VIRGINIA
REGISTER OF REGULATIONS

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# VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

**FAST-TRACK RULEMAKING PROCESS**

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

**EMERGENCY REGULATIONS**

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

# PUBLICATION SCHEDULE AND DEADLINES

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

**November 2013 through December 2014**

| Volume: Issue | Material Submitted By Noon* | Will Be Published On |
|---|---|---|
| 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 |
| 30:23 | June 25, 2014 | July 14, 2014 |
| 30:24 | July 9, 2014 | July 28, 2014 |
| 30:25 | July 23, 2014 | August 11, 2014 |
| 30:26 | August 6, 2014 | August 25, 2014 |
| 31:1 | August 20, 2014 | September 8, 2014 |
| 31:2 | September 3, 2014 | September 22, 2014 |
| 31:3 | September 17, 2014 | October 6, 2014 |
| 31:4 | October 1, 2014 | October 20, 2014 |
| 31:5 | October 15, 2014 | November 3, 2014 |
| 31:6 | October 29, 2014 | November 17, 2014 |
| 31:7 | November 12, 2014 | December 1, 2014 |

*Filing deadlines are Wednesdays unless otherwise specified.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

### Agency Decision

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

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

Name of Petitioner: Melody Cartwright.

Nature of Petitioner's Request: To amend requirements for practice by chiropractors relating to treatment and diagnosis of curvature of the spine and the use of digital x-rays.

Agency Decision: Request denied.

Statement of Reason for Decision: At a meeting of the board on October 24, 2013, the issues were thoroughly discussed and a decision made not to initiate rulemaking in response to the petition. Licensees of the board are expected to practice within an evidence-based standard of care for their profession. The board does not and cannot prescribe by regulation a protocol for each specific condition a patient might present. Additionally, the use of digital x-rays has some advantages for electronic communication of patient records, but there is no evidence of improved outcomes for patient care.

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

VA.R. Doc. No. R13-33; Filed October 25, 2013, 9:38 a.m.

### BOARD OF VETERINARY MEDICINE

### Agency Decision

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

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

Name of Petitioner: Chelsea L. Mason.

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

Agency's Decision: Request denied.

Statement of Reason for Decision: While the members acknowledged the need for owners of veterinary practices to be well informed about technology, marketing, and business management, they did not believe continuing education hours in those areas should be substituted for courses in the care of animals. The purpose of licensure and the role of the board are protection of the public. Additionally, the board found that most other states that accept business management courses typically require more total hours than Virginia. While there was discussion about an increase in the number of hours with business practices allowed to count for some of them, the board rejected that alternative as an increased burden on veterinarians and technicians who do not want or need to take such courses. Licensees who want education in business management can obtain the hours over and above the minimum of 15 for veterinarians and six for veterinary technicians. There was comment in support of continuing education in communication with clients as a way to better serve the needs of animals in the practice. The board recently revised a Guidance Document (150-11) to clarify that such courses are presently acceptable for CE credit: "Approved CE credit is given for courses or programs related to the treatment and care of patients and shall be clinical courses in veterinary medicine or veterinary technology or courses that enhance patient safety, such as medical recordkeeping or Occupational Health and Safety Administration (OSHA) requirements. The board accepts CE that is related to disaster or emergency preparedness, the U.S. Department of Agriculture's National Veterinary Accreditation Program and communication development to strengthen the veterinarian-client-patient relationships, including but not limited to grief counseling."

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

VA.R. Doc. No. R13-26; Filed October 23, 2013, 3:30 p.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Professional and Occupational Regulation has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC120-40, Professional Boxing and Wrestling Event Regulations,** which was published in 29:17 VA.R. 2091 April 22, 2013. This action is being withdrawn due the department's determination that this action does not comport with the Governor's Regulatory Reform Initiative.

Statutory Authority: § 54.1-831 of the Code of Virginia.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email boxing@dpor.virginia.gov.

VA.R. Doc. No. R13-3614; Filed October 28, 2013, 4:39 p.m.

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for **22VAC40-25, Auxiliary Grants Program,** which was published in 29:3 VA.R. 340 October 8, 2012. Enactment 65 of Chapters 803 and 835 of the 2012 Acts of Assembly transferred powers related to the administration of auxiliary grants and the provision of adult services and adult protective services from the Department of Social Services to the Department for Aging and Rehabilitative Services effective July 1, 2013. Therefore, this action is being withdrawn because the board no longer has authority to complete this regulatory action.

Statutory Authority: Chapters 803 and 835 of the 2012 Acts of Assembly.

Agency Contact: Karin Clark, Manager, Legislative and Regulatory Affairs, Office of Commissioner, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

VA.R. Doc. No. R13-3204; Filed October 23, 2013, 3:11 p.m.

### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for **22VAC40-771, Adult Services Approved Providers,** which was published in 28:9 VA.R. 766 January 2, 2012. Enactment 65 of Chapters 803 and 835 of the 2012 Acts of Assembly transferred powers related to the administration of auxiliary grants and the provision of adult services and adult protective services from the Department of Social Services to the Department for Aging and Rehabilitative Services effective July 1, 2013. Therefore, this action is being withdrawn because the board no longer has authority to complete this regulatory action.

Statutory Authority: Chapters 803 and 835 of the 2012 Acts of Assembly.

Agency Contact: Karin Clark, Manager, Legislative and Regulatory Affairs, Office of Commissioner, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

VA.R. Doc. No. R12-3064; Filed October 23, 2013, 3:15 p.m.

### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services has WITHDRAWN the Notice of Intended Regulatory Action for 22VAC40-775, Adult Services Standards, which was published in 27:16 VA.R. 1983 April 11, 2011. Enactment 65 of Chapters 803 and 835 of the 2012 Acts of Assembly transferred powers related to the administration of auxiliary grants and the provision of adult services and adult protective services from the Department of Social Services to the Department for Aging and Rehabilitative Services effective July 1, 2013. Therefore, this action is being withdrawn because the board no longer has authority to complete this regulatory action.

Statutory Authority: Chapters 803 and 835 of the 2012 Acts of Assembly.

Agency Contact: Karin Clark, Manager, Legislative and Regulatory Affairs, Office of Commissioner, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

VA.R. Doc. No. R11-2775; Filed October 23, 2013, 3:16 p.m.

## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

### Final Regulation

Title of Regulation: **2VAC5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2VAC5-320-10).**

Statutory Authority: §§ 3.2-1002 and 3.2-1005 of the Code of Virginia.

Effective Date: December 18, 2013.

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

Summary:

*The amendments (i) remove nestronia umbellula (nestronia) from the endangered species list; (ii) add boltonia montana (valley doll's-daisy), isoetes virginica (Virginia quillwort), and pseudanophthalmus thomasi (Thomas' cave beetle) to the endangered species list; and (iii) add clematis viticaulis (Millboro leatherflower) to the threatened species list.*

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.

**2VAC5-320-10. Listing of endangered and threatened plant and insect species.**

A. The Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act (§ 3.2-1000 et seq. of the Code of Virginia).

B. The following plant and insect species are hereby declared an endangered species:

1. Boltonia montana, valley doll's-daisy.

~~1.~~ 2. Cardamine micranthera, small-anthered bittercress.

~~2.~~ 3. Carex juniperorum, juniper sedge.

~~3.~~ 4. Corallorhiza bentley, Bentley's coralroot.

~~4.~~ 5. Fimbristylis perpusilla, Harper's fimbristylis.

~~5.~~ 6. Helenium virginicum, Virginia sneezeweed.

~~6.~~ 7. Helonias bullata, swamp-pink.

~~7.~~ 8. Ilex collina, long-stalked holly.

~~8.~~ 9. Iliamna corei, Peter's ~~mountain~~ Mountain mallow.

10. Isoetes virginica, Virginia quillwort.

~~9.~~ 11. Isotria medeoloides, small whorled pogonia.

~~10.~~ 12. Neonympha mitchellii, Mitchell's satyr butterfly.

~~11. Nestronia umbellula, nestronia.~~

13. Pseudanophthalmus holsingeri, Holsinger's cave beetle.

14. Pseudanophthalmus thomasi, Thomas' cave beetle.

~~12.~~ 15. Ptilimnium nodosum, harperella.

~~13.~~ 16. Puto kosztarabi, Buffalo Mountain mealybug.

~~14. Pseudanophthalmus holsingeri, Holsinger's cave beetle.~~

~~15.~~ 17. Scirpus ancistrochaetus, Northeastern bulrush.

~~16.~~ 18. Sigara depressa, Virginia Piedmont water boatman.

~~17.~~ 19. Spiraea virginiana, Virginia spiraea.

~~18.~~ 20. Trifolium calcaricum, running glade clover.

C. The following plant and insect species are hereby declared a threatened species:

1. Aeschynomene virginica, sensitive-joint vetch.

2. Amaranthus pumilus, seabeach amaranth.

3. Arabis serotina, shale barren ~~rock cress~~ rockcress.

4. Cicindela dorsalis dorsalis, Northeastern beach tiger beetle.

5. Clematis viticaulis, Millboro leatherflower.

~~5.~~ 6. Echinacea laevigata, smooth coneflower.

~~6.~~ 7. Juncus caesariensis, New Jersey rush.

~~7.~~ 8. Lycopodiella margueritiae, Northern prostrate clubmoss.

~~8.~~ 9. Nuphar sagittifolia, narrow-leaved spatterdock.

~~9.~~ 10. Platanthera leucophaea, Eastern prairie fringed orchid.

~~10.~~ 11. Pyrgus wyandot, Appalachian grizzled skipper.

~~11.~~ 12. Rhus michauxii, Michaux's sumac.

~~12.~~ 13. Scirpus flaccidifolius, reclining bulrush.

VA.R. Doc. No. R09-1869; Filed October 30, 2013, 9:30 a.m.

### Fast-Track Regulation

Title of Regulation: **2VAC5-690. Regulations for Pesticide Containers and Containment under Authority of the Virginia Pesticide Control Act (adding 2VAC5-690-10 through 2VAC5-690-240).**

Statutory Authority: § 3.2-3906 of the Code of Virginia; 40 CFR Part 165.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

Effective Date: January 2, 2014.

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

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board that may adopt regulations in accordance with Title 3.2 of the Code of Virginia.

Section 3.2-3906 of the Code of Virginia authorizes the board to adopt regulations that are necessary to carry out the purposes of Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia regarding pesticides. This authority is discretionary.

Purpose: Regulatory standards and requirements for pesticide containers, repackaging pesticides, and pesticide containment structures are essential to protect the environment from potential contamination resulting from accidental pesticide discharges. The enforcement of the current federal regulations utilizing the federal credentials issued to Virginia's pesticide investigators by the U.S. Environmental Protection Agency (EPA) is sufficient to demonstrate compliance with the federal rule. However, the promulgation of Virginia's own regulations would allow more flexibility and greater discretion in the enforcement of pesticide container and containment requirements based on Virginia's unique needs and conditions, thereby benefiting the welfare of the regulants subject to the provisions of this regulation. The health, safety, and welfare of Virginians would not be adversely impacted because the proposed regulations are equivalent to those currently in place at the federal level. Moreover, the enforcement of a state pesticide container and containment regulation would be more cost effective because, under the proposed regulations, investigators would be able to perform container and containment inspections in conjunction with other inspection activities at all applicable sites.

Rationale for Using Fast-Track Process: Department staff expects the regulations will be noncontroversial because the requirements are identical to those of Part 165 of Title 40 of the Code of Federal Regulations, Pesticide Management and Disposal, with which industry is already expected to comply. Since the finalization of the federal regulations, the Department of Agriculture and Consumer Services has provided compliance assistance to the approximately 50 pesticide businesses that are required to comply with its provisions.

Substance: These regulations establish standards for (i) container design and residue removal for nonrefillable pesticide containers, (ii) container design for refillable pesticide containers, (iii) repackaging pesticide products into refillable containers, and (iv) pesticide containment structures. The regulations establish standards for both the registrant of a pesticide product and the refiller who repackages a pesticide product. The regulations also establish recordkeeping requirements.

Issues: The promulgation of Virginia's own regulations will allow more flexibility and greater discretion in the enforcement of pesticide container and containment requirements based on Virginia's unique needs and conditions. This additional flexibility and discretion will be an advantage to both regulants and the agency.

The regulations pose no disadvantages to the public or the Commonwealth as the regulations are equivalent to federal regulations that are currently in place.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Part 165 of Title 40 of the Code of Federal Regulations, Pesticide Management and Disposal, establishes standards for container design and residue removal in non-refillable pesticide containers, standards for container design in refillable pesticide containers, standards for repackaging pesticide products into refillable containers, and standards for pesticide containment structures. The Board of Agriculture and Consumer Services proposes to promulgate equivalent regulations.

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

Estimated Economic Impact. According to the Virginia Department of Agriculture and Consumer Services (Department), the enforcement of the current federal regulations utilizing the federal credentials issued to Virginia's pesticide investigators by the U.S. Environmental Protection Agency (EPA) is sufficient to demonstrate compliance with the federal rule. However, the promulgation of Virginia's own regulations would allow more flexibility and greater discretion in the enforcement of pesticide container and containment requirements based on Virginia's unique needs and conditions. The health, safety, and welfare of Virginians would not be adversely affected because the proposed regulations are equivalent to those currently in place at the federal level. Moreover, the enforcement of a state pesticide container and containment regulation would be more cost-effective since under the proposed regulations, investigators would be able to perform container and containment inspections in conjunction with other inspection activities at all applicable sites.

It is a violation of EPA policy for state investigators, during the same visit to any given facility, to conduct any type of pesticide inspection not related to the container and

containment inspection being conducted under the investigator's federal credentials. With 50 regulated sites in Virginia that receive a state inspection and a container and containment inspection once a year, the proposed regulations would enable a reduction in duplicative travel that the Department anticipates will result in savings of approximately $20,000. Additionally, compliance actions under a state pesticide container and containment regulation will be processed more quickly and in accordance with Virginia-specific administrative processes and penalty matrix. The federal compliance process can be lengthy, often taking a year or longer to reach resolution.

Businesses and Entities Affected. Pesticide registrants, retailers, distributors, commercial applicators, custom blenders, and end-users may all be affected by the proposed regulations. The Department estimates that approximately 50 facilities will be required to comply with the proposed regulations, the vast majority of these facilities being small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The promulgation of these regulations will not significantly affect employment.

Effects on the Use and Value of Private Property. The promulgation of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The promulgation of these regulations will not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The promulgation of these regulations will not adversely affect small businesses.

Real Estate Development Costs. The promulgation of these regulations will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, 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 agency concurs with the analysis of the Department of Planning and Budget.

Summary:

*The regulations establish standards for (i) container design and residue removal in nonrefillable pesticide containers, (ii) container design in refillable pesticide containers, (iii) repackaging pesticide products into refillable containers, and (iv) pesticide containment structures. The regulations also establish recordkeeping requirements. The regulations are equivalent to federal regulations located at 40 CFR Part 165, Pesticide Management and Disposal.*

## CHAPTER 690
## REGULATIONS FOR PESTICIDE CONTAINERS AND CONTAINMENT UNDER AUTHORITY OF THE VIRGINIA PESTICIDE CONTROL ACT

**2VAC5-690-10. Scope.**

This chapter establishes standards and requirements for pesticide containers, repackaging pesticides, and pesticide containment structures.

**2VAC5-690-20. Definitions.**

Terms used in this chapter have the same meaning as in the Federal Insecticide, Fungicide, Rodenticide Act (7 USC § 136 et seq.) and 40 CFR Part 152. In addition, as used in this chapter, the following terms shall have the meanings set forth below.

"Agricultural pesticide" means any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

"Appurtenance" means any equipment or device that is used for the purpose of transferring a pesticide from a stationary pesticide container or to any refillable container, including but not limited to hoses, fittings, plumbing, valves, gauges, pumps, and metering devices.

"Capacity" means, as applied to containers, the rated capacity of the container.

"CFR" means the Code of Federal Regulations.

"Container" means any package, can, bottle, bag, barrel, drum, tank, or other containing-device (excluding any application tanks) used to enclose a pesticide. Containers that are used to sell or distribute a pesticide product and that also function in applying the product (such as spray bottles, aerosol cans, and containers that become part of a direct injection system) are considered to be containers for the purposes of this chapter.

"Containment pad" means any structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment washwater at a pesticide dispensing area.

"Containment structure" means either a secondary containment unit or a containment pad.

"Custom blending" means the service of mixing pesticides to a customer's specifications, usually a pesticide-fertilizer, pesticide-pesticide, or a pesticide-animal feed mixture, when:

1. The blend is prepared to the order of the customer and is not held in inventory by the blender;

2. The blend is to be used on the customer's property (including leased or rented property);

3. The pesticides used in the blend bear end-use labeling directions that do not prohibit use of the product in such a blend;

4. The blend is prepared from registered pesticides; and

5. The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.

"Dilutable" means that the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application or use.

"Dry pesticide" means any pesticide that is in solid form and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowables, water-soluble powders, granules, and dry baits.

"EPA" means the U.S. Environmental Protection Agency.

"Establishment" means any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States.

"Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person).

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 et seq.).

"Nonrefillable container" means a container that is not a refillable container and that is designed and constructed for one-time use and is not intended to be filled again with a pesticide for sale or distribution. Reconditioned containers are considered to be nonrefillable containers.

"One-way valve" means a valve that is designed and constructed to allow virtually unrestricted flow in one direction and no flow in the opposite direction, thus allowing the withdrawal of material from, but not the introduction of material into, a container.

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located.

"Owner" means any person who owns a facility at which a containment structure is required.

"Pesticide compatible as applied to containers" means that the container construction materials will not chemically react with the formulation. A container is not compatible with the formulation if, for example, the formulation:

1. Is corrosive to the container;

2. Causes softening, premature aging, or embrittlement of the container;

3. Otherwise causes the container to weaken or to create the risk of discharge;

4. Reacts in a significant chemical, electrolytic, or galvanic manner with the container; or

5. Interacts in a way, such as the active ingredient permeating the container wall, that would cause the formulation to differ from its composition as described in the statement required in connection with its registration under § 3 of FIFRA (7 USC § 136a).

"Pesticide compatible as applied to containment" means that the containment construction materials are able to withstand anticipated exposure to stored or transferred substances without losing the capability to provide the required containment of the same or other substances within the containment area.

"Pesticide dispensing area" means an area in which pesticide is transferred out of or into a container.

"Portable pesticide container" means a refillable container that is not a stationary pesticide container.

"Produce" means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to § 5 of FIFRA (7 USC § 136c), and any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

"Producer" means any person, as defined by FIFRA, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling).

"Refillable container" means a container that is intended to be filled with pesticide more than once for sale or distribution.

"Refiller" means a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.

"Refilling establishment" means an establishment where the activity of repackaging pesticide product into refillable containers occurs.

"Registrant" means the person registering any pesticide pursuant to the provisions of Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

"Repackage" means to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number for sale or distribution.

"Rinsate" means the liquid resulting from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

"Runoff" means any liquid leaving the target site, including water, pesticide rinsate, and pesticide diluents.

"Secondary containment unit" means any structure, including rigid diking, that is designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff and leaching from stationary pesticide containers.

"Stationary pesticide container" means a refillable container (i) that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days and (ii) that holds pesticide during the entire time.

"Suspension concentrate" means a stable suspension of solid particulate active ingredients in a liquid intended for dilution with water before use.

"Tamper-evident device" means a device that can be visually inspected to determine if a container has been opened.

"Transport vehicle" means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car, or rail car used for the transportation of cargo by any mode.

"USDOT" means the U.S. Department of Transportation.

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

"Washwater" means the liquid resulting from the rinsing of the exterior of any equipment or containers that have or may have come in direct contact with any pesticide or system maintenance compound, such as oil or antifreeze.

## Part II
## Nonrefillable Container Standards: Container Design and Residue Removal

### 2VAC5-690-30. General provisions.

A. The regulations in Part II (2VAC5-690-30 et seq.) of this chapter establish design and construction requirements for nonrefillable containers used for the distribution or sale of some pesticide products.

B. A registrant who distributes or sells a pesticide product in nonrefillable containers must comply with the regulations in Part II of this chapter. A registrant whose pesticide product is subject to the regulations in Part II of this chapter as set out in 2VAC5-690-40 must distribute or sell the pesticide product in a nonrefillable container that meets the standards of these regulations.

### 2VAC5-690-40. Scope of pesticide products included.

A. The regulations in Part II (2VAC5-690-30 et seq.) of this chapter do not apply to manufacturing use products, as defined in 40 CFR 158.153(h).

B. The regulations in Part II of this chapter do not apply to plant-incorporated protectants, as defined in 40 CFR 174.3.

C. The regulations in Part II of this chapter do not apply to a pesticide product if it satisfies all of the following conditions:

1. The pesticide product meets one of the following two criteria:

a. The pesticide product is an antimicrobial pesticide as defined in § 2(mm) of FIFRA (7 USC § 136(mm)); or

b. The pesticide product (i) is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime and (ii) in the intended use is subject to a tolerance under § 408 of the Federal Food, Drug, and Cosmetic Act (21 USC § 346a) or a food additive regulation under § 409 of the Federal Food, Drug, and Cosmetic Act (21 USC § 348).

2. The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

3. The pesticide product is not a hazardous waste as set out in 40 CFR Part 261 when the pesticide product is intended to be disposed.

4. EPA has not specifically determined that the pesticide product must be subject to the regulations in Part II of this chapter to prevent an unreasonable adverse effect on the environment according to the provisions of subsection D of this section.

D. As established in 40 CFR 165.23(d), EPA may determine that an antimicrobial pesticide product otherwise exempted must be subject to the regulations in Part II of this chapter.

E. Except for manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt under subsection C of this section, all of the regulations in Part II of this chapter apply to a pesticide product if it satisfies at least one of the following criteria:

1. The pesticide product meets the criteria of Toxicity Category I as set out in 40 CFR 156.62.

2. The pesticide product meets the criteria of Toxicity Category II as set out in 40 CFR 156.62.

3. The pesticide product is classified for restricted use as set out in 40 CFR 152.160 through 40 CFR 152.175.

F. Except for manufacturing use products, plant-incorporated protectants, antimicrobial products that are exempt under subsection C of this section, and other pesticide products that are regulated under subsection E of this section, a pesticide product must be packaged in compliance with 49 CFR 173.24. If the pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the USDOT requires it to be packaged according to 49 CFR Part 171 through 49 CFR Part 180.

**2VAC5-690-50. Nonrefillable container standards.**

A. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part II of this chapter as described in 2VAC5-690-40.

B. A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 49 CFR 173.5, 49 CFR 173.6, 49 CFR 173.24, 49 CFR 173.24a, 49 CFR 173.24b, 49 CFR 173.28, 49 CFR 173.155, 49 CFR 173.203, 49 CFR 173.213, 49 CFR 173.240(c), 49 CFR 173.240(d), 49 CFR 173.241(c), 49 CFR 173.241(d), 49 CFR Part 178, and 49 CFR Part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of 49 CFR Part 107 Subpart B. The requirements in this subsection apply to the pesticide product as it is packaged for transportation in commerce.

C. A registrant's nonrefillable containers must comply with the following standards if the registrant's pesticide product is a USDOT hazardous material as defined in 49 CFR 171.8:

1. The USDOT requires the pesticide product to be packaged according to 49 CFR Part 171 through 49 CFR Part 180 or, if subject to a special permit, according to the applicable requirements of 49 CFR Part 107 Subpart B.

2. The pesticide product must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR Part 171 through 49 CFR Part 180 or, if subject to a special permit, according to the applicable requirements of 49 CFR Part 107 Subpart B. The requirements in this subdivision apply to the pesticide product as it is packaged for transportation in commerce.

D. Any nonrefillable container that is a rigid container with a capacity equal to or greater than three liters (0.79 gallons), is not an aerosol container or a pressurized container, and is used to distribute or sell a liquid agricultural pesticide must have at least one of the following standard closures:

1. Bung, two-inch pipe size (2.375 inches in diameter), external threading, 11.5 threads per inch, National Pipe Straight (NPS) standard;

2. Bung, two-inch pipe size (2.375 inches in diameter), external threading, five threads per inch, buttress threads;

3. Screw cap, 63 millimeters, at least one thread revolution at six threads per inch; or

4. Screw cap, 38 millimeters, at least one thread revolution at six threads per inch. The cap may fit on a separate rigid spout or on a flexible pull-out plastic spout.

E. Any nonrefillable container that has a capacity of five gallons (18.9 liters) or less; is not an aerosol container, a pressurized container, or a spray bottle; and holds a liquid pesticide must do both of the following:

1. Allow the contents of the nonrefillable container to pour in a continuous, coherent stream.

2. Allow the contents of the nonrefillable container to be poured with a minimum amount of dripping down the outside of the container.

F. Each nonrefillable container and pesticide formulation combination must meet the applicable residue removal standard of this section.

1. If the nonrefillable container is rigid and has a capacity less than or equal to five gallons (18.9 liters) for liquid formulations or 50 pounds (22.7 kilograms) for solid formulations and if the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application (that is, if the pesticide is dilutable), each container/formulation combination must be capable of attaining at least 99.99% removal of each active ingredient when tested using the EPA test procedure "Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers."

2. The test must be conducted only if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case-by-case basis.

3. For the rigid container/dilutable product standard in subdivision 1 of this subsection, percent removal represents the percent of the original concentration of the active ingredient in the pesticide product when compared to the concentration of that active ingredient in the fourth rinse. Percent removal is calculated by the formula: percent removal = [1.0 - RR] x 100.0, where RR = rinsate ratio = Active ingredient concentration in fourth rinsate/Original concentration of active ingredient in the product.

G. As established in 40 CFR 165.25(g) and 40 CFR 165.25(h), a registrant may obtain from EPA a waiver from or a modification to the nonrefillable container standards.

**2VAC5-690-60. Reporting and recordkeeping.**

A. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject

to the regulations in Part II of this chapter as described in 2VAC5-690-40.

B. A registrant is not required to report to VDACS with information about the registrant's nonrefillable containers under the regulations in Part II of this chapter. A registrant should refer to the reporting standards in 40 CFR Part 159 to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under § 6(a)(2) of FIFRA (7 USC § 136d(a)(2)).

C. For each pesticide product that is subject to 2VAC5-690-50 and 2VAC5-690-60 and is distributed or sold in nonrefillable containers, the registrant must maintain the records listed in this section for as long as a nonrefillable container is used to distribute or sell the pesticide product and for three years afterwards. The registrant must furnish these records for inspection and copying within 72 hours of request by an employee of VDACS. Registrants must keep the following records:

1. The name and EPA registration number of the pesticide product.

2. A description of the nonrefillable container or containers in which the pesticide product is distributed or sold.

3. At least one of the following records to document compliance with the requirement for closures in 2VAC5-690-50 D for each nonrefillable container used to distribute or sell the pesticide product that must comply with 2VAC5-690-50 D:

a. A letter or document from the container supplier that describes the closure.

b. A specification about the closure in the contract between the registrant or applicant and the container supplier.

c. A copy of EPA's approval of any nonstandard closure.

4. At least one of the following records pertaining to the container dispensing capability requirements in 2VAC5-690-50 E for each nonrefillable container used to distribute or sell the pesticide product that must comply with 2VAC5-690-50 E:

a. Test data or documentation demonstrating that the nonrefillable container meets the standards in 2VAC5-690-50 E when it contains the pesticide product.

b. Test data or documentation demonstrating that a different nonrefillable container meets the standards in 2VAC5-690-50 E when it contains the pesticide product or a different pesticide product and a written explanation of why such data or documentation demonstrates that the container meets the standards in 2VAC5-690-50 E for the pesticide product.

c. A copy of EPA's approval of a request for a waiver from the container dispensing requirement.

5. At least one of the following records pertaining to the nonrefillable container residue removal requirement in 2VAC5-690-50 F if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case-by-case basis:

a. Test data showing that the nonrefillable container and pesticide formulation meet the standard in 2VAC5-690-50 F.

b. Test data showing that a different nonrefillable container with the same or a different pesticide formulation meets the standard in 2VAC5-690-50 F, together with a written explanation of why such data demonstrate that the nonrefillable container and pesticide formulation meet the standard in 2VAC5-690-50 F.

c. A copy of EPA's approval of a request for a waiver from the residue removal standard requirement.

## Part III
## Refillable Container Standards: Container Design

### 2VAC5-690-70. General provisions.

A. The regulations in Part III (2VAC5-690-70 et seq.) of this chapter establish design and construction requirements for refillable containers used for the distribution or sale of some pesticide products.

B. The following persons must comply with the regulations in Part III of this chapter as follows:

1. A registrant must comply with all of the regulations in Part III of this chapter if the registrant distributes or sells a pesticide product in refillable containers. If the pesticide product is subject to the regulations in Part III of this chapter as set out in 2VAC5-690-80, the pesticide product must be distributed or sold in a refillable container that meets the standards of these regulations. This includes pesticide products that are repackaged according to Part IV (2VAC5-690-110 et seq.) of this chapter.

2. A refiller must comply with the regulations in 2VAC5-690-90 G for stationary pesticide containers if the refiller is not the registrant of the pesticide product. If the pesticide product is subject to the regulations in Part III of this chapter as set out in 2VAC5-690-80, the stationary pesticide containers used to distribute or sell the product must meet the standards of 2VAC5-690-90 G.

3. For a refiller of a pesticide product who is not a registrant of the pesticide product, 2VAC5-690-90 C provides an exemption from some of the requirements in 2VAC5-690-90 B.

### 2VAC5-690-80. Scope of pesticide products included.

A. The regulations in Part III (2VAC5-690-70 et seq.) of this chapter do not apply to manufacturing use products as defined in 40 CFR 158.153(h).

B. The regulations in Part III of this chapter do not apply to plant-incorporated protectants as defined in 40 CFR 174.3.

C. The regulations in Part III of this chapter do not apply to a pesticide product if it satisfies all of the following conditions:

1. The pesticide product meets one of the following two criteria:

a. The pesticide product is an antimicrobial pesticide as defined in § 2(mm) of FIFRA (7 USC § 136(mm)); or

b. The pesticide product (i) is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and (ii) in the intended use is subject to a tolerance under § 408 of the Federal Food, Drug, and Cosmetic Act (21 USC § 346a) or a food additive regulation under § 409 of the Federal Food, Drug, and Cosmetic Act (21 USC § 348).

2. The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

3. The pesticide product is not a hazardous waste as set out in 40 CFR Part 261 when the pesticide product is intended to be disposed.

4. EPA has not specifically determined that the pesticide product must be subject to the regulations in Part III of this chapter to prevent an unreasonable adverse effect on the environment according to the provisions of subsection E of this section.

D. An antimicrobial swimming pool product that is not exempt by subsection A, B, or C of this section must comply with all of the regulations in Part III of this chapter except 2VAC5-690-90 E regarding marking and 2VAC5-690-90 F regarding openings. For the purposes of Part III of this chapter, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

1. The pesticide product is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

2. The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

E. As established in 40 CFR 165.43(e), EPA may determine that an antimicrobial pesticide product otherwise exempted must be subject to the regulations in Part III of this chapter.

F. The regulations in Part III of this chapter apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt by subsection C of this section. Antimicrobial products covered under subsection D of this section are subject to the regulations indicated in subsection D of this section.

G. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part III of this chapter as described in subsections A through F of this section.

1. The regulations in Part III of this chapter do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

2. The regulations in Part III of this chapter do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

**2VAC5-690-90. Refillable container standards.**

A. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part III of this chapter as described in 2VAC5-690-80 A through F.

B. A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 49 CFR 173.5, 49 CFR 173.6, 49 CFR 173.24, 49 CFR 173.24a, 49 CFR 173.24b, 49 CFR 173.28, 49 CFR 173.155, 49 CFR 173.203, 49 CFR 173.213, 49 CFR 173.240(c), 49 CFR 173.240(d), 49 CFR 173.241(c), 49 CFR 173.241(d), 49 CFR Part 178, and 49 CFR Part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of 49 CFR Part 107 Subpart B. The requirements in this subsection apply to the pesticide product as it is packaged for transportation in commerce.

C. A refiller is not required to comply with 49 CFR 173.28(b)(2) for pesticide products that are not USDOT hazardous materials if the refillable container to be reused complies with the refillable container regulations in Part III (2VAC5-690-70 et seq.) of this chapter and the refilling is done in compliance with the repackaging regulations in Part IV (2VAC5-690-110) of this chapter.

D. A registrant's refillable containers must comply with the following standards if the registrant's pesticide product is a USDOT hazardous material as defined in 49 CFR 171.8:

1. The USDOT requires the pesticide product to be packaged according to 49 CFR Part 171 through 49 CFR

Part 180 or, if subject to a special permit, according to the applicable requirements of 49 CFR Part 107 Subpart B.

2. The pesticide product must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR Part 171 through 49 CFR Part 180 or, if subject to a special permit, according to the applicable requirements of 49 CFR Part 107 Subpart B. The requirements in this subsection apply to the pesticide product as it is packaged for transportation in commerce.

E. Each refillable container must be marked in a durable and clearly visible manner with a serial number or other identifying code that will distinguish the individual container from all other containers. Durable marking includes, but is not limited to, etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, and marking with durable ink. The serial number or other identifying code must be located on the outside part of the container except on a closure. Placement on the label or labeling is not sufficient unless the label is an integral, permanent part of or permanently stamped on the container.

F. For any refillable container that is a portable pesticide container, is designed to hold liquid pesticide formulations, and is not a cylinder that complies with the USDOT Hazardous Materials Regulations in 49 CFR Part 171 through 49 CFR Part 180, each opening of the container other than a vent must have a one-way valve, a tamper-evident device, or both. A one-way valve may be located in a device or system separate from the container if the device or system is the only reasonably foreseeable way to withdraw pesticide from the container. A vent must be designed to minimize the amount of material that could be introduced into the container through it.

G. If a stationary pesticide container designed to hold undivided quantities of pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide is located at the refilling establishment of a refiller operating under written contract to a registrant, the stationary pesticide container must meet the following standards:

1. Except during a civil emergency or any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, each stationary pesticide container (for liquid and dry pesticides) and its appurtenances must meet both of the following standards:

a. Each stationary pesticide container and its appurtenances must be resistant to extreme changes in temperature and constructed of materials that are adequately thick to not fail and that are resistant to corrosion, puncture, or cracking.

b. Each stationary pesticide container must be capable of withstanding all operating stresses, taking into account static heat, pressure buildup from pumps and compressors, and any other foreseeable mechanical stresses to which the container may be subjected in the course of operations.

2. Each stationary container of liquid pesticides must meet all of the following standards:

a. Each stationary container of liquid pesticides must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

b. External sight gauges, which are pesticide-containing hoses or tubes that run vertically along the exterior of the container from the top to the bottom, are prohibited on stationary containers of liquid pesticides.

c. Each connection on a stationary container of liquid pesticides that is below the normal liquid level must be equipped with a shutoff valve that is capable of being locked closed. A shutoff valve must be located within a secondary containment unit if one is required by Part V (2VAC5-690-160 et seq.) of this chapter.

H. As established in 40 CFR 165.45(g) and 40 CFR 165.45(h), a registrant may obtain from EPA a waiver from or a modification to some of the refillable container standards.

**2VAC5-690-100. Reporting.**

In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part III of this chapter as described in 2VAC5-690-80 A through F.

A registrant is not required to report to VDACS information about the refillable containers under the regulations in Part III (2VAC5-690-70 et seq.) of this chapter. A registrant should refer to the reporting standards in 40 CFR Part 159 to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under § 6(a)(2) of FIFRA (7 USC § 136d(a)(2)).

Part IV
Standards for Repackaging Pesticide Products into Refillable Containers

**2VAC5-690-110. General provisions.**

A. The regulations in Part IV (2VAC5-690-110 et seq.) of this chapter establish requirements for repackaging some pesticide products into refillable containers for distribution or sale.

B. The following persons must comply with the regulations in Part IV of this chapter:

1. A registrant who distributes or sells a pesticide product in refillable containers;

2. A registrant who distributes or sells pesticide products to a refiller that is not part of the registrant's company for repackaging into refillable containers; or

3. A refiller of a pesticide product that is not the registrant of the pesticide product.

Each pesticide product that is subject to the regulations in Part IV of this chapter as set out in 2VAC5-690-120 and that is distributed or sold in a refillable container must be distributed or sold in compliance with the standards of these regulations.

**2VAC5-690-120. Scope of pesticide products included.**

A. The regulations in Part IV (2VAC5-690-110 et seq.) of this chapter do not apply to manufacturing use products as defined in 40 CFR 158.153(h).

B. The regulations in Part IV of this chapter do not apply to plant-incorporated protectants as defined in 40 CFR 174.3.

C. The regulations in Part IV of this chapter do not apply to a pesticide product if it satisfies all of the following conditions:

1. The pesticide product meets one of the following two criteria:

a. The pesticide product is an antimicrobial pesticide as defined in § 2(mm) of FIFRA (7 USC § 136(mm)); or

b. The pesticide product (i) is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and (ii) in the intended use is subject to a tolerance under § 408 of the Federal Food, Drug, and Cosmetic Act (21 USC § 346a) or a food additive regulation under § 409 of the Federal Food, Drug, and Cosmetic Act (21 USC § 348).

2. The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

3. The pesticide product is not a hazardous waste as set out in 40 CFR Part 261 when the pesticide product is intended to be disposed.

4. EPA has not specifically determined that the pesticide product must be subject to the regulations in Part IV of this chapter to prevent an unreasonable adverse effect on the environment according to the provisions of subsection F of this section.

D. For the purposes of Part IV of this chapter, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

1. The pesticide product is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

2. The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

E. An antimicrobial swimming pool product that is not exempt by subsection A, B, or C of this section must comply with all of the regulations in Part IV of this chapter except for the following requirements:

| Requirement | Requirement for registrants who distribute or sell directly in refillable containers | Requirement for refillers who are not registrants |
|---|---|---|
| Recordkeeping specific to each instance of repackaging | 2VAC5-690-130 J 2 | 2VAC5-690-150 K 2 |
| Container inspection: criteria regarding a serial number or other identifying code | 2VAC5-690-130 F 2 | 2VAC5-690-150 G 2 |
| Container inspection: criteria regarding one-way valve or tamper-evident device | 2VAC5-690-130 F 3 | 2VAC5-690-150 G 3 |
| Cleaning requirement: criteria regarding one-way valve or tamper-evident device | 2VAC5-690-130 G 1 | 2VAC5-690-150 H 1 |
| Cleaning if the one-way valve or tamper-evident device is not intact | 2VAC5-690-130 H | 2VAC5-690-150 I |

F. As established in 40 CFR 165.63(e), EPA may determine that an antimicrobial pesticide product otherwise exempted must be subject to the regulations in Part IV of this chapter.

G. The regulations in Part IV of this chapter apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt under subsection C of this section. Antimicrobial products covered under subsection E of this

section are subject to the regulations indicated in that subsection.

H. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part IV of this chapter as described in subsections A through G of this section.

1. The regulations in Part IV of this chapter do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

2. Custom blending is not subject to the regulations in Part IV of this chapter.

3. The regulations in Part IV of this chapter do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

**2VAC5-690-130. Registrants who distribute or sell pesticide products in refillable containers.**

A. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part IV of this chapter as described in 2VAC5-690-120 A through G.

B. Any registrant who distributes or sells pesticide products in refillable containers and any registrant who conducts all of the repackaging for a pesticide product and does not distribute or sell the pesticide product to a refiller that is not part of the registrant's company for repackaging into refillable containers must comply with this section. Any registrant that repackages a product directly into refillable containers for sale or distribution and also sells or distributes other quantities of that product to an independent refiller for repackaging must meet the requirements in this section for those quantities the registrant distributes or sells directly and the requirements in 2VAC5-690-140 for those quantities that the registrant distributes or sells to an independent refiller.

C. A registrant is responsible for the pesticide product that the registrant distributes or sells in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under § 3 of FIFRA (7 USC § 136a).

D. For each pesticide product distributed or sold in refillable containers, the registrant must develop both of the following documents in writing.

1. The registrant must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

a. The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under § 3 of FIFRA (7 USC § 136a).

b. If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under "Directions for Use," or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable federal and state regulations.

2. The registrant must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

a. An acceptable container is one that the registrant has determined meets the standards in Part III (2VAC5-690-70 et seq.) of this chapter and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

b. The registrant must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in Part III of this chapter.

E. A refiller at a registrant's establishment that repackages a pesticide product into refillable containers for distribution or sale must comply with all of the following provisions.

1. The establishment must be registered with EPA as a producing establishment as required by 40 CFR 167.20.

2. The refiller must not change the pesticide formulation unless the refiller has a registration for the new formulation.

3. The refiller must repackage a pesticide product only into a refillable container that is identified on the registrant's description of acceptable containers for that pesticide product.

4. The refiller may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that the refiller can use.

5. The refiller must have all of the following items at the establishment before repackaging a pesticide product into any refillable container for distribution or sale:

a. The pesticide product's label and labeling;

b. The written refilling residue removal procedure for the pesticide product; and

c. The written description of acceptable containers for the pesticide product.

6. Before repackaging a pesticide product into any refillable container for distribution or sale, the refiller must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with

subsection G of this section. The refiller may identify the previous pesticide product by referring to the label or labeling.

7. The refiller must inspect each refillable container according to subsection F of this section.

8. The refiller must clean each refillable container according to subsection G or H of this section, if required by either subsection.

9. The refiller must ensure that each refillable container is properly labeled according to subsection I of this section.

10. The establishment must maintain records in accordance with subsection J of this section.

11. The establishment must maintain records as required by 40 CFR Part 169.

12. The establishment must report as required by 40 CFR Part 167.

F. Before repackaging a pesticide product into any refillable container, a refiller at a registrant's establishment must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in subdivision 1 of this subsection exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant USDOT requirement. If the condition in subdivision 2 or 3 of this subsection (or both) exists, the container fails the inspection and must not be refilled until the container meets the standards specified in Part III of this chapter. The conditions are:

1. The integrity of the container is compromised in at least one of the following ways:

a. The container shows signs of rupture or other damage that reduces its structural integrity;

b. The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects;

c. The container has cracks, warpage, corrosion, or any other damage that might render it unsafe for transportation; or

d. There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

2. The container does not bear the markings required by 2VAC5-690-90 B through E, or such markings are not legible.

3. The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

G. A refiller at a registrant's establishment must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in subdivisions 1 and either 2 or 3 of this subsection are satisfied.

1. If required, each tamper-evident device and one-way valve is intact.

2. The refillable container is being refilled with the same pesticide product.

3. Both of the following conditions are satisfied:

a. The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

b. There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under § 3 of FIFRA (7 USC § 136a). Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

H. As required in subsection G of this section, a refiller at a registrant's establishment must clean each refillable container that has a tamper-evident device that is not intact or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

I. Before distributing or selling a pesticide product in a refillable container, a refiller must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of 40 CFR Part 156. In particular, the refiller must ensure that the net contents statement and EPA establishment number appear on the label.

J. Each establishment of a registrant that repackages a pesticide product into refillable containers for distribution or sale must maintain all of the records listed in this section in addition to the applicable records identified in 40 CFR Part 167 and 40 CFR Part 169. The establishment must furnish these records for inspection and copying within 72 hours of request by an employee of VDACS.

1. For each pesticide product distributed or sold in refillable containers, both of the following records must be maintained for the current operating year and for three years afterwards:

a. The written refilling residue removal procedure for the pesticide product; and

b. The written description of acceptable containers for the pesticide product.

2. Each time a refiller at a registrant's establishment repackages a pesticide product into a refillable container and distributes or sells the product, the following records must be generated and maintained for at least three years after the date of repackaging:

a. The EPA registration number of the pesticide product distributed or sold in the refillable container;

b. The date of the repackaging; and

c. The serial number or other identifying code of the refillable container.

**2VAC5-690-140. Registrants who distribute or sell pesticide products to refillers for repackaging.**

A. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part IV of this chapter as described in 2VAC5-690-120 A through G.

B. A registrant who distributes or sells pesticide products to a refiller that is not part of the registrant's company for repackaging into refillable containers must comply with the standards in this section.

C. A registrant may allow a refiller to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all of the following conditions are satisfied:

1. The repackaging results in no change to the pesticide formulation.

2. One of the following conditions regarding a registered refilling establishment is satisfied:

a. The pesticide product is repackaged at a refilling establishment registered with EPA as required by 40 CFR 167.20.

b. The pesticide product is repackaged by a refilling establishment registered with EPA as required by 40 CFR 167.20 at the site of a user who intends to use or apply the product.

3. The registrant has entered into a written contract with the refiller to repackage the pesticide product and to use the label of the registrant's pesticide product.

4. The pesticide product is repackaged only into refillable containers that meet the standards of Part III (2VAC5-690-70 et seq.) of this chapter.

5. The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

D. Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in subsection C of this section is a violation of § 12 of FIFRA (7 USC § 136j). Both the registrant and the refiller that is repackaging the registrant's pesticide product under written contract with the registrant may be liable for violations pertaining to the repackaged product.

E. A registrant that allows a refiller to repackage the registrant's product as specified in subsection C of this section must provide the written contract referred to in subdivision C 3 of this section to the refiller before the registrant distributes or sells the pesticide product to the refiller.

F. A registrant is responsible for the pesticide product that the registrant distributes or sells to a refiller that is not part of the registrant's company for repackaging into refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under § 3 of FIFRA (7 USC § 136a).

G. For each pesticide product distributed or sold in refillable containers, the registrant must develop both of the following documents in writing.

1. The registrant must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

a. The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under § 3 of FIFRA (7 USC § 136a).

b. If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under "Directions for Use," or if there is no diluents used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable federal and state regulations.

2. The registrant must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

a. An acceptable container is one that the registrant has determined meets the standards Part III of this chapter and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

b. The registrant must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in Part III of this chapter.

H. A registrant must provide the refiller with all of the following information and documentation before or at the

time of distribution or sale of the registrant's pesticide product to the refiller:

1. The registrant's written refilling residue removal procedure for the pesticide product;

2. The registrant's written description of acceptable containers for the pesticide product; and

3. The pesticide product's label and labeling.

I. A registrant must maintain all of the records listed in this section for the current operating year and for three years afterwards. A registrant must furnish these records for inspection and copying within 72 hours of request by an employee of VDACS:

1. Each written contract entered into with a refiller for repackaging the registrant's pesticide product into refillable containers;

2. The registrant's written refilling residue removal procedure for the pesticide product; and

3. The registrant's written description of acceptable containers for the pesticide product.

**2VAC5-690-150. Refillers who are not registrants.**

A. In this section, the term "pesticide product" or "pesticide" refers only to a pesticide product or a pesticide that is subject to the regulations in Part IV of this chapter as described in 2VAC5-690-120 A through G.

B. A refiller of a pesticide product that is not the registrant of the pesticide product must comply with the standards in this section.

C. A registrant may allow a refiller to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all of the following conditions are satisfied:

1. The repackaging results in no change to the pesticide formulation.

2. One of the following conditions regarding a registered refilling establishment is satisfied:

a. The pesticide product is repackaged at a refilling establishment registered with EPA as required by 40 CFR 167.20.

b. The pesticide product is repackaged by a refilling establishment registered with EPA as required by 40 CFR 167.20 at the site of a user who intends to use or apply the product.

3. The registrant has entered into a written contract with the refiller to repackage the pesticide product and to use the label of the registrant's pesticide product.

4. The pesticide product is repackaged only into refillable containers that meet the standards of Part III (2VAC5-690-70 et seq.) of this chapter.

5. The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

D. Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in subsection C of this section is a violation of § 12 of FIFRA (7 USC § 136j). Both the refiller and the pesticide product's registrant may be liable for violations pertaining to the repackaged product.

E. A refiller is responsible for the pesticide product that the refiller distributes or sells in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under § 3 of FIFRA (7 USC § 136a).

F. A refiller must comply with all of the following provisions.

1. The refiller's establishment must be registered with EPA as a producing establishment as required by 40 CFR 167.20.

2. The refiller must not change the pesticide formulation unless the refiller has a registration for the new formulation.

3. The refiller must repackage a pesticide product only into a refillable container that is identified on the description of acceptable containers for that pesticide product provided by the registrant.

4. The refiller may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that the refiller can use.

5. The refiller must have all of the following items at the refiller's establishment before repackaging a pesticide product into any refillable container for distribution or sale:

a. The written contract referred to in subdivision C 3 of this section from the pesticide product's registrant;

b. The pesticide product's label and labeling;

c. The registrant's written refilling residue removal procedure for the pesticide product; and

d. The registrant's written description of acceptable containers for the pesticide product.

6. Before repackaging a pesticide product into any refillable container for distribution or sale, the refiller must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with subsection H of this section. The refiller may identify the previous pesticide product by referring to the label or labeling.

7. The refiller must inspect each refillable container according to subsection G of this section.

8. The refiller must clean each refillable container according to subsection H or I of this section, if required by either subsection.

9. The refiller must ensure that each refillable container is properly labeled according to subsection J of this section.

10. The refiller must maintain records in accordance with subsection K of this section.

11. The refiller must maintain records as required by 40 CFR Part 169.

12. The refiller must report as required by 40 CFR Part 167.

13. The stationary pesticide containers at the refiller's establishment must meet the standards in 2VAC5-690-90 G.

14. The refiller may be required to comply with the containment standards in Part V (2VAC5-690-160 et seq.) of this chapter.

G. Before repackaging a pesticide product into any refillable container, a refiller must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in subdivision 1 of this subsection exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant USDOT requirement. If the condition in subdivision 2 or 3 of this subsection (or both) exists, the container fails the inspection and must not be refilled until the container meets the standards specified in Part III (2VAC5-690-70 et seq.) of this chapter. The conditions are the following:

1. The integrity of the container is compromised in at least one of the following ways:

a. The container shows signs of rupture or other damage that reduces its structural integrity;

b. The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects;

c. The container has cracks, warpage, corrosion, or any other damage that might render it unsafe for transportation; or

d. There is damage to the fittings, valves, tamper-evident devices, or other appurtenances that may cause failure of the container.

2. The container does not bear the markings required by 2VAC5-690-90 B through E, or such markings are not legible.

3. The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

H. A refiller must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in subdivisions 1 and either 2 or 3 of this section are satisfied.

1. If required, each tamper-evident device and one-way valve is intact.

2. The refillable container is being refilled with the same pesticide product.

3. Both of the following conditions are satisfied.

a. The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

b. There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under § 3 of FIFRA (7 USC § 136a). Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

I. As required in subsection H of this section, a refiller must clean each refillable container that has a tamper-evident device that is not intact or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

J. Before distributing or selling a pesticide product in a refillable container, a refiller must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of 40 CFR Part 156. In particular, a refiller must ensure that the net contents statement and EPA establishment number appear on the label.

K. A refiller must maintain all of the records listed in this section in addition to the applicable records identified in 40 CFR Part 167 and 40 CFR Part 169. A refiller must furnish these records for inspection and copying within 72 hours of request by an employee of VDACS.

1. For each pesticide product distributed or sold in refillable containers, all of the following records must be maintained for the current operating year and for three years after that:

a. The written contract from the pesticide product's registrant for the pesticide product;

b. The written refilling residue removal procedure for the pesticide product; and

c. The written description of acceptable containers for the pesticide product.

2. Each time a refiller repackages a pesticide product into a refillable container and distributes or sells the product, the following records must be generated and maintained for at least three years after the date of repackaging:

a. The EPA registration number of the pesticide product distributed or sold in the refillable container;

b. The date of the repackaging; and

c. The serial number or other identifying code of the refillable container.

Part V

Standards for Pesticide Containment Structures

**2VAC5-690-160. General provisions.**

A. The purpose of the containment regulations in Part V (2VAC5-690-160 et seq.) of this chapter is to protect human health and the environment from exposure to agricultural pesticides that may spill or leak from stationary pesticide containers. This protection is achieved by the construction of secondary containment units or pads at certain facilities handling agricultural pesticides. These regulations will also reduce waste generation associated with:

1. Storage and handling of large quantities of pesticide products.

2. Pesticide dispensing and container-refilling operations.

B. Any owner or operator of one of the following businesses who also has a stationary pesticide container or a pesticide dispensing (including container refilling) area must comply with the regulations in Part V of this chapter.

1. Refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (i.e., more than 50% of total annual revenue comes from retail operations).

2. Custom blenders of agricultural pesticides.

3. Businesses that apply an agricultural pesticide for compensation (other than trading of personal services between agricultural producers).

**2VAC5-690-170. Scope of stationary pesticide containers included.**

A. A stationary pesticide container is a refillable container (i) that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days and (ii) that holds pesticide during the entire time.

B. Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in Part V (2VAC5-690-160 et seq.) of this chapter and must have a secondary containment unit that complies with the provisions of Part V of this chapter unless any of the following conditions exists:

1. The container is empty, that is, all pesticide that can be removed by methods such as draining, pumping, or aspirating has been removed (whether or not the container has been rinsed or washed).

2. The container holds only pesticide rinsates or washwater and is labeled accordingly.

3. The container holds only pesticides that would be gaseous when released at atmospheric temperature and pressure.

4. The container is dedicated to nonpesticide use and is labeled accordingly.

**2VAC5-690-180. Scope of pesticide dispensing areas included.**

A. A pesticide dispensing area is subject to the containment regulations in Part V (2VAC5-690-160 et seq.) of this chapter and must have a containment pad that complies with the requirements of Part V of this chapter if any of the following activities occur:

1. Refillable containers of agricultural pesticide are emptied, cleaned, or rinsed.

2. Agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide for any purpose, including refilling or emptying for cleaning. This applies when pesticide is dispensed from the container into any vessel, including but not limited to:

a. Refillable containers;

b. Service containers;

c. Transport vehicles; or

d. Application equipment.

3. Agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

4. Agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container for sale or distribution. Containment requirements do not apply if the agricultural pesticide is dispensed from such a container for use, application or purposes other than refilling for sale or distribution.

B. A pesticide dispensing area is exempt from the regulations in Part V of this chapter if any of the following conditions exist:

1. The only pesticides in the dispensing area would be gaseous when released at atmospheric temperature and pressure.

2. The only pesticide containers refilled or emptied within the dispensing area are stationary pesticide containers that

are already protected by a secondary containment unit that complies with the provisions of Part V of this chapter.

3. The pesticide dispensing area is used solely for dispensing pesticide from a rail car that does not remain at a facility long enough to meet the definition of a stationary pesticide container, that is, 30 days.

**2VAC5-690-190. Definition of new and existing structures.**

A. A new containment structure is one whose installation began after November 16, 2006. Installation is considered to have begun if:

1. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the containment structure; and

2. The owner or operator has either begun a continuous onsite physical construction or installation program or has entered into contractual obligations. The contract must be such that it cannot be canceled or modified without substantial loss and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

B. An existing containment structure is defined as one whose installation began on or before November 16, 2006.

**2VAC5-690-200. Design and capacity requirements for new structures.**

A. A new containment structure must comply with the following material specifications:

1. The containment structure must be constructed of steel, reinforced concrete, or other rigid material capable of withstanding the full hydrostatic head, load, and impact of any pesticides, precipitation, other substances, equipment, and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams, and joints appropriately sealed.

2. The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

3. The containment structure must be made of materials compatible with the pesticides stored. Materials are deemed compatible if they are able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

B. A new containment structure must comply with the following general design requirements:

1. The owner or operator must ensure that appurtenances and pesticide containers are protected against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

2. Appurtenances, discharge outlets, or gravity drains must not be configured through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures that meet the requirements of Part V (2VAC5-690-160 et seq.) of this chapter. Appurtenances must be configured in such a way that spills or leaks are easy to see.

3. The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

4. Multiple stationary pesticide containers may be protected within a single secondary containment unit.

C. A new secondary containment unit for a stationary container of a liquid pesticide and a new containment pad in a pesticide dispensing area must comply with the following capacity requirements:

1. New secondary containment units for stationary containers of liquid pesticides, if protected from precipitation, must have a capacity of at least 100% of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

2. New secondary containment units for stationary containers of liquid pesticides, if exposed to or unprotected from precipitation, must have a capacity of at least 110% of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

3. New containment pads in pesticide dispensing areas that have a pesticide container or pesticide holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

4. New containment pads in pesticide dispensing areas that do not have a pesticide container or pesticide holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100% of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

D. Each stationary container of liquid pesticides protected by a new secondary containment unit must be anchored or elevated to prevent flotation in the event that the secondary containment unit fills with liquid.

E. Each new containment pad in a pesticide dispensing area must:

1. Be designed and constructed to intercept leaks and spills of pesticides that may occur in the pesticide dispensing area;

2. Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport

vehicles that are used for prolonged storage or repeated onsite dispensing of pesticides;

3. Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically activated pumps that lack automatic overflow cutoff switches for the receiving container are prohibited; and

4. Have its surface sloped toward an area where liquids can be collected for removal, such as a liquid-tight sump or a depression, in the case of a single-pour concrete pad.

F. A new secondary containment unit for a stationary container of a dry pesticide must comply with the following specific design requirements:

1. The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

2. Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

3. The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary containers of dry pesticides must be stored.

4. The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of six inches high that extends at least two feet beyond the perimeter of the container.

**2VAC5-690-210. Design and capacity requirements for existing structures.**

A. An existing containment structure must comply with the following material specifications:

1. The containment structure must be constructed of steel, reinforced concrete, or other rigid material capable of withstanding the full hydrostatic head, load, and impact of any pesticides, precipitation, other substances, equipment, and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams, and joints appropriately sealed.

2. The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

3. The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

B. An existing containment structure must comply with the following general design requirements:

1. The owner or operator must ensure that appurtenances and pesticide containers are protected against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

2. All appurtenances, discharge outlets, and gravity drains through the base or wall of the containment structure must be sealed, except for direct interconnections between adjacent containment structures that meet the requirements of Part V (2VAC5-690-160 et seq.) of this chapter.

3. The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

4. Multiple stationary pesticide containers may be protected within a single secondary containment unit.

C. An existing secondary containment unit for a stationary container of liquid pesticides and an existing containment pad in a pesticide dispensing area must comply with the following capacity requirements:

1. Existing secondary containment units for stationary containers of liquid pesticides must have a capacity of at least 100% of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

2. Existing containment pads in pesticide dispensing areas that have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

3. Existing containment pads in pesticide dispensing areas that do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100% of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

D. Each stationary container of liquid pesticides protected by an existing secondary containment unit must be anchored or elevated to prevent flotation in the event that the secondary containment unit fills with liquid.

E. Each existing containment pad in a pesticide dispensing area must:

1. Be designed and constructed to intercept leaks and spills of pesticides that may occur in the pesticide dispensing area.

2. Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated onsite dispensing of pesticides.

3. Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically activated pumps that lack automatic overflow cutoff switches for the receiving container are prohibited.

F. An existing secondary containment unit for a stationary container of a dry pesticide must comply with the following specific design requirements:

1. The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

2. Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

3. The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary containers of dry pesticides must be stored.

4. The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of six inches high that extends at least two feet beyond the perimeter of the container.

**2VAC5-690-220. Operational, inspection, and maintenance requirements for all new and existing containment structures.**

A. The owner or operator of a new or existing pesticide containment structure must comply with the following operating procedures:

1. Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure);

2. Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of the day on which pesticides have been spilled or leaked except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment;

3. Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable federal, state, and local laws and regulations;

4. Ensure that transfers of pesticides between containers or between containers and transport vehicles, are attended at all times; and

5. Ensure that each lockable valve on a stationary pesticide container, if it is required by 2VAC5-690-90 G, is closed and locked, or that the facility is locked, whenever the facility is unattended.

B. The owner or operator of a new or existing pesticide containment structure must comply with the following inspection and maintenance requirements:

1. Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment structure. The inspection must include looking for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage;

2. Initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed no later than the end of the day on which damage is noticed and complete repairs within a time frame that is reasonable, taking into account factors such as the weather, and the availability of cleanup materials, trained staff, and equipment; and

3. Not store any additional pesticide on a containment structure if the structure fails to meet the requirements of Part V (2VAC5-690-160 et seq.) of this chapter until suitable repairs have been made.

**2VAC5-690-230. Combining a containment pad and a secondary containment unit.**

An owner or operator subject to the requirements of Part V (2VAC5-690-160 et seq.) of this chapter may combine containment pads and secondary containment units as an integrated system provided the requirements set out in Part V of this chapter for containment pads and secondary containment units in 2VAC5-690-200 A and B, 2VAC5-690-210 A and B, and 2VAC5-690-220, and, as applicable, 2VAC5-690-200 C through F and 2VAC5-690-210 C through F are satisfied separately.

**2VAC5-690-240. Recordkeeping.**

A. A facility owner or operator subject to the requirements of Part V (2VAC5-690-160 et seq.) of this chapter, must maintain the following records and must furnish these records for inspection and copying within 72 hours of request by an employee of VDACS:

B. Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for three years and must include the following information:

1. Name of the person conducting the inspection or maintenance;

2. Date the inspection or maintenance was conducted;

3. Conditions noted; and

4. Specific maintenance performed.

C. Records for any nonstationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide that holds pesticide but is not protected by a secondary containment unit meeting these regulations must be kept for three years. Records on these nonstationary pesticide containers must include the time period that the container remains at the same location.

D. Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for three years afterwards.

VA.R. Doc. No. R14-3295; Filed October 25, 2013, 10:54 a.m.

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# TITLE 3. ALCOHOLIC BEVERAGES

## ALCOHOLIC BEVERAGE CONTROL BOARD

### Final Regulation

Title of Regulation: **3VAC5-20. Advertising (amending 3VAC5-20-30).**

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

Effective Date: December 18, 2013.

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

Summary:

*This action carries out the mandate of Chapter 728 of the 2011 Acts of Assembly and Chapters 760 and 818 of the 2012 Acts of Assembly, which require the Alcoholic Beverage Control Board to promulgate regulations establishing reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages. The amendments replace most of the existing language with four provisions that (i) prohibit the use of persons consuming alcohol, cartoon characters, or persons under the legal drinking age in outdoor alcoholic beverage advertising; (ii) prohibit alcoholic beverage advertising within 500 feet of religious institutions, schools, recreational facilities, or residences, with measurements as defined in the Code of Virginia; (iii) prohibit outdoor alcoholic beverage advertising on property zoned for agricultural or residential use or unzoned; and (iv) require that outdoor alcoholic beverage advertising comply with Virginia Department of Transportation laws and regulations. Other provisions prohibit manufacturers, importers, or wholesalers from providing outdoor advertising to retailers or engaging in cooperative advertising with retailers, and prohibit manufacturers or importers from requiring wholesalers to engage in outdoor advertising.*

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.

**3VAC5-20-30. Advertising; exterior.**

Outdoor alcoholic beverage advertising shall comply with 3VAC5-20-10, and shall be limited ~~to signs and is otherwise discretionary, except~~ as follows:

~~1. Manufacturers and wholesalers, including wineries and farm wineries:~~

~~a. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;~~

~~b. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;~~

~~c. If the establishment is a winery also holding a retail off-premises winery license or is a farm winery, additional directional signs with advertising limited to trade names, brand names, the terms "farm winery" or "winery," and tour information, may be erected in accordance with state and local rules, regulations and ordinances; and~~

~~d. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.~~

~~2. Retailers, including mixed beverage licensees, other than carriers and clubs:~~

~~a. No more than two signs at the establishment and, in the case of establishments at intersections, three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment;~~

~~b. Signs may not include any reference to or depiction of "Happy Hour," or references or depictions of similar import, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages, except that, notwithstanding the provisions of 3VAC5-50-160 B 8, a retail licensee may post one two-dimensional sign not~~

~~exceeding 17" x 22", attached to the exterior of the licensed premises, limited in content to the terms "Happy Hour" or "Drink Specials" and the time period within which alcoholic beverages are being sold at reduced prices; and~~

~~c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.~~

~~3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.~~

1. No outdoor alcoholic beverage advertising shall depict persons consuming alcoholic beverages, use cartoon characters in any way, or use persons who have not attained the minimum drinking age as models or actors.

2. No outdoor alcoholic beverage advertising shall be placed in violation of § 4.1-112.2 of the Code of Virginia.

3. No outdoor alcoholic beverage advertising shall be placed on property zoned exclusively for agricultural or residential uses, or on unzoned property.

4. All outdoor alcoholic beverage advertising must also comply with the provisions of Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 of the Code of Virginia and the regulations of the Virginia Department of Transportation promulgated pursuant thereto.

5. No alcoholic beverage manufacturer, importer, or wholesale licensee may sell, rent, lend, buy for, or give to any retail licensee any outdoor alcoholic beverage advertising, any billboard placements for such advertising, or in any other way confer on any retail licensee anything of value that constitutes outdoor alcoholic beverage advertising.

6. No alcoholic beverage manufacturer, importer, or wholesale licensee may engage in cooperative advertising, as defined in 3VAC5-30-80, on behalf of any retail licensee.

7. No alcoholic beverage manufacturer or importer may require a wholesale licensee to place outdoor alcoholic beverage advertising or exercise control over the funds of a wholesale licensee for any purpose, including but not limited to the purchase of outdoor alcoholic beverage advertising.

VA.R. Doc. No. R12-2956; Filed October 22, 2013, 1:55 p.m.

## Final Regulation

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

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

Effective Date: December 18, 2013.

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

Summary:

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

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.

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

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

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

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

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

1. Would tend to induce minors to drink, or would tend to induce persons to consume to excess;

2. Is obscene or is suggestive of any illegal activity;

3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess; except that, persons granted a license to sell wine or beer may display within their licensed premises point-of-sale advertising materials that incorporate the use of any present or former professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the ~~Federal Bureau of Alcohol, Tobacco and Firearms~~ appropriate federal agency and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, do not depict an athlete consuming alcohol while the athlete is operating or about to operate a

motor vehicle or other machinery, and do not imply that the alcoholic beverage so advertised enhances athletic prowess;

4. Is false or misleading in any material respect;

5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;

6. Makes any reference to the intoxicating effect of any alcoholic beverages;

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

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

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

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

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

1. Items not in excess of $10 in wholesale value may be given away;

2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give licensed retailers items not in excess of $10 in wholesale value in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees; however, manufacturers or their authorized representatives other than wholesalers conducting tastings pursuant to the provisions of § 4.1-201.1 of the Code of Virginia may give no more than one such item to each consumer provided a sample of alcoholic beverages during the tasting event; and such items bearing moderation and responsible drinking messages may be displayed by the licensee and his employees on the licensed premises and given to patrons on such premises as long as any references to any alcoholic beverage manufacturer or its brands are subordinate in type size and quantity of text to such moderation message;

3. Items in excess of $10 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations of 3VAC5-20-100, and for events of a charitable or cultural nature;

4. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at the reasonable open market price in the localities where sold;

5. Wearing apparel shall be in adult sizes; ~~and~~

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

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

**3VAC5-20-90. Advertising; coupons.**

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

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

1. Manufacturers or importers of spirits, wine, and beer may use only consumer mail-in refund, not instantly redeemable discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet or state government store but shall be mailed directly to the manufacturer or importer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Consumer proof of purchase (such as a dated, retail specific receipt) is required for redemption of all consumer coupons. Coupons are permitted in the print media, via the Internet, by direct mail or electronic mail to consumers, or as part of, or attached to, the package. ~~Beer and wine~~ Manufacturers, importers, bottlers, brokers, wholesalers, and their representatives may provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees may attach refund coupons to the package if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, for each retailer or his representative.

2. Manufacturers or importers offering refund coupons on spirits and wine sold in state government stores shall notify the board at least ~~45~~ 15 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.

3. Wholesale licensees are not permitted to offer coupons.

4. Retail licensees may offer coupons, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point-of-sale or by direct mail to consumers.

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons and the name of the retail establishment may not appear on any refund coupons offered by manufacturers. No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers which are customized or designed for discount or refund by the retailer.

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

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

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

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

B. Restrictions and conditions.

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R12-3235; Filed October 22, 2013, 1:36 p.m.

## Final Regulation

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

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

Effective Date: December 18, 2013.

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

Summary:

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

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.

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

A. Permitted acts. ~~For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wine wholesaler~~ Manufacturers, importers, bottlers, brokers, or wholesalers [ , or their representatives, ] may perform, except on Sundays in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages, ~~and a beer wholesaler may perform, except on Sundays in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages,~~ the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack, and rearrange ~~wine or beer~~ alcoholic beverages in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);

2. Restock ~~wine and beer~~ alcoholic beverages;

3. Rotate, repack, rearrange, and add to his own stocks of ~~wine or beer~~ alcoholic beverages in a storeroom space assigned to him by the retailer;

4. Transfer ~~wine and beer~~ alcoholic beverages between storerooms, between displays, and between storerooms and displays; and

5. Create or build original displays using ~~wine or beer products~~ alcoholic beverages only.

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

1. Alter or disturb in any way the merchandise sold by another manufacturer, importer, bottler, broker, or wholesaler, whether in a display, sales area, or storeroom except in the following cases:

a. When the products of one manufacturer, importer, bottler, broker, or wholesaler have been erroneously placed in the area previously assigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler; or

b. When a floor display area previously assigned by a retailer to one manufacturer, importer, bottler, broker, or wholesaler has been reassigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler;

2. Mark or affix retail prices to products other than those sold by the manufacturer, importer, bottler, broker, or wholesaler to the retailer; or

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

a. Products defective at the time of delivery may be replaced;

b. Products erroneously delivered may be replaced or money refunded;

c. Products ~~that~~ of which a manufacturer or importer discontinues ~~nationally~~ production or importation may be returned and money refunded if no lawful exchange under subdivision 3 g of this subsection is available and if prior written approval is provided by the board;

d. Resalable draft beer may be returned and money refunded;

e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;

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

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

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

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

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

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

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

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

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

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund transfers shall be no larger than the purchase price of the alcoholic beverages; and

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

and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.

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

1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine or beer to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;

2. The wholesaler must generate an invoice covering the sale of wine or beer, and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery; and

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.

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

1. State license taxes and application fees;

~~2. Purchases of alcoholic beverages from the board by mixed beverage licensees;~~

~~3.~~ 2. Wine taxes and excise taxes on beer and wine coolers;

~~4.~~ 3. Solicitors' permit fees and temporary permit fees;

~~5.~~ 4. Registration and certification fees, and the markup or profit on cider, collected pursuant to these regulations;

~~6.~~ 5. Civil penalties or charges and costs imposed on licensees and permittees by the board; and

~~7.~~ 6. Forms provided to licensees and permittees at cost by the board.

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

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

1. Draft beer [ or wine ] knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer [ or wine ]; and

2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:

a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;

b. Gas pressure gauges (may be sold at cost);

c. Draft arms or standards;

d. Draft boxes; and

e. Refrigeration equipment or components thereof.

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

B. Any manufacturer, importer, bottler, broker, or wholesaler [ , or their representatives, ] may sell to any retailer and install in the retailer's establishment ~~tapping~~ dispensing accessories ~~such as~~ [ ~~(including but not limited to~~ (such as ] standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check ~~valves, if the tapping accessories are sold~~ valves) and carbon dioxide (and other gases used in dispensing equipment) at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

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

~~1. Draft wine knobs, which may be given to a retailer;~~

~~2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales; or~~

~~3. Mechanical refrigeration equipment.~~

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

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

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

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

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

1. Comply with all other applicable regulations of the board;

2. Be for interior use only;

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

4. Be made available to all retail licensees.

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

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

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

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

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

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

B. Permitted activities are:

1. Meals and beverages;

2. Concerts, theatre and arts entertainment;

3. Sports participation and entertainment;

4. Entertainment at charitable events; ~~and~~

5. Private parties; and

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

C. The following conditions apply:

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

2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;

3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees;

4. No more than $400 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, or any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions;

5. No person enumerated in subdivision 4 of this subsection may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;

6. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity and retail licensee entertained; and

7. This ~~regulation~~ section shall not apply to personal friends of manufacturers, importers, bottlers, brokers, or wholesalers as provided for in 3VAC5-70-100.

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

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

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

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

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

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

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

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

H. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler, broker, importer, or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such ~~manufacturer, bottler, or wholesaler~~ industry member [ or their representatives ] using any normal and customary installation materials. With the consent of the retail licensee, which consent may be a

continuing consent, manufacturers, importers, bottlers, brokers, or wholesalers, or their representatives, may mark or affix retail prices on these materials.

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

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

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

1. Acceptance or rejection by a retail purchaser of terms or conditions affecting a price offer, including a quantity discount, as long as such terms or conditions are offered on an equal basis to all retailers;

2. A bona fide difference in the cost of sale or delivery; [ or ]

3. [ ~~The status of the purchaser as an on-premises or off-premises licensee; or~~

~~4.~~ ] The wholesale licensee charging a lower price in good faith to meet an equally low price charged by a competing wholesale licensee on a brand and package of like grade and quality.

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

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

VA.R. Doc. No. R12-3236; Filed October 22, 2013, 1:37 p.m.

## Final Regulation

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

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

Effective Date: December 18, 2013.

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

Summary:

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

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

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

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

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

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

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

a. The assortment of foods commonly offered for sale;

b. The method and extent of preparation and service required; and

c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.

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

a. The business hours observed as compared with similar type businesses;

b. The extent to which such food or other merchandise is regularly sold; and

c. Present and anticipated sales volume in such food or other merchandise.

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

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that meals or other foods are regularly sold at substantially all hours that

wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

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

Monthly sales .....$2,000

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

Monthly sales .....$2,000

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

Monthly sales .....$2,000

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

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

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

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

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

Monthly sales .....$2,000

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

Monthly sales .....$2,000

3. "Hotel." See subdivision B 3:

Monthly sales .....$2,000

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

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

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

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

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

5. "Tables and counters."

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

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

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

F. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in

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

VA.R. Doc. No. R12-3012; Filed October 22, 2013, 1:37 p.m.

## Final Regulation

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

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

Effective Date: December 18, 2013.

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

Summary:

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

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.

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

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

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

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

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

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

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

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

6. Reports to the board. Each month wholesale wine licensees shall, on forms or an electronic system prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to §§ 4.1-234 and 4.1-235 of the Code of Virginia. Each wholesale wine licensee shall on forms or an electronic system prescribed by the board on a quarterly basis indicate the quantity of wine on hand at the close of business on the last day of the

last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements or adjustments and shall be postmarked or submitted electronically no later than the ~~fifteenth~~ 15th of the month, or if the ~~fifteenth~~ 15th is not a business day, the next business day thereafter.

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

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

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

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

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of two years, which records shall be available during reasonable hours for inspection by any member of the board or its special agents. Such records shall include the following information:

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

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

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

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

(1) Name and address of consignee;

(2) Date of shipment; and

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

e. Purchases of cider or wine including:

(1) Date of purchase;

(2) Name and address of vendor;

(3) Amount of purchase in liters; and

(4) Amount of consideration paid.

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

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

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

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

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

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

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

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

B. Permits.

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

a. Register with the board by filing an application on such forms as prescribed by the board;

b. Pay in advance a fee of $300, which is subject to proration on a quarterly basis, pursuant to § 4.1-230 E of the Code of Virginia;

c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and

d. Be an individual at least 21 years of age.

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

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

C. Records. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.

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

1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of $10 in wholesale value (in quantities equal to the number of employees of the retail establishment present at the time the items are delivered); and provide film or video presentations of spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, ~~50 milliliter~~ sample container no larger than 375 milliliters of each brand being promoted by the permittee and not sold by the licensee; such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee and any ~~50 milliliter~~ sample containers left with the licensee shall not be sold by the licensee;

3. Promote their authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of their members and guests, and shall be limited as follows:

a. To sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;

b. To displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this section;

c. To distribution of informational brochures, pamphlets and the like, relating to spirits;

d. To distribution of novelty and specialty items bearing spirits advertising not in excess of $10 in wholesale value; ~~and~~

e. To film or video presentations of spirits which are essentially educational;

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

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

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

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

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

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

E. Prohibited activities. A permittee shall not:

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

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

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

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

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

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

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

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

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

F. Refusal, suspension or revocation of permits.

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

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

**3VAC5-60-110. Contract brewing arrangements.**

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

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 of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[ FORMS (3VAC5-60)

~~Wholesale Wine Distributions' Bond — Corporate Form, #702-38.~~

~~Wholesale Wine Distributions' Bond — Individual or Partnership Form, #702-37.~~

~~Purchase Order, #703-34 (eff. 3/87).~~

~~Wholesaler's Summary of Wine Sales and Taxes, #703-40 (eff. 5/92).~~

~~Malt Beverage Wholesaler's Tax Report, #805-70.~~

Purchase Order, #703-34 (rev. 3/87)

Wholesale Wine Distributors' Bond - Individual or Partnership Form, #702-37

Wholesale Wine Distributors' Bond - Corporation Form, #702-38.

Wholesaler's Summary of Wine Sales and Taxes, #703-40 (rev. 7/00)

Virginia Farm Winery Monthly Report, #703-40A (rev. 10/12)

Malt Beverage Wholesaler's Tax Report, #805-70 (rev. 5/09)

Solicitor-Salesman Permit Application, #805-81 (rev. 5/08) ]

VA.R. Doc. No. R12-3240; Filed October 22, 2013, 1:38 p.m.

## Final Regulation

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

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

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

Effective Date: December 18, 2013.

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

Summary:

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

*(v) allow licensees to file required monthly activity reports electronically.*

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.

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

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

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

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

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

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

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

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

1. On delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its special agents a complete and accurate inventory of all alcoholic beverages currently held in inventory on the premises by the licensee; and

2. Once a year, each licensee shall submit on prescribed forms to the board an annual review report. The report is due within 30 days after the end of the mixed beverage license year and shall include:

a. A complete and accurate inventory of all alcoholic beverages purchased for sale as mixed beverages and held in inventory at the close of business at the end of the annual review period;

b. An accounting of the annual purchases of food, nonalcoholic beverages and alcoholic beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items; and

c. An accounting of the monthly and annual sales of all merchandise specified in subdivision 2 b of this subsection.

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

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

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

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

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

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

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

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

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

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer, which such wholesaler otherwise may sell to such retail licensee, provided that in ~~a~~ the case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample container.

3. Hospitality rooms; conventions. ~~A person licensed to manufacture wine or beer may~~ The following activities are permitted:

a. ~~Give~~ A brewer or vintner may give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. ~~Host~~ A manufacturer, importer, bottler, broker, or wholesaler may host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

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

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

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

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

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

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

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

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

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

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

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

A. No winery as defined in § 4.1-401 or brewery as defined in § 4.1-500 of the Code of Virginia shall require a wholesale licensee to discount the price at which the wholesaler shall sell any alcoholic beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage.

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

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

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

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

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

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

A. Any licensee charged with any violation of board regulations or statutes listed below, if the licensee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may enter a written waiver of hearing and (i) accept the period of license suspension set forth below for the violation, or (ii) pay the civil charge set forth below for the violation in lieu of suspension. In the case of a violation involving the sale of beer, wine, or mixed beverages to a person at least 18 but under 21 years of age, or to an intoxicated person, or allowing consumption of such beverages by such person, any retail licensee that can demonstrate that it provided alcohol seller/server training certified in advance by the board to the employee responsible for such violation within the 12 months immediately preceding the alleged violation may accept the lesser period of license suspension or pay the lesser civil charge listed below for the violation in lieu of suspension. Any notice of hearing served on a licensee for a violation covered by this section shall contain a notice of the licensee's options under this section. Any licensee who fails to notify the board of its intent to exercise one of the options provided for under this section within 20 days after the date of mailing of the notice of hearing shall be deemed to have waived the right to exercise such options and the case shall proceed to hearing. For good cause shown, the board may, in its discretion, allow a licensee to exercise the options provided for under this section beyond the 20-day period.

| VIOLATION | SUSPENSION | CIVIL CHARGE | SUSPENSION WITH CERTIFIED TRAINING | CIVIL CHARGE WITH CERTIFIED TRAINING |
|---|---|---|---|---|
| Sale of beer, wine or mixed beverages to a person at least 18 but under 21 years of age. | 25 days | $2,000 | 5 days | $1,000 |
| Allowing consumption of beer, wine, or mixed beverages by a person at least 18 but under 21 years of age. | 25 days | $2,000 | 5 days | $1,000 |
| Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but under 21 years of age. | 10 days | $1,000 | | |

| | | | | |
|---|---|---|---|---|
| Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid. | 7 days | $500 | | |
| Allow an intoxicated person to loiter on the premises. | 7 days | $500 | | |
| Sale to an intoxicated person. | 25 days | $2,000 | 5 days | $1,000 |
| Allow consumption by an intoxicated person. | 25 days | $2,000 | 5 days | $1,000 |
| After hours sales or consumption of alcoholic beverages. | 10 days | $1,000 | | |
| No designated manager on premises. | 7 days | $500 | | |
| Invalid check to wholesaler or board. | 7 days | $250 | | |
| Inadequate illumination. | 7 days | $500 | | |
| ABC license not posted. | 7 days | $500 | | |
| Not timely submitting report required by statute or regulation. | 7 days | $500 | | |
| Designated manager not posted. | 7 days | $500 | | |
| Person less than 18 serving alcoholic beverages; less than 21 acting as bartender. | 7 days | $500 | | |
| Sale of alcoholic beverages in unauthorized place or manner. | 10 days | $1,000 | | |
| Consumption of alcoholic beverages in unauthorized area. | 7 days | $500 | | |
| Removal of alcoholic beverages from authorized area. | 7 days | $500 | | |
| Failure to obliterate mixed beverage stamps. | 7 days | $500 | | |
| Employee on duty consuming alcoholic beverages. | 7 days | $500 | | |
| Conducting illegal happy hour. | 7 days | $500 | | |
| Illegally advertising happy hour. | 7 days | $500 | | |
| Unauthorized advertising. | 7 days | $500 | | |
| Failure to remit state beer/wine tax (if deficiency has been corrected). | 10 days | $1,000 | | |
| Wholesaler sale of wine/beer in unauthorized manner. | 10 days | $1,000 | | |
| Wholesaler sale of wine/beer to unauthorized person. | 10 days | $1,000 | | |

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

1. Complete the Alcohol Seller/Server Training Data Sheet and review the Seller/Server Training Evaluation form to make sure the program will meet the listed criteria; and

2. Submit the Alcohol Seller/Server Training Data Sheet and a copy of the proposed training program materials for

review. Materials submitted should include copies of any lesson plans and instructional materials used in the training program.

Requests for certification of training courses should be sent to:

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

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

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

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

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

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

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

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

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

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

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

1. Number of containers shipped;

2. Volume of each container shipped;

3. Brand of each container shipped;

4. Names and addresses of recipients; and

5. Price charged.

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

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

1. Whether any shipments were made during the month; and

2. If shipments were made, the following information for each shipment:

a. Number of containers shipped;

b. Volume of each container shipped;

c. Brand of each container shipped;

d. Names and addresses of recipients; and

e. Price charged.

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

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

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

1. The recipient to demonstrate, upon delivery, that he is at least 21 years of age; and

2. The recipient to sign an electronic or paper form or other acknowledgement of receipt that allows the maintenance of the records required by this section.

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

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine or beer shipper's licensees, or Internet wine retailer's licensees, including for each shipment:

1. Date of shipment and delivery;

2. Number of items shipped and delivered;

3. Weight of items shipped and delivered;

4. Acknowledgement signed by recipient; and

5. Names and addresses of shippers and recipients.

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

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

1. Whether any shipments were delivered during the quarter; and

2. If shipments were made, the following information for each shipment:

a. Dates of each delivery; and

b. Names and address of shippers and recipients for each delivery.

VA.R. Doc. No. R12-3241; Filed October 22, 2013, 1:39 p.m.

## Final Regulation

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

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

Effective Date: December 18, 2013.

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

Summary:

*Pursuant to Chapter 728 of the 2011 Acts of Assembly, the Alcoholic Beverage Control Board is amending its regulations so that a business that is licensed by the board may get a prorated refund of its licensure fee if the business is destroyed by an act of God*.

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.

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

The board shall make refunds of the state license tax paid pursuant to subsection A of § 4.1-231 of the Code of Virginia to licensees whose place of business designated in the license is destroyed by an act of God, including but not limited to

fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon, upon the following schedule:

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

VA.R. Doc. No. R12-3013; Filed October 22, 2013, 1:38 p.m.

# TITLE 4. CONSERVATION AND NATURAL RESOURCES

## DEPARTMENT OF CONSERVATION AND RECREATION

### Final Regulation

REGISTRAR'S NOTICE: The Department of Conservation and Recreation is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Department of Conservation and Recreation will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **4VAC5-36. Standard Fees for Use of Department of Conservation and Recreation Facilities, Programs, and Services (amending 4VAC5-36-50, 4VAC5-36-50. Parking and launch fees.**

PARKING FEES (NONTAXABLE)

| | WEEKDAYS | WEEKENDS |
|---|---|---|
| Daily Parking for Passenger Vehicles: Applies to cars, trucks, vans (up to 15 passenger), and motorcycles. | | |
| All parks unless listed below. | ~~$2.00~~ $3.00 | ~~$3.00~~ $4.00 |
| ~~Parks under construction and having only limited facilities and services.~~ | ~~$2.00~~ | ~~$2.00~~ |
| ~~Fairy Stone, Raymond R. "Andy" Guest Jr. Shenandoah River, Smith Mountain Lake, Claytor Lake, Kiptopeke, Westmoreland, Mason Neck, Sky Meadows, Chippokes~~ | ~~$3.00~~ | ~~$4.00~~ |
| ~~Leesylvania, First Landing, Lake Anna, Pocahontas~~ Chippokes, Claytor Lake, Douthat, Fairy Stone, First Landing, Grayson Highlands, Kiptopeke, Lake Anna, Leesylvania, Mason Neck, New River Trail, Pocahontas, Raymond R. "Andy" Guest Jr. Shenandoah River, Sky Meadows, Smith Mountain Lake, Westmoreland | $4.00 | $5.00 |

**4VAC5-36-90, 4VAC5-36-100, 4VAC5-36-110, 4VAC5-36-120, 4VAC5-36-130, 4VAC5-36-150, 4VAC5-36-200, 4VAC5-36-210).**

Statutory Authority: § 10.1-104 of the Code of Virginia.

Effective Date: January 1, 2014.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Summary:

*The amendments modify parking and launch fees (4VAC5-36-50), camping fees (4VAC5-36-90), cabin fees (4VAC5-36-100), picnic shelter and event tent fees (4VAC5-36-110), amphitheater and gazebo fees (4VAC5-36-120), boat storage fees (4VAC5-36-130), interpretive and educational tour and program fees (4VAC5-36-150), miscellaneous rental fees (4VAC5-36-200), and conference center and meeting facility fees (4VAC3-36-210).*

*The increases and changes to the standard rates and prices represent (i) revisions to maintain fair market value and demand for services, (ii) the addition of new facilities and offerings, (iii) updates to ensure consistency with the private sector, (iv) the deletion of fees that have become obsolete as there is no longer demand for a service, (v) revisions to reflect private concessionaires' new seasonal prices, (vi) reasonable increases to offset growing maintenance costs, and (vii) updates to ensure formatting consistency.*

| | | |
|---|---|---|
| York River Croaker Landing/Pier Area (also requires boat launch fee for all vehicles) | $3.00 | $3.00 |
| Horse Trailer Parking Fee covers up to two horses in the same trailer (also requires vehicle parking fee.) All parks unless listed below. | $3.00 per trailer | $3.00 per trailer |
| Lake Anna | $4.00 per trailer | $4.00 per trailer |
| Surcharge for additional horse in same trailer beyond the first two horses. | $2.00 per horse | $2.00 per horse |
| Other Trailer Parking Fee: Applies to other trailers not covered by camping, horse trailer, and boat launch fee. (Add to daily parking fee.) | $2.00 per trailer | $2.00 per trailer |
| Daily Bus Parking: All Seasons. Applies to vehicles with 16 or more passenger capacity. | | |
| All parks unless listed below. | $10 | $10 |
| Claytor Lake, Hungry Mother, Leesylvania, Mason Neck, New River Trail | $12 | $12 |
| First Landing, Kiptopeke, Lake Anna, Pocahontas, Westmoreland | $15 | $15 |
| Natural Area Preserve Parking Fees for any Vehicle: The department may charge these fees at any Natural Area Preserve. | $2.00 | $2.00 |
| Boat Launch Fees: Required to use park boat ramps on bodies of water where motorboats are permitted. Required for all vehicles using York River Croaker Landing/Pier Area. May not apply to small "car-top" launch facilities (facilities at which boats may only be launched by hand carrying them to the water). The fee is normally added to the parking fee to create a combined park/launch payment. | | |
| Daily Launch Fees: All Seasons | | |
| All parks unless listed below. | $3.00 | $3.00 |
| Claytor Lake | $2.00 | $2.00 |
| First Landing, Kiptopeke (with Marine Fishing License), Lake Anna | $4.00 | $4.00 |
| Kiptopeke (without Marine Fishing License), Leesylvania | $8.00 | $8.00 |
| Surcharge for second boat on same trailer: jet ski | $2.00 | $2.00 |
| Overnight parking at boat launch: where available | $10 | $10 |
| Camper's Boat Launch Fee Kiptopeke: Does not apply if camper parks trailer at campsite. | $3.00 | $3.00 |
| Boat Tournament Fee for Fishing Tournaments: Registration fee is based on the number of boats registered and is nonrefundable regardless of number that actually participates. This fee is in addition to the applicable daily launch fee. | No charge | $2.00 per boat |

| Annual and Lifetime Parking Fees: | FEE |
|---|---|
| Lifetime Naturally Yours Passport Plus: Lifetime admission and parking pass to all state parks, plus 10% discount on individual camp sites and horse stalls; all state park merchandise, except fuel sales; equipment rentals; and shelter rentals except where these services are provided by private concessionaires. | |
| Age up to 40 | $333 |
| Age 41-45 | $300 |
| Age 46-50 | $266 |
| Age 51-55 | $233 |
| Age 56−61 | $200 |
| Senior Lifetime Naturally Yours Passport Plus (Age 62 or older): See Lifetime Naturally Yours Passport Plus above. | $121 |
| Naturally Yours Passport Plus: 12-month from date of purchase admission and parking pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals. | $66 |
| Naturally Yours Parking Passport: 12-month from date of purchase admission and parking pass to park of purchase. | $40 |
| Senior Naturally Yours Passport Plus: See Naturally Yours Passport Plus above. | $36 |
| Senior Naturally Yours Parking Passport: See Naturally Yours Parking Passport above. | $24 |
| Golden Disability Pass: Available to persons with disabilities as verified by U.S. Social Security Administration's (SSA) "Benefit Verification Letter." Pass remains in effect unless SSA withdraws eligibility. | No Charge |
| Disabled Veterans Passport<br>Admission, parking, and launch pass to all state parks, plus 50% discount on camping fees, swimming fees, shelter rentals, and department equipment rentals when provided by the department. Where equipment rentals are provided by private concessionaires, this passport does not apply.<br>The passport shall be issued upon request to a veteran of the armed forces of the United States with a letter from the U.S. Department of Veterans Affairs, or from the military service that discharged the veteran, certifying that such veteran has a service-connected disability rating of 100%. This passport coverage shall be valid for as long as that determination by the U.S. Department of Veterans Affairs remains in effect. | No Charge |
| Annual and Lifetime Park/Launch/Equestrian Fees: | |
| Lifetime Naturally Yours Passport Plus for Boaters and Equestrians: Lifetime admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals. | |
| Age up to 40 | $667 |
| Age 41-45 | $600 |
| Age 46-50 | $534 |
| Age 51-55 | $466 |
| Age 56-61 | $400 |

| | |
|---|---|
| Senior Lifetime Naturally Yours Passport Plus for Boaters and Equestrians (Age 62 or older): See Lifetime Naturally Yours Passport Plus for Boaters above. | $345 |
| Naturally Yours Passport Plus for Boaters and Equestrians: 12-month from date of purchase admission, parking, and launch pass to all state parks, plus 10% discount on camping, all state park merchandise, equipment rentals, and shelter rentals. | $167 |
| Park/Launch/Equestrian Passport: | |
| 12-month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania. | $141 |
| 12-month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase. | $107 |
| 12-month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna. | $87 |
| Senior Naturally Yours Passport Plus for Boaters and Equestrians: Annual permit for all parks including Leesylvania. | $133 |
| Senior Park/Launch/Equestrian Passport: | |
| 12-month from date of purchase admission, parking, and launch pass to all state parks including Leesylvania. | $120 |
| 12-month from date of purchase admission, parking, and launch pass to First Landing, Kiptopeke, or Lake Anna. Good only at park of purchase. | $87 |
| 12-month from date of purchase admission, parking, and launch pass to park of purchase other than Leesylvania, First Landing, Kiptopeke, or Lake Anna. | $73 |
| Buggs Island Lake Special Annual Park/Launch/Equestrian Pass: Good only at Occoneechee and Staunton River State Parks. | $55 |
| Leesylvania Annual Overnight Boating/Parking Pass. | $74 |
| Disabled Visitor Annual Boat Launch Pass (in addition to disabled tags). | $48 |

| Special Event Fees: | EVENT FEE |
|---|---|
| Standard Special Event Parking Fee: Applies to all parks and events that utilize parking fees unless noted below. | $10 per vehicle |
| Community Event Fee: May be used by any park as a condition of a Special Use Permit for a community event provided by a nonprofit group or organization or government agency or entity. | $1.00 per vehicle |
| Sky Meadows: Strawberry Festival | |
| Advance payment | $20 per vehicle |
| Day of Event | $25 per vehicle |
| Sky Meadows: Extended Hours Special Event: for events that take place after park hours such as Astronomy Night, Candlelight Tours, etc. | $5.00 per vehicle |
| Grayson Highlands Fall Festival. Hungry Mother Arts and Crafts Festival | $6.00 per vehicle |

| | |
|---|---|
| Claytor Lake Arts and Crafts Festival | $5.00 per vehicle with canned food donation on designated day<br>$10 per vehicle |
| Kiptopeke: Eastern Shore Birding Festival | Parking Fee waived to registered festival guests; otherwise standard fees apply |
| Smith Mountain Lake: special park/launch rate for boaters participating in fishing tournaments if the tournament sponsor has also rented the Tournament Headquarters Building. | $5.00 per vehicle/ boat combination |
| Shenandoah River: Riverfest Event | $8.00 per vehicle |
| Standard Special Event Per Person Entrance Fee: Applies to all parks and events that utilize per person admission fees unless noted below. | $4.00 per adult<br>$3.00 per child, 6 through 12 years<br>Children under 6 free |
| Sailor's Creek Battlefield: Battle of Sailor's Creek Reenactment | $5.00 per person<br>Children under 6 free<br>$10 maximum per vehicle<br>$50 per bus (16 passenger +) |
| Chippokes Plantation Steam and Gas Engine Show | $5.00 per person<br>Children under 12 free |
| Chippokes Plantation Christmas | $5.00 per person |
| Chippokes Pork, Peanut & Pine Festival | $5 per person<br>Children under 13 free |
| Grayson Highlands Wayne C. Henderson Music Festival | $10 per person<br>Children under 12 free |
| Natural Tunnel Special Event Parking Fee | $2.00 per person<br>$6.00 per vehicle |
| Occoneechee Pow Wow | $5.00 per person (13 years and older)<br>$3.00 per child, 3 through 12 years<br>$3.00 Seniors (62 and over)<br>Children under 3 free |
| Occoneechee Pow Wow School Groups | $4.00 per student<br>Teachers and Chaperones free |

Notes on parking fees:

1. Weekend rates apply on Memorial Day, Fourth of July, and Labor Day holidays.

2. Except as otherwise noted, boat launching shall be free for up to one boat per vehicle per campsite, cabin, lodge, camping cabin, travel trailer, or camping lodge.

3. Parking fees are waived for any vehicle displaying disabled license plates or temporary disabled parking identification issued by any state or the federal government. However, the fee for any additional types of trailers, the boat launch fee or the portion of any combined parking-launching fee that applies to boat launching shall be collected from such vehicles. Additionally, the price for

annual passes and lifetime passes that include boat launching for qualified disabled individuals shall be calculated by subtracting the applicable parking pass fee from the park/launch pass fee.

4. Parking fees are waived for any vehicle occupied solely by students and/or teachers and/or assisting personnel participating in an official activity of a bona fide school, home school, or institution of higher learning. Parks may require that individuals in vehicles other than those marked as a school bus verify their official activity by letter from the school or approved field trip form, or in the case of home school groups, proof of home school status such as current ID card from a state or national home school organization (HEAV, HSLDA, etc.) or a copy of the letter from the school district that acknowledges "Notice of Intent" to home school for that school year.

5. Parking fees are waived for official vehicles of federal, state, and local governments while on official business; vehicles making deliveries to the park; contractor and business vehicles performing work in the park; and emergency vehicles while conducting official business, including training.

6. Parking fees are waived for park employees during time of employment, including family and household members of staff occupying staff residences, visitors to staff residences, and park volunteers entering the park to perform volunteer duties.

7. Parking fees may be waived for vehicles conducting research or collecting activities provided such waiver is included in the language of the Research and Collection Permit as required in 4VAC5-30-50.

8. The period covered by a daily parking fee shall be midnight to midnight. Park guests utilizing overnight parking when and where available (e.g., backpackers, overnight fishermen, etc.) will be required to pay the applicable daily parking fee for each calendar day that their vehicle is in the parking lot (partial days included).

9. Annual permits shall be valid for 12 months from the date of purchase, unless otherwise noted.

10. Parking fees are waived for visitors entering the park for the sole purpose of dining at the park restaurant at Douthat and Hungry Mother State Parks.

11. Parking fees are waived at state parks for participants in Walk for Parks, Fall River Renaissance, Envirothons, March for Parks, Operation Spruce-Up Day, Stewardship Virginia, National Trails Day, and other park-sanctioned public service events as approved by the director.

12. Daily parking fees are reduced to $1.00 for vehicles occupied by participants in fund-raising events sponsored by nonprofit organizations (Walk-A-Thons, etc.) provided the sponsor has obtained a special use permit from the park that contains provisions for the identification of participants in the event.

13. Parking fees shall be waived for persons using park roads to gain legal access to their private residence and guests to such residences; and for vehicles passing through, but not stopping in, a park on a public roadway.

14. Revenue collected from special event parking and/or admission fees may be divided between the park and the event sponsor if so designated and approved in the special event permit following a determination made by the director that the revenue split is in the benefit of the Commonwealth.

15. Annual Park/Launch/Equestrian passes cover the park entrance or parking fee for up to two horses in the same horse trailer or other allowable trailers. Annual and Lifetime parking-only passes do not include trailers.

16. Parking fees are waived for service vehicles such as tow trucks when entering the park to service a visitor vehicle.

17. Parking fees are waived for visitors entering the park to attend a performance by a U.S. military band if this is a required condition for the band's performance.

18. Parking fees are included in the rental fees for meeting facilities, up to the capacity of the facility and provided that this waiver of fee is included in the rental agreement for the facility.

19. Parking fees are waived for a period of up to 15 minutes for persons entering the park to deposit materials in community recycling collection containers.

20. Parking fees are waived for vehicles occupied entirely by persons attending fee interpretive programs.

21. Annual parking passes that do not include boat launch require payment of daily launch fee if launching a boat at any park or for all vehicles using Croaker Landing/Pier Area at York River State Park.

22. Annual parking pass holders are not guaranteed the parking privileges of the pass should parking places be unavailable.

23. Parking fees are waived at Mason Neck during the park's annual Elizabeth Hartwell Eagle Festival.

24. The payment of a parking fee at one park shall be applied to parking at any state park on the same day provided that the visitor supplies evidence of the paid parking fee.

25. Annual passes are issued to the purchaser and members of the same household and may not be transferred. Improper transfer or use may result in revocation of the pass without refund.

26. Parking fees are waived at all state parks on Veterans Day, November 11, of each year.

**4VAC5-36-90. Camping fees.**

CAMPING FEES (TAXABLE, Price here does not include tax)

| Camping fees include free use of dump station and free swimming and boat launching for members of the camping party during their stay at the property, when and where available, except that at Kiptopeke State Park guest is subject to applicable launch fee unless the trailer is returned to the campsite immediately after launching. The number of campers per campsite is limited to six individuals except when all campers are members of the same household. | ALL SEASONS<br>(Per site fees) |
|---|---|
| Standard Sites: No hookup; access to bathhouse and restrooms. | |
| All parks with standard sites unless noted below. | $20 per night |
| Bear Creek and Occoneechee Waterfront Sites. | ~~$23~~ $26 per night |
| Kiptopeke, First Landing, Lake Anna. | $24 per night |
| Douthat. | $26 per night |
| Water and Electric Sites: Access to water and electric hookups; access to bathhouse and restrooms. | |
| All parks where available unless noted below, including Chippokes Campground A. | ~~$27~~ $30 per night |
| Occoneechee Waterfront Sites and Chippokes Campground B. | ~~$30~~ $33 per night |
| Kiptopeke, First Landing, Lake Anna, Shenandoah. | ~~$32~~ $35 per night |
| Water, Electric, and Sewage Sites: Access to water, electric, and sewage hookups; access to bathhouse and restrooms. | |
| Kiptopeke. | ~~$37~~ $40 per night |
| Hungry Mother. | ~~$30~~ $33 per night |
| Primitive Camping Sites: primitive restrooms; no showers. | |
| All parks where available unless noted below. | $11 per night |
| James River. | $13 per night |
| Grayson Highlands: Sites with electricity (November, March and April when bathhouses are closed). | $15 per night |
| Occoneechee (persons renting the entire equestrian campground will receive a 10% discount on the combined price for sites and stalls, including transaction fees). | $15 per night |
| New River Trail Primitive camping sites at Foster Falls and Cliffview, Primitive Sites at Sky Meadows. | $15 per night |
| New River Trail Water Trail Camping (no potable water). | $12 per night |
| Horse Camping | |
| Horse Stall Fee. | $7.00 per night (Outside Stalls)<br>$9.00 per night (Inside Stall) |
| Standard Rates | |
| Primitive Group Camp Rental (camping in special primitive group areas). All parks where available. | |

| | |
|---|---|
| Up to 20 campers. | $61 for entire area per night |
| Up to 30 campers. | $91 for entire area per night |
| 31 or more campers, up to maximum capacity of group camp area. | $122 for entire area per night |
| Grayson Highlands: Primitive camping is available in the stable area November, March, and April. | $15 per site per night |
| Special Group Camping Areas: | |
| Fairy Stone Group Campsites. | $20 per site per night |
| Chippokes Plantation: All 4 Sites; Group Rate; 24 persons maximum.<br>Natural Tunnel Group Area.<br>Grayson Highlands Group Area.<br>James River Group Area.<br>Shenandoah Group Area.<br>Sky Meadows Group Area. | $67 per night (only available as entire group area) |
| Sky Meadows 6 Site Group Area. | $100 per night |
| Westmoreland Group Area. | $122 per night |
| Standard Buddy Sites: All parks where available unless noted below. | $78 per night |
| Douthat Buddy Sites.<br>Holliday Lake Group Camp. | $97 per night |
| Sky Meadows Buddy Sites. | $35 per night |
| James River Equestrian Group Area (persons renting the entire equestrian campground will receive a 10% discount on the combined price for sites and stalls, including transaction fees). | $216 per night |
| Camping – Other Fees | |
| Camping Site Transaction Fee: Applies to each purchase transaction of a camping visit to a campsite (i.e., one transaction fee per camping visit per site no matter how many nights). Applies to Internet, reservation center, and walk up visits. | $5.00 |
| ~~Dog Fees (this fee does not apply to service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia).~~ | ~~$5.00 per dog per night, $15 maximum per dog per trip~~ |
| Dump Station Fee: Free to state park campers during stay. | $5.00 per use |
| Camping Reservation Cancellation Fee Individual Site. | $10 per reservation |
| Camping Reservation Cancellation Fee Group Sites. | $30 per reservation |
| Hiker or noncamper Shower Fee at Virginia State Parks. | $5.00 per person |
| Sky Meadows: Wheelbarrow Rental Fee for hike-in campers | $10 per wheelbarrow rented |

Notes on camping:

1. Check-out time is 3 p.m. and check-in time is 4 p.m.

2. Camping Transfer/Cancellation/Early Departure Policy.

a. Any fees to be refunded are calculated less the applicable cancellation fee(s).

b. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.

c. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.

d. A customer may move a camping reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to 4 p.m. on the scheduled date of arrival. If the reservation center will not be open again prior to the start date of the

reservation, transferring is not an option. There is no fee to transfer.

e. A camping reservation may be canceled until 4 p.m. on the scheduled date of arrival but campers will be charged the cancellation fee. This cancellation fee applies to each separate reservation made.

f. Once the 4 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure.

g. After the check-in time is reached, the first night is considered used whether the site is occupied or not.

h. There is a one-night penalty, deducted from any amount available for refund, for early departure.

3. Campers are allowed two vehicles per campsite per day without charge of a parking fee. Additional vehicles, beyond two, must pay the prevailing parking fee in effect at the park for each day that the vehicle(s) is parked in the park. The number of vehicles allowed to park on the campsite varies according to site design and size of other camping equipment. No vehicles shall park on a campsite in other than the designated area for this purpose. Camper vehicles that do not fit on the site, whether or not they require the special camper vehicle fee, must park in the designated overflow parking area.

4. Each member of the camping party, except in primitive group areas, up to the maximum allowable per site, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of camping. Passes only issued during days and seasons of operation of the swimming facility and only good during the member's registered stay.

5. Damage to campsites, not considered normal wear and tear, will be billed to the person registered for the campsite on an itemized cost basis.

6. At honor collection sites, the stated camping fees on this list shall be considered as having tax included. Honor collection is defined as the payment of the camping fee on-site at the park at a nonelectronic collection point at which the payment is placed in a box or safe provided for that purpose.

7. Horse stalls may only be rented in conjunction with the rental of a campsite in the equestrian campground and a person must occupy the campsite. All horses brought to the park by overnight guests must be kept in rental stalls except in primitive equestrian areas at New River Trail and James River State Parks.

**4VAC5-36-100. Cabin fees.**

CABIN RENTALS (TAXABLE, Price here does not include tax)

| | BASE RATE | | VIRGINIA RESIDENTS | |
|---|---|---|---|---|
| PRIME SEASON CABIN AND LODGE RATES | | | | |
| Cabin/Lodge Type | Per-Night Rental Fee | Per-Week Rental Fee | Per-Night Rental Fee | Per-Week Rental Fee |
| Efficiency | ~~$88~~ $92 | ~~$527~~ $553 | ~~$79~~ $83 | ~~$474~~ $498 |
| One Bedroom, Standard | ~~$103~~ $108 | ~~$618~~ $649 | ~~$93~~ $98 | ~~$557~~ $585 |
| One Bedroom, Waterfront or Water View | ~~$114~~ $120 | ~~$685~~ $719 | ~~$103~~ $108 | ~~$616~~ $647 |
| One Bedroom, Chippokes Plantation | ~~$120~~ $126 | ~~$720~~ $756 | ~~$108~~ $113 | ~~$648~~ $680 |
| Two Bedroom, Standard, all parks where available unless noted below | ~~$119~~ $125 | ~~$714~~ $750 | ~~$107~~ $112 | ~~$643~~ $675 |
| Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, Shenandoah, Natural Tunnel | ~~$125~~ $131 | ~~$749~~ $786 | ~~$113~~ $119 | ~~$674~~ $708 |
| Two Bedroom, Waterfront or Water View, all parks where available unless noted below | ~~$131~~ $138 | ~~$786~~ $825 | ~~$118~~ $124 | ~~$708~~ $743 |
| Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna | ~~$137~~ $144 | ~~$823~~ $864 | ~~$124~~ $130 | ~~$741~~ $778 |
| Two Bedroom, First Landing, Chippokes Plantation | ~~$139~~ $146 | ~~$831~~ $873 | ~~$125~~ $131 | ~~$747~~ $784 |
| Three Bedroom, Standard, all parks where available unless noted below | ~~$135~~ $142 | ~~$810~~ $851 | ~~$122~~ $128 | ~~$729~~ $765 |

| | | | | |
|---|---|---|---|---|
| Three Bedroom, Chippokes Plantation, Bel Air Guest House | ~~$157~~ $165 | ~~$943~~ $990 | ~~$142~~ $149 | ~~$849~~ $891 |
| Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, Shenandoah, Natural Tunnel, Douthat | ~~$156~~ $164 | ~~$932~~ $979 | ~~$140~~ $147 | ~~$839~~ $881 |
| Hill Lodge (Twin Lakes) | ~~$176~~ $185 | ~~$1,052~~ $1,105 | ~~$158~~ $166 | ~~$947~~ $994 |
| Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle) | ~~$316~~ $332 | ~~$1,892~~ $1,987 | ~~$284~~ $298 | ~~$1,703~~ $1,788 |
| Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland) | ~~$372~~ $391 | ~~$2,230~~ $2,342 | ~~$335~~ $352 | ~~$2,007~~ $2,107 |
| 6-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, Shenandoah, Natural Tunnel, Douthat | ~~$390~~ $410 | ~~$2,337~~ $2,454 | ~~$351~~ $369 | ~~$2,104~~ $2,209 |
| MID-SEASON CABIN AND LODGE RATES | | | | |
| Cabin/Lodge Type | Per-Night Rental Fee | Per-Week Rental Fee | Per-Night Rental Fee | Per-Week Rental Fee |
| Efficiency | ~~$79~~ $83 | ~~$474~~ $498 | ~~$71~~ $75 | ~~$427~~ $448 |
| One Bedroom, Standard | ~~$93~~ $98 | ~~$557~~ $585 | ~~$84~~ $88 | ~~$501~~ $526 |
| One Bedroom, Waterfront or Water View | ~~$103~~ $108 | ~~$616~~ $647 | ~~$93~~ $98 | ~~$555~~ $583 |
| One Bedroom, Chippokes Plantation | ~~$108~~ $113 | ~~$648~~ $680 | ~~$97~~ $102 | ~~$583~~ $612 |
| Two Bedroom, Standard, all parks where available unless noted below | ~~$107~~ $112 | ~~$643~~ $675 | ~~$97~~ $102 | ~~$578~~ $607 |
| Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, Shenandoah, Natural Tunnel | ~~$113~~ $119 | ~~$674~~ $708 | ~~$101~~ $106 | ~~$606~~ $636 |
| Two Bedroom, Waterfront or Water View, all parks where available unless noted below | ~~$118~~ $124 | ~~$708~~ $743 | ~~$106~~ $111 | ~~$637~~ $669 |
| Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna | ~~$124~~ $130 | ~~$741~~ $778 | ~~$111~~ $117 | ~~$667~~ $700 |
| Two Bedroom, First Landing, Chippokes Plantation | ~~$125~~ $131 | ~~$747~~ $784 | ~~$112~~ $118 | ~~$673~~ $707 |
| Three Bedroom, Standard, all parks where available unless noted below | ~~$122~~ $128 | ~~$729~~ $765 | ~~$110~~ $116 | ~~$656~~ $689 |
| Three Bedroom, Chippokes Plantation, Bel Air Guest House | ~~$122~~ $149 | ~~$849~~ $891 | ~~$128~~ $134 | ~~$764~~ $802 |
| Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, Shenandoah, Natural Tunnel, Douthat | ~~$140~~ $147 | ~~$839~~ $881 | ~~$126~~ $132 | ~~$755~~ $793 |
| Hill Lodge (Twin Lakes) | ~~$158~~ $166 | ~~$947~~ $994 | ~~$142~~ $149 | ~~$852~~ $895 |
| Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle) | ~~$284~~ $298 | ~~$1,703~~ $1,788 | ~~$256~~ $269 | ~~$1,533~~ $1,610 |
| Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland) | ~~$335~~ $352 | ~~$2,007~~ $2,107 | ~~$302~~ $317 | ~~$1,806~~ $1,896 |

| | | | | |
|---|---|---|---|---|
| 6-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, Shenandoah, Natural Tunnel, Douthat | ~~$351~~ $369 | ~~$2,104~~ $2,209 | ~~$316~~ $332 | ~~$1,893~~ $1,988 |
| OFF-SEASON CABIN AND LODGE RATES | | | | |
| Cabin/Lodge Type | Per-Night Rental Fee | Per-Week Rental Fee | Per-Night Rental Fee | Per-Week Rental Fee |
| Efficiency | ~~$66~~ $69 | ~~$395~~ $415 | ~~$59~~ $62 | ~~$356~~ $374 |
| One Bedroom, Standard | ~~$77~~ $81 | ~~$464~~ $487 | ~~$70~~ $74 | ~~$417~~ $438 |
| One Bedroom, Waterfront or Water View | ~~$86~~ $90 | ~~$513~~ $539 | ~~$77~~ $81 | ~~$462~~ $485 |
| One Bedroom, Chippokes Plantation | ~~$90~~ $95 | ~~$540~~ $567 | ~~$81~~ $85 | ~~$486~~ $510 |
| Two Bedroom, Standard, all parks where available unless noted below | ~~$89~~ $93 | ~~$536~~ $563 | ~~$80~~ $84 | ~~$482~~ $506 |
| Two Bedroom, Bear Creek Lake, James River, Occoneechee, Lake Anna, Shenandoah, Natural Tunnel | ~~$94~~ $98 | ~~$561~~ $589 | ~~$84~~ $88 | ~~$505~~ $530 |
| Two Bedroom, Waterfront or Water View, all parks where available unless noted below | ~~$99~~ $104 | ~~$590~~ $620 | ~~$89~~ $93 | ~~$531~~ $558 |
| Two Bedroom, Waterfront or Water View, Bear Creek Lake, Occoneechee, Lake Anna | ~~$103~~ $108 | ~~$617~~ $648 | ~~$93~~ $98 | ~~$556~~ $584 |
| Two Bedroom, First Landing, Chippokes Plantation | ~~$104~~ $109 | ~~$623~~ $654 | ~~$91~~ $99 | ~~$561~~ $589 |
| Three Bedroom, Standard, all parks where available unless noted below | ~~$101~~ $106 | ~~$607~~ $637 | ~~$91~~ $96 | ~~$546~~ $573 |
| Three Bedroom, Chippokes Plantation, Bel Air Guest House | ~~$118~~ $124 | ~~$707~~ $742 | ~~$106~~ $111 | ~~$636~~ $668 |
| Three Bedroom, Claytor Lake, Bear Creek Lake, James River, Occoneechee, Lake Anna, Southwest Virginia Museum Poplar Hill Cottage, Shenandoah, Natural Tunnel, Douthat | ~~$117~~ $123 | ~~$699~~ $734 | ~~$105~~ $110 | ~~$629~~ $660 |
| Hill Lodge (Twin Lakes) | ~~$132~~ $139 | ~~$789~~ $828 | ~~$119~~ $125 | ~~$710~~ $746 |
| Fairy Stone Lodge (Fairy Stone), Creasy Lodge (Douthat), Bel Air Mansion (Belle Isle) | ~~$237~~ $249 | ~~$1,419~~ $1,490 | ~~$213~~ $224 | ~~$1,277~~ $1,341 |
| Douthat Lodge (Douthat), Hungry Mother Lodge (Hungry Mother), Potomac River Retreat (Westmoreland) | ~~$279~~ $293 | ~~$1,673~~ $1,757 | ~~$251~~ $264 | ~~$1,505~~ $1,580 |
| 6-Bedroom Lodge, Kiptopeke, James River, Claytor Lake, Occoneechee, Bear Creek Lake, Shenandoah, Natural Tunnel, Douthat | ~~$293~~ $308 | ~~$1,753~~ $1,841 | ~~$263~~ $276 | ~~$1,578~~ $1,657 |
| CAMPING CABINS, CAMPING LODGES, YURTS, AND TRAVEL TRAILERS (camping cabins, camping lodges, yurts, and travel trailers located in campgrounds and operated in conjunction with the campground) | Per-Night Rental Fee | Per-Week Rental Fee | Per-Night Rental Fee | Per-Week Rental Fee |
| Camping Cabin rental rate: (2-night minimum rental required) | $51 | NA | $47 | NA |
| Yurt rental: Standard fee | ~~$103~~ $113 | ~~$618~~ $680 | ~~$92~~ $101 | ~~$555~~ $611 |
| Travel Trailers: 25-30' Standard fee | ~~$103~~ $113 | ~~$618~~ $680 | ~~$92~~ $101 | ~~$555~~ $611 |
| Camping Lodges: Standard fee | $103 | $618 | $92 | $555 |

| | | |
|---|---|---|
| Additional Cabin Fees: | | |
| Cabin Transaction Fee: Applies to each purchase transaction of a visit to a cabin (i.e., one transaction fee per cabin visit per site no matter how many nights). Applies to Internet, reservation center, and walk up visits. | $5.00 | |
| Additional Bed Rentals | $3.00 per rental night | |
| Additional linens at all parks unless otherwise noted. One set of linens is 1 sheet set (1 fitted sheet, 1 flat sheet, and 1 pillowcase) or 1 towel set (1 bath towel, 1 hand towel, and 1 washcloth or 2 bath towels and 1 washcloth) | $2.00 per sheet set<br>$2.00 per towel set | |
| Cabin Cancellation Fee: Applies to all lodging in this section except as described below in "Lodge Cancellation Fee" | $20 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy. | |
| Lodge Cancellation Fee: Applies to Fairy Stone Lodge, Douthat Lodge, Hungry Mother Lodge, Potomac River Retreat, and all 6-bedroom park lodges | $50 per cancellation period: See notes on Cabin Transfer/Cancellation/Early Departure Policy | |
| Pet Fee (this fee does not apply to service or hearing dogs identifiable in accordance with § 51.5-44 of the Code of Virginia). | $10 per pet per night | |
| Pocahontas Group Cabins | DAY | WEEK |
| Algonquian Ecology Camp Dining Hall: 8 a.m. to 10 p.m. for day use, 24-hour use when rented with cabins | $236 | $1,181 |
| Swift Creek Dining Hall: 8 a.m. to 10 p.m. for day use, 24-hour use when rented with cabins | $275 | $1,375 |
| Dining Hall: fee for partial day rental when associated with full day rental as noted above | $140 | NA |
| Cabin Units: per unit, per night | $112 | $560 |
| Complete Algonquian Ecology Camp (4 units: 112 capacity) with Dining Hall | $460 | $2,300 |
| Complete Swift Creek Camp (2 units: 56 capacity) with Dining Hall | $375 | $1,875 |
| Refundable security deposit charged for all reservations | $100 per reservation | |

Notes on Pocahontas Group Cabins:

Pocahontas Group Cabins: Reservations of $200 or more require a 25% prepayment, due within 14 days of making the reservation. Balance of fees is due 60 days prior to the reservation start date. Reservations of less than $200 require payment in full to confirm the reservation, due within 14 days of making the reservation. Cancellations made 30 days or more prior to the first day of the reservation shall receive a refund less a $30 per unit cancellation fee. Cancellations made less than 30 days prior to the first date of the reservation receive no refund unless the units are subsequently rented, in which case the refund shall be full price minus $30 per unit.

Notes on cabins and lodges:

1. Seasonal cabin and lodge rates shall be in effect according to the following schedule, except for camping cabins, camping lodges, yurts, and travel trailers, which operate on the same schedule and season as the campground at that particular park. In the event that a weekly rental period includes two seasonal rates, the higher rate will apply for the entire weekly rental period.

| PARK | PRIME SEASON | MID-SEASON | OFF-SEASON |
|---|---|---|---|
| Bear Creek Lake<br>Belle Isle<br>Chippokes Plantation<br>First Landing<br>Kiptopeke<br>Lake Anna<br>Occoneechee<br>Southwest Virginia Museum<br>Staunton River<br>Twin Lakes<br>Westmoreland | Friday night prior to Memorial Day through the Sunday night prior to Labor Day | April 1 through the Thursday night prior to Memorial Day, and Labor Day through November 30 | December 1 through March 31 |
| Claytor Lake<br>Douthat<br>Fairy Stone<br>Hungry Mother<br>James River<br>Smith Mountain Lake<br>Shenandoah<br>Natural Tunnel | Friday night prior to Memorial Day through the Sunday night prior to Labor Day, and October 1 through October 31 | April 1 through the Thursday night prior to Memorial Day, and Labor Day through September 30, and November 1 through November 30 | December 1 through March 31 |

2. All dates refer to the night of the stay; checkout time is 10 a.m. and check-in time is 3 p.m.

3. The following holiday periods are charged prime season weekend rates: the Wednesday, Thursday, Friday, and Saturday period that includes Thanksgiving Day; and Christmas Eve and Christmas Day; and New Year's Eve and New Year's Day.

4. Cabins and lodges require a two-night minimum stay.

5. Cabin guests are allowed two vehicles for a one or two bedroom cabin, and three vehicles for a three bedroom cabin per day without charge of parking fee. Additional vehicles must pay the prevailing parking fee for each day that the vehicle is parked in the park. The number of vehicles allowed to park at the cabin varies according to site design and other factors. All vehicles must park in designated parking areas, either at the cabin or in the designated overflow parking area.

6. Six-bedroom lodge guests are allowed six vehicles per lodge per day without charge of parking fee. Additional vehicles must pay the prevailing vehicle parking fee for each day the vehicle is parked in the park. The number of vehicles allowed to park at the lodge varies according to site design and other factors. All vehicles must park in designated parking areas, either at the lodge or in the designated overflow parking area.

7. Damage to cabins and other rental units under this section, not considered normal wear and tear, may be billed to the person registered for the cabin or rental unit on an itemized cost basis.

8. Each member of the rental party, up to the maximum allowable for the rented unit, may receive an entrance pass to the park's swimming facility on the basis of one pass per night of rental. Passes are only issued during days and seasons of operation of the swimming facility and are only good during the member's registered stay.

9. Employees of DCR and the members of committees and boards of DCR shall receive a discount of 50% on applicable cabin or lodge rates for any season, when the rental of such cabins or lodge is in connection with the official business of DCR or its committees or boards.

Notes on cabin or lodge transfer/cancellation/early departure policy:

1. Any fees to be refunded are calculated less the applicable cancellation fees listed below.

2. Fees paid to the reservation center by credit card will be refunded to the original credit card charged.

3. Fees paid by check or money order to the reservation center, or by any method at the park, will be refunded by state check.

4. A customer may move a cabin or lodge reservation to another date or park, referred to as a transfer, through the reservation center only, and prior to 5 p.m. on the Monday before the scheduled date of arrival. After 5 p.m. on the Monday before the scheduled date of arrival, cancellation is the only option (see note 5 below) except that transfers to a different cabin or lodge for the same rental nights shall be allowed, subject to availability, up to the check in time for the original reservation.

5. Once the reservation is paid for, a customer may cancel in full with payment of the required cancellation fee if there are more than 30 days before the scheduled arrival date. As long as the reservation is not during the one-week minimum stay requirement period, the length of stay may be reduced without a fee as long as there are more than 30

days before the scheduled arrival. However, the length of stay cannot be less than two nights. During the 30 days prior to the scheduled arrival date, the cancellation fee is charged for each night cancelled or reduced from the stay. Once the official check-in time on the scheduled arrival date is reached, the cancellation policy is no longer in effect and the early departure policy applies.

6. Once the 3 p.m. check-in time is reached on the scheduled day of arrival, any adjustment to a reservation is considered an early departure. There is a two night minimum charge associated with all cabin, lodge, camping cabin, travel trailer, and camping lodge stays. Reducing the total nights stayed will incur a $20 per night fee. If the original reservation was for a week, the weekly discount will no longer be valid and the fee will be adjusted to the nightly rate before any refunds are calculated.

**4VAC5-36-110. Picnic shelters and event tents fees.**

PICNIC SHELTERS AND EVENT TENTS (TAXABLE)

| The shelter rental periods shall be from park opening until park closing, unless otherwise specified. | DAY |
|---|---|
| Standard Small Picnic Shelter Rental Fee: Bear Creek Lake, Belle Isle, Caledon, Chippokes Plantation, Claytor Lake, Douthat, Holliday Lake, Hungry Mother (half shelter), Lake Anna, Natural Tunnel, New River Trail, Occoneechee, Pocahontas, ~~Sky Meadows,~~ Smith Mountain Lake, Twin Lakes, Westmoreland, York River, and all other small park picnic shelters. | $60 |
| Standard Large Picnic Shelter Rental Fee: Belle Isle, Chippokes Plantation, Claytor Lake, Douthat Fairy Stone, First Landing, Grayson Highlands, Hungry Mother (full shelter), James River, Kiptopeke, Lake Anna, Natural Tunnel, Occoneechee, Pocahontas, Powhatan, Shenandoah, ~~Sky Meadows,~~ Smith Mountain Lake (Pavilion), Staunton River, Staunton River Battlefield, Twin Lakes, Westmoreland, York River, and all other large park picnic shelters. | $90 |
| Sky Meadows: Covered Group Picnic Area Shelter Rental (up to 60 people) | $130 |
| Sky Meadows: Group Picnic Pad (up to 60 people) | $64 |
| Leesylvania Shelter, Shenandoah Large Group Shelter Rental | $130 |
| Leesylvania: Lee's Landing Picnic Area Rental | $64 |
| Leesylvania: Lee's Landing Picnic Shelter | $400 |
| With 15 tables and 100 chairs | $820 |
| Mason Neck Picnic Area Rental | |
| ~~Without~~ Area rental without tent shelter | $64 |
| Area activity fee (for use of picnic area for "special use" without tent shelter that requires special set-up or clean-up). | $35 |
| ~~With~~ Area rental with tent shelter (seasonably available) | $130 |
| Chippokes Plantation Conference Shelter (with kitchen) | $315 per function |
| Chippokes Plantation Conference Shelter kitchen cleaning fee (only applicable is kitchen is used and not cleaned in accordance with rental agreement) | $150 per function |
| Mini-Shelter: All parks where available unless otherwise noted. | $21 |
| Event Tent Rental: Full day in-park rental only. Price includes set up and take down. | |
| Standard fee: All parks where available unless otherwise noted. | $0.45 per square foot |
| Chippokes Plantation, Douthat, Kiptopeke, Lake Anna, Pocahontas, Shenandoah River, Smith Mountain Lake, York River. | $0.55 per square foot |

| | |
|---|---|
| False Cape, First Landing, Leesylvania, Mason Neck. | $0.60 per square foot |
| Standard 10' x 10' event tent | $25 per day |
| Westmoreland, Caledon Natural Area: 20' x 40' tent with tables and chairs | $400 per day |
| Wilderness Road: 20' x 40' | $350 per day |
| White String Lights for Tent | $0.80 per foot |
| Side Panels for Tent | $1.50 per foot |
| Standard Shelter Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within 14 days prior to date. Shelter reservation may be transferred without penalty if the change is made through the reservations center prior to scheduled use. | $10 |

**4VAC5-36-120. Amphitheater and gazebo fees.**

AMPHITHEATERS AND GAZEBOS (TAXABLE, Price here does not include tax)

| Amphitheater or Gazebo Rental Fee: The amphitheater or gazebo rental periods shall be from park opening until park closing unless otherwise specified. | DAY |
|---|---|
| Leesylvania, Fairy Stone, Staunton River, Kiptopeke and all other amphitheaters and gazebos unless noted below. | $32 |
| Hungry Mother, Occoneechee, Westmoreland, New River Trail | $53 |
| Smith Mountain Lake, Natural Tunnel (gazebo at Cove Ridge), James River | $74 |
| Claytor Lake (gazebo) | $84 |
| First Landing (gazebo at Chesapeake Bay Center): rental period is three hours | $84 per 3 hours |
| York River and Douthat Amphitheater. | $105 |
| Shenandoah Overlook Rental | $16 per half-day<br>$32 per full day |
| Natural Tunnel and First Landing Amphitheaters: Private group or company rate | $315 |
| Natural Tunnel and First Landing Amphitheaters: Educational group. | $158 |
| Natural Tunnel Amphitheater Wedding Package: Three consecutive half-day rental periods. | $420 per package |
| First Landing: Courtyard at Chesapeake Bay Center; includes amphitheater and gazebo. | $788 |
| First Landing: Additional hourly charge for hours beyond 10 p.m. for gazebo. | $11 per hour |
| First Landing: Additional hourly charge for hours beyond 10 p.m. for Courtyard. | $53 per hour |
| Fishing Tournament Staging. All parks where available. | $26 |
| Pocahontas Amphitheater Area: Without Heritage Center. Includes Amphitheater, Exhibit Area, Restrooms and use of sound system. | $630 |
| Pocahontas Amphitheater Area Plus Heritage Center | $840 |
| Parking Attendant (per attendant). | ~~$11~~ $12 per hour |
| Law Enforcement Officer (per officer). | ~~$26~~ $28 per hour |

| | |
|---|---|
| Natural Tunnel: Rental of Observation Deck at mouth of tunnel for dinner parties. Includes use of chairlift for transportation of guests and supplies and set-up/take-down of tables and chairs. | $300 per 4 hours |
| Natural Tunnel Amphitheater Concession Building | $42 |
| Natural Tunnel: Sound System Rental | $32 |
| Standard Amphitheater/Gazebo Cancellation Fee: Cancellation fee deducted from refund if refund is made more than 14 days prior to the reservation date. No refunds if cancellation made within ~~fourteen~~ 14 days prior to date. | $11 |
| All parks unless listed below. | $11 |
| Pocahontas Amphitheater or First Landing Courtyard | $105 |

**4VAC5-36-130. Boat storage fees.**

BOAT STORAGE (TAXABLE, Price here does not include tax)

| Boat Storage Fees | FEE |
|---|---|
| Standard Annual Boat Storage Fee: Bear Creek Lake, Douthat, Hungry Mother, and all other parks where available unless noted below. | $35 |
| Marine Pump-Out Fee (all parks where available) | $5.00 per usage |
| Leesylvania Boat Storage Fees: Annual Fee (Dec. 1 – Nov. 30). Fee prorated for partial year on a months-remaining basis. Fee includes one park/launch pass per storage rental space to coincide with the rental period. | |
| Boat Length Up To 16' | $755 |
| Boat Length Up To 17' | $800 |
| Boat Length Up To 18' | $850 |
| Boat Length Up To 19' | $895 |
| Boat Length Up To 20' | $945 |
| Boat Length Up To 21' | $990 |
| Boat Length Up To 22' | $1,035 |
| Boat Length Up To 23' | $1,085 |
| Boat Length Up To 24' | $1,155 |
| Boat Length Up To 25' | $1,210 |
| Leesylvania Canoe/Kayak Storage: Renter must possess an annual parking pass | $10 per month |
| Staunton River Boat Shed Fees: Does not include parking or launching fee, if applicable | |
| Nightly Storage | $4.00 |
| Monthly Storage | $15 |
| Six-Month Storage | $70 |
| One-year boat storage | $120 without annual park/launch pass<br>$150 with Buggs Island Special pass |

| Claytor Lake: Boat Dock Slips: | FEE PER RENTAL SEASON | | FEE PER RENTAL NIGHT |
|---|---|---|---|
| 7' wide and under | $468 | | $11 |
| 9' wide and under | $715 | | $22 |
| 14' wide and under | $908 | | $22 |
| Extended length slips | $770 | | NA |
| Occoneechee: | FEE PER ANNUAL RENTAL PERIOD | FEE PER MONTH | FEE PER RENTAL NIGHT (Transient) |
| 20' with water - 20 amp hookup | $1,200 | $120 | ~~$36~~ $18 |
| 30' with water - 20 amp hookup | $1,600 | $160 | NA |
| 30' with water - 20 amp and 30 amp hookups | $1,750 | $175 | NA |

Notes on Occoneechee marina fees/Claytor Lake board dock slips:

~~1. All rentals for more than a three-month period shall be made by signing an annual rental agreement.~~

~~2.~~ 1. The annual rental period shall be March 1 through November 1 at Claytor Lake State Park and through the last day of February in the following year in Occoneechee State Park. All annual rental agreements, no matter when initiated, will end on the last day of an annual period (not 12 months from the time rental).

~~3.~~ 2. Any annual rental agreement entered into or renewed for a period that includes March 1 through June 30 shall be made at 100% of the annual rental fee.

~~4. Any annual rental agreement made for a period that includes July 1 through the end of the annual rental period shall receive a 40% discount off of the current annual rate.~~

~~5. At the park manager's discretion, and subject to availability, boat slips not covered by an annual rental agreement may be rented on a monthly basis, not to exceed three months to the same renter or boat, at a monthly rate of 20% of the annual rental fee.~~

~~6.~~ 3. The cancellation fee for an annual slip rental is three months rental. Also, after the first of the month, that month is considered to be "used."

**4VAC5-36-150. Interpretive and educational tours and program fees.**

INTERPRETIVE AND EDUCATIONAL TOURS AND PROGRAMS (NONTAXABLE)

| Interpretive and Educational Tours and Programs | | |
|---|---|---|
| PARK | PROGRAM | FEE |
| All parks unless otherwise noted: | Standard Interpretive Program or Tour: such as typical staff led nature hikes or campfire programs. | Free |
| | Fee-based Interpretive Program or Tour: (Fee only applies to programs or tours that have unusual costs or require special equipment, personnel, marketing, or other special arrangements). | $2.00 per person<br>$6.00 per family |
| | Fee-based Night Hike or Evening Program or Evening Tour: (Fee only applies to programs or tours that have unusual costs or require special equipment, personnel, marketing, or other special arrangements). | $3.00 per person<br>$8.00 per family |

| | | |
|---|---|---|
| | Standard Workshop Fee | $5.00 per child (Age 12 and under)<br>$15 per adult (Age 13 and over) |
| | Standard Wagon Ride Program | $3.00 per person<br>$8.00 per family<br>$25 exclusive group |
| | Extended or Special Event Wagon Ride Program | $4.00 per person<br>$10 per family<br>$75 exclusive group booking |
| | Park Outreach Program: Price per park staff member conducting program | $10 for under 2 hours<br>$25 for 2 to 3 hours<br>$50 for 4 hours plus |
| | Standard Junior Ranger Program: 4-day program. All parks unless noted below. | $10 full program<br>$3.00 per day |
| | Haunted Hike | $1.00 (Age 3 through 12)<br>$3.00 (Age 13 and over) |
| | Geo Caching or Orienteering Interpretive Program. | $3.00 per person<br>$8.00 per family<br>$25 per group |
| | Nature-Themed Birthday Party: Includes a nature talk, hike, games, songs, and time in the Nature Center for gifts and cakes. At least one staff member is present to conduct activities. | $96 per hour plus materials cost for 12 children<br>$8.00 per additional child |
| | Standard Women's Wellness Weekend Program | $149 per person |
| Grayson Highlands | Junior Ranger Program | $5.00 per person per day |
| | Hayrides | $2.00 per child<br>$3.00 per adult |
| | Adventure Rangers Interpretive Program | $10 per person per day |
| | Make a Birdhouse Program | $5.00 per person |
| | Make Your Own Hiking Stick Program | $3.00 per person |
| | 2-Day Photography Class | $35 per person |
| Twin Lakes | Haunted Hike | $3.00 (Age 3 through 12)<br>$5.00 (Age 13 and over) |
| Occoneechee, Caledon~~, Sky Meadows~~ | Individual interpretive program pass: (Allows admission for one person to 4 interpretive programs valued at $3.00 or less) | $6.00 per pass |
| | Family interpretive program pass: (Allows admission for members of the same family to 4 interpretive programs valued at $8.00 or less) | $18 per pass |

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| Pocahontas | Nature Camps | $100 per child per program plus materials cost<br>$30 per child plus materials cost for Jr. Assistant. The Jr. Assistant helps the park staff in conducting camp programs. |
| | Curious Kids | $3.00 per program |
| | Nature and Discovery Programs (School/Groups Outreach) | $4.00 per child<br>$80 minimum<br>$15 additional if program is outside of Chesterfield County |
| Sky Meadows | ~~Interpretive Program Series: 6-program series~~ | ~~$15 per person per program~~<br>~~$45 per person per 4 programs~~<br>~~$60 per person per 6 programs~~ |
| | Nature and Discovery Programs (School/Groups Outreach) | $2.00 per child<br>$50 minimum<br>$15 additional if program is outside of the following counties: Fauquier, Frederick, Clark, and Loudoun |
| | Junior Ranger Outdoor Adventure Camp | $100 per child per program plus materials cost<br>$30 per child plus materials cost for Jr. Assistant. The Jr. Assistant helps the park staff in conducting camp programs. |
| Smith Mountain Lake | Nature and Discovery Programs (School/Groups Outreach) | $10 per school visit |
| Southwest Virginia Museum | How Our Ancestors Lived | $5.00 per person |
| | Special Themed Interpretive Program | $10 per person |
| | Music or Literary Event | $5.00 per person |
| | Workshop (Adult) | $10 per person |
| | Workshop (Children) | $5.00 per person |
| | Nature and Discovery Programs (School/Groups Outreach) | $25 for under 2 hours<br>$50 from 2 hours to under 4 hours<br>$75 for 4 or more hours |
| | Guided Tour or Activity | School Groups: $1.50 per person<br>Public Groups: $2.50 per person |
| | Step-On Tour Guide Service | $7.00 per person |
| Caledon | Caledon Eagle Tours | $6.00 per person<br>$50 Flat Rate (minimum: 10; maximum: 20) |
| | All Group Programs up to 2 hours long | $5.00 per person |
| | Haunted Hay Ride | $5.00 per person (age 7 and over)<br>Children under 7 free |
| | Special Program Bus Fee: Programs involving transportation within the natural area. | $3.00 per person |
| | Workshop (Adult) | $15 per person |

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| | Workshop (Children) | $5.00 per person |
| Natural Tunnel: Cove Ridge | Guided Programs | $25 per program (Maximum 30 participants)<br>$25 facility fee (If applicable) |
| | Environmental Education (Children's Activities) | $25 per program (Maximum 30 participants)<br>$25 facility fee (If applicable) |
| | Environmental Education (Adult Facilitation) | $15 per person |
| Hungry Mother/ Hemlock Haven | Junior Naturalist Program | $4.00 per person per week<br>$12 unlimited participation in interpretive season |
| Kiptopeke | Birding Program (Group Rates) | $35 (Corporate)<br>$25 (Nonprofit) |
| York River | Guided Adventure Programs | $4.00 per person<br>$40 per group (Minimum 12 persons) |
| Westmoreland | Guided Program Fee | $25 per person |
| Natural Tunnel | Junior Ranger Program (Includes T-Shirt) | $35 per person |
| | Wagon Ride Program | $50 Exclusive Education Group Booking |
| | Hay Wagon and Hot Dog Roast | $10 per person |
| | Bike Tours - 2 hours | $10 per person |
| | Extended Bike Tours - 4 hours | $15 per person |
| | Canoe and Bike Tour - 4 hours | $20 per person |
| | Halloween Haunted House/Hay Wagon Ride | $3.00 (Age 3 through 12)<br>$5.00 (Age 13 and over) |
| Mason Neck | Junior Ranger Program | $50 per person |
| Holliday Lake | Field Archaeology Workshop | $25 per person |
| | Junior Ranger Program (3 half-day workshop) (Ages 6 to 13) | $25 per child |
| False Cape | Wildlife Watch Tour – Per Person | $8.00 per person |
| | Wilderness Survival Weekend (2-night stay) | $200 per person |
| | Wilderness Survival Weekend (1-night stay) | $100 per person |
| | Wilderness Survival Program | $16 |
| | Astronomy Program | $16 per person |
| | Wild Women Weekend | $200 per person |
| | Summer Survival | $120 per person |
| | Blue Berry Blues | $20 per person |
| Staunton River | Interpretive Craft | $2.00 per person |

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| First Landing | Junior Ranger Program<br>3 Hour Program<br>6 Hour Program | <br>$25 per person<br>$50 per person |
| Bear Creek Lake | Junior Ranger Program | $20 per person |
| Leesylvania | Junior Ranger Program | $50 per person |
| | Halloween Haunted Hike | $2.00 per person<br>$6.00 per group (4 person maximum) |
| | Interpretive Programs | $2.00 per person |
| | Kids Fishing Tournament | $2.00 per child |
| Natural Tunnel | Pannel Cave Tour | $10 per person<br>$7.00 per person (Family-Group; 8-person minimum) |
| | Bolling Cave Tours | $15 per person<br>$12 per person (Family-Group; 10-person minimum) |
| | Stock Creek Tunnel Tour/Snorkeling on the Clinch | $5.00 per person |
| New River Trail | New River Trail Seniors Van Tour Full Day | $25 per person |
| | New River Trail Seniors Van Tour Half Day | $15 per person |
| | Bertha Cave Tour | $10 per person |
| James River | Haunted Wagon Ride | $5.00 per person (Age 7 and over)<br>Children 6 and under free |
| | Interpretive Archery Program | $5.00 per person |
| Belle Isle | Triple Treat Program:<br>Hayride/Canoe/Campfire | $10 per person |
| | Junior Ranger 3-day program | $5.00 per class |
| | Bike Tour: visitors can supply their own bike or rent separately | $2.00 per person<br>$6.00 per family |

Notes on interpretive and educational tours and programs:

Additional costs for supplies and materials may apply.

**4VAC5-36-200. Miscellaneous rental fees.**

RENTALS (TAXABLE; Price here does not include tax)

| Bike Rentals (includes helmet) | FEE |
|---|---|
| All parks where available unless otherwise noted | $3.00 per hour<br>$8.00 per half-day<br>$15 per full-day |
| New River Trail, James River, Mason Neck | $5.00 per hour<br>$12 per half-day<br>$18 per day |
| First Landing | $5.00 per hour<br>$16 per day |

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| Bike Helmet without bike rental | $1.00 |
| Child Cart for bike | $5.00 |
| Personal Bike Repair Services | $25 basic tune-up<br>$60 standard tune-up<br>$13.50 flat repairs<br>$10 minor adjustments |
| Boat Rentals | |
| Standard Paddle Boat Rental: | |
| All parks where available unless otherwise noted | $4.00 per half-hour<br>$6.00 per hour |
| Fairy Stone, ~~Westmoreland,~~ Hungry Mother | $5.00 per half-hour<br>$8.00 per hour |
| Smith Mountain Lake | $25 per half-hour<br>$35 per one hour |
| Westmoreland | $7.00 per half-hour<br>$12 per hour |
| Standard Canoe Rental: | |
| All parks where available unless otherwise noted. | $8.00 per hour<br>$15 per half-day<br>$25 per full-day<br>$40 for 24 hours<br>$100 per week |
| Smith Mountain Lake | $8.00 per half-hour<br>$12 per one hour<br>$60 for 24 hours<br>$30 additional for each day after first day |
| Claytor Lake | $12 per hour<br>$35 per half-day<br>$50 per day |
| Leesylvania, Mason Neck | $7.00 per half-hour<br>$12 per hour<br>$35 per half-day<br>$50 per day |
| James River | $10 per hour (does not include shuttle)<br>$40 per day (does not include shuttle)<br>$120 per week (does not include shuttle) |
| Standard Float Trips: | |
| James River | |
| Bent Creek to Canoe Landing: | |
| Canoe | $45 Max 3 people |
| Single Kayak | $35 per kayak |
| Canoe Landing to Dixon Landing: | |

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|---|---|
| Tubes | $12 per tube |
| Group of four or more | $10 per tube |
| Canoe | $15 per canoe |
| Single Kayak | $15 per kayak |
| Bent Creek to Dixon Landing: | |
| Canoe | $50 per canoe |
| Single Kayak | $40 per kayak |
| Shuttle Service Only: | |
| Canoe Landing to Dixon Landing, canoe or single kayak, scheduled or unscheduled | $2.00 per person<br>$5.00 per canoe/kayak |
| Bent Creek Shuttle (Scheduled) | $5.00 per boat (canoe/kayak)<br>$5.00 per person |
| Bent Creek Shuttle (Unscheduled) | $15 per boat (canoe/kayak)<br>$15 per person |
| Tubes | $5.00 per person/Bent Creek Shuttle<br>$2.00 between landings in park |
| Late Rental Fee | $15 per half hour past return time |
| New River Trail | $7.00 per hour<br>$20 per half-day<br>$30 per day<br>$35 per half-day, includes canoe rental and shuttle<br>$50 per full day, includes canoe rental and shuttle |
| Canoe Rental (includes shuttle) | |
| Trip A: Austinville to Foster Falls | $35 per canoe |
| Trip B: Ivanhoe to Austinville | $50 per canoe |
| Trip C: Ivanhoe to Foster Falls | $55 per canoe |
| Trip D: Foster Falls to Allisonia | $55 per canoe |
| Kayak Rental (includes shuttle) | |
| Trip A: Austinville to Foster Falls | $25 per kayak |
| Trip B: Ivanhoe to Foster Falls | $40 per kayak |
| Trip C: Foster Falls to Allisonia | $45 per kayak |
| Standard Rowboat Rental, without motor: | |
| All parks where available unless otherwise noted | $6.00 per hour<br>$12 per half-day<br>$22 per full-day<br>$36 per 24 hours<br>$80 per week |

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| Hungry Mother: Rowboats | $4.00 per hour<br>$15 per day<br>$40 per week |
| New River Trail: Rafts and flat-bottom boats | $7.00 per hour<br>$20 per half-day<br>$30 per day |
| Standard Rowboat Rental with electric motor and battery: All parks where available unless otherwise noted | $10 per hour<br>$20 per 4 hours<br>$36 per day<br>$100 per 4 days<br>$150 per week |
| Hungry Mother: Standard Rowboat Rental with electric motor and battery | $12 per hour<br>$24 per 4 hours<br>$45 per day<br>$75 per 24 hours (limited to overnight guests) |
| Standard Motorboat Rental, 16-foot console steering, 25-45 horsepower outboard. All parks where available. | $18 per hour<br>$90 per day |
| Standard Fishing Boat Rental with gasoline motor and one tank of fuel: All parks where available. | $10 per hour (2-hour minimum)<br>$50 per day |
| Pedal Craft Rental: (Hydro-Bike, Surf-Bike, etc.) All parks where available unless otherwise noted. | |
| One person. | $8.00 per hour |
| Two person. | $10 per hour |
| Hungry Mother: Hydro Bike | $5.25 per half hour<br>$8.00 per hour |
| Smith Mountain Lake: Hydro Bike | $8.00 per half hour<br>$12 per hour<br>$4.00 additional per hour after first hour<br>$60 per 24 hours<br>$30 additional per day after first day |
| Barracuda Boat. All parks where available | $10 per hour |
| Solo Kayak Rental: | |
| All parks where available unless otherwise noted | $8.00 per hour<br>$20 per half-day<br>$30 per day<br>$40 for 24 hours<br>$100 per week |
| Westmoreland | ~~$9.00~~ $12 per hour<br>$17 per half-day<br>~~$30 per day~~ |
| Smith Mountain Lake | $8.00 per half hour<br>$12 per hour<br>$60 per 24 hours<br>$30 additional per day after first day |

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| Mason Neck | $6.00 per half-hour<br>$10 per hour<br>$35 per half-day<br>$50 per day |
| James River | $7.00 per hour (does not include shuttle)<br>$20 per day (does not include shuttle)<br>$80 per week (does not include shuttle)<br>$12 per half hour past return time |
| Claytor Lake | $10 per hour<br>$25 per half-day<br>$40 per day |
| Tandem Kayak Rental: | |
| All parks where available unless otherwise noted. | $10 per hour<br>$20 per half-day<br>$30 per full-day<br>$45 for 24 hours<br>$120 per week |
| Westmoreland | ~~$12~~ $15 per hour<br>$22 per half-day<br>~~$36 per day~~ |
| Smith Mountain Lake | $10 per half-hour<br>$15 per hour<br>$80 for 24 hours<br>$30 additional for each day after first day |
| Mason Neck | $8.00 per half-hour<br>$15 per hour<br>$45 per 4 hours<br>$60 per day |
| Smith Mountain Lake: 14-foot fishing boat with 5 hp (3 person capacity). Rental does not include fuel and oil. Damage deposit of $200 required. | $50 for 3 hours<br>$10 additional per hour after first 3 hours<br>$150 for 24 hours<br>$30 additional per day after first day |
| Claytor Lake: 16-foot Bass Tracker with 60 hp motor. Damage deposit of 50% required. | $30 per hour<br>$75 per half-day<br>$115 per day |
| Claytor Lake: 20-foot pontoon boat with 90 hp motor. Damage deposit of 50% required. | $45 per hour<br>$120 per half-day<br>$185 per day |
| Claytor Lake: 21-foot pontoon boat (10 person capacity) with 75 hp motor and tow hook. Damage deposit of 50% required. | $45 per hour<br>$125 per half-day<br>$195 per day |
| Claytor Lake: 24-foot pontoon boat with 75 hp motor. Damage deposit of 50% required. | $50 per hour<br>$140 per half-day<br>$210 per day |
| Claytor Lake: 24-foot pontoon boat with 115 hp motor. Damage deposit of 50% required. | $55 per hour<br>$150 per half-day<br>$225 per day |

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| Claytor Lake: 30-foot pontoon boat with 115 hp motor. Damage deposit of 50% required. | $60 per hour<br>$165 per half-day<br>$250 per day |
| Claytor Lake: 18-foot bowrider with 190 hp motor. Damage deposit of 50% required. | $50 per hour<br>$135 per half-day<br>$205 per day |
| Claytor Lake: 19-foot bowrider with 220 hp motor, Damage deposit of 50% required. | $55 per hour<br>$150 per half-day<br>$225 per day |
| Occoneechee: 17-1/2-foot fishing boat. Rental includes 30 gallons of fuel. Damage deposit of $200 required. | $85 per hour<br>$20 additional per hour after first hour<br>$175 per 8 hours<br>$875 per 7 day week |
| Occoneechee: 20-foot pontoon boat with motor (8 person capacity) Rental includes 30 gallons of fuel. Damage deposit of $200 required. | $85 per hour<br>$20 additional per hour after first hour<br>$175 per 8 hours<br>$875 per 7 day week |
| Occoneechee: 22-foot pontoon boat with motor (10 person capacity) Rental includes 30 gallons of fuel. Damage deposit of $200 required. | $95 per hour<br>$20 additional per hour after first hour<br>$185 per 8 hours<br>$925 per 7 day week |
| Occoneechee: 25-foot pontoon boat with motor (14 person capacity) Rental includes 30 gallons of fuel. Damage deposit of $200 required. | $110 per hour<br>$25 additional per hour after first hour<br>$230 per 8 hours<br>$1,150 per 7 day week |
| Smith Mountain Lake: 18-20-foot Runabout with 190 hp (8 person capacity). Rental does not include fuel and oil. Damage deposit of $200 required. | $165 for 3 hours<br>$20 additional per hour after first 3 hours<br>$255 per 8 hours<br>$320 for 24 hours<br>$100 additional per day after first day |
| Claytor Lake: Jet Ski/Personal Watercraft | $50 per hour<br>$140 per 4 hours<br>$210 per 8 hours |
| Smith Mountain Lake: 24-foot pontoon boat with 40 hp (10-12 person capacity). Damage deposit of $200 required. | $90 for 3 hours<br>$20 additional per hour after first 3 hours<br>$165 per 8 hours<br>$215 for 24 hours<br>$80 additional each day after first day |
| Smith Mountain Lake: Personal Watercraft (Waverunner 700). Rental does not include fuel and oil. Damage deposit of $500 required. | $180 for 3 hours<br>$20 additional per hour after first 3 hours<br>$270 per 8 hours<br>$335 for 24 hours<br>$130 additional per day after first day |
| Belle Isle: Motorboat less than 25 horsepower (3 gallons of fuel included, 2 hour minimum) | $15 per hour<br>$60 per half-day<br>$100 per day |

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| Belle Isle: Motorboat 25-49 horsepower (11 gallons of fuel included, 2 hour minimum) | $22 per hour<br>$70 per half-day<br>$110 per day |
| Standard Damage/Replacement Fees: All parks where available unless otherwise noted. Not required for damage due to normal wear and tear. | |
| Paddle | $20 |
| Anchor/Rope | $40 |
| Fuel Tank/Hose | $60 |
| Fire Extinguisher | $25 |
| Throw Cushion | $10 |
| Propeller (small) | $100 |
| Propeller (large) | $135 |
| Personal Flotation Device (PFD): replacement fee for lost/damaged PFD | $25 each |
| Other Rentals: | |
| Personal Flotation Device (PFD): When separate from boat rental. | $1.00 per day |
| Smith Mountain Lake, James River: Personal Floatation Device, type II. | $5.00 for first day<br>$1.00 additional days |
| Smith Mountain Lake: Personal Floatation Device, type III | $7.00 for first day<br>$2.00 additional days |
| Canoe/Kayak Paddles: All parks where available unless otherwise noted. | $5.00 per day |
| New River Trail: Float Tubes | $5.00 per hour<br>$12 per half-day<br>$18 per day |
| James River: | |
| Cooler Tubes | $3.00 per day |
| Tubes | $8.00 per hour (does not include shuttle)<br>$20 per day (does not include shuttle)<br>$12 per half hour past return time |
| Claytor Lake: 2-person tow tube and towrope (with rental of boat only) | $20 per 2 hours<br>$25 per half-day<br>$30 per day |
| Claytor Lake: Water skis and towrope (with rental of boat only) | $20 per 2 hours<br>$25 per half-day<br>$30 per day |
| Claytor Lake: Kneeboard and towrope (with rental of boat only) | $15 per 2 hours<br>$20 per half-day<br>$25 per day |
| Smith Mountain Lake: Tow tube; Water Skis; Knee Board | $15 per day with boat rental<br>$5.00 per additional day<br>$25 per day without boat rental |

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| Smith Mountain Lake: Wake Board | $25 per day with boat rental<br>$10 per additional day<br>$30 per day without boat rental |
| Mobile Pig Cooker: All parks where available unless otherwise noted. | $40 per day |
| GPS Units | $6.00 per unit per half-day<br>$10 per unit per day |
| Volleyball Net and Ball Rental: All parks where available. | $10 |
| Binocular Rentals (2 hours): All parks where available. | $2.00 |
| Beach Floats: All parks where available. | $1.00 per hour<br>$3.00 for 4-hours<br>$5.00 for full-day |
| Surf Lounge Floating Chair Rental. All parks where available. | $2.00 per hour, single chair<br>$5.00 per half-day, single chair<br>$7.00 per full day, single chair<br>$3.00 per hour, double chair<br>$7.00 per half-day, double chair<br>$10 per full day, double chair |
| Body Board: First Landing | $6.00 per day |
| Standard Stand-Up Paddle Board: Westmoreland | $15 per hour |
| Beach Umbrella: All parks where available unless otherwise noted. | $3.00 per hour<br>$8.00 for 4 hours<br>$15 for full-day |
| First Landing | $6.00 per day |
| Beach Chair: All parks where available | $5.00 per day |
| First Landing | $6.00 per day |
| Fishing Rods: All parks where available unless otherwise noted. | $5.00 per half-day |
| First Landing | $6.00 per day<br>$3.00 per rod per fishing program |
| Tents with a group camp reservation. All parks where available. | |
| 2-person tent | $12 per day |
| 3-person tent | $20 per day |
| 4-person tent | $25 per day |
| 5-person tent | $30 per day |
| Coleman Camp Stove Rental, includes fuel | $10 per day |
| Tabletop Propane Grill, includes fuel | $15 per day |
| Coin-Operated Washing Machine: All parks where available unless otherwise noted. | $1.25 per load, tax included |
| First Landing | $1.50 per load, tax included |
| Coin Operated Dryer: All parks where available unless otherwise noted. | $1.25 per load, tax included |
| First Landing | $1.50 per load, tax included |

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| Pump Out: All parks where available unless otherwise noted. | $5.00 |
| Horse Rentals: | |
| All parks where available unless otherwise noted. | $20 per one-hour ride<br>$35 per two-hour ride<br>$100 per full day ride |
| Pony Rides: All parks where available unless otherwise noted. | $5.00 per 15 minutes |
| Horseback Riding Lessons: All parks where available unless otherwise noted. | $25 per lesson on group basis<br>$30 per lesson for individual |
| Horseback Summer Day Camp: All parks where available unless otherwise noted. | $180 per person per week |
| Horseshoe or Croquet Rental for Campers. All parks where available. | $1.00 per hour<br>$5.00 per day<br>$20 deposit |

**4VAC5-36-210. Conference center and meeting facility fees.**

CONFERENCE CENTERS (TAXABLE)

| Prices may be discounted and/or waived by the director when necessary to create competitive bids for group sales. | FEE |
|---|---|
| Hemlock Haven Conference Center at Hungry Mother | |
| Main Hall (Capacity: 240) | $350 per day |
| Upper Level Dogwood Room (Capacity: 50) | $200 per day |
| Lower Level Board Room: (Capacity: 16) | $100 per day |
| Ferrell Hall (Entire complex from 8 a.m. through 10 p.m.) | $575 per day |
| Day Use Recreational Package (Includes all outside recreational facilities) | |
| 0 – 250 Persons | $300 per half-day<br>$600 per full-day |
| 250 – 500 Persons | $425 per half-day<br>$850 per full-day |
| 500 + persons | $575 per half-day<br>$1,200 per full-day |
| Cedar Crest Conference Center at Twin Lakes | |
| Complex: Doswell Hall with deck, grounds, volleyball, horseshoes; Kitchen, Latham and Hurt Rooms NOT included. | $229 per 4 hours<br>$459 per day<br>$53 each extra hour |
| Doswell Meeting Room: Meeting Room only; no kitchen or dining room. | $164 per room per 4 hours<br>$328 per room per day<br>$37 each extra hour |
| Small breakout rooms with main room: Latham and Hurt. | $65 per room per 4 hours<br>$131 per room per day<br>$21 each extra hour |

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| Small breakout rooms without main room. | $98 per room per 4 hours<br>$196 per room per day<br>$37 each extra hour | |
| Picnic Shelter or Gazebo at Cedar Crest. | $68 per 4 hours<br>$131 per day<br>$11 each extra hour | |
| Kitchen rental only available with complex rental. | $105 per event | |
| Kitchen Cleaning Fee: Deposit. | $150 per event | |
| Chippokes Plantation Meeting, Conference, and Special Use Facilities | | |
| Mansion Conference Room. | $26 per hour | |
| Mansion or Historic Area Grounds (Includes parking for party rental). | $525 per 4 hours | |
| Mansion Board Room | $105 per 4 hours | |
| Chippokes Plantation Conference Shelter (Available on reservation basis only). | $105 per 4 hours | |
| Wedding Package (includes historic area grounds, gardens, tent set up and take down, 10 60-inch round tables, 10 standard size rectangle tables, 100 folding chairs, Wedding Coordinator, changing room for bride and groom, Mansion kitchen area, boardroom, no fee for wedding rehearsal). | $1,412 per 4 hours<br>$2,073 per 8 hours<br>$50 nonrefundable reservation fee | |
| Southwest Virginia Museum | DAY | EVENING |
| Victorian Parlor | | |
| Up to 30 People (8 tables – 30 chairs) OR Up to 50 people (50 chairs and head table) | $42 | $68 |
| Additional meeting rooms: Victorian Parlor must be rented in order to rent additional rooms. | | |
| Hallway (downstairs) (Includes three existing tables with linens) | $11 | $11 |
| Additional Hours | $10 per hour | $10 per hour |
| Exceeding approved hours | $20 per hour | $20 per hour |
| Wedding Portraits | $52 per 2 hours | $78 per 2 hours |
| Wedding Packages | EVENT | |
| Wedding Package A: Accommodates 100 people. Use of arbor in Victorian Garden. Setup of 100 chairs. One parking attendant. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled). | $500 | |
| Wedding Package B: Accommodates 100 people. Use of a 40x40 Tent. Small platform stage (4"H x 8'W x 8'L). Accent rope lighting. Setup of 100 chairs. One parking attendant. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled). | $1,500 | |

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| Wedding Package C: Accommodates 200 people (this requires an off-site reception area). Use of a 40x60 tent. Small platform stage (4"H x 8'W x 8'L). Accent rope lighting. Setup of 200 chairs. Two parking attendants. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled). | $2,500 | |
| Reception Packages | | |
| Casual Reception Package A: May be reserved with Wedding Package A or B. Use of Victorian Parlor or foyer; parlor set with serving tables and linens. Use of serving kitchen. | $200 | |
| Casual Reception Package B: May be reserved with Wedding Package A or B. Use of 20x30 tent; set with tables and linens. Use of serving kitchen. | $300 | |
| Formal Reception Package C: May be reserved with Wedding Package A or B. Use of 40x60 tent; sit-down reception for 100 to include tables, linens and chairs. Use of serving kitchen. | $2,250 | |
| Wedding and Reception Combination Package | | |
| Wedding and Reception Combination Package: Accommodates 100 people. Both wedding and reception are held under the same tent. Use of a 40x60 tent. Small platform stage (4"H x 8'W x 8'L). Accent rope lighting. Setup of 100 chairs. One parking attendant. Use of wedding space for previous night's rehearsal. Bride and groom dressing rooms. Free use of facilities for wedding portrait (must be scheduled). Back of tent set with serving tables and linens. Use of serving kitchen. | $2,500 | |
| Damage Fee: a minimal damage fee will be accessed the person(s) renting the property for damage to the site. | $200 | |
| Wilderness Road (Mansion and Ground Rental) | | |
| Karlan Mansion and Grounds Rental | $350 for first day<br>$150 for each additional day | |
| Cove Ridge Center at Natural Tunnel: | PRIVATE FEE | EDUCATIONAL FEE |
| Cove Ridge Center Annual Membership: Membership entitles organization to a 25% discount on facility rental fees and group rates on all programming offered through the center. | $1,050 per year | $525 per year |
| Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for two consecutive half-day rental periods, and parking passes. | $315 | $210 |
| Overnight Use of one dorm: Includes Day Use Package plus one dorm rooms for one night and swimming (in season). | $683 | $498 |
| Overnight Use of both dorms: Includes Day Use Package plus two dorm rooms for one night and swimming (in season). | $892 | $656 |

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| Wedding Package Day Use: Exclusive use of the auditorium, meeting room, resource library, catering kitchen, great room with stone fireplace and deck for three consecutive half-day rental periods, and parking passes. | $525 | NA |
| Wedding Package Overnight: Includes Day Use Package plus one dorm for one night and swimming (in season). | $919 | NA |
| Wedding Package Overnight: Includes Day Use Package plus both dorms for one night and swimming (in season). | $1,102 | NA |
| Wedding Package with Amphitheater: Rental of the park amphitheater in conjunction with any of the above wedding packages. | $236 for the rental period | NA |
| Removal of furniture from great room (only available with exclusive use of the center). | $42 | $42 |
| Additional seating on deck (only available with exclusive use of the center). | $42 | $0 |
| Auditorium | $126 per half day<br>$231 per full day | $99 per half day<br>$183 per full day |
| Classroom – Library (half-day) | $63 | $47 |
| One dorm: Overnight lodging for up to 30, includes swimming (in season) and parking passes. | $420 per night April 1-October 31<br>$378 per night November 1-March 31 | $315 per night April 1-October 31<br>$283 per night November 1-March 31 |
| Both Dorms: Overnight lodging for up to 60, includes swimming (in season) and parking passes. | $630 per night April 1-October 31<br>$567 per night November 1-March 31 | $472 per night April 1-October 31<br>$425 per night November 1-March 31 |
| Per Person Student Rate for Overnight Dorm Use | $13 per person | $13 per person |
| Kitchen Use (when not included in package) | $50 per event | $50 per event |
| Heritage Center at Pocahontas: All reservations require 50% down at time of reservation (Nonrefundable within 14 days of event) | PRIVATE FEE | EDUCATIONAL FEE |
| Large Room (Capacity: seated at tables 50; reception style 125, auditorium 80: includes tables, chairs, and warming kitchen) | $131 per 4 hours<br>$236 per full-day<br>$26 each extra hour | $78 per 4 hours<br>$141 per full-day<br>$15 each extra hour |
| Westmoreland | FEE | |
| Tayloe and Helen Murphy Hall Meeting Facility: Includes Main Meeting Room, Kitchen, and Grounds | $500 (8 a.m. to 10 p.m.)<br>$350 additional rental days after first day<br>~~$75 per hour for usage beyond reservation period~~ | |
| Wedding and Reception Package for Tayloe and Helen Murphy Hall: The hours accompanying this package are 10:00 a.m. to 10:00 p.m. on Friday, 8:00 a.m. to 10:00 p.m. on Saturday, and 9:00 a.m. to 2:00 p.m. on Sunday. | $1,000 | |
| Potomac Overlook Rental | $55 per day | |

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| ~~Breakout Meeting Room (May be rented separately from main meeting room only within 45 days of event.~~ | ~~$75 (8 a.m. to 10 p.m.)~~ |
| Kitchen Clean Up Fee: (Waived if renter cleans facility) | $250 per event |
| Potomac River Retreat: Table and Chair Set-up | $40 |
| Fairy Stone | |
| Fayerdale Hall Meeting Facility Weekend Rental. Includes Friday, Saturday, and Sunday | |
| One Day Rental | $236 (8 a.m. to 10 p.m.) |
| Two Consecutive Days Rental | $315 |
| Three Consecutive Days Rental | $366 |
| Fayerdale Hall Meeting Facility Weekday Rental. Includes Monday through Thursday only. | |
| One Day Rental | $75 (8 a.m. to 10 p.m.) |
| Two Consecutive Days Rental | $125 |
| Three Consecutive Days Rental | $174 |
| Four Consecutive Days Rental | $225 |
| Douthat | |
| Restaurant (includes table set-up) | $236 |
| Allegheny Room: Up to 30 persons. | $158 per day |
| Wedding Package: Conference room and amphitheater (see "amphitheater section") on day of wedding, plus an extra half-day amphitheater for rehearsal. | $289 |
| First Landing | |
| Trail Center Conference Room and Meeting Facility | $280 per day |
| Lake Anna | |
| Visitor Center | $32 per half-day<br>$53 per full day |
| Concessions Building Rental | $100 per day |
| Bear Creek Lake | |
| Meeting facility | $350 per day (Memorial Day weekend through October 31)<br>$236 per day (November 1 up to Memorial Day weekend)<br>$25 each extra hour |
| Wedding Package | $400 per day (Memorial Day weekend through October 31)<br>$315 per day (November 1 up to Memorial Day weekend) |
| Claytor Lake | |

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| Marina Meeting Facility: Includes facility, chairs, and tables. | $550 per day, Friday – Sunday<br>$275 per day, Monday – Thursday<br>$825 per two days |
| Wedding Package: Includes rental of facility, chairs, tables, gazebo, and special use permit ($10 permit fee is waived with package). | $625 per day package<br>$995 per two-day package |
| Leesylvania Wedding/Function Package: Includes Rental of: Lee's Landing Picnic Shelter, 100 Chairs, 15 Tables, and Parking for up to 50 vehicles | $840 per half-day<br>$945 per full-day |
| Mason Neck | |
| Small Wedding Package: Includes two 10 foot by 10 foot canopies, up to 50 chairs, and parking for up to 25 cars. | $250 per event |
| Wedding Package: Includes a 20 foot by 40 foot tent, up to 100 chairs, and parking for up to 50 cars. | $788 per event |
| Parking Attendant | $53 per 4 hours |
| Smith Mountain Lake | |
| Meeting room at Visitor Center | $158 per day |
| Exceeding approved hours. All parks unless otherwise noted below. | $25 per hour |
| Sky Meadows | |
| Timberlake House Meeting Room<br>Capacity 15 people | $50 per day 8 a.m. to 5 p.m.<br>$75 per evening beyond 5 p.m. |
| Timberlake House Kitchen (in conjunction with rental of meeting room) | $25 per day or part of day |
| Equipment and Services Associated with Meetings and Rentals: | |
| Microphone/Podium Rental | $15 per day |
| Stage Section Rental: 4' x 4' | $24 per event |
| First Landing | |
| Trail Center Pergola | $95 per 3 hours |
| Chair Rentals | |
| White, padded | $3.00 |
| White, plastic event chair | $1.50 |
| Standard folding chair | $1.00 |
| Table Rentals | |
| Rectangular, 6' | $7.50 |
| Rectangular, 8' | $8.00 |
| Round, 4' | $7.50 |
| Round, 5' | $8.75 |
| Round, 6' | $15 |
| Linen Rentals: All parks unless otherwise noted | |

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| Table cloth only<br>Place settings | $3.00 per table<br>$2.00 each |
| Wilderness Road | |
| Table cloth | $7.00 |
| Twin Lakes | |
| Overlay | $1.25 per table |
| Napkins | $0.40 per napkin |
| Fax | First 2 pages free<br>$2.00 each extra page |
| Copies | Single copy free<br>$0.15 each extra copy |
| Lost Key Fee | $10 |
| Easels | $5.00 per day |
| Overhead Projector | $10 per day |
| TV with VCR | $10 |
| Second TV | $10 |
| Overhead Projector with Screen | $10 |
| Slide Projector with Screen | $10 |
| Flip Chart | $10 |
| Event Set-up and Clean Up Fees | |
| First Landing | |
| Table and Chair Set-up Fee | $40 per event |
| Park labor to clean up after special events and facility rentals if not done in accordance with rental agreement or use permit | $50 per hour |

Notes on conference and meeting facilities fees:

1. Conference and meeting facilities require a 30% prepayment due 10 days after making reservation, and payment of the full balance prior to or on the first day of the reservation. Cancellations made 14 or more days prior to the first day of the reservation shall be charged the lesser of 10% of the total fee or $100. Cancellations made less that 14 days prior to the first date of the reservation shall be charged 30% of the total fee.

2. Alcohol use during weddings at the Southwest Virginia Museum: Weddings held during public operating hours of the museum will not be allowed to serve alcohol. Weddings held after regular operating hours of the museum must comply with ABC permit laws and have alcohol in the designated reception areas.

VA.R. Doc. No. R14-3876; Filed October 28, 2013, 5:31 p.m.

## MARINE RESOURCES COMMISSION

### Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-40, 4VAC20-260-50).**

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

Effective Date: November 1, 2013.

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

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

Summary:

*The amendments clarify culling tolerances and inspection procedures for oysters taken from public oyster beds, rocks, and shoals in Virginia's tidal waters as follows: (i) oysters less than the minimum cull size that are adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size, need not be removed, but shall be considered part of the culling tolerance during inspection; and (ii) for any oysters transferred from the culling board to one or more baskets, any police officer may select one or more baskets of oysters and empty the contents of those baskets into a bushel container for inspection.*

**4VAC20-260-40. Culling tolerances or standards.**

A. In the clean cull areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel inspected by ~~a~~ any police officer, it shall constitute a violation of this chapter, except as described in ~~subsection E of~~ 4VAC20-260-30 E.

B. In the James River seed areas, if more than a six-quart measure of shells is found in any bushel of seed oysters inspected by ~~a~~ any police officer, it shall constitute a violation of this chapter.

C. In the James River seed areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel of clean cull oysters inspected by ~~a~~ any police officer, it shall constitute a violation of this chapter.

D. From the seaside of the Eastern Shore, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found per bushel of clean cull oysters inspected by ~~a~~ any police officer, it shall constitute a violation of this chapter.

E. Any oysters less than the minimum cull size or any amount of shell that exceeds the culling standard shall be returned immediately to the natural beds, rocks, or shoals from where they were taken.

F. Oysters less than the minimum cull size that are ~~attached~~ adhering so closely ~~on~~ to the shell of ~~a~~ any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size need not be removed but shall be considered part of the culling tolerance during inspection.

**4VAC20-260-50. Culling and inspection procedures.**

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board, or in only one basket upon the culling board, and culled by hand at the location of harvest.

1. Culled oysters shall be transferred immediately from the culling board to either the inside open part of the boat, a loose pile, or baskets, but only one transfer method may be used on any boat or vessel in any one day.

a. Oysters shall not be stored in both a loose pile and in baskets.

b. A single basket may be on board any boat during transfer of culled oysters from the culling board to the inside open part of the boat in a loose pile.

2. The entire harvest shall be subject to inspection, as provided in subsection F of this section.

B. Any oysters taken lawfully by hand from natural public beds, rocks, or shoals from the seaside of the Eastern Shore, and held in sacks, bags, or containers, shall be culled when taken and placed in those sacks, bags, or containers for inspection by any police officer as described in subsection G of this section.

C. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this chapter.

D. All oysters taken from public grounds shall be sold or purchased in the regular oyster one-half bushel or one bushel measure as described in § 28.2-526 of the Code of Virginia, or the alternate container described in subsection E of this section; except that on the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

E. An alternate container produced by North Machine Shop in Mathews, Virginia, may be used for measuring oysters to be sold or purchased. The dimensions of this metallic cylindrical container shall be 18.5 inches inside diameter and 11 inches inside height.

F. Oysters may be inspected by any police officer according to any one of the following provisions:

1. For any oysters transferred from the culling board to the inside open part of the boat, vehicle, or trailer~~,~~ or a loose pile, any police officer may use a shovel to take at least one bushel of oysters to inspect, at random, provided that the entire bushel shall be taken from one place in the open pile of oysters.

2. For any oysters transferred from the culling board to one or more baskets, any police officer may select one or more baskets of oysters~~,~~ and empty the contents of those baskets ~~in a loose pile and use a shovel to take, at random, at least one bushel of oysters for inspection~~ into a bushel container, as described in § 28.2-526 of the Code of Virginia, for inspection.

G. In the inspection of oysters harvested by hand from waters of the seaside of the Eastern Shore, the police officer may select any sacks, bags, or containers at random to

establish a full metallic measuring bushel for purposes of inspection.

VA.R. Doc. No. R14-3902; Filed November 1, 2013, 11:00 a.m.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Final Regulation

Title of Regulation: **4VAC25-31. Reclamation Regulations for Mineral Mining (amending 4VAC25-31-10, 4VAC25-31-100, 4VAC25-31-110, 4VAC25-31-130, 4VAC25-31-140, 4VAC25-31-150, 4VAC25-31-170, 4VAC25-31-190, 4VAC25-31-260, 4VAC25-31-290, 4VAC25-31-330, 4VAC25-31-360, 4VAC25-31-380, 4VAC25-31-420, 4VAC25-31-460, 4VAC25-31-490, 4VAC25-31-500, 4VAC25-31-510, 4VAC25-31-530, 4VAC25-31-540; adding 4VAC25-31-405, 4VAC25-31-505).**

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Effective Date: December 19, 2013.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Summary:

*The amendments facilitate the use of electronic permitting and forms and clarify reclamation and post-mining land use requirements. Obsolete items, such as addresses that have changed, are updated. The amendments also expand the types of financial instruments that can be used for performance bonds. Changes since the proposed stage include (i) those in 4VAC25-3-460, where the requirement for operators to include a 50-foot riparian buffer along both sides of a perennial stream was removed from the final stage and (ii) additional requirements for what must be included in maps of permitted areas added to 4VAC25-3-150.*

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

**4VAC25-31-10. Definitions.**

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

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons. One acre-foot of water is equivalent to one acre covered by water one foot deep.

"Berm" means a stable ridge of material used in reclamation for the control of sound and surface water, safety, aesthetics, or such other purpose as may be applicable.

"Critical areas" mean problem areas such as those with steep slopes, easily erodible material, hostile growing conditions, concentration of drainage or other situations where revegetation or stabilization will be potentially difficult.

"Dam break inundation zone" means the area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his designee.

"Division" means the Division of Mineral Mining.

"Fifty-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as a probability that there is a 2.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 50-year, 24-hour storm occurs when the total 50-year storm rainfall occurs in a 24-hour period.

"Inert waste" means brick, concrete block, broken concrete, [ ~~asphalt paving,~~ ] and uncontaminated minerals or soil.

"Intermittent stream" means a stream ~~or part of a stream that flows for at least one month of the calendar year as a result of ground water discharge or surface run-off~~ that contains flowing water for extended periods during a year, but does not carry flows at all times.

"Internal service roads" mean roads that are to be used for internal movement of raw materials, soil, overburden, finished, or in-process materials within the permitted area, some of which may be temporary.

"Natural drainageway" means any natural or existing channel, stream bed, or watercourse that carries surface or ground water.

"One hundred-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as a probability that there is a 1.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 100-year, 24-hour storm occurs when the total 100-year storm rainfall occurs in a 24-hour period.

"On-site generated mine waste" means the following items generated by mineral mining or processing activities taking place on the permitted mine site:

| | |
|---|---|
| Drill steel | Tree stumps/land clearing debris |
| Crusher liners | Large off-road tires |
| Conveyor belting | Scrap wood or metal |
| Steel cable | Steel reinforced air hoses |
| Screen cloth | Broken concrete or block |
| Punch plate | V-belts |

"Perennial stream" means a ~~stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface run off~~ well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permitted area" means the area within the defined boundary shown on the application map including all disturbed land area, and areas used for access roads and other mining-related activities.

"Principal access roads" mean roads that are well-defined roads leading from scales, sales offices, or loading points to a public road.

"Probable maximum flood (PMF)" means the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation (PMP) available from the National Weather Service, National Oceanic and Atmospheric ~~Association~~ Administration. In some cases local topography or meteorological conditions will cause changes from the generalized PMP values; therefore, it is advisable to contact local, state, or federal agencies to obtain the prevailing practice in specific cases.

"Qualified person" means a person who is suited by training or experience for a given purpose or task.

"Regrade" or "grade" means to change the contour of any surface.

"Riparian buffer" means an area of trees, shrubs, or other vegetation that is managed to maintain the integrity of the stream channel and reduce the effects of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals.

"Sediment" means undissolved organic or inorganic material transported or deposited by water.

"Sediment basin" means a basin created by the construction of a barrier, embankment, or dam across a drainageway or by excavation for the purpose of removing sediment from the water.

"Spillway design flood (SDF)" means the largest flood that needs be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

"Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth. This includes increasing bearing capacity, increasing shear strength, draining, compacting, rip-rapping, vegetating or other approved method.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Ten-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as a probability that there is a 10% chance that the storm magnitude may be equaled or exceeded in any given year. A 10-year 24-hour storm occurs when the total 10-year storm rainfall amount occurs in a 24-hour period.

"Top soil" means the surface layer and its underlying materials that have properties capable of producing and sustaining vegetation.

**4VAC25-31-100. Mineral mining permits.**

Permits shall be renewed annually, in a manner acceptable to the director, to continue to remain in effect. [ Paper filings shall be considered acceptable. ]

**4VAC25-31-110. Permit application.**

Application for a mineral mining permit shall be made in ~~writing on~~ a form prescribed by the director and shall be ~~signed and sworn to~~ certified by the applicant or his ~~duly sworn~~ authorized representative. ~~Two copies~~ Copies of the application shall be submitted to the division in a manner acceptable to the director. [ Paper filings shall be considered acceptable. ]

**4VAC25-31-130. Mineral mining plans.**

Mineral mining plans shall be attached to the application and consist of the following:

~~1. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading, removal of metal, lumber, and debris, including processing equipment, buildings, and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified.~~

~~2.~~ 1. The operation plan shall include a description of the proposed method of mining and processing; the location of top soil storage areas; overburden, refuse and waste disposal areas; stockpiles, equipment storage, and maintenance areas; cut and fill slopes; and roadways. The operation plan shall also include all related design and construction data. The method of operation shall provide for the conducting of reclamation simultaneously where practicable with the mining operation. For the impoundments that meet the criteria of § 45.1-225.1 A of the Code of Virginia, plans shall be provided as required under 4VAC-25-31-180 and 4VAC25-31-500.

~~3.~~ 2. The drainage plan shall consist of a description of the drainage system to be constructed before, during and after mining, a map or overlay showing the natural drainage system, and all sediment and drainage control structures to be installed along with all related design and construction data.

3. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading, removal of metal, lumber, and debris, including processing equipment, buildings, and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified.

4. Adequate maps, plans and cross sections, and construction specifications shall be submitted to demonstrate compliance with the performance standards of Part IV (4VAC25-31-330 et seq.) of this chapter and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia. Designs, unless otherwise specified, shall be prepared by a qualified person, using accepted engineering design standards and specifications.

5. A copy of the Virginia Department of Transportation land use permit for roads that connect to public roads.

6. If mining below the water table is to take place, the following conditions apply:

a. The application shall contain an assessment of the potential for impact on the overall hydrologic balance from the proposed operations to be conducted within the permitted area.

b. A plan for the minimization of adverse [ ~~affects~~ effects ] on water quality or quantity shall be prepared based on the assessment in subdivision ~~6a~~ 6 a of this section and included in the application.

c. ~~In no case shall~~ Permanent lakes or ponds ~~be~~ created ~~if they are less~~ by mining shall be equal to or greater than four feet deep~~, except when creation of wetlands is approved as part of the post-mining land use~~ or otherwise constructed in a manner acceptable to the director.

**4VAC25-31-140. Marking of permit boundaries.**

A. The permit boundary of the mine shall be clearly marked with identifiable markings when mine related land disturbing activities are within 100 feet of the permit boundary.

B. This section is not applicable to lands disturbed prior to ~~the effective date of this regulation~~ September 11, 2003.

C. Maintenance of permit boundary markers is not required after completion of construction, completion of final disturbances, or completion of final reclamation unless the area is being redisturbed by mining.

D. Separate boundary markings are not required if clear, readily identifiable features, such as streams, permanent roads, or permanent power lines coincide with the permit boundary.

**4VAC25-31-150. Maps.**

A. Maps shall be supplied as described in §§ 45.1-181 and 45.1-182.1 of the Code of Virginia and in this chapter that show the total area to be permitted and the area to be affected in the next ensuing year (with acreage calculated).

B. Preparation of maps.

1. All application, renewal, and completion maps shall be prepared and certified under the direction of a professional engineer, licensed land surveyor, licensed geologist, issued by a standard mapping service, or prepared in such a manner as to be acceptable to the director.

2. If maps are not prepared by the applicant, the certification of the maps shall read as follows: "I~~, the undersigned,~~ hereby certify that this map is correct and shows to the best of my knowledge and belief, all the information required by the mineral mining laws and regulations of the DMME."

3. The applicant shall submit a general location map showing the location of the mine, such as a county highway map or equivalent, in the initial application.

4. Sensitive features within ~~1,000~~ 500 feet of the permit boundary ~~such as~~ including state waters, cemeteries, oil and gas wells, underground mine workings, ~~streams, creeks and other bodies of public water,~~ public utilities and utility lines, ~~public~~ buildings, ~~public~~ roads, schools, churches, and occupied dwellings shall be shown. [ ~~Delineated wetlands within the permit boundary shall be shown.~~

5. ] All properties, and their owners, within 1,000 feet of the permit boundary shall be identified.

[ 6. Wetlands that have been previously delineated shall be shown within the permit boundary.

7. Riparian buffers that have been previously delineated shall be shown within the permit boundary. ]

C. Map code and legend.

1. A color code as prescribed by the director shall be used in preparing the map.

2. Graphic symbols may be used to represent the different areas instead of a color-coded map.

3. The map shall include a legend that shows the graphic symbol or color code and the acreage for each of the different areas.

**4VAC25-31-170. Permit application notifications.**

A. The following shall be made with a new permit application:

1. Notification to property owners within 1,000 feet of the permit boundary by certified mail. A record shall be kept of:

a. The names and addresses of those notified, and

b. The certified mail return receipts used for the notification.

2. A statement as required by § 45.1-184.1 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the operator is seeking a surface mining and reclamation permit from the Department of Mines, Minerals and Energy. The statement shall also include:

a. Company name;

b. Date;

c. Location;

d. Distance and direction of nearest town or other easily identified landmark;

e. City or county;

f. Tax map identification number; and

g. Requirements for (i) regrading; (ii) revegetation; and (iii) erosion controls of mineral mine sites.

h. A notice that informs property owners that they have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the Department of Mines, Minerals and Energy, Division of Mineral Mining~~, P.O. Box 3727, Charlottesville, Virginia 22903, (434) 951-6310~~.

B. Applicants will provide a copy of the permit notification to the division at the time they are mailed to the neighboring landowners.

~~B.~~ C. A statement, with certified mail receipt, certifying that the chief administrative official of the local political subdivision has been notified.

~~C.~~ D. Notification shall be made to any public utilities on or within [ 500 ~~1,000~~ ] feet of the permitted area. The notification shall consist of the following:

1. The name of the party issuing the notice;

2. The applicant name, address, and phone number; and

3. The name and address of the party receiving the notice and the information noted in subdivision A 2 of this section.

~~D.~~ E. No permit will be issued until at least 15 days after receipt of the application by the division. If all persons required to receive notice have issued a statement of no objection, the permit may be issued in less than 15 days.

~~E.~~ F. Copies of all permit notifications and statements required in subsections A through ~~C~~ D of this section shall be supplied to the ~~department~~ division with the application.

**4VAC25-31-190. Availability of permits.**

Mineral mining permits ~~and~~, a copy of the permit application, and a copy of the approved mineral mining plan shall be kept on-site while mining is underway.

**4VAC25-31-260. Form of performance bond.**

The bond shall be submitted in the form of cash, check, certificate of deposit, ~~or~~ insurance surety bond, or irrevocable letter of credit.

A. Certificates of deposit.

1. Certificates of deposit must be made payable to the Treasurer of Virginia, Division of Mineral Mining.

2. The amount of the certificate of deposit must include the maximum early withdrawal penalty rounded up to the next higher hundred dollars.

3. The original certificate of deposit shall be submitted to the division and held by the division throughout the bond liability period.

4. Certificates of deposit must be automatically renewable.

5. The certificate of deposit must be from a bank located in the Commonwealth of Virginia or approved as an allowable bank depository by the Virginia Department of Treasury.

6. Interest accrued on certificates of deposit may be deposited to the permittee's individual account and is free of encumbrance by bond liability.

7. In the event of forfeiture of a certificate of deposit, the face value of the deposit plus any accrued interest that has been rolled back into the certificate principal will be subject to bond liability and expenditure in the performance of the reclamation obligation.

B. Surety bonds.

1. All bonds shall be in a form acceptable ~~by~~ to the director. Bonds shall be executed by the permittee, and a corporate surety and agent licensed to do business in the Commonwealth.

2. Surety bonds shall not be canceled during their term except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the division. The division shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

C. Irrevocable letter of credit.

1. The director may accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the Commonwealth. The letter of credit shall be irrevocable and unconditional, shall be payable to the division on demand, and shall afford to the division protection equivalent to a corporate surety bond. The issuer of the letter of credit shall give prompt notice to the permittee and the division of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements that could result in the suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the

issuer shall immediately notify the permittee and the division. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the division, and the division shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease mineral extraction and mineral processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mineral extraction and mineral processing operations shall not resume until the division has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the division may suspend the permit until acceptable bond is posted.

2. The letter of credit shall be provided on the form and in the format established by the director.

3. Nothing contained in this section shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

**4VAC25-31-290. Intensive agricultural use.**

If the post-mining use is to be intensive agriculture, then planting and harvesting of a normal crop yield is required to meet the regulatory requirements for full or partial bond release. A normal yield for a particular crop is equal to the five-year average for the county. If crop yield data is unavailable, then other methods to determine suitability for bond release may be utilized as acceptable to the director. The use of grass, water bars, or diversion strips and natural vegetative drainage control may be required in the initial planting year as specified by the director.

Part IV
Performance Standards

**4VAC25-31-330. Protected structures and sensitive features.**

Mining activities shall be conducted in a manner that protects state waters, cemeteries, oil and gas wells, underground mine workings, public utilities, and utility lines, ~~public~~ buildings, ~~public~~ roads, schools, churches, and occupied dwellings.

**4VAC25-31-360. Operation and reclamation.**

A. Mining operations shall be conducted to minimize adverse effects on the environment and facilitate integration of reclamation with mining operations according to the special requirements of individual mineral types. Mining shall be conducted to minimize the acreage that is disturbed and reclamation shall be conducted simultaneously with mining to the extent feasible.

B. Open pit mining of unconsolidated material shall be performed in such a way that extraction and reclamation are conducted simultaneously.

C. Mining activities shall be conducted so that the impact on water quality and quantity are minimized. Mining below the water table shall be done in accordance with the mining plan under 4VAC25-31-130.

D. ~~In no case shall lakes or ponds of water be created that are less than four feet deep, unless wetlands are formed as part of the approved post mining land use~~ Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep, or otherwise constructed in a manner acceptable to the director.

E. Excavation shall be done in such a manner as to keep storm drainage flowing toward sediment control structures. Diversions shall be used to minimize storm run-off over disturbed areas.

F. The mining operation shall be planned to enhance the appearance to the public during mining and to achieve simultaneous and final reclamation.

G. At the completion of mining, all entrances to underground mines shall be closed or secured and the surface area reclaimed in accordance with the mineral mining plan.

H. Reclamation shall be completed to allow the post-mining land use to be implemented. After reclamation, the post mining land use shall be achievable and compatible with surrounding land use. All necessary permits and approvals for the post-mining land use shall be obtained prior to implementation.

**4VAC25-31-380. Treatment of acid material.**

All acid material~~, which is part of or directly associated with the mineral deposit or deposits being mined,~~ encountered during the mining operation shall be properly controlled ~~during mining and upon~~ to prevent adverse impacts on surface or groundwater quality. Upon completion of mining, acid materials shall be covered with a material capable of shielding ~~the acid material~~ them and supporting plant cover in accordance with the approved reclamation plan. Unless otherwise specified by the director, the minimum cover shall be four feet in depth.

**4VAC25-31-405. Disposal of waste.**

On-site generated waste shall not be disposed of within the permitted mine area without prior approval. [ On-site generated inert materials are approved for use as fill on the mining site provided they are capped with a minimum of four feet of soil cover and seeding is established per the approved reclamation plan. ] Off-site generated inert waste shall not be brought onto the mine permitted area or disposed of on the mine permitted area without prior approval.

**4VAC25-31-420. Screening.**

A. Screening shall be provided for sound absorption and to improve the appearance of the mining site from public roads, public buildings, recreation areas, and occupied dwellings.

B. If screening is to be undisturbed forest, a distance of 100 feet must be left undisturbed within the permit boundary. Less than 100 feet may be approved if the natural vegetation provides the needed screening benefits between the mining operation and the adjacent property. Planted earth berms, tree plantings, natural topography, or appropriately designed fences or walls may be used if approved in the mineral mining plan.

C. On permanent berms for screening, the spoils (waste materials) shall be initially placed on the proposed berm area and top soil (where available) shall be spread over the spoil areas, not less than ~~four~~ six inches in thickness, and if possible, 12 inches in thickness. The remaining top soil shall be placed in a designated area for future spreading on other areas which need top dressing. The top soil shall be seeded or planted in accordance with the approved reclamation plan.

**4VAC25-31-460. Intermittent or perennial streams.**

All intermittent or perennial streams shall be protected from spoil by natural or constructed barriers. [ ~~Areas disturbed after (the effective date of this regulation) shall provide an undisturbed riparian buffer, 50 feet in width, along both sides of a perennial stream unless otherwise approved by the director. Areas disturbed prior to (the effective date) shall provide the aforementioned riparian buffer upon reclamation, in accordance with the approved post mining land use.~~ ] Stream channel diversions shall safely pass the peak run-off from a 10-year, 24-hour storm. Stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

**4VAC25-31-490. Water quality.**

The pH of all water discharge resulting from the mining of minerals shall be between pH 6.0 and pH 9.0 unless otherwise approved by the director. In addition, discharges shall be in compliance with applicable standards established by the Department of Environmental Quality [ ~~(4VAC25-260-20)~~ (9VAC25-260-20) ].

**4VAC25-31-500. Water impoundments.**

A. Structures that impound water or sediment to a height of five feet or more above the lowest natural ground area within the impoundment and have a storage volume of 50 acre-feet or more, or impound water or sediment to a height of 20 feet or more regardless of storage volume, shall meet the following criteria (noted in Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia):

1. Impoundments meeting or exceeding the size criteria set forth in this section shall be designed utilizing a spillway flood and hazard potential classification as specified in the following table:

| Class of Impoundment* | ~~Hazard Potential if Failure Occurred~~ | ~~Size Classification**~~ Spillway Design Flood (SDF)** | | ~~Spillway Design Flood (SDF)***~~ Minimum Threshold for Incremental Damage Analysis *** |
|---|---|---|---|---|
| | | ~~Capacity (ac-ft)~~ | ~~Height~~ | |
| ~~I~~ High Hazard | ~~Probable loss of life~~<br>~~Extensive off-site effect~~ | ~~A) >1000~~ PMF<br>~~B) > 500~~<br>~~C) > 50~~<br>~~D) < 50~~ | ~~> 40 ft~~<br>~~< 40 ft~~<br>~~> 5 ft~~<br>~~> 20 ft~~ | .50 PMF<br>~~0.5 PMF PMF~~<br>~~0.5 PMF PMF~~<br>~~100 yr - 0.5 PMF~~ |
| ~~II~~ Significant Hazard | ~~Probable loss of life~~<br>~~Appreciable off-site effects~~ | ~~A) >1000~~ .50 PMF<br>~~B) > 500~~<br>~~C) > 50~~<br>~~D) < 50~~ | ~~> 40 ft~~<br>~~< 40 ft~~<br>~~> 5 ft~~<br>~~> 20 ft~~ | ~~0.5 PMF PMF~~ 100-year storm<br>~~100 yr - 0.5 PMF~~<br>~~100 yr - 0.5 PMF~~<br>~~100 yr~~ |
| ~~III~~ Low Hazard | ~~No loss of life~~<br>~~Minimal off-site effect~~ | ~~A) >1000~~ 100- year storm<br>~~B) > 500~~<br>~~C) > 50~~<br>~~D) < 50~~ | ~~> 40 ft~~<br>~~< 40 ft~~<br>~~> 5 ft~~<br>~~< 20 ft~~ | ~~100 yr - 0.5 PMF~~ 50-year storm<br>~~100 yr~~<br>~~100 yr~~<br>~~50 yr - 100 yr~~ |

*Size and hazard potential classifications shall be proposed and justified by the operator and shall be subject to approval by the director. Present and projected development in the inundation zone downstream from the structure shall be used in determining the classification.

~~**The factor determining the largest size classification shall govern~~ **The complete definitions of hazard potential are those contained in 4VAC50-20-40.

***The establishment of rigid design flood criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions for each impounding structure and in recognition of the many factors involved, some of which may not be precisely known. Such can only be done by competent, experienced engineering judgment, which the values in the table are intended to add to, not replace.

Reductions in the SDF may be evaluated by use of incremental damage analysis described in 4VAC50-20-52. Note that future development downstream may increase the required SDF.

2. Impounding structures shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout their life.

a. Impoundments shall be designed and constructed by or under the direction of a qualified ~~registered~~ professional engineer licensed in Virginia and experienced in the design and construction of impoundments.

b. The designs shall meet the requirements of this section and use current prudent engineering practices.

c. The plans and specifications for an impoundment shall consist of a detailed engineering design report that includes engineering drawings and specifications, with the following as a minimum:

(1) The name of the mine; the name of the owner; classification of the impounding structure as set forth in this regulation; designated access to the impoundment and the location with respect to highways, roads, streams and existing impounding structures and impoundments that would affect or be affected by the proposed impounding structure.

(2) Cross sections, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways and other additional drawings in sufficient detail to indicate clearly the extent and complexity of the work to be performed.

(3) The technical provisions as may be required to describe the methods of the construction and construction quality control for the project.

(4) Special provisions as may be required to describe technical provisions needed to ensure that the impounding structure is constructed according to the approved plans and specifications.

d. Components of the impounding structure, the impoundment, the outlet works, drain system and appurtenances shall be durable in keeping with the design and planned life of the impounding structure.

e. All new impounding structures regardless of their hazard potential classification~~,~~ shall include a device to permit draining of the impoundment within a reasonable period of time, and at a minimum shall be able to lower the pool level six vertical inches per day, as determined by the owner's professional engineer, subject to approval by the director.

f. Impoundments meeting the size requirements and hazard potential of ~~Class I, Class II and Class III~~ high, significant, or low shall have a minimum static safety factor of 1.5 for a normal pool with steady seepage saturation conditions and a seismic safety factor of 1.2.

g. Impoundments shall be inspected and maintained to ensure that all structures function to design specifications.

h. Impoundments shall be constructed, maintained and inspected to ensure protection of adjacent properties and preservation of public safety and shall meet proper design and engineering standards under Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia. Impoundments shall be inspected at least daily by a qualified person, designated by the licensed operator, who can provide prompt notice of any potentially hazardous or emergency situation as required under § 45.1-225.2 of the Code of Virginia. Records of the inspections shall be kept and certified by the operator or his agent.

i. The operator will prepare an Emergency Action Plan (EAP) that includes the following information:

(1) A notification chart of persons or organizations to be notified, the person or persons responsible for notification, and the priority in which notifications are issued. Notifications shall include at a minimum the division, the local government authority responsible for emergency response, and the Virginia Department of Emergency Management.

(2) A discussion of the procedures used for timely and reliable detection, evacuation, and classification of emergency situations considered to be relevant to the structure and its setting.

(3) Designation of responsibilities for EAP related tasks. Also, the EAP shall designate the responsible party for making a decision that an emergency situation no longer exists at the impounding structure. Finally, the EAP shall include the responsible party and the procedures for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties

potentially impacted by a failure of the impounding structure.

(4) A section describing actions to be taken in preparation for impoundment emergencies, both before and during the development of emergency conditions.

(5) Dam break inundation maps. Each sheet of such maps for high and significant potential hazard classification structures shall be prepared and sealed by a professional engineer. Where possible, inundation mapping in the EAP should be provided on sheets no larger than 11 inches by 17 inches to facilitate copying for emergency response.

(6) Appendices containing information that supports and supplements the material used in the development of the EAP, including plans for training, exercising, and updating the EAP.

(7) A section that identifies all parties with assigned responsibilities in the EAP and signed certification by all of those parties that a copy of the EAP has been received.

(8) Times periods for review or revision acceptable to the director.

3. Impoundments shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4. The following are acceptable as design procedures and references:

a. The design procedures, manuals and criteria used by the United States Army Corps of Engineers~~:~~;

b. The design procedures, manuals and criteria used by the United States Department of Agriculture, Natural Resources Conservation Service~~:~~;

c. The design procedures, manuals and criteria used by the United States Department of Interior, Bureau of Reclamation~~:~~;

d. The design procedures, manuals and criteria used by the United States Department of Commerce, National Weather Service~~: or~~;

e. The design procedures, manuals and criteria used by the United States Federal Energy Regulatory Commission;

f. Federal Guidelines for Dam Safety: Emergency Action Planning for Dam Owners, United States Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted January 2004; FEMA 64 or as revised;

g. Federal Guidelines for Dam Safety: Selecting and Accommodating Inflow Design Floods for Dams, United States Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted April 2004; FEMA 94 or as revised; or

~~e.~~ h. Other design procedures, manuals and criteria that are accepted as current, sound engineering practices, as approved by the director prior to the design of the impounding structure.

B. Impoundments that do not meet or exceed the size criteria of subsection A of this section shall meet the following criteria:

1. Be designed and constructed using current, prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Safely pass the runoff from a 50-year storm event for temporary (life of mine) structures and a 100-year storm event for permanent (to remain after mining is completed) structures.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

C. Impoundments with impounding capability created solely by excavation shall comply with the following criteria:

1. Be designed and constructed using prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Be designed and constructed with outlet facilities capable of:

a. Protecting public safety;

b. Maintaining water levels to meet the intended use; and

c. Being compatible with regional hydrologic practices.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

**4VAC25-31-505. Reporting impoundment failures.**

If upon examination an operator determines that [ ~~a~~ any ] water impounding structure [ in the permitted area ] has failed partially or completely, the incident must be reported to the division immediately.

**4VAC25-31-510. Alternative methods of stabilization.**

Riprap shall be used for the control of erosion on those areas where it is impractical to establish vegetation or other means of erosion control or in any areas where rock riprap is an

appropriate means of reclamation. Placing of rock riprap shall be in accordance with drainage standards and the approved mineral mining plan. Other methods of stabilization ~~shall~~ may include gabions, concrete, ~~and~~ shotcrete, geotextiles, and other means acceptable to the director.

**4VAC25-31-530. Process in revegetation.**

A. Slopes shall be graded in keeping with good conservation practices acceptable to the division. Slopes shall be provided with proper structures such as terraces, berms, and waterways, to accommodate surface water where necessary and to minimize erosion due to surface run-off. Slopes shall be stabilized, protected with a permanent vegetative or riprap covering and not be in an eroded state at the time reclamation is complete.

B. Crusted and hard soil surfaces shall be scarified prior to revegetation. Steep graded slopes shall be tracked (running a cleated crawler tractor or similar equipment up and down the slope).

C. Application of lime and fertilizer shall be performed based on soil tests and the revegetation requirements in the approved reclamation plan.

D. Vegetation shall be planted or seeded and mulched according to the mixtures and practices included in the approved reclamation plan. ~~Mulch shall be applied at the rate of 2,000 pounds per acre for straw or hay, and 1,500 pounds per acre for wood cellulose mulch.~~

E. The seed used must meet the purity and germination requirements of the Virginia Department of Agriculture and Consumer Services. The division may, at its discretion, take samples for laboratory testing. Noncritical vegetated areas shall achieve adequate cover so that no areas larger than one-half acre shall exist with less than 75% cover after two growing seasons. Seeded portions of critical areas shall have adequate vegetative cover so the area is completely stabilized.

**4VAC25-31-540. Trees and shrubs.**

Trees and shrubs shall be planted according to the specific post-mining land use, regional adaptability, and planting requirements included in the approved reclamation plan. ~~Tree and shrub planting for ground cover shall be combined with well established grass species.~~ For forest and wildlife post-mining land uses, at least 400 healthy plants per acre shall be established after two growing seasons.

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 of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[ FORMS (4VAC25-31)

Permit/License Application, DMM-101 (rev. 2/06).

Notice of Application to Mine, DMM-103 (rev. 2/06).

Statement Listing the Names and Addresses of Adjoining Property Owners, DMM-103a (rev. 9/99); included in DMM-103 Notice of Application to Mine.

Bond Release Inspection, DMM-104d (rev. 12/09).

Yearly Progress Report, DMM-105 (rev. 2/06).

Surety Bond, DMM-107 (rev. 4/09).

Legend, DMM-109 (rev. 2/11).

Relinquishment of Mining Permit, DMM-112 (rev. 2/06).

Request for Amendment, DMM-113 (rev. 2/06).

Consolidated Biennial Report of Waivered Counties, Cities, and Towns, DMM-116 (rev. 2/06).

Biennial Waivered Counties, Cities, and Towns, Report of Individual Mining Companies, DMM-117 (rev. 2/06).

Consent for Right of Entry, DMM-120 (rev. 12/99).

Mineral Mining Annual Tonnage Report, DMM-146 (rev. 2/06).

Mineral Mining Annual Report for Contractors, DMM-146c (rev. 12/11).

DMM Application Checklist, DMM-148 (rev. 2/06).

Request for Release of Mine Map, DMM-155 (rev. 2/06).

Notice of Operator Intent, DMM-156 (rev. 2/06).

License Renewal/Transfer Application, DMM-157 (rev. 2/06).

Permit Transfer Acceptance, DMM-161 (rev. 2/06).

Permit Renewal Checklist, DMM-163 (rev. 3/06).

Certification of No Change, DMM-164 (rev. 3/06).

Surety Bond Rider, DMM-167 (rev. 2/06).

General Permit for Sand and Gravel Operations Less Than Ten Acres in Size, DMM-168 (eff. 9/03).

Certificate of Deposit, DMM-169 (eff. 2/06).

Irrevocable Standby Letter of Credit, DMM-108 (eff. 6/13) ]

VA.R. Doc. No. R09-1913; Filed October 22, 2013, 8:21 a.m.

## Fast-Track Regulation

Title of Regulation: **4VAC25-35. Certification Requirements for Mineral Miners (amending 4VAC25-35-10, 4VAC25-35-20, 4VAC25-35-40 through 4VAC25-35-70, 4VAC25-35-80 through, 4VAC25-35-120; adding 4VAC25-35-5).**

Statutory Authority: § 45.1-161.292:19 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

Effective Date: January 3, 2014.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy,

1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Basis: Section 45.1-161.292:19 of the Code of Virginia directs the Department of Mines, Minerals and Energy (DMME) to issue certifications for mineral miners to ensure the health and safety of persons and property associated with mineral mining and grants DMME the authority to promulgate regulations necessary or incidental to the performance of its duties.

Purpose: The purpose of this regulatory action is to amend the certification requirements for mineral miners to allow for electronic submission of certification forms. Doing so will allow DMME to more effectively and efficiently serve its customers and protect the health, safety, and welfare of the public.

Rationale for Using Fast-Track Process: This rulemaking is expected to be noncontroversial as the amendments are largely to clarify language and enhance the efficiency of the certification process.

Substance: Amendments allow for certification documentation and for payment of fees associated with certification to be submitted electronically. In addition, amendments add a definitions section, make several clarifying changes, and change the requirements for written examination for general mineral mining certification and electrical certification.

Issues: The primary advantage to the public and the Commonwealth is a more convenient, electronic permitting process. This process creates efficiencies for both DMME and the mineral mining industry. There are no known disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Mineral Mining Examiners (Board) proposes to amend these regulations to allow mineral miners to file for their required certifications, pay fees and take examinations electronically. Additionally, the Board proposes several amendments for clarity, which do not change policy or requirements.

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

Estimated Economic Impact. Allowing mineral miners to file for their required certifications, pay fees and take examinations electronically may moderately reduce costs through saved time and postage. To the extent that the clarifying amendments reduce confusion, these proposed changes will be beneficial as well.

Businesses and Entities Affected. The proposed amendments potentially affect the 433 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these (roughly 390) would qualify as small businesses.

Localities Particularly Affected. The proposed amendments apply to all localities, but may particularly impact areas with relatively greater mineral mining. According to the Department of Mines, Minerals and Energy, the Division of Mineral Mining has issued active permits in over 90 localities in the Commonwealth.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments may moderately reduce costs by permitting the use of electronic submission of documents.

Small Businesses: Costs and Other Effects. The proposed amendments may moderately reduce costs by permitting the use of electronic submission of documents.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, 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 Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*The amendments (i) define terms used in the regulation; (ii) make technical changes designed to allow for mineral*

*miners to file their required certifications and pay fees electronically; and (iii) provide that applicants for general mineral miner certification and electrical certification who possess a valid master electrical license issued by the Department of Professional and Occupational Regulation are not required to take a written examination.*

**4VAC25-35-5. Definitions.**

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

"Commencing work" means after employment but before beginning job duties.

"Department" means the Department of Mines, Minerals and Energy.

"Division" means the Division of Mineral Mining of the Department of Mines, Minerals and Energy.

"MSHA" means the federal Mine Safety and Health Administration.

Part I
General and Specific Requirements

**4VAC25-35-10. Initial certification requirements.**

A. Applicants shall submit:

1. An application for certification examination in a form acceptable to the division.

2. ~~A copy~~ Verification of all degrees required for certification and a valid first aid certificate ~~or card or~~ as noted in Part II, Minimum Certification Requirements (4VAC25-35-50 et seq.). When not otherwise specified, first aid ~~cards~~ certifications shall be issued by an organization that uses nationally recognized standards and is approved by the ~~Division of Mineral Mining (DMM)~~ division, e.g., American Red Cross and National Safety Council.

3. A $10 fee for each examination application received at least five working days prior to an examination. Cash will be accepted if paying in person at a department office.

4. Verification of work experience in a form acceptable to the division and documentation of equivalent work experience for approval by the division, if required for the certification. Work experience shall be verified by a company official who is knowledgeable of the experience of the applicant.

B. Applicants shall fulfill the requirements of ~~4VAC25-35-10~~ this section and accumulate the required years of experience within five years of taking the examination or start the process over including payment of fee.

C. Applicants for the general mineral miner certification shall submit a $10 processing fee with their application.

**4VAC25-35-20. Examination requirements.**

A. All applicants for certification shall take ~~a written~~ an examination except candidates for the general mineral miner certification and electrical certification applicants who hold a valid journeyman ~~card~~ or master electrical license issued by the Department of Professional and Occupational Regulation. Applicants for the foreman certification shall score at least 85% and applicants for other certifications shall score at least 80% on each section of the ~~written~~ examination. Examinations will be given in a manner specified by the division, including, but not limited to, online or written examinations.

B. If all or part of an examination is failed, the applicant must pay the examination fee and retake the failed section or sections within 90 days to continue the certification process. If a section of the examination is failed a second time, the applicant must pay the fee and retake the entire examination. If the examination is failed on the third try, the applicant must pay the fee and wait the longer of 90 days from the re-examination date or one year from the initial examination date before retaking the entire exam. After the third attempt, the application cycle starts over.

**4VAC25-35-40. Renewal requirements.**

A. The division will send renewal notices to the last known address of the certificate holder at least 180 days prior to the expiration of the certificate. Certified persons shall apply for renewal of certificates by submitting an application for renewal and verification of work experience in a form acceptable to the division no more than 180 days prior to the expiration of their certificate. The application shall be submitted in time to be received at least five working days prior to the date of the examination or refresher class.

B. Certified persons, except mine inspectors, who have worked in the classification for which they are certified for a cumulative minimum of 24 months in the last five years shall select one of two options to renew their certificates; either take an examination or complete a refresher class on any changes in regulations and law since the initial certification or the certificate was last renewed. ~~No examination or class shall be required if there have been no such changes.~~

C. Certified persons shall take the examination described in 4VAC25-35-20 if their certificate has expired, they have not worked in the ~~area~~ classification for which they are certified for a cumulative minimum of 24 months in the last five years, or ~~DMM~~ the division has issued the individual violations that have not been corrected.

D. Successful completion of the mine inspector renewal shall suffice for renewing the mine foreman certification.

E. Applicants for renewal of certifications shall hold a valid first aid certificate ~~or card~~ to renew their certification.

F. Applicants shall submit a $10 fee for the examination or the refresher class which shall be received at least five

working days prior to the examination or class. Cash will be accepted if paying in person at a department office.

Part II
Minimum Certification Requirements

**4VAC25-35-50. Underground foreman.**

A. Applicants for certification as an underground foreman shall possess five years mining experience at an underground mineral mine or equivalent work experience approved by ~~DMM~~ the division.

B. Applicants may be given three years credit for a surface foreman certificate or bachelor's degree in mining engineering, mining technology, civil engineering or geology, or two years credit for an associate's degree in mining technology or civil technology.

C. Applicants shall possess a valid first aid certificate ~~which represents~~ verifying completion of an approved first aid course.

**4VAC25-35-60. Surface foreman (this certification is for a person whose job duties include overseeing blasting activities).**

A. Applicants for certification as a surface foreman shall possess five years mining experience, at least one year at a surface mineral mine, or equivalent work experience approved by ~~DMM~~ the division.

B. Applicants may be given three years credit for a bachelor's degree in mining engineering, mining technology, civil engineering, civil technology or geology, or two years credit for an associate's degree in mining technology or civil technology.

C. Applicants shall possess a valid first aid certificate ~~which represents~~ verifying completion of an approved first aid course.

**4VAC25-35-70. Surface foreman, open pit ~~(not applicable to drilling and~~ (this certification is for a person whose job duties do not include overseeing blasting activities).**

A. Surface foreman, open pit applicants shall possess five years mining experience with at least one year at a surface mineral mine, or equivalent work experience approved by ~~DMM~~ the division.

B. Applicants may be given three years credit for a bachelor's degree in mining engineering, mining technology, civil engineering, civil technology or geology, or two years credit for an associate's degree in mining technology or civil technology.

C. Applicants shall possess a valid first aid certificate ~~which represents~~ verifying completion of an approved first aid course.

**4VAC25-35-80. Surface blaster.**

A. Surface blaster applicants shall possess one year of blasting experience on a surface mineral mine under the supervision of a certified blaster or possess equivalent work experience approved by ~~DMM~~ the division.

B. Applicants shall possess a valid ~~record of three hours of training in first aid from an organization that uses nationally recognized standards or a valid record of training to meet the requirements in 30 CFR Part 48 that includes~~ first aid certificate verifying completion of a first aid course approved by the division.

**4VAC25-35-90. Underground mining blaster.**

A. Underground mining blaster applicants shall possess two years of work experience in an underground mine with at least one year handling and using explosives underground or possess equivalent work experience approved by ~~DMM~~ the division.

B. Applicants shall possess a valid ~~MSHA 5000-23 form showing training in~~ first aid certificate verifying completion of a first aid course approved by the division.

**4VAC25-35-100. Mineral mining electrician (electrical repairman).**

A. Applicants for certification as a mineral mining electrician shall possess work experience as demonstrated by a valid journeyman or master electrical ~~certification~~ license issued by the Department of Professional and Occupational Regulation, Tradesmen Section or as approved by ~~DMM~~ the division as equivalent to that required for a journeyman ~~certification~~ license.

B. Applicants shall submit documentation of training or obtain training as required by 30 CFR Part 46 or 30 CFR Part 48 or provide evidence of their knowledge of safe working practices on the mine site as approved by ~~DMM~~ the division.

**4VAC25-35-110. Mine inspector.**

In addition to the requirements set forth in § 45.1-161.292:11 of the Code of Virginia, mine inspector applicants shall demonstrate knowledge and competence in those areas specified in § 45.1-161.292:12 of the Code of Virginia through the examination process. A certificate will not be issued until an applicant is employed by ~~DMME~~ the department.

**4VAC25-35-120. General mineral miner.**

A. As set forth in § 45.1-161.292:28 of the Code of Virginia, miners commencing work after January 1, 1997, shall have a general mineral miner certification. ~~For the purposes of these regulations, "commencing work" means after employment but before beginning job duties.~~ Persons excluded from the general mineral miner certification are those involved in delivery, office work, maintenance, service and construction work, other than the extraction and processing of minerals, who are contracted by the mine operator. Hazard training as required by 30 CFR Part 46 or 30 CFR Part 48 shall be provided to these persons.

B. Applicants shall complete certification training in first aid and mineral mining regulations and law, which is conducted by a training instructor approved by ~~DMM~~ the division, a certified MSHA instructor, or a certified mine foreman.

Training shall include the following topics, subtopics and practical applications:

1. First aid training shall convey ~~a~~ knowledge of first aid practices including identification of trauma symptoms, recognition and treatment of external and internal bleeding, shock, fractures, and exposure to extreme heat or cold. Training shall include a demonstration of skills or passing ~~a written~~ an examination, as evidenced by the instructor certification submitted in a form acceptable to the division.

2. Law and regulation training shall convey highlights of the mineral mine safety laws of Virginia and the safety and health regulations of Virginia. Specifically, information shall be provided on miner responsibilities and accountability, certification requirements, violations, penalties, appeals and reporting violations to ~~DMM~~ the division. Training shall include a demonstration of skills or passing ~~a written~~ an examination, as evidenced by the instructor certification submitted in a form acceptable to the division.

C. The trainer will certify to the department that the training and demonstrations required by § 45.1-161.292:28 B of the Code of Virginia and this section have occurred.

D. Applicants who hold a valid first aid ~~card or~~ certificate as noted in 4VAC25-35-10 shall be considered to have met the first aid requirements.

E. Applicants who have completed training may commence work and shall be considered provisionally certified for up to 60 days from the date the instructor completes the training.

F. The instructor shall submit verification of certification in a form acceptable to the division and the $10 fee for each applicant who completes the training, together with a class roster of all persons who complete the training, within 30 days of the training date.

G. The mine operator shall maintain the following records for those miners required to obtain a general mineral miner certification and those who qualify for exemption, starting January 1, 1997:

1. The employee name, address, and phone number.

2. The job title, employment date and general mineral miner number if applicable.

3. The date training was completed and the instructor providing it for nonexempt employees.

4. If the employee is exempt from the requirements, the date they began working in the mineral mining industry in Virginia.

VA.R. Doc. No. R14-3357; Filed October 22, 2013, 8:19 a.m.

## Final Regulation

Title of Regulation: **4VAC25-165. Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes (adding 4VAC25-165-10 through 4VAC25-165-130).**

Statutory Authority: §§ 45.1-361.15 and 45.1-361.22:1 of the Code of Virginia.

Effective Date: December 19, 2013.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Summary:

*Chapter 442 of the 2010 Acts of Assembly directs the Virginia Gas and Oil Board (VGOB) to adopt regulations to implement a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas. VGOB adopts its regulations through the Department of Mines, Minerals and Energy. This regulation establishes the guidelines for the arbitration process. Key provisions include how arbitrations are funded, the qualifications of the arbitrator, and procedures associated with the arbitration process.*

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

CHAPTER 165
REGULATIONS GOVERNING THE USE OF ARBITRATION TO RESOLVE COALBED METHANE GAS OWNERSHIP DISPUTES

**4VAC25-165-10. Definitions.**

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

"Accrued interest" means funds accrued during the preceding 36 months on total proceeds held in the general escrow account. Accrued interest does not include escrow account fees or administrative costs of the board related to the general escrow account.

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Arbitrator" means a qualified individual appointed by a court to render a determination in an ownership dispute concerning coalbed methane gas.

"Board" means the Virginia Gas and Oil Board.

"Claimant" means a person or entity in a dispute over ownership of coalbed methane gas who has agreed to arbitration to resolve the dispute.

"Court" means a circuit court in the Commonwealth of Virginia wherein the majority of the subject tract of land is located.

"Department" means the Department of Mines, Minerals and Energy.

"Escrow account" means the account established by the board pursuant to [ ~~§~~ ] § 45.1-361.21 and [ subdivision 2 of § ] 45.1-361.22 [ ~~(2)~~ ] of the Code of Virginia.

"Ex parte communication" means any form of communication between an arbitrator and a claimant without the presence of the opposing claimant.

"Operator" means the gas or oil owner designated by the board to operate in or on a pooled unit.

**4VAC25-165-20. Costs of arbitration.**

Arbitrations shall be funded from accrued interest. The department shall determine on a case-by-case basis if sufficient funds exist to conduct an arbitration. Sufficiency of funds shall be determined by the amount of accrued interest available at the time arbitration is requested, less estimated costs of pending arbitrations. If sufficient funds are not available, the department shall maintain a waiting list of parties willing to arbitrate.

**4VAC25-165-30. Qualification of arbitrators.**

The department shall review all applications from potential arbitrators pursuant to § 45.1-361.22:1 C of the Code of Virginia. Applications shall be submitted on a form prescribed by the department. In order to qualify, applicants must demonstrate substantial expertise in mineral title examination. Substantial expertise shall be determined on an individual basis. The department shall notify applicants deemed to be qualified.

The department shall maintain a list of qualified arbitrators and update it annually. The list shall be supplied to the court when the board issues an order for arbitration. Pursuant to § 45.1-361.22:1 C of the Code of Virginia, the court has the discretion to appoint an individual not on the list of qualified arbitrators.

In order to maintain a current, accurate list, qualified arbitrators shall at least annually update their disclosures to the department.

**4VAC25-165-40. Agreement to arbitrate.**

Claimants shall submit their request of arbitration to the board on a form prescribed by the department. Claimants shall also provide an affidavit pursuant to § 45.1-361.22:1 A of the Code of Virginia.

**4VAC25-165-50. Conflicts of interest.**

In addition to the limitations set forth in § 45.1-361.22:1 A of the Code of Virginia, an arbitrator may not hear an arbitration if the arbitrator is related to one of the claimants, has a personal interest in the subject of the arbitration, or if other circumstances exist that might affect the arbitrator's ability to render a fair determination. If evidence of a conflict exists under this section, a claimant may petition the court to appoint a different arbitrator.

**4VAC25-165-60. Location.**

The arbitrator shall determine an appropriate time and place for the arbitration. The arbitration shall take place in the jurisdiction where the majority of the subject tract is located, unless all claimants agree to an alternate location. Notice to claimants shall be given pursuant to the requirements of § 45.1-361.22:1 D of the Code of Virginia.

**4VAC25-165-70. Postponement of arbitration.**

Any request for postponement may be granted by the arbitrator if all claimants consent, or if good cause for a postponement is shown to the satisfaction of the arbitrator. Requests for postponement for cause should be made to the arbitrator at least 15 days before the hearing, unless the circumstances requiring the postponement do not allow 15 days notice. Whenever a postponement is granted, the arbitrator will promptly reschedule the hearing and notify the board and the claimants.

**4VAC25-165-80. Discovery.**

Pursuant to §§ 8.01-581.06 and 45.1-361.22:1 D of the Code of Virginia, the arbitrator may issue subpoenas, administer oaths, and take depositions. Additionally, any documents a claimant intends to introduce at the arbitration must be shared with the opposing claimant and the arbitrator not less than five days prior to the arbitration. If this provision is found not to be met, the arbitrator may elect to continue the arbitration.

**4VAC25-165-90. Extension of arbitration.**

If, pursuant to § 45.1-361.22:1 E of the Code of Virginia, the claimants agree that the arbitrator may take longer than six months from the date the board ordered the arbitration to render a determination, the arbitrator shall notify the board of this extension.

**4VAC25-165-100. Determination of arbitrator.**

Pursuant to § 45.1-361.22:1 E of the Code of Virginia, the determination of the arbitrator shall be in writing and sent to the board and each party to whom notice is required to be given. The determination shall include, at a minimum, a finding of facts and an explanation for the basis of the determination. A copy of the determination shall be placed on the department's website. The arbitrator shall record the determination with the clerk's office of the court.

**4VAC25-165-110. Ex parte communications.**

There shall be no direct communication between the claimants and the arbitrator concerning the merits of the dispute other than at the arbitration hearing. If an ex parte communication occurs between a party and the arbitrator outside of the arbitration hearing, the arbitrator shall notify the other parties of the date, time, place, and content of the communication.

**4VAC25-165-120. Fees.**

Arbitrators shall be paid at the rate of no more than $250 per hour. Expenses of the arbitrator incurred during the course of the arbitration shall be reimbursed in accordance with the State Travel Regulations prescribed by the Department of Accounts. Arbitrators shall submit a complete W-9 form to the department before payment is made.

Pursuant to § 45.1-361.22:1 F of the Code of Virginia, payment of fees and expenses of the arbitration may be delayed if there are intervening disbursements from the general escrow account under [ subdivision 5 (i) or (iii) of ] § 45.1-361.22 [ ~~(5)(i) or (iii)~~ ] of the Code of Virginia that reduce the interest balance below the amount of fees and expenses requested.

**4VAC25-165-130. Disbursement of proceeds.**

Within 30 days of receipt of an affidavit from the claimants affirming the determination, the operator shall petition the board for disbursement pursuant to [ subdivision 5 of ] § 45.1-361.22 [ ~~(5)~~ ] of the Code of Virginia.

NOTICE: The following forms used in administering the regulation have been filed by the Department of Mines, Minerals and Energy. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the form by clicking on the name of the form. The form is also available for public inspection at the Department of Mines, Minerals and Energy, 1100 Bank Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (4VAC25-165)

Arbitrator Qualification Form, DGO-ARB (rev. 5/10)

Agreement to Arbitrate Form, DGO-ARB2 (rev. 7/10)

VA.R. Doc. No. R11-2556; Filed October 22, 2013, 8:03 a.m.

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# TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

## FORENSIC SCIENCE BOARD

### Fast-Track Regulation

Title of Regulation: **6VAC40-30. Regulations for the Approval of Field Tests for Detection of Drugs (amending 6VAC40-30-10 through 6VAC40-30-80).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

Effective Date: January 3, 2014.

Agency Contact: Stephanie Merritt, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-2281, or email stephanie.merritt@dfs.virginia.gov.

Basis: Section 19.2-188.1 of the Code of Virginia requires the department to evaluate and, where applicable, approve field tests for the detection of drugs, pursuant to regulations adopted in accordance with the Administrative Process Act, for use by law-enforcement officials. Law-enforcement officers may then testify to the results of department-approved field tests at certain preliminary hearings. The amendments to the Regulations for the Approval of Field Tests for Detection of Drugs (6VAC40-30) were adopted by the Forensic Science Board pursuant to §§ 9.1-1101 and 9.1-1110 A 1 of the Code of Virginia.

Purpose: The Regulations for the Approval of Field Tests for Detection of Drugs assist law enforcement and the criminal justice system by providing information critical to the probable cause determination necessary at the time of the arrest and subsequent preliminary hearing. This process positively impacts judicial economy and constitutional due process. Ultimately, therefore, the ability of law enforcement and the courts to rely on the results of drug field tests protects the health, safety, and welfare of the citizens of the Commonwealth.

The amendments change verbiage relating to the department's assessment of field test kits pursuant to § 19.2-188.1 of the Code of Virginia from an "approval" process to an "evaluation" process. Because approval is not automatic, but rather depends on the kit's performance during the evaluation process, these amendments achieve the goal of more accurately expressing the neutrality of the evaluation process.

The amendments also clarify the procedure for resubmitting requests for evaluation after disapproval. If a field test kit is disapproved, there is typically an exchange of information between the department and the manufacturer regarding why the kit was disapproved and any changes made to the kit upon resubmission. The amendments formalize this process by requiring the kit manufacturer to explain changes or corrections made between evaluations by the department.

Finally, the amendments require manufacturers submitting field test kits for evaluation to pay the actual costs of the "street drug preparations" used in the evaluation process. The existing $50 fee was originally intended to cover the manpower costs associated with this testing and has not changed since the regulation's 2006 effective date. This fee does not address the cost of the street drug preparations used in the evaluation process. The street drug preparations, or the known substances needed to actually test the efficacy of a particular field test, are also called "standards" in the scientific community. The standards for controlled drugs, particularly standards for newly emerging drugs such as research chemicals (e.g., bath salts) are difficult to obtain and more expensive than other scheduled substances such as heroin or cocaine. For example, the 10 mg sample necessary for a single evaluation of a 25C-NBOMe field test costs the department $448. In a recent request for evaluation, the fees to be paid by the kit manufacturer totaled $1,000, but the actual cost to department for materials alone would be $1,700. The department's budget does not address these costs, nor does the department have a control over the number and frequency of costly field tests submitted for evaluation.

Currently, these rising costs are supported by Virginia tax dollars.

Rationale for Using Fast-Track Process: The amendments to 6VAC40-30, involving the change of "approval" language to more neutral "evaluation" terminology as well as a clarification regarding the resubmission process, are minor and do not change existing, substantive procedures. Additionally, the amendment to 6VAC40-30-80 requires drug field test kit manufacturers to pay the actual cost of the street drug preparations. Based on the current information regarding requests for evaluation, this cost would affect only eight out-of-state kit manufacturers. In September 2012, the department conducted a periodic review of this regulation and received no public comment. Likewise, the Forensic Science Board discussed and voted to adopt these amendments at its January and May 2013 public meetings, and no member of the public offered a comment. Given these facts, as well as the clear cost savings to the Commonwealth, the department does not expect these amendments to be controversial.

Substance: In addition to nonsubstantive verbiage changes regarding the "evaluation" process, the amendments clarify the resubmission process by noting that resubmitted requests for approval "shall be accompanied by a detailed explanation of all modifications or changes to the test, the test instructions or the manufacturer's claims since the. . . most recent evaluation." This procedure merely formalizes the current practice in which the department and field test manufacturer discuss issues surrounding the resubmission of a previously disapproved field test. The amendments to 6VAC40-30-80 require the field test manufacturers to pay the actual cost of the street drug preparations.

Issues: The proposed clarification of the existing language and resubmission procedure will inform and benefit the public, stakeholders, and kit manufacturers. The public generally benefits from the efficient and neutral field test evaluation process to the extent the proper use of department-approved drug field tests assists law-enforcement officials with probable cause determinations and facilitates the judicial process. The transfer of the actual cost of the street drug preparations used during the kit evaluation process from the Commonwealth to the manufacturers is a benefit to Virginians, but arguably a disadvantage to the eight out-of-state kit manufacturers, particularly any manufacturer seeking to transfer its kit quality control responsibilities to the department because it will be required to pay the actual cost of repeated evaluations.

The department currently bears the cost of the street drug preparations used in the field test kit evaluation process. By transferring this cost to the manufacturers, the Commonwealth will be relieved of a financial burden that is increasingly costly.

The department believes the proposed changes benefit the Commonwealth and its citizens.

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 Forensic Science Board (board) proposes to: 1) require manufacturers submitting field test kits for evaluation to pay the actual costs of the street drug preparations used in the evaluation process, and 2) add clarifying language.

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

Estimated Economic Impact. The Regulations for the Approval of Field Tests for Detection of Drugs assist law enforcement and the criminal justice system by providing information critical to the probable cause determination necessary at the time of the arrest and subsequent preliminary hearing. This process positively impacts judicial economy and Constitutional due process. Ultimately, therefore, the ability of law enforcement and the courts to rely on the results of drug field tests protects the health, safety and welfare of the citizens of the Commonwealth.

Under the current regulations, manufacturers submitting field test kits for evaluation/approval are charged $50 for each drug for which individual evaluation/approval is requested. The existing $50 fee was originally intended to cover the manpower costs associated with this testing and has not changed since the regulation's 2006 effective date. This fee does not address the cost of the street drug preparations used in the evaluation process. The street drug preparations, or the known substances needed to actually test the efficacy of a particular field test, are also called standards in the scientific community. The standards for controlled drugs, particularly standards for newly emerging drugs such as research chemicals (e.g., bath salts), are difficult to obtain and more expensive than other scheduled substances such as heroin or cocaine. For example, the 10mg sample necessary for a single evaluation of a 25C-NBOMe field test cost the Department of Forensic Science (Department) $448.[1] In a recent request for evaluation, the fees to be paid by the kit manufacturer totaled $1000, but the actual cost to the Department for materials alone would be $1700.[2] Effectively, the costs of the street drug preparations are paid for by Virginia taxpayers.

The Department is aware of eight field test kit manufacturers likely to be affected by the proposal to charge the actual costs of the street drug preparations used in the evaluation process. All eight are located outside of Virginia. The firm that has most frequently submitted field test kits for evaluation is located in Europe. So under the status quo, Virginia taxpayers are subsidizing services for firms that are located out of state, and in particular a firm located out of country.

There is no compelling reason to provide this subsidy. There is no current concern that there would be a lack of reliable field tests for the detection drugs without it. The tax dollars

currently being used for this subsidy would likely provide greater benefit for the Commonwealth by either being used for a more productive purpose or by not being collected from the public. Thus, the proposal to charge the actual costs of the street drug preparations used in the evaluation process will most likely produce a net benefit for the Commonwealth.

Businesses and Entities Affected. The proposed amendments affect the eight manufacturers of field test kits for drug detection who have or have indicated an interest in submitting field test kits for evaluation/approval. All eight firms are located outside of the Commonwealth.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property within the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses within the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses in the Commonwealth.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

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

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[1] Source: Department of Forensic Science

[2] Ibid

Agency's Response to Economic Impact Analysis: The Department of Forensic Science concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The amendments (i) change verbiage relating to the Department of Forensic Science's assessment of field test kits from an "approval" process to an "evaluation" process in an effort to more accurately express the neutrality of the evaluation process, (ii) clarify the procedure for resubmitting requests for evaluation after disapproval, and (iii) require manufacturers submitting field test kits for evaluation to pay the actual costs of the "street drug preparations" used in the evaluation process.*

Part I
Definitions

**6VAC40-30-10. Definitions.**

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

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or designee.

"Department" means the Department of Forensic Science.

"Drug" means any controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

"Field test" means any presumptive chemical test unit used outside of a chemical laboratory environment to detect the presence of a drug.

"Field test kit" means a combination of individual field tests units.

"List of approved field tests" means a list of field tests or field test kits approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 ~~A~~ of the Code of Virginia.

"Manufacturer" means any entity ~~which~~ that makes or assembles field test units or field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting a drug.

"Manufacturers' instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions ~~which~~ that are published by the

manufacturer and supplied with the field tests or field test kits.

"Street drug preparations" means any drug or combination of drugs and any other substance ~~which~~ that has been encountered or is likely to be encountered by a law-enforcement officer as a purported drug in the Commonwealth.

Part II
Process for Approval of Field Tests

**6VAC40-30-20. Authority for approval.**

Section 19.2-188.1 ~~A~~ of the Code of Virginia provides that the Department of Forensic Science shall approve field tests for use by law-enforcement officers to enable them to testify to the results obtained in any preliminary hearing regarding whether any substance, the identify of which is at issue in such hearing, is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

**6VAC40-30-30. Request for ~~approval~~ evaluation.**

A. Any manufacturer ~~who~~ that wishes to ~~have~~ submit field tests or field test kits ~~approved~~ for evaluation shall submit a written request for ~~approval~~ evaluation to the department director at the following address:

Director
Department of Forensic Science
700 North Fifth Street
Richmond, VA 23219

B. Materials sufficient for at least 10 field tests shall be supplied for each drug for which the manufacturer requests ~~approval~~ evaluation. The materials shall include all instructions, precautions, color charts, flow charts and the like which are provided with the field test or field test kit and which describe the use and interpretation of the tests.

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose.

D. ~~This approval~~ The department's evaluation process will require at least 120 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use commonly encountered ~~"~~street drug preparations~~"~~ to examine those field tests submitted for ~~approval~~ evaluation. In order to be approved, the field test must correctly react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturers' instructions and claims.

**6VAC40-30-40. Notice of ~~approval~~ decision.**

The department will notify each manufacturer in writing of the approval or disapproval of each test for which ~~approval~~ evaluation was requested. Should any test not be approved, the manufacturer may resubmit their request for ~~approval~~ evaluation of that field test according to the previously outlined procedures ~~at any time~~. Resubmitted requests for approval shall be accompanied by a detailed explanation of all modifications or changes to the test, the test instructions, or the manufacturer's claims since the department's most recent evaluation of the test.

**6VAC40-30-50. Maintenance of approved status.**

The department may require that this ~~approval~~ evaluation be done as often as annually for routine purposes. If any modifications are made to an approved field test by the manufacturer, the department shall be notified in writing of the changes. If unreported modifications are discovered by the department, the department may require that all ~~testing and approval~~ evaluations be repeated for the particular ~~manufacturers'~~ manufacturer's approved field tests at any time. The department shall notify the manufacturer in writing of this requirement. Any modified field test must be approved before it can be used in accordance with § 19.2-188.1 ~~A~~ of the Code of Virginia. These changes shall include, but are not limited to any chemical, procedural or instructional modifications made to the field test.

**6VAC40-30-60. Publication.**

Upon completion of such ~~testing~~ evaluations and in concurrence with the approval authority, the department will periodically publish a list of approved field tests in the General Notices section of the Virginia Register of Regulations. The department will also periodically publish the list on its website. The department may, in addition, provide copies of its approval list to any agency subject to this chapter. The department may share any information or data developed from this testing with these agencies.

**6VAC40-30-70. Liability.**

A. The department assumes no liability as to the safety of these field tests or field test kits, any chemicals contained therein or the procedures and instructions by which they are used.

B. The department further assumes no responsibility for any incorrect results or interpretations obtained from these ~~inherently tentative~~ presumptive chemical tests.

Part III
Fees

**6VAC40-30-80. Fees.**

Manufacturers shall pay the actual cost of the street drug preparation and will be charged a fee of $50 for each drug ~~or type of drug~~ for which individual ~~approval~~ evaluation is requested. The department will ~~evaluate~~ review the ~~manufacturers'~~ manufacturer's request and notify ~~them~~ the manufacturer in writing of the amount due before ~~testing~~ the evaluation begins. Manufacturers who wish to withdraw a request for ~~approval~~ evaluation shall immediately notify the department in writing. The department's assessment of the amount of payment required will be based upon a detailed

~~evaluation~~ review of the manufacturer's request and that amount will be final. ~~Approval will not be granted~~ The evaluation process will not be initiated before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R14-3798; Filed October 25, 2013, 1:18 p.m.

# TITLE 9. ENVIRONMENT

## STATE AIR POLLUTION CONTROL BOARD

### Proposed Regulation

Title of Regulation: **9VAC5-130. Regulation for Open Burning (Rev. E12) (amending 9VAC5-130-10 through 9VAC5-130-50, 9VAC5-130-100; repealing 9VAC5-130-60).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act; 40 CFR Parts 51 and 60.

Public Hearing Information:

November 19, 2013 - 1:30 p.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor, Conference Room A, Richmond, VA

Public Comment Deadline: January 21, 2014.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, TTY (804) 698-4021, or email mary.major@deq.virginia.gov.

Basis: State Requirements - These specific regulations are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 of the Code of Virginia). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300 of the Code of Virginia).

Specifically, § 10.1-1308 of the Code of Virginia provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act. It further provides that no such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning.

Federal Requirements - Section 110(a) of the federal Clean Air Act mandates that each state adopt and submit to the U.S. Environmental Protection Agency (EPA) a plan that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan (SIP) shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

1. Establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

2. Establish schedules for compliance;

3. Prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

4. Require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping; procedures for testing, inspection, enforcement, and complaints; transportation control measures; and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans. Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

2. Enforce applicable laws, regulations, and standards, and seek injunctive relief;

3. Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

4. Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in

emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

5. Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;

6. Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

7. Make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D of the Clean Air Act specifies state implementation plan requirements for nonattainment areas, with Subpart 1 covering nonattainment areas in general and Subpart 2 covering additional provisions for ozone nonattainment areas.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification." Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

1. The implementation of all reasonably available control measures as expeditiously as practicable and shall provide for the attainment of the national ambient air quality standards;

2. The requirement of reasonable further progress;

3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;

4. An identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;

5. The requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;

6. The inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;

7. If applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and

8. The inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. Section 182(c) requires stationary sources in serious nonattainment areas to comply with the requirements for sources in both marginal and moderate nonattainment areas.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to nonattainment areas: the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (See 57 FR 13498 (April 16, 1992)) and 57 FR 18070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements.

Purpose: The regulation is necessary for the protection of public health and safety as it is needed to meet the primary goals of the federal Clean Air Act: the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air in order to protect public health and safety. EPA requires that each state submit a state implementation plan (SIP), including any laws and regulations necessary to enforce the plan, that shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards--that is, it would have to promulgate and implement an air quality plan for that state. EPA is also required by law to impose sanctions in cases where there is no approved plan or the plan is not being implemented--the sanctions consisting of loss of federal funds for highways and other projects or more restrictive requirements for new industry or both. Generally, the plan is revised, as needed, based upon changes in the Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future. The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the Act, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant – ozone – has proven problematic. While ozone is needed at the earth's outer atmospheric layer, excess concentrations at the surface have an adverse effect on human health and safety. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides ($NO_X$), and sunlight. When VOC and $NO_X$ emissions are reduced, ozone is reduced.

The Act establishes a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of their class. In addition to the general SIP-related sanctions, nonattainment areas have their own unique sanctions. If a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements. The Act includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Once a nonattainment area is defined, each state is then obligated to submit a SIP demonstrating how it will attain the air quality standards in each nonattainment area. Certain specific control measures and other requirements must be adopted and included in the SIP. In cases where the specific federal control measures are inadequate to achieve the emission reductions or attain the air quality standard, the state is obligated to adopt additional control measures as necessary to achieve this end. The open burning rule is needed to make legally enforceable one of several control measures identified in plans submitted by the Commonwealth for the attainment and maintenance of the ozone air quality standard.

The Regulation for Open Burning (4VAC5-130) is intended to meet three goals: (i) to protect public health and safety with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (ii) to reduce VOC emissions in Virginia's ozone nonattainment areas to facilitate the attainment and maintenance of the air quality standards; and (iii) to require that open burning be conducted in a manner as to prevent the release of air pollutants. The purpose of the planned action is to revise the regulation as needed to efficiently and effectively meet its goals while avoiding unreasonable hardships on the general public, the department, and the regulated community.

The current regulation provides for the control of open burning and use of special incineration devices. It specifies the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The regulation permits open burning or the use of special incineration devices for disposal of clean burning construction waste, debris waste and demolition waste but provides for a restriction during ozone season (May through September) in the volatile organic compound (VOC) emissions control areas, which generally correspond to nonattainment areas, as well as maintenance and early action compact areas that require additional controls to avoid a nonattainment designation. Open burning is limited to clean burning waste and debris waste; certain materials may never be burned anywhere at any time. Finally, the regulation provides a model ordinance for

localities that wish to adopt their own legally enforceable mechanisms to control burning.

In addition to controlling ozone, open burning restrictions control particulate matter (smoke) and hazardous air pollutants, which are harmful to human health.

Open burning in the Commonwealth has been regulated by the board since 1972. As the years pass, the need to control certain types of burning and how to do so evolves, and the regulation must be evaluated and revised from time to time in order to effectively meet its goals. Since the last substantive revision of the regulation in 2003, the following specific issues have been identified.

1. Applicability: Although the population has increased and cities and towns have expanded, so too have methods of dealing with certain waste materials; for example, opportunities for recycling and composting have increased. Numerous localities have also opted to adopt open burning ordinances in the interest of expeditiously meeting their residents' needs. In addition, areas with recognized pollution problems, such as ozone nonattainment areas, have open burning restrictions that enable the Commonwealth to meet targeted national standards.

In Virginia, localities have the power to regulate only what the General Assembly expressly provides. The fact that the Virginia legislature has explicitly allowed for local control over open burning suggests a legislative intent that localities should be able to control—or not control—open burning as they see fit. Essentially, open burning is a local air pollution problem and should be addressed via local governments working together to respond to the needs of their citizens and local governments that have complete authority to adopt or intervene as they deem appropriate for the citizens of their jurisdictions.

Additionally, DEQ staff endeavor to ensure that the board's regulations are properly implemented and enforced. However, it is not DEQ staff's role to address neighborhood disputes; rather, local law-enforcement personnel are best able to address such disagreements. If local police and fire services cannot resolve such problems, it is not reasonable to expect DEQ personnel to do so in their stead. Local services are also better equipped to more quickly respond to a local issue; the investigation of an open burning complaint by DEQ staff can be far more time-consuming and therefore less effective in addressing a complaint. Furthermore, in the case of an actual environmental emergency, DEQ's Pollution Response Program (PREP) provides for responses to pollution incidents in order to protect human health and the environment. PREP staff often work to assist local emergency responders, other state agencies, federal agencies, and responsible parties, as may be needed, to manage pollution incidents.

It is believed that the board's open burning regulation should be limited to VOC control areas (see 9VAC5-20-206), which correspond to localities with recognized air pollution issues. Other localities would still be able to adopt and implement local burning ordinances in accordance with state law should local conditions and needs warrant, and the model ordinance contained within the state rule would be retained. Note that although not every locality in Virginia has an open burning ordinance or provides curbside waste pickup, virtually all localities have some form of fire protection and nuisance codes that can be used to directly address local open burning problems.

2. Urban areas: 9VAC5-130-40 A 5 allows open burning in "urban areas" for the on-site destruction of leaves and tree, yard and garden trimmings located on private property if no regularly scheduled public or private collection service is available. In "non-urban" areas, such open burning is permitted regardless of the availability of collection service. Urban areas are defined generally in 9VAC5-10 (General Definitions), with the specific localities listed in 9VAC5-20-201.

The concept of "urban areas" was adopted by the board in the early 1980s in order to balance the need for waste disposal in areas without access to public services such as refuse collection against the health and safety needs of those persons likely to be affected. Since then, the term "urban areas" has been superseded by other federally established terms for characterizing population groups, including "urban clusters" and "urbanized areas." Ultimately, each community determines what characterizes an area and treats it accordingly, whether through zoning, ordinance, or providing certain services. Additionally, the delimitation of areas in the context of control of air pollution has evolved from focus on population to focus on measured air pollution (that is, to emissions control areas).

Since population characteristics are not necessarily indicative of an air pollution problem, the criteria for burning limitations should not be based on a list of "urban areas," but simply as to whether or not waste collection service is available. Emissions control areas, which have known, quantifiable air pollution control issues, would continue to be governed by the open burning regulation in addition to any local ordinances. Otherwise, as discussed elsewhere, the locality may choose to regulate--or not regulate--open burning as it deems appropriate

3. On-site: The term "on-site" was originally added in order to limit open burning where the waste material was generated to minimize problems associated with the transport and storage of solid waste. However, the Virginia Department of Transportation (VDOT) cannot burn highway maintenance debris "on-site" and therefore, special provisions have been added to address the specific burning needs of VDOT. For all other situations, the "on-site" requirements remain.

During the regulatory development process, other options for improving the regulation will be entertained.

Substance:

1. The applicability provisions are modified to establish new parts of the regulation (Part II, Volatile Organic Compound Emissions Control Areas, and Part III, Special Statewide Requirements for Forestry, Agricultural, and Highway Programs) and to specify that open burning prohibitions and restrictions and permissible open burning provisions apply only in VOC emissions control areas.

2. Definitions for "regular burn site" and "volatile organic compound emissions control area" have been added.

3. The reference to "urban areas" has been deleted from the permissible burning provisions for VOC emissions control areas. Open burning is now predicated according to whether a regularly scheduled collection for leaf/yard trimmings or household waste is available.

4. Part III is created to address special statewide requirements for forestry, agricultural, and highway programs.

5. Part IV, Local Ordinances, has been modified to stipulate that any model ordinance in VOC control areas must include all prohibitions and restrictions on burning currently imposed in the state regulation. Model ordinances for areas outside of the VOC emissions control areas must, at a minimum, include the general and statewide provisions of the statewide regulation.

Issues: The public will benefit from a more rapid resolution of nuisance problems by contacting local authorities rather than DEQ regional offices. In addition, public health may likely benefit in that the department will be directing scarce resources to air quality issues with a more serious impact on health and safety. Some members of the public may perceive limiting options for complaints to local authorities as a disadvantage. However, local government control of open burning outside of volatile organic compound emissions control areas is expected to provide for locality-specific controls, and more timely and effective response to complaints.

The department will be able to redirect staff resources to other air quality issues with a greater impact on public health and safety. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Air Pollution Control Board (Board) proposes to: 1) limit the requirements of this regulation to only VOC emissions control areas, 2) delete the reference to "urban areas" from the permissible burning provisions for VOC emissions control areas, 3) add special provisions to address the specific burning needs of VDOT, 4) add clarifying language, and 5) eliminate obsolete language.

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

Estimated Economic Impact. Background. The Regulation for Open Burning is part of the Commonwealth's effort to meet the primary goals of the federal Clean Air Act: the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS. The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air in order to protect public health and safety. EPA requires that each state submit a State Implementation Plan (SIP), including any laws and regulations necessary to enforce the plan, which shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards--that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the Act and its requirements.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant – ozone – has proven problematic. While ozone is needed at the earth's outer atmospheric layer, excess concentrations at the surface have an adverse effect on human health and safety. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides ($NO_X$), and sunlight. When VOC and $NO_X$ emissions are reduced, ozone is reduced.

Once a nonattainment area is defined, each state is then obligated to submit a SIP demonstrating how it will attain the air quality standards in each nonattainment area. Certain specific control measures and other requirements must be adopted and included in the SIP. In cases where the specific federal control measures are inadequate to achieve the emission reductions or attain the air quality standard, the state is obligated to adopt additional control measures as necessary to achieve this end. The open burning rule is needed to reduce VOC emissions in Virginia's ozone nonattainment areas to facilitate the attainment and maintenance of the air quality standards.

The current regulation provides for the control of open burning and use of special incineration devices. It specifies the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The regulation permits open burning or the use of special incineration devices for disposal of clean burning construction waste, debris waste and demolition waste but provides for a restriction during ozone season (May through September) in the VOC emissions control areas, which generally correspond to nonattainment areas, as well as maintenance and Early Action Compact areas that require additional controls to avoid a nonattainment designation. Open burning is limited to clean burning waste and debris waste; certain materials may never be burned anywhere at any time. Finally, the regulation provides a model ordinance for localities that wish to adopt their own legally enforceable mechanisms to control burning. Numerous localities have opted to adopt open burning ordinances in practice.

Limiting application of regulation

The Board proposes to limit the application of this regulation to only VOC emissions control areas. Other localities would still be able to adopt and implement local burning ordinances in accordance with state law should local conditions and needs warrant, and the model ordinance contained within the state rule would be retained. Note that although not every locality in Virginia has an open burning ordinance or provides curbside waste pickup, virtually all localities have some form of fire protection and nuisance codes that can be used to directly address local open burning problems.

According to the Department of Environmental Quality (Department), currently approximately 840 hours per year are spent by the agency on open burning compliance activities. The Department estimates that the proposal to limit the application of this regulation to only VOC emissions control areas will reduce the required staff time to address open burning issues by about 75 percent, consequently saving about 630 hours. The Department believes that this time can be more productively spent on air quality issues with a more serious impact on health and safety.

Urban areas

The current regulation allows open burning in "urban areas" for the on-site destruction of leaves and tree, yard and garden trimmings located on private property if no regularly scheduled public or private collection service is available. In "non-urban" areas, such open burning is permitted regardless of the availability of collection service.

The concept of "urban areas" was adopted by the board in the early 1980s in order to balance the need for waste disposal in areas without access to public services such as refuse collection against the health and safety needs of those persons likely to be affected. Since population characteristics are not necessarily indicative of an air pollution problem, the criteria for burning limitations is not sensibly based on a list of "urban areas," but simply as to whether or not waste collection service is available. Thus the Board proposes to delete the reference to "urban areas" from the permissible burning provisions for VOC emissions control areas.

On-site

The term "on-site" was originally added in order to limit open burning where the waste material was generated to minimize problems associated with the transport and storage of solid waste. However, the Virginia Department of Transportation (VDOT) cannot burn highway maintenance debris "on-site" and therefore the Board proposes to add special provisions to address the specific burning needs of VDOT. For all other situations, the "on-site" requirements remain.

The special provisions for VDOT are consistent with a Memorandum of Understanding that is currently in effect between DEQ and VDOT. Thus this proposed change will not have a significant impact in practice.

Businesses and Entities Affected. Open burning may be conducted by a wide range of businesses, agencies, and individual citizens. However, none of the contemplated changes to the regulation will have any direct impact on how open burning is conducted; rather, the regulatory amendments will clarify how open burning concerns are to be addressed: at the local or state level.

Localities Particularly Affected. The proposed amendments particularly affect localities which are not in VOC control areas, and do not currently have local open burning ordinances. The following counties fall into this category: Allegheny, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Brunswick, Buchanan, Buckingham, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Dinwiddie, Essex, Floyd, Fluvanna, Franklin, Giles, Goochland, Grayson, Greene, Greensville, Highland, King and Queen, King William, Lancaster, Lee, Louisa, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Patrick, Powhatan, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell, Scott, Southampton, Sussex, Westmoreland, and Wythe. The following cities fall into this category: Bedford, Buena Vista, Clifton Forge, Covington, Emporia, Galax, Lexington, and Norton.

Projected Impact on Employment. The proposed amendments will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments will not increase costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments will not significantly affect real estate development costs.

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

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

*The proposed amendments (i) specify that open burning prohibitions and restrictions and permissible open burning provisions apply only in volatile organic compound (VOC) emissions control areas; (ii) delete the reference to "urban areas" from the permissible burning provisions for VOC emissions control areas; (iii) add special provisions to address the specific burning needs of the Virginia Department of Transportation; and (iv) add clarifying language and eliminate obsolete language.*

Part I
General Provisions

**9VAC5-130-10. Applicability.**

A. Except as provided in subsections C and D of this section, the provisions of this chapter apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices. Special incineration devices, including open pit incinerators, are exempt from permitting requirements according to the provisions of 9VAC5-80-1105 and such exemption applies throughout the Commonwealth of Virginia.

B. ~~The provisions~~ This part and Part II (9VAC5-130-30 et seq.) of this chapter apply to volatile organic compounds emissions control areas (see 9VAC5-20-206). This part and Parts III (9VAC5-130-50 et seq.) and IV (9VAC5-130-100 et seq.) of this chapter apply throughout the Commonwealth of Virginia.

C. ~~The provisions of this chapter do~~ This chapter does not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality as required in Part IV of this chapter.

D. ~~The provisions of this chapter do~~ This chapter does not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC5-40-6250 et seq.), Article 46 (9VAC5-40-6550 et seq.), or Article 54 (9VAC5-40-7950 et seq.) of 9VAC5-40 (Existing Stationary Sources) or (ii) Subparts Eb, AAAA or CCCC of 40 CFR Part 60.

**9VAC5-130-20. Definitions.**

A. For the purpose of ~~these regulations~~ this chapter and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this chapter, all terms not defined here shall have the ~~meaning~~ meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this chapter and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products

that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" or "vegetative debris" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9VAC20-81-10 et seq.) of 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Regular burn site" means, in reference to burning conducted by the Virginia Department of Transportation, state-owned property where burning is expected to occur greater than once per year.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals,

shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9VAC20-81-10 et seq.) of 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Volatile organic compound emissions control area" means an area designated as such under 9VAC5-20-206.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Part II

Volatile Organic Compound Emissions Control Areas

**9VAC5-130-30. Open burning prohibitions.**

A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in 9VAC5-130-40.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

**9VAC5-130-40. Permissible open burning.**

A. Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through E of 9VAC5-130-30 are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard that constitutes a threat to the public health, safety or welfare and that cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of 9VAC20-60 (Hazardous Waste Management Regulations).

b. Destruction of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of 9VAC20-81 (Solid Waste Management Regulations).

c. On-site destruction of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order to (i) suppress, control, or eradicate an infestation or pest; (ii) prevent or retard the spread of an infestation or pest; or (iii) prevent further disease transmission or progression.

2. Open burning is permitted for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local

firefighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for firefighting instruction are exempt from this notification requirement. Buildings that have not been demolished may be burned under the provisions of this subdivision only.

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9VAC5-130-30 are not burned.

5. ~~In urban areas, open~~ Open burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled ~~public or private~~ collection service for such trimmings is available at the adjacent street or public road. ~~In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.~~

6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled ~~public or private~~ collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9VAC5-40-160 et seq.) of 9VAC5-40 (Existing Stationary Sources) and Article 3 (9VAC5-50-160 et seq.) of 9VAC5-50 (New and Modified Stationary Sources). Permits issued under 9VAC5-80 (Permits for Stationary Sources) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of 9VAC20-60 (Virginia Hazardous Waste Regulations).

8. Open burning or the use of special incineration devices is permitted on site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited ~~in volatile organic compounds emissions control areas (see 9VAC5-20-206) during~~ from May~~, June, July, August, and~~ 1 through September 30.

9. Open burning is permitted for forest management ~~and~~, agriculture practices, and highway construction and maintenance programs approved by the board (see 9VAC5-130-50), provided the following conditions are met:

a. The burning shall be at least 1,000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited ~~in volatile organic compounds emissions control areas (see 9VAC5-20-206) during~~ May~~, June, July, August, and~~ 1 through September 30.

B. Open burning or the use of special incineration devices permitted under the provisions of this chapter does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this chapter. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.

C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.

Part III
Special Statewide Requirements for Forestry, Agricultural, and Highway Programs

**9VAC5-130-50. Forest management ~~and~~, agricultural practices, and highway construction and maintenance programs.**

~~A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through E of 9VAC5-130-30 are met.~~

~~B.~~ A. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan to:

1. Reduce forest fuels and minimize the effect of wild fires.

2. Control undesirable growth of hardwoods.

3. Control disease in pine seedlings.

4. Prepare forest land for planting or seeding.

5. Create a favorable habitat for certain species.

6. Remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.

~~C.~~ B. In the absence of other means of disposal, open burning may be used for the following agricultural practices to:

1. Destroy undesirable or diseased vegetation.

2. Clear orchards and orchard prunings.

3. Destroy empty fertilizer and chemical containers.

4. Denature seed and grain that may no longer be suitable for agricultural purposes.

5. Prevent loss from frost or freeze damage.

6. Create a favorable habitat for certain species.

7. Destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

C. Open burning may be used for the destruction of vegetative debris generated by highway construction and maintenance programs conducted by the Virginia Department of Transportation (VDOT) provided the burning is conducted in accordance with VDOT's best management practices (BMP) for vegetative debris and the following requirements are met:

1. The department has approved the BMP.

2. The local department regional office shall be notified at least five business days before commencement of a burn.

3. No liquid accelerants (e.g., diesel, motor oil, etc.) or other prohibited materials (e.g., building debris, treated wood, painted wood, paper, cardboard, asphaltic materials, tires, metal, garbage, etc.) shall be used.

4. No burn activity shall be conducted in a VOC emission control area from May 1 through September 30 or in violation of § 10.1-1142 of the Code of Virginia.

5. No more than one burn event per regular burn site shall be scheduled or commenced per 60-day period.

6. The open burn shall be extinguished for reasons including but not limited to the following:

a. Unfavorable meteorological conditions (i.e., high winds or air stagnation);

b. Official declaration by a governmental entity of a pollution alert, code red air quality action day, or air quality health advisory where the burn activity is occurring; or

c. The emission of smoke, ashes, dust, dirt, odors, or any other substance creates a threat to public health, a nuisance, a pollution problem, a fire hazard, a safety hazard, or impairment to visibility on traveled roads or airports.

**9VAC5-130-60. ~~Waivers.~~ (Repealed.)**

~~A. A waiver from any provision of this chapter may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted.~~

~~B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:~~

~~1. Show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.~~

~~2. Show that the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.~~

~~C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this chapter are met by the waiver.~~

~~D. A waiver from any applicable provision of this chapter may be granted by the board for any locality that has lawfully adopted an ordinance in accordance with 9VAC5-130-100.~~

Part ~~II~~ IV
Local Ordinances

**9VAC5-130-100. Local ordinances on open burning.**

A. General.

1. If the governing body of any locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

2. In order to assist local governments in a VOC control area with the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model. For local governments located outside of a VOC control area, an ordinance must contain, at a minimum, the provisions in the title, purpose, definitions, and exemptions sections of the model ordinance in subsection C of this section.

3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is

filed with the department upon its adoption by the local government.

4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

5. Local ordinances that have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning that differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

~~d. If a waiver from any provision of this chapter has been requested under 9VAC5-130-60, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.~~

2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances that have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

a. A public hearing is held prior to granting the variance;

b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 9VAC5-170-150 shall not apply to local ordinances concerned solely with open burning.

C. Model ordinance.

**ORDINANCE NO. (000)**

**Section (000-1). Title.**

This ~~chapter~~ ordinance shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

**Section (000-2). Purpose.**

The purpose of this ~~chapter~~ ordinance is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This ~~chapter~~ ordinance is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

**Section (000-3). Definitions.**

For the purpose of this ~~chapter~~ ordinance and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the ~~meaning~~ meanings given them in this section.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Construction waste" means solid waste that is produced or generated during construction remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

**Section (000-4). Prohibitions on open burning.**

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

**Section (000-5). Exemptions.**

The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management ~~and,~~ agriculture practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

**Section (000-6). Permissible open burning.**

A. Open burning is permitted on site for the destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the following conditions are met:

1. The burning takes place on the premises of the private property; (and)

2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted (; and

3. No regularly scheduled ~~public or private~~ collection service for such trimmings is available at the adjacent street or public road[1]).

B. Open burning is permitted on-site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;

2. Animal carcasses or animal wastes are not burned;

3. Garbage is not burned; (and)

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given

prior permission, other than a building located on the property on which the burning is conducted (; and

5. No regularly scheduled ~~public or private~~ collection service for such refuse is available at the adjacent street or public road[2]).

C. Open burning is permitted on site for destruction of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations that may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;

3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

4. The burning shall be conducted at the greatest distance practicable from highways and air fields,

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for destruction of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas, provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill that meets the provisions of the regulations of the Virginia Waste Management Board;

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device ~~during~~ May~~, June, July, August, or~~ 1 through September 30.[31] )

**Section (000-7). Permits.**

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions that are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met that are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

6. The use of special incineration devices shall be allowed only for the destruction of debris waste, clean burning construction waste, and clean burning demolition waste.

7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of $____.[4 2])

**Section (000-8). Penalties for violation.**

A. Any violation of this ordinance is punishable as a Class 1 misdemeanor. (See § 15.2-1429 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

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[1 ~~This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.~~

[2 ~~This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.~~

[3 1] This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

[4 2] The fee stipulation in this section is optional at the discretion of the jurisdiction.

VA.R. Doc. No. R12-3200; Filed October 30, 2013, 7:57 a.m.

## STATE WATER CONTROL BOARD

### Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-192. Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (amending 9VAC25-192-10, 9VAC25-192-20, 9VAC25-192-50, 9VAC25-192-60, 9VAC25-192-70; adding 9VAC25-192-25, 9VAC25-192-80, 9VAC25-192-90).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public Hearing Information:

December 11, 2013 - 7 p.m. - Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801

December 12, 2013 - 7 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Richmond, VA 23060

December 18, 2013 - 7 p.m. - Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg VA 24502

December 19, 2013 - 7 p.m. - Culpeper County Library, 271 Southgate Shopping Center, Culpeper, VA 22701

Public Comment Deadline: January 21, 2014.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email betsy.bowles@deq.virginia.gov.

Summary:

*The State Water Control Board is reissuing the general permit regulation for animal feeding operations with a 10-year permit term that expires on November 15, 2024. The regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System permit and having 300 or more animal units utilizing a liquid manure collection and storage system. These animal feeding operations may operate and maintain treatment works for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges.*

*The proposed amendments include options to (i) transfer animal waste off the farm as long as specific requirements are followed by the permittee and the end-users of the animal waste and (ii) manage imported waste materials as long as specific requirements are followed by the permittee.*

CHAPTER 192
VIRGINIA POLLUTION ABATEMENT (VPA)
REGULATION AND GENERAL PERMIT ~~REGULATION~~
FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

**9VAC25-192-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water discharge" means ~~storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied~~ a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater~~, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge~~.

"Animal feeding operation" means a lot or facility ~~(other than an aquatic animal production facility)~~ where the following conditions are met:

1. Animals ~~(other than aquatic animals)~~ have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes.

"Animal waste" means liquid, semi-solid, and solid animal manure, poultry waste and process wastewater, compost, or sludges associated with livestock and poultry animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

"Animal waste end-user" or "end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for an animal waste end-user who is not covered under the general permit, the requirements of 9VAC25-192-90 constitute the NMP.

~~"Operator" means any person who owns or operates an animal feeding operation.~~

~~"Permittee" means the owner whose animal feeding operation is covered under this general permit.~~

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Waste nutrient analysis rate" means a land application rate for animal waste approved by the board as specified in this regulation.

"Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

a. 300 slaughter and feeder cattle;

b. 200 mature dairy cattle (whether milked or dry cows);

c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers.

**9VAC25-192-20. Purpose; delegation of authority; effective date of permit.**

A. This general permit regulation governs the pollutant management activities ~~of animal wastes~~ at animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit~~, and having 300 or more animal units utilizing a liquid manure collection and storage system~~ and animal waste utilized or stored by animal waste end-users. These animal feeding operations may operate and maintain treatment works for waste storage, treatment, or ~~recycle~~ recycling and may perform land application of manure, wastewater, compost, or sludges.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on November 16, ~~2004~~ 2014. This general permit will expire 10 years from the effective date.

**9VAC25-192-25. Duty to comply.**

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-192 shall comply with the applicable requirements of this chapter.

B. In order to manage pollutants from an animal feeding operation, the owner shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the owner has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit. The owner shall comply with the requirements of this chapter and the permit.

C. An animal waste end-user shall comply with the technical requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

**9VAC25-192-50. Authorization to manage pollutants.**

A. Owner of an animal feeding operation. Any owner governed by this general permit is hereby authorized to manage pollutants at animal feeding operations provided that the owner files the registration statement of 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and provided that:

1. The ~~operator~~ owner has not been required to obtain a VPDES permit or an individual VPA permit according to subdivision 2 of 9VAC25-32-260 ~~B~~;

2. The operation of the animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural ~~stormwater~~ storm water discharges are permitted. Domestic sewage ~~or industrial~~ shall not be managed under this general permit. Industrial waste shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70;

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Virginia Pollutant Discharge Elimination System (VPDES) permit must attach to the registration statement, the Local Government Ordinance Form (a notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia).

4. The owner shall obtain Department of Conservation and Recreation ~~must approve~~ approval of a nutrient management plan for the animal feeding operation prior to the submittal of the registration statement. The ~~operator~~ owner shall attach to the registration statement a copy of the approved ~~Nutrient Management Plan~~ nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the ~~Nutrient Management Plan, and if the plan was written after December 31, 2005,~~ nutrient management plan that ~~the plan~~ was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The ~~operator~~ owner shall implement the approved nutrient management plan.

5. a. The ~~operator~~ owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the ~~permit~~ registration statement may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under the permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and ~~received by~~ mailed to the owner not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary

to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.

6. ~~Each operator~~ As required by § 62.1-44.17:1 F of the Code of Virginia, each owner of a facility covered by this general permit shall have completed the training program offered or approved by the ~~Department of Conservation and Recreation~~ department in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All ~~operators~~ permitted owners shall complete the training program at least once every three years.

B. Animal waste end-user. An animal waste end-user shall comply with the requirements outlined in 9VAC25-192-80 and 9VAC25-192-90.

1. When an animal waste end-user does not comply with the requirements of 9VAC25-192-80 and 9VAC25-192-90, the department may choose to do any or all of the following:

a. Initiate enforcement action based upon the violation of the regulation;

b. Require the animal waste end-user to register for coverage under the general permit;

c. Require the animal waste end-user to apply for the VPA individual permit; or

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

2. An animal waste end-user governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of animal waste provided that the animal waste end-user files the registration statement of 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and:

a. The animal waste end-user has not been required to obtain a VPA individual permit according to subdivision 2 of 9VAC25-32-260;

b. The activities of the animal waste end-user shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage shall not be managed under this general permit. Industrial waste shall not be managed under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70;

c. The animal waste end-user shall obtain Department of Conservation and Recreation approval of a nutrient management plan for land application sites where animal waste will be utilized or stored and managed prior to the submittal of the registration statement. The animal waste end-user shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The animal waste end-user shall implement the approved nutrient management plan; and

d. As required by § 62.1-44.17:1 F of the Code of Virginia, each permitted animal waste end-user shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted animal waste end-users shall complete a training program at least once every three years.

C. Continuation of permit coverage.

1. Any owner that was authorized to manage pollutants under the general permit issued in 2004 and that submits a complete registration statement on or before November 15, 2014, is authorized to continue to manage pollutants under the terms of the 2004 general permit until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that coverage under this permit is denied.

2. When the permittee that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the expiring or expired general permit;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the expiring or expired general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

~~B.~~ D. Receipt of this general permit does not relieve any ~~operator~~ permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance, or regulation.

**9VAC25-192-60. Registration statement.**

A. The owner of an animal feeding operation. In order to be covered under the general permit, the ~~operator~~ owner shall

file a complete VPA General Permit Registration Statement for the management of pollutants at animal feeding operations in accordance with this chapter. The registration statement shall be deemed complete for registration under the VPA General Permit if it contains the following information:

1. The animal feeding operation owner's name, mailing address, email address (if available), and telephone number;

2. The ~~animal feeding operation operator's~~ name, mailing address, email address (if available), and telephone number of the operator or contact person other than the owner, if applicable;

~~2.~~ 3. The farm name (if applicable) and location of the animal feeding operation;

~~3. The name and telephone number of a contact person other than the operator, if necessary;~~

4. The best time of day and day of the week to contact the operator or the contact person;

5. If the facility has an existing VPA or VPDES permit number, the permit number;

6. The type or types of animals (dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the type or types of animals to be maintained at the animal feeding operation;

7. The ~~operator~~ owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or ~~Virginia Pollutant Discharge Elimination System (VPDES)~~ VPDES permit must attach to the registration statement, the Local Government Ordinance Form (the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia);

8. A copy of the nutrient management plan approved by the Department of Conservation and Recreation ~~and a copy of the letter certifying approval of the plan, and if the plan was written after December 31, 2005, that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia~~; ~~and~~

9. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

~~9.~~ 10. The following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under the general permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit.) I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

B. The animal waste end-user. In order to be covered under the general permit, the animal waste end-user shall file a complete VPA General Permit Registration Statement in accordance with this chapter. The registration statement shall be deemed complete for registration under the VPA General Permit if it contains the following information:

1. The animal waste end-user's name, mailing address, email address (if available), and telephone number;

2. The name (if applicable) and location of the facility where the animal waste will be utilized, stored, or managed;

3. The best time of day and day of the week to contact the animal waste end-user;

4. If the facility has an existing VPA or VPDES permit number, the permit number;

5. If confined animals are located at the facility, indicate the type or types of animals (dairy cattle, slaughter and feeder cattle, swine, other) and the maximum number and average weight of the type or types of animals;

6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

8. The following certification: "I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the

information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

~~B.~~ C. The registration statement shall be signed in accordance with ~~9VAC25-32-50~~ Part II F of 9VAC25-32-70.

**9VAC25-192-70. Contents of the general permit.**

Any ~~operator~~ owner or animal waste end-user whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA permit regulation, 9VAC25-32.

General Permit No.: VPG1
Effective Date: November 16, ~~2004~~ 2014
~~Modification Date:~~
Expiration Date: November 15, ~~2014~~ 2024

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system, and animal waste end-users are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations ~~or policies~~ prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement, supporting documents submitted to the Department of Environmental Quality, this cover page, Part I-Pollutant Management and Monitoring Requirements for Animal Feeding Operations, Part II-Conditions Applicable to all VPA Permits, and Part III-Pollutant Management and Monitoring Requirements for Animal Waste End-Users, as set forth herein.

Part I
Pollutant Management and Monitoring Requirements for Animal Feeding Operations

A. Pollutant management and monitoring requirements.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, ~~ground water~~ groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires ~~ground water~~ groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.

4. At facilities where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of ~~ground water~~ groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the ~~ground water~~ groundwater shall be monitored by the permittee at the monitoring wells as specified below. Additional groundwater monitoring may be required in the facility's approved nutrient management plan.

GROUNDWATER MONITORING

| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | | | Frequency | Sample Type |
| Static Water Level | NL | Ft | 1/3 years | Measured |
| Ammonia Nitrogen | NL | mg/L | 1/3 years | Grab |
| Nitrate Nitrogen | NL | mg/L | 1/3 years | Grab |
| pH | NL | SU | 1/3 years | Grab |
| Conductivity | NL | umhos/cm | 1/3 years | Grab |

NL = No limit, this is a monitoring requirement only.

6. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | | | Frequency | Sample Type |
| pH | NL | SU | 1/3 years | Composite |
| Phosphorus | NL | ppm or lbs/ac | 1/3 years | Composite |
| Potash | NL | ppm or lbs/ac | 1/3 years | Composite |
| Calcium | NL | ppm or lbs/ac | 1/3 years | Composite |
| Magnesium | NL | ppm or lbs/ac | 1/3 years | Composite |

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

7. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the facility's approved nutrient management plan.

8. Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | | | Frequency | Sample Type |
| Total Kjeldahl Nitrogen | NL | * | 1/year | Composite |
| Ammonia Nitrogen | NL | * | 1/year | Composite |
| Total Phosphorus | NL | * | 1/year | Composite |
| Total Potassium | NL | * | 1/year | Composite |
| Calcium | NL | * | 1/year | Composite |
| Magnesium | NL | * | 1/year | Composite |
| Moisture Content | NL | % | 1/year | Composite |

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

9. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

10. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of

at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage or treatment facilities shall maintain at least one foot of freeboard at all times, ~~except in the case of a storm event greater than a~~ up to and including 25-year, 24-hour storm.

6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed in the confined facility or (ii) utilization of any new waste storage or treatment facilities.

8. For waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

9. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The ~~operator~~ permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. When wastes are treated by a digester or other manure treatment technologies, the waste treatment process shall be approved by the department and shall be managed by a facility covered under this permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part 1 B 15 and 16.

b. When a facility covered under this permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, the permittee shall record the following items:

(a) The amount of waste brought to the facility; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the facility, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part I B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. Animal waste generated by this facility shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

~~7.~~ 12. The ~~operator~~ permittee shall implement a nutrient management plan (NMP) ~~approved by the Department of Conservation and Recreation. All NMPs written after December 31, 2005, shall be~~ developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia~~. The NMP shall be maintained~~ and approved by the Department of Conservation and Recreation and maintain the plan on site. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. ~~NMPs written after December 31, 2005, and NMPs implemented after December 31, 2006, shall also include provisions to minimize phosphorus loss to ground and surface waters according to the most current standards and criteria developed by DCR at the time the plan is written.~~ The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules~~; and~~.

~~g. A plan for waste utilization in the event the operation is discontinued.~~

~~8.~~ 13. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the ~~owner's~~ permittee's property ~~.....~~: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs ~~.....~~: 100 feet;

~~c. Distance from surface water courses~~

~~(1) 100 feet (without a vegetated buffer); or~~

~~(2) 35-foot wide vegetated buffer; or~~

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). ~~(3)~~ Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer~~,~~ or 35-foot wide vegetated buffer~~.~~;

d. Distance from rock outcropping (except limestone) ~~.....~~: 25 feet;

e. Distance from limestone outcroppings ~~.....~~: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

~~9.~~ 14. ~~Records shall be maintained to demonstrate where and at what rate waste has been applied, that the application schedule has been followed, and what crops have been planted.~~ The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after ~~recorded~~ the date the application is made and shall be made available to department personnel upon request.

~~10. The permittee shall notify the department's regional office at least 14 days prior to: (i) animals being initially placed in the confined facility or (ii) utilization of any new waste storage facilities.~~

15. Animal waste generated by this facility may be transferred from the permittee to another person if one or more of the following conditions are met:

a. Animal waste generated by this facility may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in this permitted facility's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted facility's approved nutrient management plan.

b. Animal waste generated by this facility may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if one of the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to subdivision A 2 of § 3.2-3607 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part I B 16.

16. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part I B 16 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.

~~11. Each operator of a facility~~ 18. As required by § 62.1-44.17:1 F of the Code of Virginia, each permittee covered ~~by~~ under this general permit shall have completed the training program offered or approved by the ~~Department of Conservation and Recreation~~ department in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All ~~operators~~ permittees shall complete the training program at least once every three years.

Part II

Conditions Applicable to all VPA Permits

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants ~~(40 CFR 136 (2001))~~ (40 CFR Part 136).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The persons who performed the sampling or measurements;

3. The dates analyses were performed;

4. The persons who performed each analysis;

5. The analytical techniques or methods used; and

6. The results of such analyses and measurements.

C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation shall be retained on site for five years from the date of the sample, measurement or report. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee. If the permittee monitors any pollutant at the locations designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the project report. Such increased frequency shall also be reported.

E. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance. Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the

above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information, specified in Part II E 1 a through c, regarding each such discharge immediately, that is, as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

NOTE: The immediate (within 24 hours) reports required in Parts II E 1 and 2 may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, a message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

F. Signatory requirements. Any registration statement or certification required by this permit shall be signed as follows:

1. For a corporation, by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

3. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

~~Part III~~

~~A.~~ G. Change in management of pollutants. ~~1.~~ All pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 30 days prior to all expansions, production increases, or process modifications, that will result in the management of new or increased pollutants. The management of any pollutant at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

~~2. The permittee shall promptly provide written notice of the following:~~

~~a. Any new introduction of pollutant or pollutants, into treatment works or pollutant management activities which represents a significant increase in the management of pollutant or pollutants which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment or treatment works, if such establishment, treatment works has the potential to discharge pollutants to state waters; and~~

~~b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, or pollutant management activity that was introducing pollutants into such treatment works at the time of issuance of the permit.~~

~~Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be managed at a pollutant management activity; and (iii) any additional information that may be required by the director.~~

~~B.~~ H. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner.

b. The permittee shall provide an adequate operating staff to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and utilized as specified in the approved ~~Nutrient Management Plan~~ nutrient management plan in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

~~C.~~ I. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation or limitations or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation or limitations or conditions.

~~D.~~ J. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

~~E.~~ K. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

~~F.~~ L. Compliance with state law. Compliance with this permit during its term constitutes compliance with the State Water Control Law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation.

~~G.~~ M. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

~~H.~~ N. Severability. The provisions of this permit are severable.

~~I.~~ O. Duty to reregister. If the permittee wishes to continue to operate under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.

~~J.~~ P. Right of entry. The permittee shall allow, or secure necessary authority to allow, authorized state representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge or discharges is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit. For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained here shall make an inspection time unreasonable during an emergency.

~~K.~~ Q. Transferability of permits. ~~This~~ Coverage under this permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the department includes a written agreement between the existing and proposed new permittee containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The department does not within the 30-day time period notify the existing permittee and the proposed permittee of the board's intent to ~~modify or revoke and reissue~~ transfer coverage under the permit. Such ~~a~~ transferred coverage under this permit shall, as of the date of the transfer, be ~~as~~ fully effective ~~as if it had been issued directly to the new permittee~~.

~~L.~~ R. Permit modification. The permit may be modified when ~~any of the following developments occur: 1. When~~ a change is made in the promulgated standards or regulations on which the permit was based~~; or.~~

~~2. When the level of management of a pollutant, not limited in the permit, exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.~~

~~M.~~ S. Permit termination. After public notice and opportunity for a hearing, coverage under the general permit may be terminated for cause.

~~N~~ T. When an individual permit may be required. The director may require any permittee authorized to manage pollutants covered under this general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The pollutant management activities violate the terms or conditions of this permit;

2. When additions or alterations have been made to the affected facility ~~which~~ that require the application of permit conditions that differ from those of the existing permit or are absent from it; and

3. When new information becomes available about the operation or pollutant management activities covered ~~by~~ under this permit ~~which~~ that were not available at the time of permit ~~issuance and would have justified the application of different permit conditions at the time of permit issuance~~ coverage.

~~This~~ Coverage under this general permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

~~O.~~ U. When an individual permit may be requested. Any permittee operating under this permit may request to be excluded from the coverage ~~of~~ under this permit by applying for an individual permit. When an individual permit is issued to a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

~~P.~~ V. Civil and criminal liability. Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

~~Q.~~ W. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

~~R.~~ X. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

Part III

Pollutant Management and Monitoring Requirements for Animal Waste End-Users

A. Pollutant management and monitoring requirements.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.

4. At facilities where groundwater monitoring is required, the following conditions apply:

a. One data set shall be collected from each well prior to any waste being placed in the storage facility.

b. The static water level shall be measured prior to bailing well water for sampling.

c. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be monitored by the permittee at the monitoring wells as specified below. Additional groundwater monitoring may be required in the facility's approved nutrient management plan.

GROUNDWATER MONITORING

| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | | | Frequency | Sample Type |
| Static Water Level | NL | Ft | 1/3 years | Measured |
| Ammonia Nitrogen | NL | mg/L | 1/3 years | Grab |
| Nitrate Nitrogen | NL | mg/L | 1/3 years | Grab |
| pH | NL | SU | 1/3 years | Grab |

| | | | | |
|---|---|---|---|---|
| Conductivity | NL | umhos/cm | 1/3 years | Grab |

NL = No limit, this is a monitoring requirement only.

6. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | | | Frequency | Sample Type |
| pH | NL | SU | 1/3 years | Composite |
| Phosphorus | NL | ppm or lbs/ac | 1/3 years | Composite |
| Potash | NL | ppm or lbs/ac | 1/3 years | Composite |
| Calcium | NL | ppm or lbs/ac | 1/3 years | Composite |
| Magnesium | NL | ppm or lbs/ac | 1/3 years | Composite |

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

7. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the facility's approved nutrient management plan.

8. Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

| PARAMETERS | LIMITATIONS | UNITS | MONITORING REQUIREMENTS | |
|---|---|---|---|---|
| | | | Frequency | Sample Type |
| Total Kjeldahl Nitrogen | NL | * | 1/year | Composite |
| Ammonia Nitrogen | NL | * | 1/year | Composite |
| Total Phosphorus | NL | * | 1/year | Composite |
| Total Potassium | NL | * | 1/year | Composite |
| Calcium | NL | * | 1/year | Composite |
| Magnesium | NL | * | 1/year | Composite |
| Moisture Content | NL | % | 1/year | Composite |

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

9. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

10. All monitoring data collected as required by this section and any additional monitoring shall be maintained on site for a period of five years and shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain.

3. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

4. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

5. All liquid waste storage or treatment facilities shall maintain at least one foot of freeboard at all times, up to and including 25-year, 24-hour storm.

6. For new waste storage or treatment facilities constructed after November 16, 2014, the facilities shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.

7. The permittee shall notify the department's regional office at least 14 days prior to (i) animals being initially placed in the confined facility or (ii) utilization of any new waste storage or treatment facilities.

8. For waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

9. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The permittee shall periodically inspect for leaks on equipment used for land application of waste.

10. All treated wastes generated by a digester or other manure treatment technologies shall be approved by the department and shall be managed by a facility covered under this permit and in accordance with the following conditions:

a. All treated wastes generated by a digester or other manure treatment technologies must be managed through an approved nutrient management plan or transferred to another entity in accordance with animal waste transfer requirements in Part III B 15 and 16.

b. When a facility covered under this permit generates a treated waste from animal waste and other feedstock, the permittee shall maintain records related to the production of the treated waste.

(1) If off-site wastes are added to generate the treated waste, the permittee shall record the following items:

(a) The amount of waste brought to the facility; and

(b) From whom and where the waste originated.

(2) For all treated wastes generated by the facility, the permittee shall record the following items:

(a) The amount of treated waste generated;

(b) The nutrient analysis of the treated waste; and

(c) The final use of the treated waste.

(3) Permittees shall maintain the records required by Part III B 10 b (1) and (2) on site for a period of three years. All records shall be made available to department personnel upon request.

11. Animal waste generated by this facility shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

12. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

13. Waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer or 35-foot wide vegetated buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a matter that it would discharge to sinkholes that may exist in the area.

14. The following land application records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of five years after the date the application is made and shall be made available to department personnel upon request.

15. Animal waste generated by this facility may be transferred from the permittee to another person, if one or more of the following conditions are met:

a. Animal waste generated by this facility may be transferred off-site for land application or another acceptable use approved by the department, if:

(1) The sites where the animal waste will be utilized are included in this permitted facility's approved nutrient management plan; or

(2) The sites where the animal waste will be utilized are included in another permitted facility's approved nutrient management plan.

b. Animal waste generated by this facility may be transferred off-site without identifying in the permittee's approved nutrient management plan the fields where such waste will be utilized, if the following conditions are met:

(1) The animal waste is registered with the Virginia Department of Agriculture and Consumer Services in accordance with regulations adopted pursuant to subdivision A 2 of § 3.2-3607 of the Code of Virginia; or

(2) When the permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall maintain records in accordance with Part III B 16.

16. Animal waste may be transferred from a permittee to another person without identifying the fields where such waste will be utilized in the permittee's approved nutrient management plan if the following conditions are met:

a. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall provide that person with:

(1) Permittee's name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the animal waste; and

(3) An animal waste fact sheet.

b. When a permittee transfers to another person more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) in any 365-day period, the permittee shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of animal waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the animal waste;

(5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody, if known, to the recipient that is nearest to the animal waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The animal waste;

(b) The nutrient analysis of the animal waste; and

(c) An animal waste fact sheet.

c. Permittees shall maintain the records required by Part III B 16 a and b for at least three years after the date of the transaction and shall make them available to department personnel upon request.

17. When the waste storage or treatment facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary

to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere. At closure, the permittee shall remove all waste residue from the animal waste storage or treatment facility. Removed waste materials shall be utilized according to the approved NMP.

18. As required by § 62.1-44.17:1 F of the Code of Virginia, each permittee covered under this general permit shall have completed the training program offered or approved by the department in the two years prior to submitting the registration statement for general permit coverage or shall complete such training within one year after the registration statement has been submitted for general permit coverage. All permittees shall complete the training program at least once every three years.

**9VAC25-192-80. Tracking and accounting requirements for animal waste end-users.**

A. When an animal waste end-user is the recipient of more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% percent or more moisture) in any 365-day period from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit, the end-user shall maintain records regarding the transfer and land application of animal waste.

1. The animal waste end-user shall provide the permittee with the following items:

a. End-user name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city and zip code);

c. The name of the stream or waterbody, if known, to the end-user that is nearest to the waste utilization or storage site; and

d. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) An animal waste fact sheet.

2. The animal waste end-user shall record the following items regarding the waste transfer:

a. The source name, address, and permit number (if applicable);

b. The amount of animal waste that was received;

c. The date of the transaction;

d. The final use of the animal waste;

e. The locality in which the waste was utilized (i.e., nearest town or city and zip code); and

f. The name of the stream or waterbody, if known, to the recipient that is nearest to the waste utilization or storage site.

Records regarding animal waste transfers shall be maintained on site for a period of three years after the date of the transaction. All records shall be made available to department personnel upon request.

3. If waste is land applied, the animal waste end-user shall keep a record of the following items regarding the land application of the waste:

a. The nutrient analysis of the waste;

b. Maps indicating the animal waste land application fields and storage sites;

c. The land application rate;

d. The land application dates;

e. What crops were planted;

f. Soil test results, if obtained;

g. NMP, if applicable; and

h. The method used to determine the land application rates (i.e., phosphorus crop removal, waste nutrient analysis rate, soil test recommendations, or a nutrient management plan).

Records regarding land application of animal waste shall be maintained on site for a period of three years after the date the application is made. All records shall be made available to department personnel upon request.

B. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

**9VAC25-192-90. Utilization and storage requirements for transferred animal waste.**

A. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit shall comply with the requirements outlined in this section.

B. Storage requirements. An animal waste end-user who receives animal waste from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit shall comply with the requirements outlined in this subsection regarding storage of animal waste in his possession or under his control.

1. Animal waste shall be stored in a manner that prevents contact with surface water and groundwater. Animal waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Animal waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored animal waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second); and

d. For animal waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

2. Any liquid animal waste collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

3. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain.

4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer, an employee of the Natural Resources Conservation Service of the U.S. Department of Agriculture with appropriate engineering approval authority or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this subsection. This certification shall be maintained on site.

5. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

6. All liquid waste storage or waste treatment facilities shall maintain at least one foot of freeboard at all times, except in the case of a storm event up to and including a 25-year, 24-hour storm.

C. Land application requirements. An animal waste end-user who (i) receives more than 10 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or more moisture) from an owner or operator of an animal feeding operation covered by a VPA or VPDES permit and (ii) land applies animal waste shall follow appropriate land application requirements as outlined in this subsection. The application of animal waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the table below:

| Region | Soil Test P (ppm) VPI & SU Soil Test (Mehlich I) * |
|---|---|
| Eastern Shore and Lower Coastal Plain | 135 |
| Middle and Upper Coastal Plain and Piedmont | 136 |
| Ridge and Valley | 162 |
| * If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used. | |

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Animal waste may be applied to any crop once every three years at a rate of no greater than 80 pounds per acre when:

(1) The plant available phosphorus supplied by the animal waste is based on a waste nutrient analysis obtained in the last two years;

(2) In the absence of current soil sample analyses and recommendations; and

(3) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of animal waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) The analytical results are from procedures in accordance with 4VAC5-15-150 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with 4VAC5-15-150 A 2 a.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of animal waste shall be appropriate for the crop, and in accordance with 4VAC5-15-150 A 4, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated.

3. Animal waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Animal waste end-users shall maintain the records demonstrating compliance with the requirements of subsections B and C of this section for at least three years and make them available to department personnel upon request.

E. The activities of the animal waste end-user shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

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 of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-192)

~~Virginia Pollution Abatement General Permit Registration Statement for Animal Feeding Operations (rev. 8/04).~~

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Owners of Animal Feeding Operations, RS VPG1 (rev. 2/13)

Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations for Animal Waste End-Users, RS End-Users VPG1 (2/13)

Local Government Ordinance Form (eff. 11/94)

VA.R. Doc. No. R12-3285; Filed October 30, 2013, 8:22 a.m.

# TITLE 12. HEALTH

## STATE BOARD OF HEALTH

### Reproposed Regulation

Title of Regulation: **12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-10, 12VAC5-90-370).**

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

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

Basis: Section 32.1-35.1 of the Code of Virginia requires acute care hospitals to report infection information to the Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN) and for the State Board of Health to define infections to be reported and the patient populations to be included in that report.

Purpose: The proposed regulatory action provides the Virginia Department of Health (VDH) with additional measures related to healthcare-associated infections (HAI) from acute care hospitals without increasing the burden on the hospitals to provide the information. Data entered into the CDC HAI reporting system for hospital quality monitoring by the Centers for Medicare and Medicaid Services (CMS)

would be made available to authorized staff members of VDH. This will allow VDH to have a means of measuring patient safety in hospitals, with the goal of helping to reduce the occurrence of healthcare-associated infections, without adding new reporting requirements for Virginia hospitals.

Substance: The agency proposes to amend 12VAC5-90-370, pertaining to the reporting of healthcare-associated infections. This is a reproposal of an amendment based on comments received on a proposal that was published in the Virginia Register on January 31, 2011. That proposed amendment required additional reporting of HAIs to VDH by hospitals, and the comments received were not supportive of that action. The agency has responded by submitting the current reproposal, which simply states that, "Data reported into the Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) for the Centers for Medicare and Medicaid Services Hospital Inpatient Quality Reporting Program shall be shared, through the NHSN, with the department."

Issues: Hospitals are increasingly accountable to multiple organizations to demonstrate their performance relative to patient safety, including healthcare-associated infections. Hospital staff responsible for monitoring these infections are feeling the burden of increasing demands for data. In 2011, CMS began requiring hospitals to use the CDC's NHSN to report all central line-associated bloodstream infections in intensive care units in order to maximize their reimbursement for Medicare and Medicaid services. In 2012, CMS will expand those requirements to include the reporting of data on catheter-associated urinary tract infections (CAUTI) and surgical site infections (SSI) related to colon and abdominal hysterectomy procedures. CMS is also proposing additional reporting requirements for both acute care and long-term care facilities, to be rolled out over the next several years. Rather than add more requirements, potentially not aligned with the federal government, and increase the reporting burden on hospitals in Virginia, VDH proposes that Virginia hospitals will share these same CMS-required data with the agency as well. This will provide VDH with additional data on the performance of Virginia hospitals by gaining access to the data hospitals enter into the CDC system for the CMS hospital quality program, thus achieving the goal of measuring progress toward preventing infections without adding reporting burdens to an already stressed system.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health proposes that data reported into the Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) for the Centers for Medicare and Medicaid Services Hospital Inpatient Quality Reporting Program shall be shared, through the NHSN, with the department.

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

Estimated Economic Impact. Section 32.1-35.1 of the Code of Virginia mandates that the acute care hospitals report nosocomial (healthcare-associated) infections to the Centers for Disease Control and Prevention's National Healthcare Safety Network and release their infection data to the Board which in turn may release the data to the public. The legislative mandate requires the Board to determine the types of infections to be reported and the patient populations to be included.

Pursuant to the Code of Virginia, the State Board of Health (the Board) proposes that data reported into the Centers for Disease Control and Preventions (CDC) NHSN for the Centers for CMS Hospital Inpatient Quality Reporting Program shall be shared, through the NHSN, with the department.

In 2011, CMS began requiring hospitals to use the CDC's NHSN to report all central line associated bloodstream infections in intensive care units in order to maximize their reimbursement for Medicare and Medicaid services. In 2012, CMS will expand those requirements to include the reporting of data on Catheter-Associated Urinary Tract Infections and Surgical Site Infections related to colon and abdominal hysterectomy procedures. CMS is also proposing additional reporting requirements for both acute care and long-term care facilities, to be rolled out over the next several years.

Hospitals have strong incentives to comply with CMS's disease reporting requirements as their reimbursement for Medicare and Medicaid services is contingent on reporting. Virginia Department of Health (VDH) believes that all hospitals required to report to CMS for Medicare and Medicaid reimbursement are already doing so. Since the proposed regulations provide VDH with access to data already being reported, no direct economic impact on hospitals is expected.

However, access to reported data is expected to demand more administrative resources from VDH which anticipates allocating approximately eight days (two days each quarter) of full time staff annually for this requirement. VDH believes that the current staffing level made possible by federal funding through July 2012 would be able to absorb the increased workload in terms of the retrieval and analysis of data reported and dissemination of the same data to public if requested. After July 2012, the requirement could place a financial hardship on the agency. VDH plans to pursue any available opportunities for funding to support the necessary staff resources. If none are available, existing staff may be forced to absorb the responsibilities.

The proposed changes are expected to be beneficial by allowing VDH to have a means of measuring patient safety in hospitals, with the goal of helping to reduce the occurrence of healthcare-associated infections, without adding new reporting requirements for Virginia hospitals. The proposed

regulations are also expected to benefit the public by enabling them to make informed health care choices by providing information that can be used as a proxy for hospital quality.

Businesses and Entities Affected. The proposed regulations will require 90 acute care hospitals to report healthcare-associated infection data to the Board.

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

Projected Impact on Employment. The proposed regulations are expected to increase the labor demand by VDH by about eight days of full time staff per year in order to retrieve, analyze, and disseminate already reported healthcare-associated infection data.

Effects on the Use and Value of Private Property. The proposed changes are not expected to have a direct impact on hospitals. However, since the infection data will be available to the public, depending on whether the infection data is favorable or not, some hospitals may see a decrease or increase in the demand for the health care services they are offering.

Small Businesses: Costs and Other Effects. According to VDH, of the 90 acute care hospitals, 47 have fewer than 200 beds and could be considered as small businesses. While there is no direct costs or other effects expected on small businesses, depending on whether the infection data is favorable or not, some affected small businesses may see a decrease or increase in the demand for the health care services they are offering as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No direct adverse impact on small businesses is expected.

Real Estate Development Costs. The proposed regulations are not expected to have any significant effect on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, 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 the Department of Planning and Budget's Economic Impact Analysis: The Department of Health has reviewed the economic impact analysis for expanded requirements for reporting healthcare-associated infections posted to the Virginia Town Hall website on October 21, 2011, and concur with its findings and conclusions.

Summary:

*The reproposed amendments provide that data reported into the Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) for the Centers for Medicare and Medicaid Services Hospital Inpatient Quality Reporting Program shall be shared, through the NHSN, with the department.*

Part I
Definitions

**12VAC5-90-10. Definitions.**

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

"Acute care hospital" means a hospital as defined in § 32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.

[ ~~"Adult" means a person 18 years of age or more.~~ ]

"Adult intensive care unit" means a nursing care area that provides intensive observation, diagnosis, and therapeutic procedures for persons 18 years of age or more who are critically ill. Such units may also provide intensive care to pediatric patients. An intensive care unit excludes nursing areas that provide step-down, intermediate care, or telemetry only.

"Affected area" means any part or the whole of the Commonwealth, which has been identified as where persons reside, or may be located, who are known to have been exposed to or infected with, or who are reasonably suspected to have been exposed to or infected with, a communicable disease of public health threat. "Affected area" shall include, but not be limited to, cities, counties, towns, and subsections of such areas, public and private property, buildings, and other structures.

"Arboviral infection" means a viral illness that is transmitted by a mosquito, tick, or other arthropod. This includes, but is not limited to, chikungunya, dengue, eastern equine encephalitis (EEE), LaCrosse encephalitis (LAC), St. Louis encephalitis (SLE), and West Nile virus (WNV) infection.

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Central line-associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with a central line device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection.

"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.

"Child care center" means a child day center, child day program, family day home, family day system, or registered family day home as defined by § 63.2-100 of the Code of Virginia, or a similar place providing day care of children by such other name as may be applied.

"Clinic" means any facility, freestanding or associated with a hospital, that provides preventive, diagnostic, therapeutic, rehabilitative, or palliative care or services to outpatients.

[ ~~"Clostridium difficile infection, laboratory identified event" means laboratory testing on unformed stool that yields a positive result for Clostridium difficile toxin A or B or a toxin producing Clostridium difficile organism detected in the stool sample by culture or other laboratory means, with duplicate reports on a patient ruled out according to CDC definitions in the NHSN Patient Safety Component Manual, MDRO and CDAD Module (June 2010).~~ ]

"Commissioner" means the State Health Commissioner or his duly designated officer or agent, unless stated in a provision of these regulations that it applies to the State Health Commissioner in his sole discretion.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Communicable disease of public health significance" means an illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes but is not limited to infections caused by human immunodeficiency viruses, bloodborne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance.

"Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with these regulations, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or the tubercle bacilli, unless used as a bioterrorism weapon.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this regulation.

"Condition" means any adverse health event, such as a disease, an infection, a syndrome, or as indicated by a procedure (including but not limited to the results of a physical exam, laboratory test, or imaging interpretation) suggesting that an exposure of public health importance has occurred.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact services" means a broad array of services that are offered to persons with infectious diseases and their contacts. Contact services include contact tracing, providing information about current infections, developing risk reduction plans to reduce the chances of future infections, and connecting to appropriate medical care and other services.

"Contact tracing" means the process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy hazardous substances or organisms from a person, surface, or item to the point that such substances or organisms are no longer capable of causing adverse health effects and the surface or item is rendered safe for handling, use, or disposal.

"Department" means the State Department of Health.

"Designee" or "designated officer or agent" means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board.

"Ehrlichiosis/anaplasmosis" means human infections caused by Ehrlichia chaffeensis (formerly included in the category "human monocytic ehrlichiosis" or "HME"), Ehrlichia ewingii or Anaplasma phagocytophilum (formerly included in the category "human granulocytic ehrlichiosis" or "HGE").

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Essential needs" means basic human needs for sustenance including but not limited to food, water, and health care, e.g., medications, therapies, testing, and durable medical equipment.

"Exceptional circumstances" means the presence, as determined by the commissioner in his sole discretion, of one or more factors that may affect the ability of the department to effectively control a communicable disease of public health threat. Factors to be considered include but are not limited to: (i) characteristics or suspected characteristics of the disease-causing organism or suspected disease-causing organism such as virulence, routes of transmission, minimum infectious dose, rapidity of disease spread, the potential for extensive disease spread, and the existence and availability of demonstrated effective treatment; (ii) known or suspected risk factors for infection; (iii) the potential magnitude of the effect of the disease on the health and welfare of the public; and (iv) the extent of voluntary compliance with public health recommendations. The determination of exceptional circumstances by the commissioner may take into account the experience or results of investigation in Virginia, another state, or another country.

"Foodborne outbreak" means two or more cases of a similar illness acquired through the consumption of food contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to heavy metal intoxication, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning, hepatitis A, and Escherichia coli O157:H7 infection.

"Healthcare-associated infection" (also known as nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent or agents or its toxin or toxins that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC [ ~~in the NHSN Patient Safety Component Manual, Key Terms (June 2010)~~ ].

[ ~~"Healthcare-associated outbreak" means any group of illnesses of common etiology occurring in patients of a healthcare setting acquired by exposure of those patients to the disease agent while in such a facility.~~ ]

"Hepatitis C, acute" means the following clinical characteristics are met: (i) discrete onset of symptoms indicative of viral hepatitis and (ii) jaundice or elevated serum aminotransferase levels and the following laboratory criteria are met: (a) serum alanine aminotransferase levels (ALT) greater than 400 IU/L; (b) IgM anti-HAV negative (if done); (c) IgM anti-HBc negative (if done); and (d) hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test.

"Hepatitis C, chronic" means that the laboratory criteria specified in clauses (b), (c) and (d) listed above for an acute case are met but clinical signs or symptoms of acute viral hepatitis are not present and serum alanine aminotransferase (ALT) levels do not exceed 400 IU/L. This category will include cases that may be acutely infected but not symptomatic.

"Immunization" means a procedure that increases the protective response of an individual's immune system to specified pathogens.

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow specimen examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Individual" means a person or companion animal. When the context requires it, "person or persons" shall be deemed to include any individual.

"Infection" means the entry and multiplication or persistence of a disease-causing organism (prion, virus, bacteria, fungus, parasite, or ectoparasite) in the body of an individual. An infection may be inapparent (i.e., without recognizable signs or symptoms but identifiable by laboratory means) or manifest (clinically apparent).

"Influenza A, novel virus" means infection of a human with an influenza A virus subtype that is different from currently circulating human influenza H1 and H3 viruses. Novel subtypes include H2, H5, H7, and H9 subtypes or influenza H1 and H3 subtypes originating from a nonhuman species.

"Invasive" means the organism is affecting a normally sterile site, including but not limited to blood or cerebrospinal fluid.

"Investigation" means an inquiry into the incidence, prevalence, extent, source, mode of transmission, causation of, and other information pertinent to a disease occurrence.

"Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with, or are reasonably suspected to be infected with, a communicable disease in order to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals.

"Isolation, complete" means the full-time confinement or restriction of movement of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease in order to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals.

"Isolation, modified" means a selective, partial limitation of freedom of movement or actions of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease. Modified isolation is designed to meet particular situations and includes but is not limited to the exclusion of children from school, the prohibition or restriction from engaging in a particular occupation or using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Isolation, protective" means the physical separation of a susceptible individual or individuals not infected with, or not reasonably suspected to be infected with, a communicable disease from an environment where transmission is occurring, or is reasonably suspected to be occurring, in order to prevent the individual or individuals from acquiring the communicable disease.

"Laboratory" as used herein means a clinical laboratory that examines materials derived from the human body for the purpose of providing information on the diagnosis, prevention, or treatment of disease.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.

"Lead, elevated blood levels" means a confirmed blood level greater than or equal to 10 micrograms of lead per deciliter (μg/dL) of whole blood in a child or children 15 years of age and younger, a venous blood lead level greater than or equal to 25 μg/dL in a person older than 15 years of age, or such lower blood lead level as may be recommended for individual intervention by the department or the Centers for Disease Control and Prevention.

"Least restrictive" means the minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from disease transmission.

"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who is licensed by the Board of Medicine as a certified professional midwife.

"National Healthcare Safety Network (NHSN)" means a surveillance system created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

"Nucleic acid detection" means laboratory testing of a clinical specimen to determine the presence of deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) specific for an infectious agent using any method, including hybridization, sequencing, or amplification such as polymerase chain reaction.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.

"Occupational outbreak" means a cluster of illness or disease that is indicative of a work-related exposure. Such conditions include but are not limited to silicosis, asbestosis, byssinosis, pneumoconiosis, and tuberculosis.

"Outbreak" means the occurrence of more cases of a disease than expected.

"Period of communicability" means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

"Physician" means any person licensed to practice medicine or osteopathy by the Virginia Board of Medicine.

"Quarantine" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area or who are known to have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease and who do not yet show signs or symptoms of infection with the communicable disease in order to prevent or limit the transmission of the communicable disease of public health threat to unexposed and uninfected individuals.

"Quarantine, complete" means the full-time confinement or restriction of movement of an individual or individuals who do not have signs or symptoms of infection but may have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat in order to prevent the transmission of the communicable disease of public health threat to uninfected individuals.

"Quarantine, modified" means a selective, partial limitation of freedom of movement or actions of an individual or individuals who do not have signs or symptoms of the infection but have been exposed to, or are reasonably suspected to have been exposed to, a communicable disease of public health threat. Modified quarantine may be designed

to meet particular situations and includes but is not limited to limiting movement to the home, work, and/or one or more other locations, the prohibition or restriction from using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.

"Reportable disease" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

"SARS" means severe acute respiratory syndrome (SARS)-associated coronavirus (SARS-CoV) disease.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within the Commonwealth; (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; (iii) any private or parochial nursery school or preschool, or any private or parochial child care center licensed by the Commonwealth; and (iv) any preschool handicap classes or Head Start classes.

"Serology" means the testing of blood, serum, or other body fluids for the presence of antibodies or other markers of an infection or disease process.

[ ~~"Surgical Care Improvement Project (SCIP)" means a national quality initiative supported by The Joint Commission, the Centers for Medicare and Medicaid Services, and other partners in healthcare that is designed to improve surgical care in hospitals.~~ ]

"Surveillance" means the ongoing systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.

"Susceptible individual" means a person or animal who is vulnerable to or potentially able to contract a disease or condition. Factors that affect an individual's susceptibility include but are not limited to physical characteristics, genetics, previous or chronic exposures, chronic conditions or infections, immunization history, or use of medications.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

"Tubercle bacilli" means disease-causing organisms belonging to the Mycobacterium tuberculosis complex and includes Mycobacterium tuberculosis, Mycobacterium bovis, and Mycobacterium africanum or other members as may be established by the commissioner.

"Tuberculin skin test (TST)" means a test for demonstrating infection with tubercle bacilli, performed according to the Mantoux method, in which 0.1 ml of 5 TU strength tuberculin purified protein derivative (PPD) is injected intradermally on the volar surface of the arm. Any reaction is observed 48-72 hours after placement and palpable induration is measured across the diameter transverse to the long axis of the arm. The measurement of the indurated area is recorded in millimeters and the significance of the measured induration is based on existing national and department guidelines.

"Tuberculosis" means a disease caused by tubercle bacilli.

"Tuberculosis, active disease" (also "active tuberculosis disease" and "active TB disease"), as defined by § 32.1-49.1 of the Code of Virginia, means a disease caused by an airborne microorganism and characterized by the presence of either (i) a specimen of sputum or other bodily fluid or tissue that has been found to contain tubercle bacilli as evidenced by culture or nucleic acid amplification, including preliminary identification by rapid methodologies; (ii) a specimen of sputum or other bodily fluid or tissue that is suspected to contain tubercle bacilli as evidenced by smear, and where sufficient clinical and radiographic evidence of active tuberculosis disease is present as determined by a physician licensed to practice medicine in Virginia; or (iii) sufficient clinical and radiographic evidence of active tuberculosis disease as determined by the commissioner is present, but a specimen of sputum or other bodily fluid or tissue containing, or suspected of containing, tubercle bacilli is unobtainable.

"Tuberculosis infection in children age less than 4 years" means a significant reaction resulting from a tuberculin skin test (TST) or other approved test for latent infection without clinical or radiographic evidence of active tuberculosis disease, in children from birth up to their fourth birthday.

"Vaccinia, disease or adverse event" means vaccinia infection or serious or unexpected events in persons who received the smallpox vaccine or their contacts, including but not limited to bacterial infections, eczema vaccinatum, erythema multiforme, generalized vaccinia, progressive vaccinia, inadvertent inoculation, post-vaccinial encephalopathy or encephalomyelitis, ocular vaccinia, and fetal vaccinia.

"Waterborne outbreak" means two or more cases of a similar illness acquired through the ingestion of or other exposure to water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis. A single case of laboratory-confirmed primary amebic meningoencephalitis or of waterborne chemical poisoning is considered an outbreak.

Part XIII

~~Report~~ Reporting of Healthcare-Associated Infections

**12VAC5-90-370. Reporting of healthcare-associated infections.**

A. Reportable infections [ ~~and method and timing of reporting~~ ]. [ ~~1. Acute care hospitals shall collect~~ enter data on the following healthcare-associated infection ~~infections~~ in the specified patient population: ~~into CDC's National Healthcare Safety Network according to CDC protocols in the NHSN Patient Safety Component Manual Modules: Identifying HAIs (November 2009), Device-associated Module CLABSI Events (June 2010), MDRO and CDAD Module (June 2010), and CDC Locations and Descriptions (July 2010). Acute care hospitals shall ensure that accurate and complete data are entered at least quarterly within one month of the close of the calendar year quarter and shall authorize the department to have access to hospital-specific data contained in the NHSN database.~~

~~central~~ 1. Central line-associated bloodstream infections in adult intensive care units, including the number of central line days in each population at risk, expressed per 1,000 ~~catheter-days.~~

~~2. Central line-associated bloodstream infections outside intensive care, including in one adult inpatient medical ward and one adult inpatient surgical ward. Wards selected should be those with the longest length of stay during the previous calendar year, excluding cardiology, obstetrics, psychiatry, hospice, and step-down units. Data shall include the number of central line days in each population at risk.~~

~~3. Clostridium difficile infection, laboratory identified events on inpatient units, with the exceptions recommended by CDC protocol in the NHSN Patient Safety Component Manual, MDRO and CDAD Module (June 2010). Data shall be collected year round at the overall facility wide level. Data shall include patient days.~~

~~2. All acute care hospitals with adult intensive care units shall (i) participate in CDC's National Healthcare Safety Network by July 1, 2008, (ii) submit data on the above named infection to the NHSN according to CDC protocols and ensure that all data from July 1, 2008, to December 31, 2008, are entered into the NHSN by January 31, 2009, and (iii) ensure accurate and complete data are available quarterly thereafter according to a schedule established by the department.~~

~~3. All acute care hospitals reporting the information noted above shall authorize the department to have access to hospital-specific data contained in the NHSN database.~~

~~B. Reportable process measures. Acute care hospitals shall report to the department quarterly, within one month of the close of the calendar year quarter, aggregate counts of the Surgical Care Improvement Project (SCIP) Core Measures pertaining to the following surgical procedures: hip arthroplasty, knee arthroplasty, and coronary artery bypass graft. Data shall be collected in accordance with the Specification Manual for National Hospital Inpatient Quality Measures (Version 3.3) and shall include counts of the patient population and the applicable SCIP measures for each of the above designated surgical procedures. Reports shall be submitted to the department's Division of Surveillance and Investigation.~~ [ Data reported into the Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) for the Centers for Medicare and Medicaid Services Hospital Inpatient Quality Reporting Program shall be shared, through the NHSN, with the department. ]

B. Liability protection and data release. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. Infection rate data may be released to the public by the department upon request. Data shall be aggregated to ensure that no individual patient may be identified.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-90)

Control of Communicable Diseases Manual, [ 18th ~~19th~~ ] Edition, [ ~~2008,~~ ] American Public Health Association [ , 2004 ]

[ ~~National Healthcare Safety Network Patient Safety Component Manual, Centers for Disease Control and Prevention:~~

~~Key Terms, June 2010.~~

~~Multidrug-Resistant Organism & Clostridium difficile Associated Disease (MDRO/CDAD) Module (MDRO and CDAD Module), June 2010.~~

~~Identifying Healthcare-associated Infections (HAI) in NHSN (Identifying HAIs), November 2009.~~

~~Central Line Associated Bloodstream Infection (CLABSI) Event (Device-associated Module CLABSI), June 2010.~~

~~CDC Locations and Descriptions, July 2010.~~

~~Specification Manual for National Hospital Inpatient Quality Measures, Version 3.3, 04-01-11 (2Q11) through 12-31-11 (4Q11), Centers for Medicare & Medicaid Services and The Joint Commission.~~ ]

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## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Fast-Track Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-35, 12VAC30-50-75).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

Effective Date: January 2, 2014.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority, as established by § 1902(a) of the Social Security Act (42 USC § 1396a), provides governing authority for payments for services.

Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (Public Law 110-275) amended § 1869D-2(e)(2)(A) of the Social Security Act to include barbiturates (when used for the treatment of epilepsy, cancer, or a chronic mental health disorder) and benzodiazepines in Part D drug coverage as of January 1, 2013. With this new coverage under Medicare Part D for these dual eligible persons, Medicaid no longer needs to offer this benefit.

Purpose: The proposed amendments eliminate redundant coverage of two classes of drugs (barbiturates when used for the treatment of epilepsy, cancer, or a chronic mental health disorder and benzodiazepines) that were previously excluded for Medicare beneficiaries, including full benefit dual eligibles, under their Medicare Part D drug benefit. This amendment will not prevent full benefit dual eligibles from receiving these drugs; however, the coverage will be provided by their Medicare Part D pharmacy benefit provider, not the fee for service Medicaid program. DMAS will continue to provide coverage for all other drugs enumerated in 12VAC30-50-35 and 12VAC30-50-75 that will continue to be excluded from Medicare Part D coverage in accordance with existing Medicaid policy.

An analysis of benzodiazepine and barbiturate drug utilization by full benefit dual eligibles in fiscal year 2012 indicated that the elimination of these two classes of drugs will significantly reduce current non-Medicare Part D covered drug expenditures for approximately 109,000 full benefit dual eligibles by approximately $ 2.2 million per year (state and federal funds). Pursuant to § 2.2-4007.05 of the Code of Virginia DMAS does not anticipate any impact upon the public health, safety, or welfare.

Rationale for Using Fast-Track Process: DMAS is utilizing the fast-track rulemaking process because the agency does not anticipate any objections to these changes. Full benefit dual eligibles will continue to have the same access to all of the classes of drugs they previously had and for the same conditions. This change is anticipated by the provider community because the expanded Medicare Part D drug coverage for benzodiazepines and barbiturates will be a national change that all Medicare Part D pharmacy benefit plans are implementing. These plans are required by the federal Centers for Medicare & Medicaid Services to inform their enrollees of these changes.

Substance: Currently, the State Plan for Medical Assistance provides drug coverage for certain drug classes not provided for under Medicare Part D, including the drug classes of benzodiazepines and barbiturates. This regulatory action discontinues Medicaid coverage of benzodiazepines for all conditions and barbiturates for epilepsy, cancer, and chronic mental health disorders for approximately 109,000 categorically needy and medically needy full benefit dual eligibles. These categories of drugs are covered by their chosen Medicare Part D pharmacy benefit plan effective January 1, 2013.

Issues: The primary advantage of this proposed amendment to the general public and private citizens is the cost savings associated with the implementation of this change. Recent analysis of benzodiazepine and barbiturate utilization by full benefit dual eligibles suggests that DMAS will save approximately $ 2.2 million annually in total dollars. With the implementation of this change, the cost of these drugs will be borne by the Medicare Part D plan of the enrollee, not by the Virginia Medicaid program. There are no disadvantages to the general public or private citizens.

The primary advantage to the agency and the Commonwealth is the transfer of coverage for benzodiazepines and barbiturates to the federally funded Medicare Part D plans, which will save the Commonwealth approximately $ 1.1 million in general funds.

Medicaid enrolled pharmacies that provide coverage to full benefit dual eligibles also participate in the Medicare Part D plans that will be providing this additional coverage. It is anticipated that the transition to a different payor for these classes of drugs from the Virginia Medicaid program to Medicare Part D plans should cause no disruption in coverage. There are no perceived disadvantages to the Commonwealth as a result of this proposed regulatory change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulations will eliminate Medicaid coverage for some drugs for some recipients that will be covered under Medicare Part D drug benefit effective January 1, 2013.

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

Estimated Economic Impact. The proposed regulations will eliminate Medicaid coverage for benzodiazepines for all conditions and barbiturates, for patients with diagnoses of epilepsy, cancer or a chronic mental health disorder for full

benefits dual eligibles (Medicaid recipients who are also eligible for Medicare benefits). Effective January 1, 2013, these drugs will be covered for full benefit dual eligibles under their Medicare Part D drug benefit. This additional Medicare Part D coverage is being provided as a result of the passage of Section 175 of the Medicare Improvement for Patients and Providers Act of 2008, which amended section 1860D-2(e)(2)(A) of the Act to include barbiturates used in the treatment of epilepsy, cancer, or a chronic mental health disorder and benzodiazepines for all conditions in their existing Medicare Part D coverage. Because of this additional Part D drug coverage, Virginia Medicaid will no longer provide these classes of drugs to full benefit dual eligibles.

According to Department of Medical Assistance Services (DMAS), there were 25,607 dual eligible recipients who received one of these drugs from Medicaid at a cost of approximately $2.2 million in total funds in fiscal year 2012. Since Medicare Part D, a 100% federally funded program, will start paying for these drugs at the beginning of 2013, Virginia Medicaid expenditures are anticipated to decrease by $2.2 million per year. Of this amount, $1.1 million will be savings in state funds and the rest will be savings in federal funds. As a result, the proposed change will save the Commonwealth approximately $1.1 million annually and increase the influx of federal funds coming to Virginia by the same amount. An increased influx of federal funds is likely to have an expansionary economic effect on the Commonwealth's economy.

DMAS plans to notify approximately 1,000 Medicaid enrolled pharmacies of this coverage change. In addition, DMAS reports that the Part D plans have informed patients of their expanded coverage. Moreover, Medicaid enrolled pharmacies that provide coverage to full benefit dual eligibles also participate in the Medicare Part D plans that will be providing this additional coverage. Thus, DMAS anticipates no disruption in coverage while recipients transition to a different payor for these drugs. In short, no significant economic effect is expected on affected recipients and pharmacies.

Businesses and Entities Affected. There are approximately 25,607 dual eligible recipients who received one of these drugs from Medicaid in fiscal year 2012 and there are approximately 1,000 enrolled pharmacies in the Medicaid program.

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

Projected Impact on Employment. The expected $1.1 million increase in the influx of federal funds coming into Virginia should have an expansionary economic impact on the state's economy and help increase employment.

Effects on the Use and Value of Private Property. No significant economic effect is expected on the use and value of private property.

Small Businesses: Costs and Other Effects. No significant costs and other effects are expected on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not anticipated to have a significant adverse impact on small businesses.

Real Estate Development Costs. No effect on real estate development costs is expected.

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

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs with this analysis.

Summary:

*The amendments eliminate Medicaid coverage of two classes of drugs--benzodiazepines for all conditions and barbiturates for patients with a diagnosis of epilepsy, cancer, or a chronic mental health disorder--for Medicaid recipients covered under the Medicare Part D drug benefit.*

**12VAC30-50-35. Requirements relating to payment for covered outpatient drugs for the categorically needy.**

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B. ~~1.~~ The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the

Medicare Prescription Drug Benefit-Part D. The following excluded drugs are covered:

~~a.~~ 1. Agents when used for anorexia, weight loss, weight gain (see specific drug categories in subsection B of this section);

~~b.~~ 2. Agents when used for the symptomatic relief cough and colds (see specific drug categories in subsection B of this section);

~~c.~~ 3. Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section);

~~d.~~ 4. Nonprescription drugs (see specific drug categories in subsection B of this section);

~~e.~~ 5. Barbiturates, except for dual eligible individuals when used in the treatment of epilepsy, cancer, or a chronic mental health disorder (see specific drug categories in subsection B of this section); and

~~f.~~ 6. Benzodiazepines, except for dual eligible individuals as Part D will provide coverage for all conditions (see specific drug categories in subsection B of this section).

B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12VAC30-50-520.

**12VAC30-50-75. Requirements relating to payment for covered outpatient drugs for the medically needy.**

A. Effective January 1, 2006, the Medicaid agency will not cover any Part D drug for full-benefit dual eligible individuals who are entitled to receive Medicare benefits under Part A or Part B. ~~1.~~ The Medicaid agency provides coverage for the following excluded or otherwise restricted drugs or classes of drugs, or their medical uses to all Medicaid recipients, including full benefit dual eligible beneficiaries under the Medicare Prescription Drug Benefit Part D. The following excluded drugs are covered:

~~a.~~ 1. Agents when used for anorexia, weight loss, weight gain (see specific drug categories in subsection B of this section);

~~b.~~ 2. Agents when used for the symptomatic relief cough and colds (see specific drug categories in subsection B of this section);

~~c.~~ 3. Prescription vitamins and mineral products, except prenatal vitamins and fluoride (see specific drug categories in subsection B of this section);

~~d.~~ 4. Nonprescription drugs (see specific drug categories in subsection B of this section);

~~e.~~ 5. Barbiturates, except for dual eligible individuals when used in the treatment of epilepsy, cancer, or a chronic mental health disorder (see specific drug categories in subsection B of this section); and

~~f.~~ 6. Benzodiazepines, except for dual eligible individuals as Part D will provide coverage for all conditions (see specific drug categories in subsection B of this section).

B. Coverage of specific categories of excluded drugs will be in accordance with existing Medicaid policy as described in 12VAC30-50-520.

VA.R. Doc. No. R14-3433; Filed October 21, 2013, 2:01 p.m.

## Fast-Track Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-370).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

Effective Date: January 2, 2014.

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

Basis: Section 32.1-325 of the Code of Virginia grants the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority, as established by § 1902(a) of the Social Security Act (42 USC § 1396a), provides governing authority for payments for services.

Item 307 DDD of Chapter 3 of the 2012 Acts of the Assembly, Special Session I, provides:

"The Department of Medical Assistance Services may seek federal authority through amendments to the State Plans under Title XIX and XXI of the Social Security Act, and appropriate waivers to such, to allow foster care children, on a regional basis to be determined by the department, to be enrolled in Medicaid managed care (Medallion II)."

DMAS is relying on its general authority in § 32.1-325 of the Code of Virginia to also include adoption assistance children along with foster care children, treating similarly situated individuals the same, in enrolling them in Medallion II.

As permitted by Executive Order 14 (2010), this regulatory action is necessary in order to interpret the applicable federal laws that created the managed care organization (MCO) health care delivery system (Social Security Act § 1915(b)). It also implements the directive to DMAS of Item 307 RR of Chapter 3 of the 2012 Acts of Assembly, Special Session I, to "expand principles of care coordination to all geographic areas, populations and services under programs administered by the department."

Purpose: Virginia includes most Medicaid beneficiaries in risk-based managed care; however, children in foster care and adoption assistance are currently excluded. This exclusion

was based on the fact that managed care service delivery did not, until recently, cover the entire Commonwealth.

DMAS has realized numerous health care and budgetary benefits from covering traditional acute care services through a risk-based capitated managed care program. Expanding the managed care population to include foster care and adoption assistance children is consistent with the agency's effort to improve access and treatment, coordinate care, reduce inappropriate utilization, and provide budget stability with tangible quality goals. Including more previously-excluded populations in managed care is also a goal of this administration. There are no disadvantages to the health, safety, and welfare of citizens from these amendments.

Rationale for Using Fast-Track Process: The fast-track rulemaking process for this proposed regulatory change was selected because this change is not expected to be controversial. The inclusion of foster care and adoption assistance children in managed care is not expected to be controversial as the Virginia Department of Social Services is in agreement and has even collaborated with DMAS during the earlier pilot project. The pilot project showed managed care services to be quite beneficial to these participants. The amendments help to protect the health, safety, and welfare of the affected Medicaid beneficiaries who are also citizens of the Commonwealth.

Substance: The amendments affect the Medallion II (Part VI, 12VAC30-120-360 and 12VAC30-120-370) by removing the exclusion of foster care and adoption assistance children from Medallion II.

Foster care and adoption assistance children were originally included in the managed care system, as early as 1996. Experience at that time indicated that, due to foster care and adoption assistance children's frequent changes of addresses (moving into/out of MCO service areas), being restricted for a period of time to a managed care organization was not practical. This difficulty was compounded by the fact that, at that time, there were large geographic areas of the Commonwealth that lacked operational MCOs. Consequently, these two groups of children were excluded, by regulatory action, from the managed care system. Now that the managed care system is statewide, this complication has been eliminated.

Furthermore, a recent pilot study with the City of Richmond Department of Social Services found that moving approximately 300 foster care children into the Medallion II managed care delivery system was feasible and advantageous for children in foster care as well as those receiving adoption assistance. These children often have special health care needs that are better met by managed care organizations than by separate, freestanding, fee-for-service providers. Managed care organizations have easier access to specialty physician services that these young people often need.

Issues: The primary advantage of this change is that children who are in foster care or who are receiving adoption assistance are expected to receive improved long term quality of care as a result of having a more consistent medical home. This is particularly important for these populations as they can have histories of neglect and abuse, which increases their physical, mental, and emotional vulnerabilities and medical care needs. There are no disadvantages for these populations to being included in MCOs.

The affected MCOs will experience small increases in their patient numbers for which they will receive Medicaid capitation rates. There will be no disadvantages for the MCOs.

For the public and the Commonwealth, there are no identified disadvantages. The advantage to the Commonwealth is that these most vulnerable children, for whom the Commonwealth is legally responsible, will be receiving better health care more appropriate to their medical needs as well as the coordination of those services.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 3, Item 307 DDD of the 2012 Acts of the Assembly, Special Session I, the proposed changes will allow foster care children enrolled in Medicaid to receive services under the managed care service delivery system. In addition, the proposed changes will allow adoption assistance children to enroll in managed care.

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 on providers.

Estimated Economic Impact. Pursuant to Chapter 3, Item 307 DDD of the 2012 Acts of the Assembly, Special Session I, the proposed changes will allow foster care children enrolled in Medicaid to receive services under the managed care service delivery system. In addition, the Department of Medical Assistance Services (DMAS) is proposing to allow adoption assistance children to enroll in managed care. Children enrolled in foster care or adoption assistance have previously been exempted from enrollment into managed care, due primarily to the lack of managed care delivery systems statewide.

However, at the request of the City of Richmond Department of Social Services, beginning December 1, 2011, DMAS implemented a pilot program adding foster care children in Richmond City into managed care. According to DMAS, this program has shown great success, and expansion of this program until all foster care/adoption assistance children statewide are enrolled in managed care is desirable.

Currently, there are 5,700 children in the foster care and 6,600 children in adoption assistance categories. In fiscal year 2012, the total Medicaid spending for these children was about $120 million. The health care costs under the managed care delivery system are usually lower than the costs under

the fee-for-service delivery system. Thus, the main fiscal benefit of the proposed regulations is the avoided cost difference between fee-for-service and the managed care delivery systems. The proposed changes are anticipated to provide $5.75 million savings in fiscal year 2013 and $5.5 million savings in fiscal year 2014. One half of the savings would accrue to the Commonwealth and the remaining half would accrue to the federal government since Virginia Medicaid is funded 50% by the state and 50% by the federal government.

In addition to the fiscal savings, requiring children in the foster care and adoption assistance categories to enroll in managed care is expected to enhance the coordination of services and the care received through case management, affording easier access to needed specialized care services by children who often have special medical care needs. This is particularly important for these populations as they can have histories of neglect and abuse which increases their physical, mental, and emotional vulnerabilities and medical care needs.

Furthermore, the managed care delivery system offers other value added services that the fee-for-service system does not. These value added services include 24-hour nurse line, toll-free member services helpline, free translation services, outreach and health education materials, special programs to help control conditions like asthma and diabetes, well-adult checkups, and no co-payments for any covered service.

Since the proposed regulations make it possible to provide services through the managed care system, these changes have an impact on both the networks of the managed care system and the fee-for-service system. The managed care providers and providers in the network of managed care organizations will now be able to offer their services to foster care and adoption assistance children. The fee-for-service providers, on the other hand, will no longer be the only providers offering services to these children. However, it is possible that some providers belong to both networks.

Businesses and Entities Affected. The proposed regulations will allow approximately 12,300 foster care and adoption assistance children to enroll in six managed care organizations operating in the Commonwealth. The number of unique providers that may be either in fee-for-service or managed care networks is 52,818.

Localities Particularly Affected. The proposed regulations apply to all localities.

Projected Impact on Employment. The proposed regulations are anticipated to shift up to 12,300 children from the fee-for-service provider network to the managed care provider network. Thus, while the managed care network and their providers may see an increase in their demand for labor, providers in the fee-for-service network are expected to see a corresponding decrease. However, a provider may belong to both networks.

Effects on the Use and Value of Private Property. Increased demand for services for the managed care network and their providers is expected to have a positive effect on their asset values while reduced demand is expected to hurt asset values of fee-for-service network providers.

Small Businesses: Costs and Other Effects. None of the six managed care organizations are small businesses. However, most of the providers in their networks and providers in fee-for-service networks are believed to be small businesses. The costs and other effects on these small businesses would be the same as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes adverse impact while achieving the same goals.

Real Estate Development Costs. The proposed regulations are not expected to have any effect of real estate development costs.

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

Agency's Response to Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget. The department concurs with this analysis.

Summary:

*Pursuant to Item 307 DDD of Chapter 3 of the 2012 Acts of Assembly, Special Session I, the amendments require children in foster care or adoption assistance categories to be enrolled in managed care. Children enrolled in foster care or adoption assistance have previously been exempted from enrollment into managed care. The amendments treat*

*children in foster care or adoption assistance the same as all other children enrolled in Medicaid.*

Part VI
Medallion II

**12VAC30-120-360. Definitions.**

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Early Intervention" means EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 as set forth in 12VAC30-50-131.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

2. Serious impairment to bodily functions, or

3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and MCO enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External ~~Quality Review Organization" (EQRO) is~~ quality review organization" or "EQRO" means an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other external quality review (EQR) related activities as set forth in 42 CFR 438.358, or both.

~~"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.~~

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

"Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO or PCCM.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in ~~12VAC30-50-229.1~~ 12VAC30-50-130.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

**12VAC30-120-370. Medallion II enrollees.**

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. DMAS reserves the right to exclude from participation in the Medallion II managed care program any ~~recipient~~ individual who has been consistently noncompliant with the policies and procedures of managed care or who is threatening to providers, MCOs, or DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. ~~Recipients~~ Individuals excluded from Medallion II through this provision may appeal the decision to DMAS.

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

1. Individuals who are inpatients in state mental hospitals;

2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the ~~mentally retarded~~ intellectually disabled;

3. Individuals who are placed on spend-down;

4. Individuals who are participating in the family planning waiver, or in federal waiver programs for home-based and community-based Medicaid coverage prior to managed care enrollment;

~~5. Individuals who are participating in foster care or subsidized adoption programs;~~

~~6.~~ 5. Individuals under age 21 who are ~~either enrolled in DMAS authorized treatment foster care programs as defined in 12VAC30-60-170 A, or who are~~ approved for DMAS residential facility Level C programs as defined in 12VAC30-130-860;

~~7.~~ 6. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider (e.g., physician, hospital, midwife) does not participate with the enrollee's assigned MCO. Exclusion requests made during the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;

~~8.~~ 7. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;

~~9.~~ 8. Individuals who receive hospice services in accordance with DMAS criteria;

~~10.~~ 9. Individuals with other comprehensive group or individual health insurance coverage, including Medicare, insurance provided to military dependents, and any other insurance purchased through the Health Insurance Premium Payment Program (HIPP);

~~11.~~ 10. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, at the scheduled time of MCO enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the MCO enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge. This exclusion reason shall not apply to recipients admitted to the hospital while already enrolled in a department-contracted MCO;

~~12.~~ 11. Individuals who request exclusion during preassignment to an MCO or within a time set by DMAS from the effective date of their MCO enrollment, who have been diagnosed with a terminal condition and who have a

life expectancy of six months or less. The client's physician must certify the life expectancy;

~~13.~~ 12. Certain individuals between birth and age three certified by the Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;

~~14.~~ 13. Individuals who have an eligibility period that is less than three months;

~~15.~~ 14. Individuals who are enrolled in the Commonwealth's Title XXI SCHIP program;

~~16.~~ 15. Individuals who have an eligibility period that is only retroactive; and

~~17.~~ 16. Children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia.

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

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

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

E. Clients shall be enrolled as follows:

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

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

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

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

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

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous MCO without going through preassignment and selection.

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

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

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

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

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

initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.

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

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

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

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

H. The department shall conduct an annual open enrollment for all Medallion II participants. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. In areas with only one contracted MCO, recipients will be given the opportunity to select either the MCO or the PCCM program. Enrollment selections will be effective on the first day of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current MCO selection.

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

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

a. A recipient's desire to seek services from a federally qualified health center ~~which~~ that is not under contract with the recipient's current MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;

b. Performance or nonperformance of service to the recipient by an MCO or one or more of its providers ~~which~~ that is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;

c. Lack of access to a PCP or necessary specialty services covered under the State Plan or lack of access to providers experienced in dealing with the enrollee's health care needs;

d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO or PCCM program, if applicable, or provider;

e. The enrollee moves out of the MCO's service area;

f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;

g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or

h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether cause exists for disenrollment. Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the enrollee files the request, in compliance with 42 CFR 438.56.

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

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

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

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

waiver services and related transportation to waiver services via the fee-for-service program.

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

VA.R. Doc. No. R14-3229; Filed October 17, 2013, 11:55 a.m.

# TITLE 13. HOUSING

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

### Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-50, 13VAC10-180-60).**

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

Effective Date: January 1, 2014.

Agency Contact: Paul M. Brennan, General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5798, or email paul.brennan@vhda.com.

Summary:

*The amendments (i) continue the new construction pool; (ii) implement maximum total development cost limits for developments to be eligible to receive credits; (iii) revise point categories for subsidized funding, developments in census tracts with less than a 10% poverty rate, the use of brick, energy efficient water heaters, bath vents, wall sheathing insulation, fire prevention features, applicants servicing elderly and disabled tenants, EarthCraft certification, developer experience, and bonus point categories serving lower income households; (iv) add penalty points when cost limits are exceeded; (v) amend the point category for locality notification and response letters; and (vi) make other miscellaneous administrative clarification changes.*

**13VAC10-180-50. Application.**

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least $10,000 per unit for developments financed with tax-exempt bonds and $15,000 per unit for all other developments.

Any application that exceeds the cost limits set forth below in subdivisions 1, 2, and 3 shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

1. Inner Northern Virginia. The Inner Northern Virginia region shall consist of Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and City of Falls Church. The total development cost of proposed developments in the Inner Northern Virginia region may not exceed (i) for new construction or adaptive reuse: $335,475 per unit plus up to an additional $37,275 per unit if the proposed development contains underground or

structured parking for each unit or (ii) for acquisition/rehabilitation: $292,875 per unit.

2. Prince William County [ ~~and,~~ ] Loudoun County [ , and Fauquier County ]. The total development cost of proposed developments in Prince William County [ ~~and,~~ ] Loudoun County [ , and Fauquier County ] may not exceed (i) for new construction or adaptive reuse: [ ~~$228,975~~ $249,210 ] per unit or (ii) for acquisition/rehabilitation: $175,725 per unit.

3. Balance of state. The total development cost of proposed developments in the balance of the state may not exceed (i) for new construction or adaptive reuse: $186,375 per unit or (ii) for acquisition/rehabilitation: [ ~~$117,150~~ $143,775 ] per unit.

The cost limits in subdivisions 1, 2, and 3 above are 2012 fourth quarter base amounts. The cost limits shall be adjusted annually beginning in the fourth quarter of 2013 by the authority in accordance with Marshall & Swift cost factors for such quarter, and the adjusted limits will be indicated on the application form, instructions, or other communication available to the public.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the

applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

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

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

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

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

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

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

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

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

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

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

1. Readiness.

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

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

2. Housing needs characteristics.

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

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

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

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

~~(3)~~ b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. ~~(0 points)~~ Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

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

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

e. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Virginia Housing Trust Fund, funding from VOICE for projects located in Prince William County [ ~~, Authority REACH funding~~ ] and donations from unrelated private foundations that have filed an IRS Form 990 (or ~~the~~ a variation of such form) or Rural Development for a below-market rate loan or grant ~~or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development~~; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or ~~waive~~ tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

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

rehabilitation only) of the development unless permitted by the executive director for good cause.)

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

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

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

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

~~k.~~ l. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. The executive director may make exceptions in the following circumstances: (1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures; (2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or (3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

~~l.~~ m. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics.

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

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

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

(b) ~~(a)~~ ] If the exterior walls are constructed using the following materials:

(i) Brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) covering 30% or more of the exterior walls. ~~(20 points times the percentage of exterior walls covered by brick)~~ (10 points) and

(ii) If subdivision [ ~~(a)(i)~~ (b) (i) ] above is met, an additional one-fifth point for each percent of exterior wall brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) in excess of 30%. (maximum 10 points) and

(iii) If subdivision [ ~~(a)(i)~~ (b) (i) ] above is met, an additional one-tenth point for each percent of exterior wall covered by fiber-cement board. (maximum 7 points)

[ (c) ~~(b)~~ ] If all kitchen and laundry appliances (except range hoods) meet the EPA's Energy Star qualified program requirements. (5 points)

[ (d) ~~(c)~~ ] If all the windows and glass doors meet the EPA's Energy Star qualified program requirements. (5 points)

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

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

[ (g) ~~(h)~~ ] If each bathroom contains only WaterSense labeled faucets and showerheads. (2 points)

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

[ (i) ~~(h)~~ ] If all the water heaters ~~meet the EPA's Energy Star qualified program requirements~~ have an energy factor greater than or equal to 67% for gas water heaters or greater than or equal to 93% for electric water heaters; or any centralized commercial system that has ~~a 95%+~~ an efficiency performance rating equal to or greater than 95%, or any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points)

[ (j) ~~(i)~~ ] If each bathroom is equipped with a WaterSense labeled toilet. (2 points)

[ (k) ] ~~If~~ [ ~~(j)~~ ] For new construction only, if each full bathroom is equipped with EPA Energy Star qualified bath vent fans. (2 points)

[ (l) ] ~~New~~ [ ~~(k)~~ ] If the development has or the application provides for installation of continuous R-3 or higher wall sheathing insulation. (5 points)

[ (m) ~~(l)~~ ] If all cooking surfaces are equipped with fire prevention or suppression features that meet the authority's ~~design and construction standards. (4 points for fire prevention or 2 points for fire suppression)~~ requirements (as indicated on the application form, instructions, or other communication available to the public). (2 points)

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

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

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

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

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

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

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

b. Any ~~nonelderly development or elderly rehabilitation~~ development in which (i) the greater of [ ~~5~~ five ] units or 10% of the units will be ~~subject to~~ assisted by HUD project-based vouchers (as evidenced by the submission of a [ ~~fully executed agreement to enter into a housing assistance payments (AHAP) contract for the development between the applicant and~~ letter satisfactory to the authority from ] an authorized public housing authority [ ~~(PHA))~~ (PHA) that the development meets all prerequisites for such assistance) ], or other form of documented and binding federal project-based rent subsidies or equivalent assistance (approved by the executive director) in order to ensure occupancy by extremely low-income persons; and (ii) the greater of [ ~~5~~ five ] units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to ~~people~~ persons with ~~special needs~~ disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in (ii) above must include roll-in showers and roll-under sinks and [ front control ] ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

c. Any ~~nonelderly development or elderly rehabilitation~~ development in which the greater of [ ~~5~~ five ] units or 10% of the units (i) ~~have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii)~~ conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and ~~(iii)~~ (ii) are actively marketed to ~~people~~ persons with ~~mobility impairments including HCV holders~~ disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)

d. Any ~~nonelderly development or elderly rehabilitation~~ development in which ~~4.0%~~ 5.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to ~~people~~ persons with ~~mobility impairments~~ disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. (15 points)

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

f. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) [ ~~US~~ U.S. ] Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development~~,~~ or ~~a new construction~~ EarthCraft certified development ~~that is 15% more energy efficient than the 2004 International Energy Conservation Code (IECC) as measured by EarthCraft or a rehabilitation development that is 30% more energy efficient post-rehabilitation as measured by EarthCraft~~; 30 points for a LEED Gold development~~, or a new construction development that is 20% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 40% more energy efficient post-rehabilitation as measured by EarthCraft~~ or

EarthCraft Gold development; 45 points for a LEED Platinum development~~, or a new construction development that is 25% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 50% more energy efficient post-rehabilitation as measured by EarthCraft~~ or EarthCraft Platinum development.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving 30 or 45 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis for 30 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis.

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

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

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

5. Sponsor characteristics.

a. Evidence that the principal or principals~~, as a group~~ of the controlling general partner or ~~individually,~~ managing member for the proposed development have developed~~, as~~:

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

~~b. Evidence that the principal or principals for the proposed development have developed~~

(2) At least three deals as a principal and have at least $500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the entity(s) and or person(s), including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including but not limited to: (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (50 points) or

(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

~~c.~~ Applicants receiving points under subdivision 5 a (1) and (2) above are not eligible for points under subdivision a of subdivision 1 Readiness, above.

b. Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the time frame established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

~~d.~~ c. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the

authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the authority)

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

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

f. Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit [ ~~, the following penalty points shall apply:~~

~~(1) An excess of 1.0% or less (minus 10 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the executive director determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed).~~

~~(2) An excess between 1.0% and 5.0% (minus 30 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed).~~

~~(3) An excess of~~ by ] 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed).

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (200 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the ~~propsed~~ proposed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. ~~(The~~ (Up to 50 points, the product of (i) ~~50 points~~ 62.5 multiplied by (ii) the percentage of housing units in the proposed development both rent

restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. ~~(The~~ (Up to 25 points, the product of (i) ~~25 points (50 points for proposed developments in low-income jurisdictions)~~ 31.25 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.~~)~~ Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points.)

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

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

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

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of ~~450~~ 425 points ~~(450~~ (325 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

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

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

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to [ ~~10%~~ 40% ] of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest

ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

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

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

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

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

licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

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

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

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

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

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

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

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

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

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

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

applicant or such contractual agreements shall terminate, or both, as applicable.

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

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

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

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

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

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for either (i) at least 50% of the units in the development or (ii) if HUD Section 811 funds are providing the rent subsidies, as close to, but not more than 25% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

VA.R. Doc. No. R14-3842; Filed October 30, 2013, 11:17 a.m.

# TITLE 16. LABOR AND EMPLOYMENT

## SAFETY AND HEALTH CODES BOARD

### Proposed Regulation

Title of Regulation: **16VAC25-35. Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees (amending 16VAC25-35-30).**

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

Public Hearing Information:

December 5, 2013 - 10 a.m. - State Corporation Commission, Tyler Building, Court Room A, 1300 East Main Street, Richmond, VA 23219

Public Comment Deadline: January 17, 2014.

Agency Contact: John J. 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: The Safety and Health Codes Board is authorized by § 40.1-22 of the Code of Virginia 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 and to effect compliance with the federal OSH Act of 1970…as may be necessary to carry out its functions established under this title." In making such rules and regulations to protect the occupational safety and health of employees, the board is required to adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity.

Section 40.1-51.20 of the Code of Virginia mandates that all certified lead contractors notify the Department of Labor and Industry prior to commencement of each lead abatement project for which certification is required by the Department of Professional and Occupational Regulation. The contractor must also obtain a lead permit and pay the appropriate fee in accordance with this code section. This regulation establishes the notification requirements and provides that the Department of Labor and Industry conduct on-site inspections of each certified lead contractor's actual abatement projects. This regulation does not exceed the mandate required by § 40.1-51.20.

Purpose: Currently, subsection A of 16VAC25-35-30, Notification and Permit Fee, requires that lead contractors notify the Department of Labor and Industry for lead abatement projects when the contract price is $2,000 or more. The U.S. Environmental Protection Agency (EPA) has notification requirements with which the department must comply. EPA has no price amount stipulated in its notification regulations. Therefore, the basis for this proposed regulatory action is to conform the requirements of subsection A of 16VAC25-35-30 with that of EPA's Notification Requirements for Lead-Based Paint Abatement Activities and Training, 40 CFR 745.227(e)(4)(i)-(ix). Notification to the department protects the health, welfare, and safety of the public.

Substance: The lead notification requirements in subsection A of 16VAC25-35-30 currently stipulate that lead contractors notify the department for lead abatement projects when the contract price is $2,000 or more. EPA also has notification requirements with which the department is obligated to comply. EPA has no price amount stipulated with respect to its notification requirements; therefore, the department seeks to remove the $2,000 minimum contract price provision requiring lead abatement notification for all lead projects, regardless of the contract price for the lead project.

Issues: The primary advantages of implementing the amended provisions to the public is that the $2,000 minimum contract price provision required for lead abatement notification will be removed for consistency with the notification requirements of EPA. However, since there will no longer be a contractor price threshold of $2,000, lead contractors will be required to submit more notification permit applications, which will, in turn, increase the overall costs of lead permit fees that contractors need to pay in order to get their lead abatement permit.

The primary advantages and disadvantages to the agency or the Commonwealth is that the department will incur no added costs nor will staffing levels require an increase as a result of the rule change. Any additional revenue received will be deposited in the Lead Program Special Fund.

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

The 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 certified lead contractor notification, lead project permits and permit fees to require that the Department of Labor and Industry (DOLI) receive notification of all lead projects commenced in the Commonwealth rather than only projects where the contract price exceeds $2,000.

Result of Analysis. There is insufficient information to ascertain whether benefits outweigh costs for this proposed regulatory change.

Estimated Economic Impact. Currently, lead contractors who engage in lead abatement projects where contractual payments exceed $2,000 must notify the Department of Labor and Industry (DOLI). The U.S Environmental Protection Agency (EPA), however, requires notification for all lead abatement projects without regard to contract price. Although the EPA has not demanded that DOLI change its regulations so that DOLI is notified of all lead abatement projects, DOLI does have an obligation to comply with federal standards. As a consequence, the Board now proposes to amend these regulations so that they conform to the EPA's regulations. This regulatory amendment will require lead contractors to notify DOLI of all lead abatement projects and not just those with a contract price of more than $2,000. The required notification must include 1) identifying information for all individuals who will be working on the project, 2) identifying information for the owner or operator of the building from which lead will be removed, 3) the type of notification that is being made, 4) identifying information for the building which

is to undergo lead abatement, 5) the estimated amount of lead to be removed and how that amount was estimated, 6) the fee to be submitted to DOLI, 7) scheduled setup date, removal date or dates and completion date and times during which lead abatement activities will take place, 8) name and certificate number of the on-site supervisor for the project, 9) identifying information for the waste disposal site where lead containing materials will be disposed of, 10) a detailed description of the methods to be used to remove lead materials and 11) a description of procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint and replace lead painted surfaces.

Board staff reports that they do not know how many extra projects will be reported per year on account of this regulatory change but suspect that most, if not all, lead abatement projects presently cost more than $2,000. Board staff further reports that they currently receive an average of four notifications per year for lead abatement projects. Any lead contractors affected by this proposed regulatory change will incur costs for compiling the information required in notifications to DOLI.

Businesses and Entities Affected. Board staff reports that there are 142 lead contractors in the Commonwealth and that most lead contractors are small businesses. All of these individuals, plus owners of properties that may have lead contamination 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. Affected businesses may incur additional reporting costs on account of this regulatory change only if they contract for lead abatement projects worth $2,000 or less. To the extent that any business does have to compile information for additional notifications, profits for those businesses will likely see a very small decrease that is equal to the cost of compiling information and conveying it to DOLI.

Small Businesses: Costs and Other Effects. Affected small businesses may incur additional reporting costs on account of this regulatory change only if they contract for lead abatement projects worth $2,000 or less.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods that would both further minimize any adverse impact and meet EPA standards.

Real Estate Development Costs. This regulatory action may slightly increase real estate development costs in the Commonwealth only for real estate development projects which include a lead abatement contract worth $2,000 or less.

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 economic impact analysis.

Summary:

*The proposed amendment requires a lead contractor to file a written lead project notification with the Department of Labor and Industry for all lead projects, rather than only projects where the contract price is $2,000 or more.*

**16VAC25-35-30. Notification and permit fee.**

A. Written notification of any lead project~~, the contract price of which is $2,000 or more,~~ shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

B. The department form shall include the following information:

1. Name, address, telephone number, and the certification number of each person intending to engage in a lead project.

2. Name, address, and telephone number of the owner or operator of the facility in which the lead project is to take place.

3. Type of notification: amended, emergency, renovation or demolition.

4. Description of facility in which the lead project is to take place, including address, size, and number of floors.

5. Estimate of amount of lead and method of estimation.

6. Amount of the lead project fee submitted.

7. Scheduled setup date, removal date or dates, and completion date and times during which lead-related activity will take place.

8. Name and license number of the supervisor on site.

9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site or sites where the lead-containing material will be disposed.

10. Detailed description of the methods to be used in performing the lead project.

11. Procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint, and to replace lead-painted surfaces or fixtures in order to protect public health during performance of the lead project.

12. If a facsimile transmission is to be made pursuant to subsection J of this section, the credit card number, expiration date, and signature of cardholder.

13. Any other information requested on the department form.

C. A lead project permit fee shall be submitted with the completed project notification form. The fee shall be in accordance with the following schedule:

1. The greater of $100 or 1.0% of the contract price, with a maximum of $500.

2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least 10%, the commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for a lead project on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in subsection A of this section to the department at least 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

a. The dates of work required by subdivision B 7 of this section shall be every work day during the blanket notification period, excluding weekends and state holidays.

b. The estimate of lead to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary.

c. A copy of the contract shall be submitted with the notification.

2. The lead project permit fee for blanket notifications shall be as set forth in subsection C of this section.

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be present at the site. The fee for each amended notification will be $15.

4. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of lead removed and the actual amount of payments made under the contract. The refund shall be the difference between the original lead permit fee paid and 1.0% of the actual amount of payments made under the contract.

E. Notification of fewer than 20 days may be allowed in case of an emergency involving protection of life, health or property. In such cases, notification and the lead permit fee shall be submitted within five working days after the start of the emergency lead project. A description of the emergency situation shall be included when filing an emergency notification.

F. A notification shall not be effective unless a complete form is submitted and the proper permit fee is enclosed with the completed form. A notification made by facsimile transmission pursuant to subsection J of this section shall not be effective if the accompanying credit card payment is not approved.

G. On the basis of the information submitted in the lead notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

H. Amended notifications may be submitted for modifications of subdivisions B 3 through B 11 of this section. No amendments to subdivision B 1 or B 2 of this section shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if an incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in accordance with the following schedule:

a. For modifications to subdivisions B 3, B 4, and B 6 through B 10 of this section, $15.

b. For modifications to subdivision B 5 of this section, the difference between the permit fee in subsection C of this section for the amended amount of lead and the original permit fee submitted, plus $15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

I. The department must be notified prior to any cancellation. A copy of the original notification form marked "canceled" must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the lead project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.

The following amounts will be deducted from the refund payment: $15 for processing of the original notification, $15 for each amendment filed, and $15 for processing the refund payment.

J. Notification for any lead project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.

VA.R. Doc. No. R12-3269; Filed October 28, 2013, 12:23 p.m.

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# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

## VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

### Proposed Regulation

Title of Regulation: **18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-50, 18VAC15-40-52).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

December 2, 2013 - 10:30 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 4, Richmond, VA 23233

Public Comment Deadline: January 17, 2014.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email alhi@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. Section 54.1-201 of the Code of Virginia provides the authority to regulatory boards to levy and collect fees; § 54.1-304 of the Code of Virginia authorizes the Department of Professional and Occupational Regulation (DPOR) to collect and account for fees; and § 54.1-308 of the Code of Virginia requires costs to be paid by regulatory boards.

Purpose: The intent of the proposed amendments is to increase licensing fees for regulants of the Board for Asbestos, Lead, and Home Inspectors. The board must establish fees adequate to support the costs of board operations and a proportionate share of the expense of department operations. By the close of the next biennium, if left at their current rates, fees will not provide adequate revenue for those costs.

DPOR receives no general fund money but, instead, is funded almost entirely from revenue collected from license and certificate application fees, renewal fees, examination fees, and other licensing fees. DPOR 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 that revenue. Fee revenue collected on behalf of the various boards is what funds the department's authorized special revenue appropriation.

The Board for Asbestos, Lead, and Home Inspectors has no other source of revenue from which to fund its operations.

Section 54.1-113 of the Code of Virginia requires DPOR to review each board's expenditures at the close of each biennium and to adjust fees if necessary. The Board for Asbestos, Lead, and Home Inspectors is expected to incur a deficit of $82,268 by the end of the 2012-2014 biennium and a Callahan Act percentage of -11.5%.

The regulatory review process generally takes a minimum of 18 months, so it is essential to consider fee increases now to avoid a greater deficit than currently projected. In order to address the deficit as currently projected, new fees will need to become effective by late in fiscal year 2014, or the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

Substance: The Board for Asbestos, Lead, and Home Inspectors reviewed the fees listed in 18VAC15-40-50 and 18VAC15-40-52 and, based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the regulant population. The amendments increase application, renewal, and reinstatement fees for certification as a home inspector.

Issues: The primary issue for the proposed fee increase is the department's statutory requirement to comply with the Callahan Act.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Asbestos, Lead, and Home Inspectors (Board) proposes to increase all fees paid by licensees, certificate holders and registrants that are subject to the Board's authority.

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 current regulations, home inspectors pay an initial certification fee of $25, a biennial renewal fee of $25, a late renewal fee of $50 (if they renew between 30 days and 6 months after the renewal date) and a reinstatement fee of $100 if they renew later than 6 months but sooner than 2 years after their certification expires. The Board now proposes to increase all of these fees.

Below is a comparison table for current and proposed fees:

| FEE TYPE | CURRENT FEE | PROPOSED FEE | % INCREASE |
|---|---|---|---|
| Initial Home Inspector Certification | $25 | $80 | 220% |
| Renewal of Home Inspector Certification | $25 | $45 | 80% |
| Late Renewal of Home Inspector Certification | $50 | $80 | 60% |
| Reinstatement of Home Inspector Certification | $100 | $125 | 25% |

Board staff reports that fees were reduced in 2000 because they were set at a level that was too high to be justified by Board expenditures. As a consequence of high fees prior to 2000, the Board had a large surplus that has offset fees that since then were too low to cover all Board expenses. Absent some fee increase, Board staff reports that the Board will run a deficit in the next biennium. In addition to a large surplus finally being depleted, Board staff reports that fees will need to be raised because expenses for developing Department of Professional and Occupational Regulation's (DPOR's) new customer support and licensure software have greatly increased information technology costs over the last several years.

While the number of entities that the Board regulates has increased, other things being equal, the fees from additional regulants would be expected to cover application costs, customer support services costs and any other expenses that the Board might incur in regulating them. Because fees have been kept artificially low for the last decade so that the Board could use up the very large surplus that it had accrued, fees from each new licensee, certificate holder or registrant may not, in this instance, been enough to cover the per person application and customer support costs. This notwithstanding, it is likely that the necessity of raising fees would not be as urgent as it now is without large and continuing increases in information technology (IT) expenses over the last few years.

Board staff reports that 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. In FY2005, the Board spent $32.13 per regulant; in FY2006, per regulant spending was $31.40 and in FY2007 it was $29.07. In FY2008, per regulant spending jumped to $45.45. During FY2012, per regulant spending was to $50.37. Board staff expects per regulant spending to increase further in FY2013 (to $57.07). 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 licensed, certified or registered, and so may slightly decrease the number of people who choose to be remain in these jobs or businesses. To the extent that the public benefits from the Board regulating these professional populations, they will also likely benefit from the Board's proposed action given that the regulating will continue. There is insufficient information to ascertain whether the benefits of the continued regulation will outweigh the costs with higher fees.

Businesses and Entities Affected. Board staff reports that the Board currently regulates 5,808 individuals, contractors, labs and training programs.

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

Projected Impact on Employment. Fee increases in this regulatory action may marginally decrease the number of individuals who choose to work in professional fields that are regulated by the Board. Individuals who work part time or whose earnings are only slightly higher in these regulated

fields than they would be in other jobs that do not require licensure or registration will be more likely to be affected.

Effects on the Use and Value of Private Property. Fee increases will likely very slightly decrease business profits and make affected businesses slightly less valuable.

Small Businesses: Costs and Other Effects. Board staff reports that most of the entities 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. Outside of increasing the efficiency of the business practices of DPOR or lowering other expenses charged to the department, particularly information technology related, there are no clear alternative methods that would reduce the adverse impact on small businesses from the proposed fee increases.

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 for Asbestos, Lead, and Home Inspectors concurs with the approval. However, we would like to address the statement regarding the efficiency of the Department of Professional and Occupational Regulation's (DPOR's) business practices.

DPOR serves to protect the health, safety, and welfare of the public by establishing and administering regulatory programs for certain professions or occupations that are deemed by the General Assembly as needing to be regulated. Such programs are designed to ensure minimum competency of practitioners who elect to enter these professions by verifying applicants' compliance with specified entry standards (education, experience, and examination).

DPOR is mindful of the need to keep costs to a minimum while still maintaining its charge of allowing minimally competent individuals and companies to begin working in their chosen fields as quickly as possible and resolving complaints against licensees in a timely manner. DPOR's staff continuously strives to improve its processes to find more efficient methods of conducting its work. In addition, staff works with its regulatory boards to develop regulations and policies that minimize burdens on its regulants, including minimizing costs associated with licensure, certification, and registration.

Summary:

*The proposed amendments increase fees for obtaining and maintaining certification as a home inspector.*

**18VAC15-40-50. Application fees.**

The application fee for an initial home inspector certification shall be ~~$25~~ $80.

**18VAC15-40-52. Renewal and reinstatement fees.**

Renewal and reinstatement fees are as follows:

| Fee type | Fee amount | When due |
|---|---|---|
| Renewal | ~~$25~~<br>$45 | With renewal application |
| Late renewal | ~~$25~~<br>$45 (renewal)<br>~~$25~~<br>+ $35 (late fee)<br>~~$50~~<br>= $80 total fee | With renewal application |
| Reinstatement | ~~$75~~<br>$80 (reinstatement)<br>~~$25~~<br>+ $45 (renewal)<br>~~$100~~<br>= $125 total fee | With reinstatement application |

VA.R. Doc. No. R12-3182; Filed October 21, 2013, 8:53 a.m.

## BOARD FOR CONTRACTORS

### Final Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: January 1, 2014.

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

Summary:

*The amendments add a new specialty to incorporate businesses that perform work related to the certified accessibility mechanic program pursuant to Chapters 81 and 207 of the 2010 Acts of Assembly and amend the definition of "manufactured home contracting."*

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

**18VAC50-22-30. Definitions of specialty services.**

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:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting – LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means ~~that~~ the service ~~which~~ that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means ~~that~~ the service ~~which~~ that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means ~~that~~ the service ~~which~~ that provides for the installation of asphalt paving ~~and/or~~ or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and BLD are the only other classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means ~~that~~ the service ~~which~~ that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means ~~that~~ the service ~~which~~ that provides for repair or improvement to nonresidential property and multifamily property as defined in the Virginia Uniform Statewide Building Code. The BLD classification also provides for this function. The CIC classification does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means ~~that~~ the service ~~which~~ that provides for all work in connection with the processing, proportioning, batching, mixing, conveying and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also included. The BLD and H/H classifications also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means ~~that~~ the service ~~which~~ that provides for the

construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means ~~that~~ the service ~~which~~ that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means ~~that~~ the service ~~which~~ that provides for the installation or removal of equipment or machinery including but not limited to conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means ~~that~~ the service ~~which~~ that provides for the installation, repair or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The BLD classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Fire alarm systems contracting" (Abbr: FAS) means ~~that~~ the service ~~which~~ that provides for the installation, repair, or improvement of fire alarm systems which operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means ~~that~~ the service ~~which~~ that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of fire suppression systems including but not limited to halon and other gas systems; dry chemical systems; and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Gas fitting contracting" (Abbr: GFC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Home improvement contracting" (Abbr: HIC) means ~~that~~ the service ~~which~~ that provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings.

~~"Industrial~~ "Industrialized building contracting" (Abbr: IBC) means ~~that~~ the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the ~~USBC~~ Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The BLD classification also provides for this function.

"Landscape irrigation contracting" (Abbr: ISC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means ~~that~~ the service ~~which~~ that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove [ ~~stumbs~~ stumps ] and roots below grade. The BLD and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means ~~that~~ the service ~~which~~ that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means ~~that~~ the service ~~which~~ that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require [ ~~a~~ an ] HVA or PLB license. The GFC specialty also provides for this function. A firm holding [ ~~a~~ an ] LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means ~~that~~ the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. ~~The H/H and BLD classifications also provide for this function.~~ No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means ~~that~~ the service ~~which~~ that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The BLD and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC or plumbing functions.

"Masonry contracting" (Abbr: BRK) means ~~that~~ the service ~~which~~ that includes the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging and cleaning and welding of reinforcement steel related to masonry construction. The BLD classification and HIC and CIC specialties also provide for this function.

"Natural gas fitting provider contracting" (Abbr: NGF) means ~~that~~ the service ~~which~~ that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires [ ~~a~~ an ] HVA or PLB license. The GFC specialty also provides for this function. A firm holding [ ~~a~~ an ] NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means ~~that~~ the service ~~which~~ that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The BLD classification and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means ~~that~~ the service ~~which~~ that provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. This function can only be performed by a firm holding the BLD classification or CIC (for other than one-family and two-family dwellings), FIC (for nonresidential farm buildings) or HIC (for one-family and two-family dwellings) specialty services. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means ~~that~~ the service ~~which~~ that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The BLD classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means ~~that~~ the service ~~which~~ that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVAC classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, removal or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The BLD classification and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other on-site sewage disposal systems annexed to real property.

"Swimming pool construction contracting" (Abbr: POL) means ~~that~~ the service ~~which~~ that provides for the construction, repair, improvement or removal of in-ground swimming pools. The BLD classification and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow or HVAC work is included in this specialty.

"Vessel construction contracting" (Abbr: VCC) means ~~that~~ the service ~~which~~ that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means ~~that~~ the service ~~which~~ that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude PLB, ELE or HVAC from installation of pumps and tanks.

Note: Specialty contractors engaging in construction ~~which~~ that involves the following activities or items or similar activities or items may fall under the CIC, HIC and/or FIC specialty services, or they may fall under the BLD classification.

| | | |
|---|---|---|
| Appliances | Fireplaces | Rubber linings |
| Awnings | Fireproofing | Sandblasting |
| Blinds | Fixtures | Scaffolding |
| Bulkheads | Floor coverings | Screens |
| Cabinetry | Flooring | Sheet metal |
| Carpentry | Floors | Shutters |
| Carpeting | Glass | Siding |
| Casework | Glazing | Skylights |
| Ceilings | Grouting | Storage bins and lockers |
| Chimneys | Grubbing | Stucco |
| Chutes | Guttering | Temperature controls |
| Conduit rodding | Insulation | Terrazzo |
| Curtains | Interior decorating | Tile |
| Curtain walls | Lubrication | Vaults |
| Decks | Metal work | Vinyl flooring |
| Doors | Millwrighting | Wall panels |
| Drapes | Mirrors | Wall tile |
| Drywall | Miscellaneous iron | Waterproofing |
| Epoxy | Ornamental iron | Weatherstripping |
| Exterior decoration | Partitions | Welding |
| Facings | Protective coatings | Windows |
| Fences | Railings | Wood floors |
| Fiberglass | Rigging | |

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 (18VAC50-22)

~~Contractor Licensing Information, A503-27INTRO (rev. 9/12).~~

~~Requirements for Qualified Individuals, A503-27EXINFO (rev. 9/12).~~

~~License Application, A503-27LIC (rev. 9/12).~~

~~Expedited Class A License Application, A503-2705A_ELIC (rev. 9/12).~~

~~Class C License Application (Short Form), A503-27CSF (rev. 9/12).~~

~~Additional Specialty Designation Application, A503-27ADDSP (rev. 9/12).~~

~~Change in Qualified Individual and Designated Employee Application, A503-27CH_QIDE (rev. 9/12).~~

~~Change of Responsible Management Application, A503-syCHRM (rev. 7/11).~~

~~Certificate of License Termination, A503-27TERM (3/11).~~

~~Education Provider Registration/Course Approval Application, A503-27EDREG (rev. 10/11).~~

~~Education Provider Listing Application, A503-27EDLIST (rev. 3/11).~~

~~Financial Statement, A503-27FINST (rev. 7/11).~~

~~Additional Qualified Individual Experience Reference Form, A504-27QIEXP (rev. 3/11).~~

Contractor Licensing Information, A503-27INTRO v-3 (rev. 12/12)

Requirements for Qualified Individuals, A501-27EXINFO-v2 (rev. 12/12)

Contractor's License Application, A501-27LIC-v5 (rev. 12/12)

Expedited Class A License Application, A503-2705A_ELIC-v5 (rev. 12/12)

Additional Specialty Designation Application, A503-27ADDSP-v5 (rev. 12/12)

Change in Qualified Individual and Designated Employee Application, A501-27CH_QIDE-v5 (rev. 7/13)

Change of Responsible Management Application, A501-27CHRM-v4 (rev. 12/12)

Certificate of License Termination, A501-27TERM-v3 (rev. 12/12)

Education Provider Registration/Course Approval Application, A501-27EDREG-v5 (rev. 12/12)

Education Provider Listing Application, A501-27EDLIST-v3 (rev. 12/12)

Financial Statement, A501-27FINST-v4 (rev. 12/12)

Change in License Class Application, A501-27CHLIC-v5 (rev. 12/12)

Firm – Residential Building Energy Analyst Application, A501-2707LIC-v2 (rev. 7/13) ]

VA.R. Doc. No. R11-2636; Filed October 28, 2013, 3:20 p.m.

## Final Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10, 18VAC50-22-100; adding 18VAC50-22-65, 18VAC50-22-66).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: January 1, 2014.

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

Summary:

*The Board for Contractors is amending its regulations to include temporary licenses among the types of licenses the board issues. The amendments define "temporary license," establish eligibility criteria for such a license, list the fees associated with such a license, and identify other administrative requirements.*

*These regulations replace the emergency regulations that have been in effect since March 2, 2011.*

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

Part I
Definitions

**18VAC50-22-10. General definitions.**

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Change order" means any modification to the original contract including, but not limited to, the time to complete the work, change in materials, change in cost, and change in the scope of work.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18VAC50-30-10.

"Licensee" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"Net worth" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"Prime contractor" means a licensed contractor that performs, supervises, or manages the construction, removal, repair, or improvement of real property pursuant to the terms of a primary contract with the property owner/lessee. The prime contractor may use its own employees to perform the work or use the services of other properly licensed contractors.

"Principal place of business" means the location where the licensee principally conducts business with the public.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;

2. The partners of a general partnership;

3. The managing partners of a limited partnership;

4. The officers of a corporation;

5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.

"Temporary license" means a license issued by the board pursuant to § 54.1-201.1 of the Code of Virginia that authorizes a person to engage in the practice of contracting until such time as the license is issued or 45 days from the date of issuance of the temporary license, whichever occurs first.

"Tenants by the entirety" means a tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, the other takes whole to exclusion of the deceased's remaining heirs.

"Virginia Uniform Statewide Building Code" or "USBC" means building regulations comprised of those promulgated by the Virginia Board of Housing and Community Development in accordance with § 36-98 of the Code of Virginia, including any model codes and standards that are incorporated by reference and that regulate construction, reconstruction, alteration, conversion, repair, maintenance or use of structures, and building and installation of equipment therein.

**18VAC50-22-65. Temporary licenses.**

A. A firm applying for a temporary license must meet all of the requirements of § 54.1-201.1 of the Code of Virginia, including the simultaneous submission of a completed application for licensure, and the provisions of this section.

B. A firm must hold a comparable license or certificate in another state and provide verification of current licensure or certification from the other state in a format acceptable to the board. The license or certificate, as applicable, must be in good standing and have comparable qualifications to the Virginia license applied for by the firm.

C. The following provisions apply to a temporary license issued by the board:

1. A temporary license shall not be renewed.

2. A firm shall not be issued more than one temporary license.

3. The issuance of the license shall void the temporary license.

4. If the board denies approval of the application for a license, the temporary license shall be automatically suspended.

D. Any firm continuing to practice as a contractor after a temporary license has expired or been suspended and who has not obtained a comparable license or certificate may be prosecuted and fined by the Commonwealth under § 54.1-111 A 1 of the Code of Virginia.

**18VAC50-22-66. Board's disciplinary authority over temporary license holders.**

A. A temporary licensee shall be subject to all laws and regulations of the board and shall remain under and be subject to the disciplinary authority of the board during the period of temporary licensure.

B. The license shall be subject to disciplinary action for any violations of Virginia statutes or regulations during the period of temporary licensure.

**18VAC50-22-100. Fees.**

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

| Fee Type | When Due | Amount Due |
|---|---|---|
| Class C Initial License | with license application | $210 |
| Class B Initial License | with license application | $345 |
| Class A Initial License | with license application | $360 |
| Temporary License | with license application and applicable initial license fee | $50 |
| Qualified Individual Exam Fee | with exam application | $20 |

| | | |
|---|---|---|
| Class B Exam Fee | with exam application ($20 per section) | $40 |
| Class A Exam Fee | with exam application ($20 per section) | $60 |

Note: A $25 Recovery Fund assessment is also required with each initial license application. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

VA.R. Doc. No. R11-2484; Filed October 21, 2013, 12:56 p.m.

## Final Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-40, 18VAC50-30-90, 18VAC50-30-100, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-185, 18VAC50-30-190, 18VAC50-30-200, 18VAC50-30-220).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: January 1, 2014.

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

Summary:

*The amendments establish a program to certify accessibility mechanics, including criteria, fees, and continuing education requirements associated with certification. The amendments also include an endorsement for limited use/limited application elevators.*

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

Part I
General

**18VAC50-30-10. Definitions.**

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

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

"Backflow prevention device work" means work performed by a backflow prevention device worker as defined in § 54.1-1128 of the Code of Virginia.

"Building official/inspector" is an employee of the state, a local building department or other political subdivision who enforces the Virginia Uniform Statewide Building Code.

"Certified accessibility mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing, or maintaining wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Virginia Uniform Statewide Building Code.

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the board, conducted by trade associations, businesses, the military, correspondence schools or other similar training organizations.

"Gas fitter" means an individual who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in this chapter.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

"Inactive tradesman" means an individual who meets the requirements of 18VAC50-30-73 and is licensed under that section.

"Incidental" means work that is necessary for that particular repair or installation and is outside the scope of practice allowed to the regulant by this chapter.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Limited use/limited application endorsement" means an addition to the certification record of a certified accessibility mechanic authorizing the certificate holder to erect, construct, install, alter, service, repair, test, or maintain limited use/limited application elevators as defined by the Virginia Uniform Statewide Building Code.

"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems that require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its proper operation. This does not include the actions of removing, replacing or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia Uniform Statewide Building Code.

"Plumber" means an individual who does plumbing work in accordance with the Virginia Uniform Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;
3. Domestic sprinklers;
4. Hot water baseboard heating systems;
5. Hydronic heating systems;
6. Process piping;
7. Public/private water supply systems within or adjacent to any building, structure or conveyance;
8. Sanitary or storm drainage facilities;
9. Steam heating systems;
10. Storage tanks incidental to the installation of related systems;
11. Venting systems; or
12. Water heaters.

These plumbing tradesmen may also install, maintain, extend or alter the following:

1. Liquid waste systems;
2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Regulant" means an individual licensed as a tradesman, liquefied petroleum gas fitter, natural gas fitter provider or certified as a backflow prevention device worker, elevator mechanic, or water well systems provider.

"Reinstatement" means having a license or certification card restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certification card for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

"Water distribution systems" include fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

**18VAC50-30-40. Evidence of ability and proficiency.**

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;

2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;

3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;

4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or

5. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or

2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or

2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;

2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to § 54.1-1129.1 A of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master

water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or

3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

G. An applicant for certification as an accessibility mechanic shall:

1. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances; 80 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 20 hours of formal training, but not to exceed 60 hours;

2. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances and a certificate of completion of an accessibility mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an accessibility mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

H. An applicant for a limited use/limited application (LULA) endorsement shall:

1. Hold a current certification as an accessibility mechanic issued by the board.

2. Have one year of practical experience in the construction, installation, maintenance, service, repair, and testing of limited use/limited application elevators and complete a vocational education program approved by the board; and satisfactorily complete a written examination administered by the board; or complete a limited use/limited application elevator training program determined to be equivalent to the requirements established by the board.

**18VAC50-30-90. Fees for licensure and certification.**

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

| | |
|---|---|
| Original tradesman license by examination | $130 |
| Original tradesman license without examination | $130 |
| Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license) | $95 |
| Liquefied petroleum gas fitter | $130 |
| Natural gas fitter provider | $130 |
| Backflow prevention device worker certification | $130 |
| Elevator mechanic certification | $130 |
| Certified accessibility mechanic | $130 |
| Water well systems provider certification | $130 |
| Limited use/limited application endorsement | $65 |

**18VAC50-30-100. Fees for examinations.**

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. Exam service contracts shall be established through competitive negotiation, in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The current examination shall not exceed a cost of $100 for the journeyman exam, $125 for the master exam for any of the trades, or $100 for the backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider exams.

**18VAC50-30-120. Renewal.**

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. An inactive tradesman is

not required to meet the continuing education requirements as a condition of renewal.

C. Certified elevator mechanics and certified accessibility mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code pertaining to elevators, escalators, and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

| | |
|---|---|
| Tradesman license | $90 |
| Liquefied petroleum gas fitter license | $90 |
| Natural gas fitter provider license | $90 |
| Backflow prevention device worker certification | $90 |
| Elevator mechanic certification | $90 |
| Certified accessibility mechanic | $90 |
| Water well systems provider certification | $90 |

All fees are nonrefundable and shall not be prorated.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

**18VAC50-30-130. Reinstatement.**

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

| | |
|---|---|
| Tradesman license | $140* |
| Liquefied petroleum gas fitter license | $140* |
| Natural gas fitter provider license | $140* |
| Backflow prevention device worker certification | $140* |
| Elevator mechanic certification | $140* |
| Certified accessibility mechanic | $140* |
| Water well systems provider certification | $140* |

*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, or water well systems providers, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic

certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

Part V
Standards of Conduct

**18VAC50-30-185. Revocation of licensure or certification.**

A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. The board shall have the power to require remedial education and to fine suspend, revoke, or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers ~~or,~~ elevator mechanics, or accessibility mechanics in the Commonwealth of Virginia.

**18VAC50-30-190. Prohibited acts.**

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;

3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker ~~or,~~ water well systems provider, elevator mechanic, or accessibility mechanic certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;

4. Negligence or incompetence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider;

5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider;

6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider by a court of competent jurisdiction;

7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under $1,000, or backflow prevention device workers, elevator mechanics, accessibility mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating,

stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, elevator or accessibility work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Uniform Statewide Building Code;

15. Practicing in a classification or specialty service for which the regulant is not licensed or certified;

16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment; and

17. Failure to obtain a building permit or applicable inspection where required.

Part VI

Vocational Training and Continuing Education Providers

**18VAC50-30-200. Vocational training.**

A. Vocational training courses must be completed through accredited colleges, universities, junior and community colleges; adult distributive, marketing and formal vocational training as defined in this chapter; Virginia Apprenticeship Council programs; or proprietary schools approved by the Virginia Department of Education.

B. Backflow prevention device worker courses must be completed through schools approved by the board. The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

C. Elevator mechanic courses must be completed through schools approved by the board. The board accepts training programs approved by the National Elevator Industry Education Program (NEIEP). Other programs could be approved after board review.

D. Water well systems provider courses must be completed through schools or programs approved by the board.

E. Certified accessibility courses must be completed through education providers approved by the board.

**18VAC50-30-220. Continuing education courses.**

A. All courses offered by continuing education providers must be approved by the board and shall cover articles of the current edition of the building code for the applicable license specialty. For tradesmen with the electrical specialty, the National Electrical Code; for tradesmen with the plumbing specialty, the International Plumbing Code; for tradesmen with HVAC specialty, the International Mechanical Code; for gas fitters, liquefied petroleum gas fitters, and natural gas fitters, the International Fuel Gas Code. Courses offered by continuing education providers for elevator mechanics shall cover articles of the current edition of the building code and other applicable laws governing elevators, escalators, or related conveyances. Courses offered by continuing education providers for accessibility mechanics shall cover articles of the current edition of the building code and other applicable laws governing wheelchair lifts, incline chairlifts, dumbwaiters, and private residence elevators. Courses offered by continuing education providers for water well systems providers shall cover the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction.

B. Approved continuing education providers shall submit an application for course approval on a form provided by the board. The application shall include but is not limited to:

1. The name of the provider and the approved provider number;

2. The name of the course;

3. The date(s), time(s), and location(s) of the course;

4. Instructor information, including name, license number(s) if applicable, and a list of other appropriate trade designations;

5. Course and material fees;

6. Course syllabus.

C. Courses may be approved retroactively; however, no regulant will receive credit toward the continuing education requirements of renewal until such approval is received from the board.

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 of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[ FORMS (18VAC50-30)

~~Education Provider Listing Application, A503-27EDLIST-v2 (rev. 3/11).~~

~~Education Provider Registration/Course Approval Application, A503-27EDREG-v4 (rev.10/11).~~

~~Tradesman Additional Designation & License Upgrade Application, A503-2710_ADDLIC-v1 (rev. 10/11).~~

~~Tradesman Exam & License Application, A503-2710EXLIC-v1 (eff. 10/11).~~

~~Tradesman Individual Experience Form, A503-2710EXP-v1 (rev. 10/11).~~

~~Backflow Prevention Device Worker Certification Application, A503-2717BPD (rev. 10/11).~~

~~Certified Elevator Mechanic Application, A503-2718ELE (rev. 10/11).~~

~~Certified Water Well System Provider Application, A503-2719WSP (rev. 10/11).~~

Education Provider Listing Application, A501-27EDLIST-v3 (rev. 12/12)

Education Provider Registration/Course Approval Application, A501-27EDREG-v5 (rev. 12/12)

Tradesman Additional Designation & License Upgrade Application, A501-2710_ADDLIC-v2 (rev. 12/12)

Tradesman Exam & License Application, A501-2710EXLIC-v2 (rev. 12/12)

Tradesman Individual Experience Form, A501-2710EXP-v2 (rev. 12/12)

Tradesman – Inactive/Activate License Application, A501-2710INAT-v1 (eff. 1/13)

Backflow Prevention Device Worker Certification Application, A501-2717CERT-v2 (rev. 12/12)

Certified Elevator Mechanic Application, A501-2718CERT-v3 (rev. 7/13)

Temporary Elevator Mechanic Certification (rev. 4/10)

Certified Water Well System Provider Application, A501-2719CERT-v2 (rev. 12/12)

Certified Accessibility Mechanics Application, A501-2720CERT-v1 (eff. 1/14)

Certified Accessibility Mechanics Limited Use/Limited Application (LULA) Endorsement Application, A501-2720LULA-v1 (eff. 1/14) ]

VA.R. Doc. No. R11-2485; Filed October 28, 2013, 12:47 p.m.

## BOARD OF MEDICINE

### Final Regulation

Title of Regulation: **18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-80; adding 18VAC85-130-81).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.9 of the Code of Virginia.

Effective Date: December 18, 2013.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

*The amendments require midwives to disclose to their clients options for consultation and referral to a physician and evidence-based information on health risks associated with a home birth when certain antepartum or intrapartum conditions exist.*

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 III
Practice Standards

**18VAC85-130-80. ~~Disclosure~~ General disclosure requirements.**

A licensed midwife shall provide written disclosures to any client seeking midwifery care. The licensed midwife shall review each disclosure item and obtain the client's signature as evidence that the disclosures have been received and explained. Such disclosures shall include:

1. A description of the licensed midwife's qualifications, experience, and training;

2. A written protocol for medical emergencies, including hospital transport, particular to each client;

3. A statement as to whether the licensed midwife has hospital privileges;

4. A statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances;

5. A description of the midwife's model of care;

6. A copy of the regulations governing the practice of midwifery;

7. A statement as to whether the licensed midwife carries malpractice or liability insurance coverage and, if so, the extent of that coverage;

8. An explanation of the Virginia Birth-Related Neurological Injury Compensation Fund and a statement that licensed midwives are currently not covered by the fund; and

9. A description of the right to file a complaint with the Board of Medicine and with NARM and the procedures and contact information for filing such complaint.

**18VAC85-130-81. Disclosures on health risks.**

A. Upon initiation of care, a midwife shall review the client's medical history in order to identify pre-existing conditions or indicators that require disclosure of risk for home birth. The midwife shall offer standard tests and screenings for evaluating risks and shall document client response to such recommendations. The midwife shall also continually assess the pregnant woman and baby in order to recognize conditions that may arise during the course of care that require disclosure of risk for birth outside of a hospital or birthing center.

B. If any of the following conditions or risk factors are presented, the midwife shall request and review the client's medical history, including records of the current or previous pregnancies; disclose to the client the risks associated with a birth outside of a hospital or birthing center; and provide options for consultation and referral. If the client is under the care of a physician for any of the following medical conditions or risk factors, the midwife shall consult with or

request documentation from the physician as part of the risk assessment for birth outside of a hospital or birthing center.

1. Antepartum risks:

Conditions requiring ongoing medical supervision or ongoing use of medications;

Active cancer;

Cardiac disease;

Severe renal disease -- active or chronic;

Severe liver disease -- active or chronic;

HIV positive status with AIDS;

Uncontrolled hyperthyroidism;

Chronic obstructive pulmonary disease;

Seizure disorder requiring prescriptive medication;

Psychiatric disorders;

Current substance abuse known to cause adverse effects;

Essential chronic hypertension over 140/90;

Significant glucose intolerance;

Genital herpes;

Inappropriate fetal size for gestation;

Significant 2nd or 3rd trimester bleeding;

Incomplete spontaneous abortion;

Abnormal fetal cardiac rate or rhythm;

Uterine anomaly;

Platelet count less than 120,000;

Previous uterine incision and/or myomectomy with review of surgical records and/or subsequent birth history;

Isoimmunization to blood factors;

Body mass index (BMI) equal to or greater than 30;

History of hemoglobinopathies;

Acute or chronic thrombophlebitis;

Anemia (hematocrit less than 30 or hemoglobin less than 10 at term);

Blood coagulation defect;

Pre-eclampsia/eclampsia;

Uterine ablation;

Placental abruption;

Placenta previa at onset of labor;

Persistent severe abnormal quantity of amniotic fluid;

Suspected chorioamnionitis;

Ectopic pregnancy;

Pregnancy lasting longer than 42 completed weeks with an abnormal nonstress test;

Any pregnancy with abnormal fetal surveillance tests;

Rupture of membranes 24 hours before the onset of labor;

Position presentation other than vertex at term or while in labor; or

Multiple gestation.

2. Intrapartum risks:

Current substance abuse;

Documented intrauterine growth retardation (IUGR)/small for gestational age (SGA) at term;

Suspected uterine rupture;

Active herpes lesion in an unprotectable area;

Prolapsed cord or cord presentation;

Suspected complete or partial placental abruption;

Suspected placental previa;

Suspected chorioamnionitis;

Pre-eclampsia/eclampsia;

Thick meconium stained amniotic fluid without reassuring fetal heart tones and birth is not imminent;

Position presentation other than vertex at term or while in labor;

Abnormal auscultated fetal heart rate pattern unresponsive to treatment or inability to auscultate fetal heart tones;

Excessive vomiting, dehydration, or exhaustion unresponsive to treatment;

Blood pressure greater than 140/90 that persists or rises and birth is not imminent;

Maternal fever equal to or greater than 100.4°F; or

Labor or premature rupture of membrane (PROM) less than 37 weeks according to due date.

3. If a risk factor first develops when birth is imminent, the individual midwife must use judgment taking into account the health and condition of the mother and baby in determining whether to proceed with a home birth or arrange transportation to a hospital.

C. If the risks factors or criteria have been identified that may indicate health risks associated with birth of a child outside of a hospital or birthing center, the midwife shall provide evidence-based information on such risks. Such information shall be specified by the board in guidance documents and shall include evidence-based research and clinical expertise from both the medical and midwifery models of care.

D. The midwife shall document in the client record the assessment of all health risks that pose a potential for a high risk pregnancy and, if appropriate, the provision of disclosures and evidence-based information.

VA.R. Doc. No. R10-2179; Filed October 21, 2013, 11:08 a.m.

## BOARD OF LONG-TERM CARE ADMINISTRATORS

### Proposed Regulation

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-80).**

**18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-40).**

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

Public Hearing Information:

December 10, 2013 - 9:30 a.m. - Department of Health Professions, 9960 Mayland Drive, Perimeter Center, 2nd Floor, Suite 201, Henrico, VA

Public Comment Deadline: January 17, 2014.

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

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 in accordance with the Administrative Process Act that are reasonable and necessary, and establishes the authority to levy and collect fees that are sufficient to cover all expenses for the administration of a regulatory program. Section 54.1-113 of the Code of Virginia requires the board to 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.

Purpose: The issue to be addressed is the need of the Board of Long-Term Care Administrators to increase its fees to cover expenses for essential functions of licensing, investigation of complaints against licensees, and adjudication of disciplinary cases to protect the health and safety of a very vulnerable population who receive services in long-term care facilities in the Commonwealth.

Section 54.1-113 of the Code of Virginia requires that an analysis of revenues and expenditures of each regulatory board shall be performed at the end of each biennium. It is necessary that each board have sufficient revenue to cover its expenditures. In fiscal year (FY) 2009, the board collected biennial renewal fees, resulting in a balance of $16,929. However, in FY 2010, allocated and direct expenditures and the cash transfers to the general fund totaled $470,144 and revenue totaled $354,270, resulting in a shortfall of $98,946 by June 30, 2010. With current fees, the shortfall in the board's budget is projected to increase to $609,645 by FY 2014. With a small pool of licensees (approximately 798 nursing home administrators and 590 assisted living administrators), it is very difficult to have sufficient revenue to eliminate a shortfall and have adequate revenue for future budgets.

In FY 2005 when the contract for information technology services was signed, placing all IT hardware, software, and services under a contract with Northrop-Grumman through the Virginia Information Technology Agency (VITA), DHP costs for IT services was $850,000. In FY 2011, the cost for those services was $3.6 million, and in FY 2012, the allocated data budget for the Board of Long-Term Care Administrators is $126,416 (which is $91 per year for each licensed nursing home administrator and assisted living administrator). Since the department and its boards are under the VITA contract, the agency has no other options for information technology.

Additionally, some of the department's nongeneral funds were transferred, in accordance with the 2010 appropriation act, to the general fund to help close the gap between revenue and expenditures. The share of that cash transfer allocated to the Board of Long-Term Care Administrators was $17,997.

While the board only spent 87% of its direct budget for FY 2010, the allocated expenditures were 204% over budget. The VITA expenditures and cash transfers account for some of that overage, but the enforcement and adjudication cost were also over budget due to a significant increase in the disciplinary caseload. The investigative costs were 497% over budget and the adjudication costs were 369% over budget. In FY 2009, there were 21 nursing home cases and four assisted living cases; in FY 2010, there were 36 nursing home cases and 27 assisted living cases. Consequently, the board is working with enforcement and administrative proceedings to develop alternative methods for managing the caseload with the intent of reducing the number of investigative hours and streamlining the preparing of documentation.

Since the fees from licensees no longer generate sufficient funds to pay operating expenses for the board, adoption of a fee increase is essential to continue licensing, investigating, and disciplining long-term care administrators.

Substance: The Board of Long-Term Care Administrators is proposing amendments to increase fees charged to regulants and applicants. Annual renewal fees for FY 2012 would be increased as follows: (i) for nursing home and assisted living facility administrators, the increase is $90 per year from $225 to $315 and (ii) for preceptors, the increase is $15 per year to $65. Other fees set proportionally to the renewal fees would also be increased. An application fee, which includes initial licensure, would be increased from $200 to $315. There is a new fee of $1,000 proposed for reinstatement after disciplinary action to partially cover the costs of an investigation and a hearing for reinstatement of licensure.

Issues: The primary advantage to the public would be that increased fees will produce adequate revenue to fund the licensing and disciplinary activities of the board. With the shortfall at $98,946 at the end of FY 2010 and projected to increase to $951,192 in FY 2016, there could be significant delays in licensing new administrators, approving

administrator-in-training programs, and investigating and adjudicating complaints against licensees. There are no disadvantages; increases in annual renewal fees of $90 should not impact the cost of long-term care for Virginians. There are no disadvantages to the agency; the advantage would be that fees would be sufficient to cover expenditures, which is a requirement of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Long-Term Care Administrators (Board) proposes to institute one new fee (a fee for reinstatement after disciplinary action) and increase most fees paid by licensees and registrants that are subject to the Board's authority.

Result of Analysis. There is insufficient information to accurately gauge whether benefits are likely to outweigh costs for these proposed changes.

Estimated Economic Impact. The Board proposes to change most of its fees for nursing home administrators, assisted living administrators, preceptors and administrator-in-training program applications. Below is a comparison table for current and proposed fees.

| FEE TYPE | CURRENT FEE | PROPOSED FEE | % INCREASE |
|---|---|---|---|
| Fee Increases For Nursing Home Administrators | | | |
| A.I.T. Program Application | $185 | $215 | 16.21% |
| Preceptor Application | $50 | $65 | 30% |
| Licensure Application | $200 | $315 | 57.5% |
| Verification of Licensure Requests from States | $25 | $35 | 40% |
| Nursing Home Administrator License Renewal | $225 | $315 | 40% |
| Preceptor Renewal | $50 | $65 | 30% |
| Penalty for Nursing Home Administrator Late Renewal | $65 | $110 | 69.23% |
| Penalty for Preceptor Late Renewal | $20 | $25 | 25% |
| Nursing Home Administrator Reinstatement | $315 | $435 | 38.09% |
| Preceptor Reinstatement | $95 | $105 | 10.53% |
| Duplicate License | $15 | $25 | 66.67% |
| Duplicate Wall Certificate | $25 | $40 | 60% |
| Reinstatement After Disciplinary Action | None | $1,000 | N/A |
| Fee Increases For Assisted Living Facility Administrators | | | |
| ALF A.I.T. Program Application | $185 | $215 | 16.21% |
| Preceptor Application | $50 | $65 | 30% |
| Licensure Application | $200 | $315 | 57.5% |
| Verification of Licensure Requests from States | $25 | $35 | 40% |
| Assisted Living Facility Administrator License Renewal | $225 | $315 | 40% |
| Preceptor Renewal | $50 | $65 | 30% |
| Penalty for Assisted Living Facility Administrator Late Renewal | $65 | $110 | 69.23% |

| | | | |
|---|---|---|---|
| Penalty for Preceptor Late Renewal | $20 | $25 | 25% |
| Assisted Living Facility Administrator Reinstatement | $315 | $435 | 38.09% |
| Preceptor Reinstatement | $95 | $105 | 10.53% |
| Duplicate License | $15 | $25 | 66.67% |
| Duplicate Wall Certificate | $25 | $40 | 60% |
| Returned Check Fee | $35 | $35 | No Change |
| Reinstatement After Disciplinary Action | None | $1,000 | N/A |

Board staff reports that the Board had a surplus for FY 2009 of $16,929 but ran a deficit of $98,946 for FY2010. Absent approval of these fee increases, Board staff reports that the deficit for FY2014 is projected to be $609,645 and may reach as high as $951,192 by FY2016. Board staff reports that the fee increases are needed because 1) the costs of health care for Board employees and lease payments for office space have increased, 2) some Board non-general funds were transferred in FY2010, FY2011 and FY2012 to the General Fund to help close the budget gap, and so won't be available to cover the cost of licensure services, 3) costs for information technology (IT) services have skyrocketed, and 4) enforcement and adjudications costs have run well over budget.

The Department of Health Professions (DHP) reports that a large portion of the expected expenditure increases over their forecast horizon are needed to cover increased costs for services from the Virginia Information Technologies Agency (VITA). DHP reports that its VITA services costs have more than tripled from FY2005 to FY2011, from $850,000 to $3.6 million, and are expected to be $4.4 million in FY2012. A large portion of the increase in costs, at least for FY 2010 and FY 2011, can be attributed to the planned move of DHP's licensing servers from DHP to Northrop Grumman. DHP anticipates that this will increase the costs for maintaining these servers by approximately $80,000 per month ($960,000 per year). This Board is and will be responsible for a proportional share of these costs. Although it is likely beyond the capacity of DHP to control the very rapid growth of these costs, licensees of this Board (and all other DHP Boards) would benefit from increased scrutiny of services provided to DHP through VITA.

Board Staff also reports that a portion of DHP's non-general fund bank account balances that would have partially offset the need for fee increases were instead moved to the General Fund by the Budget Bill of 2010 to help close the gap between revenue and expenditures. Staff reports that the Board's portion of this transfer was $17,997. Budget bills for 2011 and 2012 also required balance transfers to the General Fund: this Board's portions of these transfers were $4,057 and $4,750, respectively. Staff further reports that there is a possibility that further transfers could be required in future budgets. Licensees likely are harmed by these transfers as funds that were collected from them (and the interest those funds earned) that would have been used to cover the costs of administering their licensure program are instead used to offset the need for an increase in general taxes or for further budget cuts.

Board staff reports that, in FY 2010, investigative costs were 497% over budget and adjudication costs were 369% over budget. In FY09, the Board investigated 21 nursing home cases and 4 assisted living cases; in FY10, there were 36 nursing home cases and 27 assisted living cases. Board staff reports that the Board is working with Enforcement and Administrative Proceedings to develop alternative methods for managing the caseload with the intent of reducing the number of investigative hours and streamlining the preparing of documentation.

Businesses and Entities Affected. DHP reports that the Board currently regulates 798 nursing home administrators, 590 assisted living facility administrators, 379 preceptors and 150 administrators-in-training. All of these entities, as well as any individuals or entities who may wish to become licensed or registered in the future, will be affected by these proposed regulations.

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

Projected Impact on Employment. Fee increases in this regulatory action will likely marginally decrease the number of individuals who choose to work in professional fields that are regulated by the Board. Individuals who work part time or whose earnings are only slightly higher in these licensed fields than they would be in other jobs that do not require licensure will be more likely to be affected.

Effects on the Use and Value of Private Property. To the extent that affected licensees fees are paid by their private business employers, fee increases will likely slightly decrease business profits and make their businesses slightly less valuable.

Small Businesses: Costs and Other Effects. DHP reports that most licensees are employed by small private businesses or non-profit ventures.

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 license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Affected small businesses would also likely benefit from increased scrutiny of the IT costs that are driving increases in both agency and 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, 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.

Summary:

*The proposed amendments (i) increase fees charged to nursing home administrators, assisted living administrators, preceptors, and administrator-in-training program applicants and (ii) establish a new fee of $1,000 for reinstatement after disciplinary action.*

**18VAC95-20-80. Required fees.**

The applicant or licensee shall submit all fees below which apply:

| | |
|---|---|
| 1. A.I.T. program application | ~~$185~~ $215 |
| 2. Preceptor application | ~~$50~~ $65 |
| 3. Licensure application | ~~$200~~ $315 |
| 4. Verification of licensure requests from other states | ~~$25~~ $35 |
| 5. Nursing home administrator license renewal | ~~$225~~ $315 |
| 6. Preceptor renewal | ~~$50~~ $65 |
| 7. Penalty for nursing home administrator late renewal | ~~$65~~ $110 |
| 8. Penalty for preceptor late renewal | ~~$20~~ $25 |
| 9. Nursing home administrator reinstatement | ~~$315~~ $435 |
| 10. Preceptor reinstatement | ~~$95~~ $105 |
| 11. Duplicate license | ~~$15~~ $25 |
| 12. Duplicate wall certificates | ~~$25~~ $40 |
| 13. Reinstatement after disciplinary action | $1,000 |

**18VAC95-30-40. Required fees.**

A. The applicant or licensee shall submit all fees below that apply:

| | |
|---|---|
| 1. ALF AIT program application | ~~$185~~ $215 |
| 2. Preceptor application | ~~$50~~ $65 |
| 3. Licensure application | ~~$200~~ $315 |
| 4. Verification of licensure requests from other states | ~~$25~~ $35 |
| 5. Assisted living facility administrator license renewal | ~~$225~~ $315 |
| 6. Preceptor renewal | ~~$50~~ $65 |
| 7. Penalty for assisted living facility administrator late renewal | ~~$65~~ $110 |
| 8. Penalty for preceptor late renewal | ~~$20~~ $25 |
| 9. Assisted living facility administrator reinstatement | ~~$315~~ $435 |
| 10. Preceptor reinstatement | ~~$95~~ $105 |
| 11. Duplicate license | ~~$15~~ $25 |
| 12. Duplicate wall certificates | ~~$25~~ $40 |
| 13. Returned check | $35 |
| 14. Reinstatement after disciplinary action | $1,000 |

B. Fees shall not be refunded once submitted.

C. Examination fees are to be paid directly to the service contracted by the board to administer the examination.

VA.R. Doc. No. R10-2364; Filed October 21, 2013, 11:19 a.m.

## BOARD OF PHARMACY

### Proposed Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10; adding 18VAC110-20-418).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information:

December 12, 2013 - 9 a.m. - Department of Health Professions, 9960 Mayland Drive, Perimeter Center, Suite 201, Board Room 2, Richmond, VA 23233

Public Comment Deadline: January 17, 2014.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system, and § 54.1-3434.03 of the Code of Virginia, which requires that each pharmacy implement a program for continuous quality improvement, according to regulations of the board.

Purpose: The intent of the regulatory action is the adoption of regulations in compliance with the statutory mandate of Chapter 124 of the 2011 Acts of the Assembly, which requires the Board of Pharmacy to promulgate regulations to specify the elements of a continuous quality improvement program. The program provides a systematic, ongoing process of analysis of dispensing errors that uses findings to formulate an appropriate response and to develop or improve pharmacy systems and workflow processes designed to prevent or reduce future errors.

The goal of the regulations is to provide a framework for a continuous quality improvement (CQI) program that can identify, analyze, and reduce risks and errors associated with dispensing of drugs to patients. An analysis of an error is required to identify systems failures and personnel deficiencies and to review any gaps in the efficiency and effectiveness of policies and processes that might result in dispensing errors. Oversight of CQI programs by the board can be accomplished through routine inspections or investigations initiated by a complaint, so documentation of an analysis is required to be maintained for at least 12 months from the date of the analysis.

To protect the health and safety of patients who receive drugs dispensed by pharmacies to Virginia residents, legislation was introduced to require continuous quality improvement programs in every licensed pharmacy (resident and nonresident). Quality improvement programs can result in the identification of root causes for errors in the systems and workflow processes in order to prevent or reduce future errors.

Substance: The regulations include (i) definitions for terms used in regulation, such as "actively reports," "analysis," and "dispensing error"; (ii) provisions for pharmacies actively reporting to a patient safety organization; and (iii) provisions for a continuous quality improvement program in a pharmacy, to include notification responsibilities, documentation requirements, remediation of systems or procedures, and maintenance of a record of the analysis of the error.

Issues: The advantage to the public is assurance that a pharmacy is recording and analyzing errors in the dispensing of prescriptions in order to identify problems that led to a prescription error that could cause harm to a patient. There are no disadvantages. There are no advantages or disadvantages to the Commonwealth. This action is in response to a mandate in the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 124 of the 2011 Acts of the Assembly, and as a replacement for emergency regulations that expired September 30, 2013, the Board of Pharmacy (Board) proposes to amend its regulations to set rules for a continuous quality improvement (CQI) program. The purpose of the CQI program is to have pharmacists systematically record and report drug dispensing errors so that they can be analyzed and avoided in the future.

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

Estimated Economic Impact. Prior to 2011, the Board of Pharmacy (Board) enforced a code of behavior for pharmacists that required they handle errors in an appropriate manner so that patients were not harmed and also supported the institution of continuous quality improvement programs that would facilitate protecting patient safety and eliminating repeated errors. In 2011, the General Assembly passed legislation that required the Board to promulgate regulations for a CQI program that provides a systematic ongoing process of analysis of dispensing errors that uses findings to formulate an appropriate response and to develop or improve pharmacy systems and workflow processes designed to prevent or reduce future errors. The Board promulgated emergency regulations to meet this mandate and these regulations became effective October 1, 2012. These proposed regulations will serve as a more permanent replacement for the emergency regulations that expired September 30th of this year.

This action adds several definitions to these regulations, including definitions for the activity reports that pharmacies will have to compile and submit to a patient safety organization after a dispensing error occurs and also includes a long but intuitive list of thing that fall under the heading dispensing error. The proposed regulations contain

notification requirements (both for pharmacy staff to notify the pharmacist on duty and for the pharmacist to notify the affected patient and, when appropriate, the prescribing physician) and also specify that pharmacies can meet their error reporting and analysis obligations under the CQI program by either reporting errors and analysis to a patient safety organization or by independently keeping track of and analyzing dispensing errors. Records of errors, both those reported to patient safety organizations and those independently tracked by pharmacies, will be required to be kept for 12 months.

Pharmacies that are subject to these regulations will incur some costs, mainly for time spent on new record keeping requirements and on analysis activities related to dispensing errors that occur but also for time spent educating pharmacy staff on CQI procedures as well as the outcome of error analysis. Pharmacies will be able to report errors to patient safety organizations at no cost but may also choose to pay for additional analysis services that these organizations offer. Pharmacies are unlikely to pay for these additional services unless they perceive that the benefits of doing so outweigh the costs. Patients will likely benefit to the extent that these regulations reduce dispensing errors and improve patient safety.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that there are 1,764 resident pharmacies and 511 non-resident pharmacies permitted to dispense drugs in the Commonwealth. All of these entities 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. DHP reports that they do not know how many of the entities affected by these proposed regulations would qualify as small businesses but also report that most pharmacies are part of a national chain or health care system that would not qualify. Affected small businesses will likely incur extra bookkeeping and reporting costs as well as costs associated with completing analysis of any errors that occur. Most of these costs would be for time spent at these activities instead of doing some other job related tasks.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods for doing the tasks mandated by these regulations that would both meet the Boards (and the General Assemblys) aims and also further minimize any adverse impact on affected small businesses.

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 Pharmacy concurs with the analysis of the Department of Planning and Budget.

Summary:

*Chapter 124 of the 2011 Acts of Assembly mandates that the Board of Pharmacy promulgate regulations to specify the elements of a continuous quality improvement program that provides a systematic, ongoing process for analyzing dispensing errors and uses those findings to (i) formulate an appropriate response, (ii) develop or improve pharmacy systems and workflow processes, and (iii) prevent or reduce future errors.*

*The key provisions of the proposed regulations include (i) definitions for terms used in regulation, such as "actively reports," "analysis," and "dispensing error"; (ii) provisions for pharmacies actively reporting to a patient safety organization; and (iii) provisions for a continuous quality improvement program in a pharmacy, to include notification responsibilities, documentation requirements, remediation of systems or procedures, and maintenance of a record of the analysis of the error.*

Part I
General Provisions

**18VAC110-20-10. Definitions.**

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Actively reports" means reporting all dispensing errors and analyses of such errors to a patient safety organization as soon as practical or at least within 30 days of identifying the error.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Analysis" means a review of the findings collected and documented on each dispensing error, assessment of the cause and any factors contributing to the dispensing error, and any recommendation for remedial action to improve pharmacy systems and workflow processes to prevent or reduce future errors.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or his designated agent.

"Compliance packaging" means packaging for dispensed drugs which is comprised of a series of containers for solid oral dosage forms and which is designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the United States Drug Enforcement Administration.

"Dispensing error" means one or more of the following discovered after the final verification by the pharmacist:

1. Variation from the prescriber's prescription drug order, including but not limited to:

a. Incorrect drug;

b. Incorrect drug strength;

c. Incorrect dosage form;

d. Incorrect patient; or

e. Inadequate or incorrect packaging, labeling, or directions.

2. Failure to exercise professional judgment in identifying and managing:

a. Known therapeutic duplication;

b. Known drug-disease contraindications;

c. Known drug-drug interactions;

d. Incorrect drug dosage or duration of drug treatment;

e. Known drug-allergy interactions;

f. A clinically significant, avoidable delay in therapy; or

g. Any other significant, actual, or potential problem with a patient's drug therapy.

3. Delivery of a drug to the incorrect patient.

4. Variation in bulk repackaging or filling of automated devices, including but not limited to:

a. Incorrect drug;

b. Incorrect drug strength;

c. Incorrect dosage form; or

d. Inadequate or incorrect packaging or labeling.

"Drug donation site" means a permitted pharmacy that specifically registers with the board for the purpose of receiving or redispensing eligible donated prescription drugs pursuant to § 54.1-3411.1 of the Code of Virginia.

"Electronic prescription" means a written prescription that is generated on an electronic application in accordance with 21 CFR Part 1300 and is transmitted to a pharmacy as an electronic data file.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the United States Food and Drug Administration.

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has passed approved examinations establishing proficiency in English.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the USAN and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license which is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Long-term care facility" means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"Patient safety organization" means an organization that has as its primary mission continuous quality improvement under the Patient Safety and Quality Improvement Act of 2005 (Pub. L. 109-41) and is credentialed by the Agency for Healthcare Research and Quality.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed or otherwise distributed by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container which meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), i.e., in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy which is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).

2. "Room temperature" means the temperature prevailing in a working area.

3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

**18VAC110-20-418. Continuous quality improvement programs.**

A. Notwithstanding practices constituting unprofessional practice indicated in 18VAC110-20-25, any pharmacy that actively reports dispensing errors and the analysis of such errors to a patient safety organization consistent with § 54.1-3434.03 of the Code of Virginia and 18VAC110-20-10 shall be deemed in compliance with this section. A record indicating the date a report was submitted to a patient safety organization shall be maintained for 12 months from the date of reporting. If no dispensing errors have occurred within the past 30 days, a zero report with date shall be recorded on the record.

B. Pharmacies not actively reporting to patient safety organizations, consistent with § 54.1-3434.03 and 18VAC110-20-10, shall implement a program for continuous quality improvement in compliance with this section.

1. Notification requirements:

a. A pharmacy intern or pharmacy technician who identifies or learns of a dispensing error shall immediately notify a pharmacist on duty of the dispensing error.

b. A pharmacist on duty shall appropriately respond to the dispensing error in a manner that protects the health and safety of the patient.

c. A pharmacist on duty shall immediately notify the patient or the person responsible for administration of the drug to the patient and communicate steps to avoid injury or mitigate the error if the patient is in receipt of a drug involving a dispensing error, that may cause patient harm or affect the efficacy of the drug therapy. Additionally, reasonable efforts shall be made to determine if the patient self-administered or was administered the drug involving the dispensing error. If it is known or reasonable to believe the patient self-administered or was administered the drug involving the dispensing error, the pharmacist shall immediately assure that the prescriber is notified.

2. Documentation and record requirements; remedial action:

a. Documentation of the dispensing error must be initiated as soon as practical, not to exceed three days from identifying the error. Documentation shall include, at a minimum, a description of the event that is sufficient to allow further investigation, categorization, and analysis of the event.

b. The pharmacist-in-charge or designee shall perform a systematic, ongoing analysis, as defined in 18VAC110-20-10, of dispensing errors. An analysis of each dispensing error shall be performed within 30 days of identifying the error.

c. The pharmacist-in-charge shall inform pharmacy personnel of changes made to pharmacy policies, procedures, systems, or processes as a result of the analysis.

d. Documentation associated with the dispensing error need only to be maintained until the systematic analysis has been completed. Prescriptions, dispensing information, and other records required by federal or state law shall be maintained accordingly.

e. A separate record shall be maintained and available for inspection to ensure compliance with this section for 12 months from the date of the analysis of dispensing errors and shall include the following information:

(1) Dates the analysis was initiated and completed;

(2) Names of the participants in the analysis;

(3) General description of remedial action taken to prevent or reduce future errors; and

(4) A zero report with date shall be recorded on the record if no dispensing errors have occurred within the past 30 days.

VA.R. Doc. No. R11-2888; Filed October 21, 2013, 11:02 a.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Final Regulation

Title of Regulation: **18VAC120-30. Regulations Governing Polygraph Examiners (amending 18VAC120-30-30, 18VAC120-30-40, 18VAC120-30-70, 18VAC120-30-100, 18VAC120-30-110, 18VAC120-30-160, 18VAC120-30-170, 18VAC120-30-180, 18VAC120-30-200, 18VAC120-30-220, 18VAC120-30-230, 18VAC120-30-240, 18VAC120-30-260, 18VAC120-30-270, 18VAC120-30-300).**

Statutory Authority: § 54.1-1802.1 of the Code of Virginia.

Effective Date: January 1, 2014.

Agency Contact: Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-6166, FAX (804) 527-4401, or email polygraph@dpor.virginia.gov.

Summary:

*The amendments (i) allow an applicant to take portions of the examination at different dates within a one-year period, (ii) clarify renewal and reinstatement requirements, and (iii) provide for a procedure to be used in the event that an examiner supervising an intern is unable to provide verification of experience.*

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.

**18VAC120-30-30. Advisory board.**

A. The Polygraph Examiners Advisory Board, consisting of [ eight ~~seven~~ ] members appointed by the director, shall exercise the authority delegated by the director consistent with § 2.2-2100 A of the Code of Virginia and advise the department on any matters relating to the practice of polygraphy and the licensure of polygraph examiners in the Commonwealth of Virginia.

B. The advisory board shall be composed of three Virginia licensed polygraph examiners employed by law enforcement agencies of the Commonwealth, or any of its political subdivisions; three Virginia licensed polygraph examiners employed in private industry; and two citizen members as defined in §§ 54.1-107 and 54.1-200 of the Code of Virginia. All members must be residents of the Commonwealth of Virginia.

C. Each member shall serve a four-year term. No member shall serve more than two consecutive four-year terms.

Part II
Entry Requirements

**18VAC120-30-40. Basic qualifications for licensure and registration.**

A. Every applicant to the board for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years old.

2. The applicant is in good standing as a licensed polygraph examiner in every jurisdiction where licensed. The applicant must disclose if he has had a license as a polygraph examiner 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. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a polygraph examiner and whether he has been previously licensed in Virginia as a polygraph examiner.

3. The applicant is fit and suited to engage in the profession of polygraphy. The applicant must disclose if he has been convicted in any jurisdiction of a felony or misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in the evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

4. The applicant has disclosed his physical address. A post office box is not acceptable.

5. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as a service agent for all actions filed in any court in this Commonwealth.

6. The applicant has signed, as part of the application, a statement certifying that he has read and understands the Virginia polygraph examiner's license law and regulations.

7. The applicant has submitted an application, provided by the department, which shall include criminal history record information from the Central Criminal Records Exchange, with a report date within 30 days of the date the application is received by the department.

B. The department may (i) make further inquiries and investigations with respect to the qualifications of the applicant, (ii) require a personal interview with the applicant, (iii) or both.

C. The applicant shall pass all parts of the polygraph examiners licensing examination approved by the department ~~at a single administration~~ within one year from examination approval in order to be eligible for a polygraph examiners license.

**18VAC120-30-70. Procedures for licensed polygraph examiners to certify the procedures to be used to supervise an intern during an internship.**

A. Each licensee supervising an intern shall file with the application of the intern a description of the following:

1. The frequency and duration of contact between the licensee and the intern; and

2. The procedures to be employed by the licensee in reviewing and evaluating the intern's performance; and

3. The polygraph technique(s) to be used.

B. The licensee supervising the intern shall review the intern's charts prior to the intern rendering ~~of any~~ an opinion or conclusion on any polygraph examination administered by the intern.

C. In the event the licensed supervisor is unable to continue [ , ] any review of experience shall be at the discretion of the board.

**18VAC120-30-100. Fees.**

A. All application fees for licenses and registrations are nonrefundable and shall not be prorated. The date of receipt by the department is the date that will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department.

D. The following fees listed in the table apply:

| FEE TYPE | AMOUNT DUE | WHEN DUE |
|---|---|---|
| Application for Examiner's License | $45 | With application |
| Application for Examiner's License by Reciprocity | $95 | With application |
| Application for Intern Registration | $75 | With application |
| Application for Examiner's License by Examination | $200 | With application |
| Reexamination | $200 | With approval letter |

| | | |
|---|---|---|
| Renewal | $55 | Up to one calendar month after the expiration date on license |
| Reinstatement | $75 | One to six calendar months after the expiration date on license |
| ~~Duplicate Wall Certificate~~ | ~~$25~~ | ~~With written request~~ |
| ~~Certificate of Licensure~~ | ~~$25~~ | ~~With written request~~ |

**18VAC120-30-110. Examinations.**

All examinations required for licensure shall be approved by the advisory board and provided by the department, a testing service acting on behalf of the advisory board, or another governmental agency or organization.

Applicants for licensure shall pass a two-part licensing examination approved by the board, of which Part I is a written examination and Part II is an Advisory Board Evaluation. Applicants must pass the written examination in order to sit for the advisory board evaluation ~~being administered the same day~~.

The applicant shall follow all the rules established by the department with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the department with regard to conduct at the examination shall be grounds for denial of application.

**18VAC120-30-160. Qualifications for renewal.**

A. Applicants for renewal of a license shall continue to meet the standards for entry as set forth in subdivisions A 2 through A 5 of 18VAC120-30-40. The board may deny renewal of a license for the same reasons as it may refuse initial issuance or discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, or processing of a new application; or exam administration.

Part IV
Reinstatement

**18VAC120-30-170. Reinstatement required.**

A. Any licensee who fails to renew his license within one calendar month after the expiration date on the license shall be required to apply for reinstatement and submit the proper fee referenced in 18VAC120-30-100.

B. Six calendar months after the expiration date on the license, reinstatement is no longer possible. To resume practice as a polygraph examiner, the former licensee must apply as a new applicant for licensure, meeting all ~~educational, examination and experience requirements as listed in the regulations~~ then current entry requirements at the time of reapplication, including retaking an examination.

C. Any examiner activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under § 54.1-111 of the Code of Virginia.

**18VAC120-30-180. Department discretion to deny reinstatement.**

The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee.

Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding the services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Part V
Standards of Practice and Conduct

**18VAC120-30-200. Polygraph examination procedures.**

A. Each licensed polygraph examiner and registered polygraph examiner intern must post, in a conspicuous place for the examinee, his license or registration, or a legible copy of his license or registration to practice in Virginia.

B. The examiner shall provide the examinee with a written explanation of the provisions of 18VAC120-30-200, 18VAC120-30-210 and 18VAC120-30-220 at the beginning of each polygraph examination.

C. The examinee may request a recording of the polygraph examination being administered. Each examiner shall maintain recording equipment and recording media adequate for such recording. The examiner shall safeguard all examination recordings with the records he is required to keep pursuant to 18VAC120-30-230. All recordings shall be made available to the department, the examinee or the examinee's attorney upon request. The examiner may charge the examinee a fee not to exceed ~~$25~~ $35 only if the

examinee requests and receives a copy of an examination ~~tape recording~~.

D. The examinee shall be entitled to a copy of all portions of any written report pertaining to his examination which is prepared by the examiner and provided to any person or organization. The examinee shall make his request in writing to the examiner. The examiner shall comply within 10 business days of providing the written report to any person or organization or receiving the examinee's written request, whichever occurs later. The examiner may collect not more than $1.00 per page from the examinee for any copy provided.

E. The provisions of subsections B, C, and D of this section shall not be applicable to any examination conducted by or on behalf of the Commonwealth or any of its political subdivisions when the examination is for the purpose of preventing or detecting crime or the enforcement of penal laws. However, examiners administering examinations as described in this section shall comply with subsection B of this section through a verbal explanation of the provisions of 18VAC120-30-210 and 18VAC120-30-220.

**18VAC120-30-220. Examination standards of practice.**

A. The examiner shall comply with the following standards of practice and shall disclose to each examinee the provisions of this subsection and shall not proceed to examine or continue the examination if it is or becomes apparent to the examiner that the examinee does not understand any of these disclosures:

1. All questions to be asked during the polygraph test(s) shall be reduced to writing and read to the examinee.

2. The examinee or the examiner may terminate the examination at any time.

3. If the examination is within the scope of § 40.1-51.4:3 of the Code of Virginia, the examiner shall explain the provisions of that statute to the examinee.

4. No questions shall be asked concerning any examinee's lawful religious affiliations, lawful political affiliations, or lawful labor activities. This provision shall not apply to any such affiliation which is inconsistent with the oath of office for public law-enforcement officers.

5. The examinee shall be provided the full name of the examiner and the name, address, and telephone number of the department.

6. During no part of a preemployment polygraph examination shall the examiner ask questions concerning an examinee's sexual preferences or sexual activities except as in accordance with § 40.1-51.4:3 or 54.1-1806 of the Code of Virginia.

B. An examiner shall not perform more than 12 polygraph examinations in any 24-hour period.

C. An examiner shall not ask more than 16 questions per chart on a single polygraph test. Nothing in this subsection shall prohibit an examiner from conducting more than one polygraph test during a polygraph examination.

D. An examiner shall allow on every polygraph test a minimum time interval of 10 seconds between the examinee's answer to a question and the start of the next question.

E. An examiner shall record at a minimum the following information on each polygraph test chart produced:

1. The name of the examinee;

2. The date of the examination;

3. The time that each test begins;

4. The examiner's initials;

5. Any adjustment made to component sensitivity;

6. The point at which each question begins and each answer is given;

7. Each question number; and

8. Each answer given by the examinee.

F. An examiner shall render only three evaluations of polygraph tests:

1. Deception indicated;

2. No deception indicated; or

3. Inconclusive.

An examiner may include in his report any information revealed by the examinee during the polygraph examination.

Nothing in this section shall prohibit an examiner from explaining the meaning of the above evaluations.

G. An examiner shall not render a verbal or written report based upon polygraph test chart analysis without having conducted at least two polygraph ~~tests~~ charts. Each relevant question shall have been asked at least once on each of at least two polygraph ~~tests~~ charts.

H. An examiner may make a hiring or retention recommendation for the examiner's ~~full-time~~ employer provided the hiring or retention decision is not based solely on the results of the polygraph examination.

**18VAC120-30-230. Records.**

The licensed polygraph examiner or registered polygraph examiner intern shall maintain the following for at least one year from the date of each polygraph examination:

1. Polygraphic charts;

2. Questions asked during the examination;

3. A copy of the results and the conclusions drawn;

4. A copy of ~~any~~ every written report provided in connection with the examination; and

5. ~~Tape~~ Electronic recordings of examinations made in compliance with subsection C of 18VAC120-30-200.

**18VAC120-30-240. ~~Grounds for fines, denial, suspension or revocation of licenses or denial or withdrawal of school approval~~ Prohibited acts.**

The department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval upon a finding that the applicant, licensee, registrant, or school:

1. Has presented false or fraudulent information when applying for any license or registration, renewal of license or registration, or approval;

2. Has violated, aided, or abetted others to violate Chapters 1 through 3 of Title 54.1 or §§ 54.1-1800 through 54.1-1806 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of this chapter;

3. ~~Has been convicted of any misdemeanor directly related to the occupation or any felony.~~ [ ~~Having~~ Has ] been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of any misdemeanor or felony. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any pleas of nolo contendere shall be considered a conviction for the purposes of this ~~section~~ subsection. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where the conviction occurred shall be forwarded to the board within ~~10~~ 30 days of entry and shall be admissible as prima facie evidence of such conviction;

~~4. Has made any misrepresentation or false promise or caused to be published any advertisement that is false, deceptive, or misleading;~~

[ 4. Has made, in the course of soliciting for or advertising a business or service licensed under § 54.1-1802 of the Code of Virginia, a false, deceptive, or misleading statement orally, in writing, or in printed form; ]

[ 5. ~~4.~~ ] Has allowed one's license or registration to be used by anyone else;

[ 6. ~~5.~~ ] Has failed, within a reasonable period of time 21 days, to provide any records or other information requested or demanded by the department;

[ 7. ~~6.~~ ] Has displayed professional incompetence or negligence in the performance of polygraphy; [ ~~or~~ ]

[ 8. ~~7.~~ ] Has violated any provision of 18VAC120-30-220 [ ~~.~~ ; ]

[ ~~8. Failure of the regulant, school's owner, or instructor~~ 9. Has failed ] to maintain for a period of one year from the date of each administered polygraph examination a complete and legible copy of all documents relating to the polygraph examination including, but not limited to, examination questions, results, conclusions drawn, and written or electronic reports;

[ ~~9. Failure~~ 10. Has failed ] to inform the board in writing within 30 days that the regulant, school's owner, or instructor has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of polygraphy [ ~~.~~ ; ]

[ ~~10. Refusing or failing,~~ 11. Has refused or failed, ] upon request, to produce to the board, or any of its agents, any document, book, or record, or copy of it in the regulant's or school's owner's possession concerning all records for which the regulant, school's owner, or instructor is required to maintain [ ~~.~~ ; or ]

[ ~~11. Failing~~ 12. Has failed ] to respond to an investigator or [ ~~providing~~ provides ] false, misleading, or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the regulant, school's owner, or instructor.

Part VI
Approval of Polygraphy School

**18VAC120-30-260. Approval of polygraph school curriculum.**

Schools seeking approval of their polygraph curriculum shall submit the application for approval of a polygraph school to the department for consideration. The application shall include:

1. The name and address of the school;

2. The name and address of the proprietor, partnership, corporation or association if different from the school name;

3. The owners of the school;

4. The names and qualifications of the instructors which shall be indicated on instructor qualifications form; and in a format approved by the advisory board; [ ~~and~~ ]

5. The subject courses and the number of instruction hours assigned to each.

**18VAC120-30-270. Minimum requirements for school curriculum.**

A. There must be one type of ~~accepted~~ polygraph instrument per three students in the course.

B. To receive approval, the institution must offer a minimum of 240 hours of instruction, unless the school has obtained approval from the department for less than the minimum hours of course instruction. The following subject areas must be included in the school's curriculum:

1. Polygraph theory;

2. Examination techniques and question formulation;

3. Polygraph interrogation;

4. Case observation;

5. Polygraph case practice;

6. Chart interpretation;

7. Legal aspects of polygraph examination;

8. Physiological aspects of polygraphy;

9. Psychological aspects of polygraphy;

10. Instrumentation;

11. History of polygraph; ~~and~~

12. Reviews and examinations [ ~~.; and;~~ ]

13. Ethics as it relates to polygraphy.

C. Out-of-state schools seeking approval of their curriculum which has been approved by their state must have the appropriate regulatory agency of their state certify such approval to the department.

**18VAC120-30-300. Periodic requalification for continued course approval.**

At times established by the department, or during the random audit of any course, the department may require that schools that have previously obtained course approval, provide the department with evidence, in a form set forth by the department, that they continue to comply with the requirements of 18VAC120-30-260, 18VAC120-30-270 and 18VAC120-30-280. Failure to continue to comply with the department's requirements or respond to such a request may result in the department withdrawing its approval.

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 (18VAC120-30)

~~Internship Completion and License Exam Form, 16EXINT (rev. 8/07).~~

~~License/Intern Registration Application, 16LIC (rev. 8/07).~~

~~Polygraph School Curriculum Approval Application, 16SCHL (rev. 11/02).~~

~~Supervisor Endorsement Form, 16SEND (rev. 11/02).~~

[ ~~Internship Completion and License Exam Form, 16EXINT (rev. 9/12)~~

~~License/Intern Registration Application, 16LIC (rev. 9/12)~~

~~Polygraph School Curriculum Approval Application, 16SCHL (rev. 9/12)~~

~~Supervisor Endorsement Form, 16SEND (rev. 9/12)~~

Internship Completion and License Exam Form, A456-16EXINT-v5 (rev. 10/13)

License/Intern Registration Application, A456-16LIC-v3 (rev. 8/13)

Polygraph School Curriculum Approval Application, A456-16SCHL-v3 (rev. 8/13)

Supervisor Endorsement Form, A456-16SEND-v3 (rev. 8/13)

Commonwealth of Virginia Polygraph Examiners License Examination, A543-16CIB-v10 (eff. 10/13) ]

VA.R. Doc. No. R10-2217; Filed October 21, 2013, 1:49 p.m.

## REAL ESTATE APPRAISER BOARD

### Proposed Regulation

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-90, 18VAC130-20-130, 18VAC130-20-240).**

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

Public Hearing Information:

December 2, 2013 - 11 a.m. - 9960 Mayland Drive, Suite 200, Board Room 4, Richmond, VA 23233

Public Comment Deadline: January 17, 2014.

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

Basis: The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Real Estate Appraiser Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

1. Section 54.1-113 (Callahan Act) requires the board to adjust fees levied by it for certification or licensure and renewal so that the fees are sufficient but not excessive to cover expenses.

2. Subdivision 4 of § 54.1-201 describes each regulatory board's power and duty to "levy and collect fees for the 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..."

3. Subdivision 3 of § 54.1-304 describes the power and duty of the director 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 the Department shall be paid..."

4. Section 54.1-308 provides for compensation of the Director of the Department of Professional and Occupational Regulation, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

5. Section 54.1-2013 provides the Real Estate Appraiser Board with the power and duty to "levy and collect fees for the 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..."

These Code sections require the department to:

- Pay expenses of each board and the department from revenues collected;

- Establish fees adequate to provide sufficient revenue to pay expenses;

- Account for the revenues collected and expenses charged to each board; and

- Revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the department:

- Accounts for the revenue collected for each board distinctly;

- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;

- 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

- 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.

Fee adjustments are mandatory in accordance with these Code of Virginia sections. The board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Purpose: The intent of the proposed change in the regulations is to adjust licensing fees for regulants of the Real Estate Appraiser Board. The board must establish fees adequate to support the costs of the board's operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the next biennium, fees will not provide adequate revenue for those costs.

The board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive an appraiser, temporary appraiser, or appraiser trainee license; an appraisal instructor certification; or an appraisal business registration. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, citizen complaints against regulants could not be investigated and processed in a timely manner. This could provide an opportunity for a dishonest appraiser, appraisal instructor, or appraisal business, waiting for action to be taken by the board, to continue to operate, harming additional citizens.

The department receives no general fund money but, instead, is funded almost entirely from revenue collected for license applications, renewal fees, and other 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 that revenue. Fee revenue collected on behalf of the various boards funds the department's authorized special revenue appropriation.

The board has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to adjust the fees related to obtaining and maintaining licensure, registration, certification, or approval as an appraiser, appraiser trainee, appraisal business, appraisal instructor, and appraisal course.

1. The registration fee for an appraisal business is adjusted from $100 to $160.

2. The application fee for an appraiser license is adjusted from $141 to $201.

3. The application fee for a temporary appraiser license is adjusted from $45 to $75.

4. The application fee for an appraiser trainee license is adjusted from $96 to $146.

5. The application fee to upgrade an appraiser license is adjusted from $65 to $130.

6. The application fee for an appraisal instructor certification is adjusted from $135 to $150.

7. The renewal fee for an appraisal business is adjusted from $60 to $120.

8. The renewal fee for an appraiser license is adjusted from $61 to $116.

9. The renewal fee for an appraiser trainee license is adjusted from $61 to $116.

10. The renewal fee for an appraisal instructor certification is adjusted from $125 to $150.

11. The reinstatement fee for an appraisal business is adjusted from $40 to $160.

12. The reinstatement fee for an appraiser license is adjusted from $60 to $180.

13. The reinstatement fee for an appraiser trainee license is adjusted from $60 to $125.

14. The reinstatement fee for an appraisal instructor certification is adjusted from $105 to $150.

15. The approval fee for an appraisal course is adjusted from $135 to $150.

Issues: The Code of Virginia establishes the board as the state agency that oversees licensure of appraisers providing services in Virginia. The board's primary mission is to protect the citizens of the Commonwealth 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 Code of Virginia requires the department to comply with the Callahan Act. The proposed fee adjustments 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 Real Estate Appraiser Board (Board) proposes to increase most fees paid by licensees, registrants and certificate holders that are subject to the Board's authority.

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 current regulations, business entities that practice real estate appraisal pay $100 for initial registration with the Board, a biennial renewal fee of $60 and, when necessary, a reinstatement fee of $100. Temporary certification for general or residential real estate appraisers and temporary licensure for residential real estate appraisers currently cost $45. Certified general real estate appraisers, certified residential real estate appraisers and licensed residential real estate appraisers all currently pay an initial fee of $141, a biennial renewal fee of $141 and, if applicable, a reinstatement fee of $201. Appraiser trainees currently pay an initial fee of $96, a biennial renewal fee of $60 and a fee of $121 if they ever need to be reinstated by the Board. Instructors pay an initial certification fee of $135 for certification, a fee of $125 for biennial certification renewal and a $230 fee if they ever have to get their certification reinstated. Licensees currently pay $65 for upgrade of license. The fee for real estate appraiser training course approval is currently $135. The Board now proposes to increase all of these fees.

Below is a comparison tale for current and proposed fees:

| FEE TYPE | CURRENT FEE | PROPOSED FEE | % INCREASE |
|---|---|---|---|
| Initial Registration of Business Entity | $100 | $160 | 60% |
| Initial Temporary Certification for General Real Estate Appraiser | $45 | $75 | 67% |
| Initial Temporary Certification for Residential Real Estate Appraiser | $45 | $75 | 67% |
| Initial Temporary Licensure for Residential Real Estate Appraiser | $45 | $75 | 67% |
| Initial Certification for General Real Estate Appraiser | $141 | $281 | 99.3% |
| Initial Certification for Residential Real Estate Appraiser | $141 | $281 | 99.3% |
| Initial Licensed Residential Real Estate Appraiser | $141 | $281 | 99.3% |
| Initial Registration of Appraiser Trainee | $96 | $146 | 52% |
| Upgrade of Licensure | $65 | $130 | 100% |
| Initial Instructor Certification | $135 | $150 | 11% |
| Renewal of Certification for General Real Estate Appraiser | $141 | $196 | 39% |
| Renewal of Certification for Residential Real Estate Appraiser | $141 | $196 | 39% |

| | | | |
|---|---|---|---|
| Renewal of Licensed Residential Real Estate Appraiser | $141 | $196 | 39% |
| Renewal of Appraiser Trainee Registration | $61 | $116 | 90% |
| Renewal of Business Entity Registration | $60 | $120 | 100% |
| Renewal of Instructor Certification | $125 | $150 | 20% |
| Reinstatement of Certification for General Real Estate Appraiser | $201 | $376 | 87% |
| Reinstatement of Certification for Residential Real Estate Appraiser | $201 | $376 | 87% |
| Reinstatement of Licensed Residential Real Estate Appraiser | $201 | $376 | 87% |
| Reinstatement of Appraiser Trainee Registration | $121 | $241 | 99.3% |
| Reinstatement of Business Entity Registration | $100 | $280 | 180% |
| Reinstatement of Instructor Certification | $230 | $300 | 30.43% |
| Training Course Approval | $135 | $150 | 11% |

Board staff reports that, although revenues have fallen short of being able to pay for all expenditures in this and the last biennium, the Board had excess balances that covered budget shortfalls. Absent some fee increase, Board staff reports that the Board will run a deficit in the next biennium. In addition to a surplus finally being depleted, Board staff reports that fees will need to be raised because expenses for developing Department of Professional and Occupational Regulation's (DPOR's) new customer support and licensure software have greatly increased information technology costs over the last several years.

While the number of entities that the Board regulates has increased, other things being equal, the fees from additional regulants would be expected to cover application costs, customer support services costs and any other expenses that the Board might incur in regulating them. Because fees have been kept artificially low so that the Board could use up the surplus that it had accrued, fees from each new licensee or registrant may not, in this instance, been enough to cover the per person application and customer support costs. This notwithstanding, it is likely that the necessity of raising fees would not be as urgent as it now is without large and continuing increases in information technology (IT) expenses over the last few years.

Board staff reports that the 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. 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 licensed or registered and, so, will likely slightly decrease the number of people who choose to be remain in these jobs or businesses. To the extent that the public benefits from the Board regulating these professional populations, they will also 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 4,243 real estate appraisers.

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

Projected Impact on Employment. Fee increases in this regulatory action will likely marginally decrease the number of individuals who choose to work in professional fields that are regulated by the Board. Individuals who work part time or whose earnings are only slightly higher in these regulated fields than they would be in other jobs that do not require licensure or registration will be more likely to be affected.

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 entities 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 license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, 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, 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 Professional and Occupational Regulations concurs with the approval of the economic impact analysis.

Summary:

*The proposed amendments increase fees for (i) obtaining and maintaining licensure, registration, or certification as a real estate appraiser, appraiser trainee, appraisal business, and appraisal instructor and (ii) approval of a real estate appraisal course.*

**18VAC130-20-90. Application and registration fees.**

There will be no pro rata refund of these fees to licensees who resign or upgrade to a higher license or to licensees whose licenses are revoked or surrendered for other causes. All application fees for licenses and registrations are nonrefundable.

1. Application fees for registrations, certificates and licenses are as follows:

| | |
|---|---|
| Registration of business entity | ~~$100~~ $160 |
| Certified General Real Estate Appraiser | ~~$150~~ $281 |
| Temporary Certified General Real Estate Appraiser | ~~$45~~ $75 |
| Certified Residential Real Estate Appraiser | ~~$150~~ $281 |
| Temporary Certified Residential Real Estate Appraiser | ~~$45~~ $75 |
| Licensed Residential Real Estate Appraiser | ~~$150~~ $281 |
| Temporary Licensed Residential Real Estate Appraiser | ~~$45~~ $75 |
| Appraiser Trainee | ~~$105~~ $146 |
| Upgrade of license | ~~$65~~ $130 |
| Instructor Certification | ~~$135~~ $150 |

Application fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a $30 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

2. Examination fees. 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.

3. An $80 National Registry fee assessment for all permanent license applicants is to be assessed of each applicant in accordance with § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 USC §§ 3331-3351). This fee may be adjusted and charged to the applicant in accordance with the Act. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

**18VAC130-20-130. Fees for renewal and reinstatement.**

A. All fees are nonrefundable.

B. National Registry fee assessment. In accordance with the requirements of § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, $80 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. The registry fee may be adjusted in accordance with the Act and charged to the licensee.

Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a $30 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

C. Renewal fees are as follows:

| | |
|---|---|
| Certified general real estate appraiser | ~~$150~~ $196 |
| Certified residential real estate appraiser | ~~$150~~ $196 |
| Licensed residential real estate appraiser | ~~$150~~ $196 |
| Appraiser trainee | ~~$70~~ $116 |
| Registered business entity | ~~$60~~ $120 |
| Certified instructor | ~~$125~~ $150 |

D. Reinstatement fees are as follows:

| | |
|---|---|
| Certified general real estate appraiser | ~~$210~~ $376 |
| Certified residential real estate appraiser | ~~$210~~ $376 |
| Licensed residential real estate appraiser | ~~$210~~ $376 |
| Appraiser trainee | ~~$130~~ $241 |
| Registered business entity | ~~$100~~ $280 |
| Certified instructor | ~~$230~~ $300 |

**18VAC130-20-240. Course approval fees.**

| | |
|---|---|
| Course Approval Fee | ~~$135~~ $150 |

VA.R. Doc. No. R12-3187; Filed October 23, 2013, 12:43 p.m.

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# TITLE 22. SOCIAL SERVICES

## STATE BOARD OF SOCIAL SERVICES

### Final Regulation

Title of Regulation: **22VAC40-221. Additional Daily Supervision Rate Structure (adding 22VAC40-221-10 through 22VAC40-221-70).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 42 USC § 673.

Effective Date: January 1, 2014.

Agency Contact: Phyl Parrish, Program Manager, Policy and Legislation, Division of Family Services, Department of Social Services, 801 East Main Street, Richmond, VA 23219-2901, telephone (804) 726-7926, FAX (804) 726-7985, TTY (800) 828-1120, or email phyl.parrish@dss.virginia.gov.

Summary:

*This regulatory action establishes a structure for an enhanced maintenance payment for children who require increased supervision or support (additional daily supervision) because of identified needs, as required by the federal Administration for Children and Families (ACF) to draw down Title IV-E funds to reimburse Virginia for these payments.*

*The regulation (i) requires the use of an assessment instrument developed by the Department of Social Services (DSS), (ii) establishes how and when the instrument will be used, and (iii) sets forth the responsibilities of local departments of social services (LDSS) making the payments and of parents receiving payments. The regulation also establishes an enhanced maintenance payment process for emergency placements and rules for reviewing the results of the assessment process.*

*This regulatory action addresses only maintenance payments for the additional daily supervision needs of the child. It does not address the provision of services funded through the Comprehensive Services Act.*

*Changes to the regulation since the proposed stage include (i) expanding the time frame to conduct an assessment after an initial emergency placement; (ii) use of the assessment process for post-finalized adoptions; (iii) consideration of certain services in reducing the amount of the enhanced maintenance payment for foster parents; (iv) limiting when the assessment must be used in initial adoption assistance negotiations; (v) changing the date on which a new enhanced maintenance rate goes into effect; (vi) requiring the LDSS to give a copy of the assessment tool to the foster or adoptive parent; and (vii) eliminating the requirement to conduct a new assessment when the child moves from one home to another in a different child-placing agency.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 221
ADDITIONAL DAILY SUPERVISION RATE STRUCTURE

**22VAC40-221-10. Definitions.**

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

"Additional daily supervision" or "ADS" means a child's need for increased supervision and support. ADS is the basis for determining if an enhanced maintenance payment to a foster parent or an adoptive parent entering into an adoption assistance agreement is needed. The need for ADS is also the basis for increased expectations for the child-placing agency and the foster parent [ or the adoptive parent prior to the finalization of the adoption ] in meeting the needs of the child.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Adoption assistance agreement" is a written agreement between the local department of social services (LDSS) and the adoptive parent that is binding on both parties and includes maintenance and, when applicable, additional daily supervision, Medicaid, services and nonrecurring fees.

"Adoptive placement" means the placement of a child for the purposes of adoption in a home with a signed adoptive placement agreement.

"ADS emergency placement" means the sudden, unplanned, or unexpected placement of a child who needs immediate care in a foster home and the placement occurs prior to the agency obtaining adequate information regarding the child's needs. ADS emergency placements require the foster parent to provide increased supervision and support to ensure the child's safety.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to § 63.2-900, 63.2-903, or 63.2-1221 of the Code of Virginia. [ Officers, employees, or agents of the Commonwealth, or any locality, acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed. ]

"CRAFFT" means Community Resource, Adoptive, and Foster Family Training. CRAFFT specialists are available to local departments of social services to provide assistance regarding training for foster families.

"Department" means the [ ~~State~~ Virginia ] Department of Social Services.

"Enhanced maintenance payment" means the payment made to a foster parent over and above the basic foster care maintenance payment or to an adoptive parent when the [ ~~initial~~ ] adoption assistance agreement is negotiated. It is based on the needs of the child for additional daily supervision as identified by the uniform rate assessment tool.

"Foster care maintenance payment" means payments to cover the cost of food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child was enrolled at the time of placement.

"LDSS" means the local department of social services.

"Licensed" means licensed child-placing agencies; entities licensed by the Department of Behavioral Health and Developmental Services; licensed behavioral health professionals or behavioral health professionals working under the direct supervision of a licensed behavioral health professional.

"Treatment foster care" or "TFC" means a community-based program where services are designed to address the special needs of children and families. Services to children and youth are delivered primarily by treatment foster parents who are trained, supervised, and supported by agency staff. Treatment is primarily foster family based.

**22VAC40-221-20. Administration of the uniform rate assessment tool.**

A. A department approved uniform rate assessment tool shall be used to determine the additional daily supervision component of the foster care maintenance payment or the adoption assistance payment. Use of the rate assessment tool shall be applied consistently regardless of the child's maintenance funding source.

1. The LDSS having care and responsibility for the child is responsible to ensure the tool is completed with input from a child-specific team of individuals who are knowledgeable about the child's characteristics.

2. The team shall include the caseworker, foster or adoptive parents, and an individual trained to administer the rate assessment tool. Other individuals with knowledge of the child shall be invited to participate in the meeting or provide input about the child's needs. This shall include family members and the child as appropriate, other significant individuals in the child's social support network, the private child-placing agency staff involved in the care of the child, and other providers.

3. LDSS staff or other public child-serving agency individuals may be trained in accordance with [ ~~departmental guidance~~ the department's Child and Family Services Manual, Chapter E Foster Care, Section 14, July 2011 ] to administer the tool.

4. The child's assigned caseworker, foster or adoptive parents, or private agency staff shall not administer the tool.

5. The rate assessment tool shall be administered according to the following criteria and in accordance with [ ~~department guidance~~ the department's Child and Family Services Manual, Chapter E Foster Care, Section 14, July 2011 ]:

a. If the child is to be placed in a TFC home;

b. If the LDSS chooses to make enhanced maintenance payments for children in non-TFC homes;

c. At the time an adoption assistance agreement is negotiated [ ~~whether or not an ADS assessment has been previously administered for this child~~ when the child's needs prior to negotiating and signing the agreement indicate a need for ADS ]. A re-administration of the tool is not required if the adoption assistance agreement is signed within three months of a prior ADS assessment.

6. The rate assessment tool shall be re-administered:

[ ~~a. If a child moves to a TFC home in a different TFC agency;~~

~~b.~~ a. ] When requested and there is evidence of significant behavioral, emotional, or medical changes and [ ~~two~~ four ] or more weeks of additional support have become necessary to maintain the child in the home [ ~~;~~. ]

(1) Once requested, the rate assessment tool must be administered within 14 calendar days.

(2) If the rate assessment tool indicates a need for an increase [ or decrease ] in ADS, the increase [ ~~is retroactive to the date of the foster parent's request~~ or decrease takes effect on the first day of the subsequent month ].

[ ~~c.~~ b. ] No more often than quarterly for any child unless the previously stated criteria apply [ ~~; and.~~ ]

[ ~~d.~~ c. ] A minimum of once per year.

B. The individual administering the rate assessment tool shall:

1. Consider all input from all sources regarding the characteristics of the child and will rate each item on the tool;

2. Make the final decision as to how to rate a child's characteristics based on the evidence as presented;

3. Issue a final score on the tool within five business days of the meeting; and

4. Share a copy of the scored tool with the foster [ or adoptive ] parents and [ , if requested, ] review the tool with them [ ~~if requested~~ ].

**[ 22VAC40-221-25. Determining the enhanced maintenance rate.**

The child-specific team shall consider the services provided to the child that reduce or eliminate any direct additional supervision or support provided to the child by the foster parent and reduce the enhanced maintenance payment based on these services. ]

**22VAC40-221-30. Child-placing agency requirements.**

A. The child-placing agency that approved the home shall have face-to-face contacts with the foster parents at least monthly. Child-placing agencies may contract with licensed providers to conduct the in-home contacts with the foster parent.

B. Child-placing agencies shall have an appointed case worker on call and available to make face-to-face contact if necessary to provide services to the child and the foster family 24 hours per day, seven days per week.

1. Child-placing agencies may contract with licensed providers to perform this service.

2. Supervisory consultation to the on-call worker shall be available 24 hours per day, seven days per week and may be a service obtained through a contract with a licensed provider.

C. The child-placing agency shall monitor and document the contractor's performance if they choose to contract out the activities in subsections A and B of this section in accordance with [ ~~guidance developed by the department~~ the department's Child and Family Services Manual, Chapter E Foster Care, Section 14, July 2011 ].

D. Additional training shall be provided to the foster parents receiving an enhanced maintenance payment based on the needs of the foster parent and the children in care. Foster parents [ and adoptive parents prior to finalization of the adoption ] receiving enhanced maintenance payments shall be consulted on their training needs.

E. The foster care service plans developed for a child for whom enhanced maintenance is paid shall include but not be limited to:

1. Measurable goals, objectives, and strategies for the foster [ or adoptive ] parent and the child-placing agency in addressing the identified needs of the child;

2. Provisions for providing training for the foster [ or adoptive ] parents consistent with the identified needs of the child;

3. Provisions for services to prevent placement disruption and maintain a stable placement; and

4. The method developed jointly by the child-placing agency and the foster [ or adoptive ] parent to document the child's progress.

F. This section is not applicable in cases where a final order of adoption has been issued.

**22VAC40-221-40. Foster [ and adoptive ] home requirements.**

A. The requirements for foster [ ~~parent or~~ ] parents [ or adoptive parents, prior to a finalized adoption, ] receiving an ADS payment shall include but not be limited to:

1. Working with the child-placing agency to identify and participate in targeted training necessary to meet the support and supervision needs of the child;

2. Actively [ ~~participate~~ participating ] in the development and implementation of the foster care service plan;

3. [ ~~Agree~~ Agreeing ] to accept and participate in services to prevent placement disruption; and

4. [ ~~Monitor and document~~ Monitoring and documenting ] the child's progress based on a schedule and in a format developed in consultation with the child-placing agency.

B. This section is not applicable in cases once a final order of adoption has been issued.

**22VAC40-221-50. ADS emergency placement.**

Enhanced maintenance payments for the initial emergency placement of a child shall be based on a per diem not to exceed $1,600 per month.

1. The department may change the maximum per diem for initial emergency placements upon approval from the State Board of Social Services.

2. The enhanced maintenance payment per diem for the initial emergency placement includes the day the uniform rate assessment tool is administered to determine the on-going enhanced maintenance rate.

3. The rate assessment tool shall be administered within [ ~~30~~ 60 ] calendar days of the initial emergency placement of a child.

**22VAC40-221-60. Reviews.**

A representative of the child, including the foster parent or guardian ad litem, may request a review of the results of the rate assessment tool by the director of the LDSS that holds custody, if he feels the tool did not correctly identify the needs of the child. The director may not adjust the rate but may request a new assessment.

1. The representative shall have five business days to request a review.

2. The LDSS director or designee has 15 business days to conduct an administrative review of the request and may concur with the original decision or may order a new administration of the tool. The re-administration may occur by phone or videoconferencing.

3. The [ ~~LDSS~~ individual administering the rate assessment tool ] has 10 business days to re-administer the tool if requested by the director.

4. If the re-administration of the tool indicates a higher [ or lower ] payment rate, that rate shall [ ~~be retroactive to the date of the foster parent's request~~ take effect on the first day of the subsequent month ].

**[ 22VAC40-221-70. Post-finalized adoptions.**

Enhanced maintenance payments shall be made available to adoptive parents after the adoption has been finalized pursuant to the department's Child and Family Services Manual, Chapter E Foster Care, Section 17, April 2013.

1. The adoptive parent shall be required to submit an application for renegotiation of their adoption assistance agreement.

2. The documented needs of the child shall be the basis for a decision to provide an enhanced maintenance payment or a services payment.

3. Enhanced maintenance payments shall be documented in an adoption assistance agreement addendum.

[ DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-221)

Child and Family Services Manual, Chapter E Foster Care, Section 14, July 2011

Child and Family Services Manual, Chapter E Foster Care, Section 17, April 2013 ]

VA.R. Doc. No. R09-1868; Filed October 23, 2013, 9:06 a.m.

## Proposed Regulation

Title of Regulation: **22VAC40-601. Supplemental Nutrition Assistance Program (adding 22VAC40-601-70).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 7 CFR 271.4.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 17, 2014.

Agency Contact: Celestine Jackson, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7357, TTY (800) 828-1120, or email celestine.jackson@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia grants the State Board of Social Services authority to promulgate rules and regulations to operate assistance programs in Virginia. Federal regulations at 7 CFR 271.4 delegate responsibility to administer the Supplemental Nutrition Assistance Program (SNAP) within a state to the agency assigned responsibility for other federally funded public assistance programs. Federal regulations at 7 CFR 273.11(c)(3)(i) permit states to count all of the income of an ineligible immigrant or to count a prorated amount of the ineligible immigrant's income.

Purpose: The proposed amendments change how income is evaluated in determining SNAP eligibility for households that contain immigrants who do not meet the eligibility requirements to receive SNAP benefits. Only citizens and certain immigrants are eligible for SNAP benefits. Federal regulations at 7 CFR 273.4 outline eligibility requirements for those who are not citizens. This proposed action will not alter or establish requirements to identify which immigrants are eligible for SNAP benefits or to establish separate or additional SNAP eligibility rules or allowances.

The proposed amendments require local eligibility workers to count all the income of household members who are ineligible immigrants for SNAP purposes towards the determination of eligibility for SNAP for the remaining household members. Prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), states were required to prorate the income of the ineligible immigrant and use that prorated amount toward the eligibility of the remaining household members. PRWORA allowed each state the option to count all of the income of the ineligible immigrant or to prorate the income.

Prorating the income results in less money being counted as available to the SNAP household and conceivably results in a higher benefit. In SNAP households that do not include an ineligible immigrant, or other persons who are disqualified from receiving SNAP benefits, all of the income of all members is counted toward the household's eligibility, which results in a lower benefit. Prorating the income instead of counting the full income amount results in inequitable eligibility determinations when compared to citizen or eligible immigrant households with similar income amounts.

This action will align SNAP guidance with that for Medicaid and Temporary Assistance for Needy Families, as these programs count the full amount of ineligible immigrants' income to the eligibility determination.

This regulation promotes the welfare of Virginia residents by providing equal access to SNAP benefits. Receipt of SNAP benefits expands available household resources by setting aside money for food and thereby enhancing the health and welfare of eligible households by granting greater access to nutritious food. This amendment will not affect the safety of Virginia residents.

Substance: A proposed section will require SNAP eligibility and benefit level to be determined by using the full monthly income of household members who are ineligible for SNAP benefits because of their immigration status. This amendment requires the use of the full amount of income instead of a prorated amount.

Issues: The primary advantage of changing the income calculation method for SNAP households with ineligible immigrants will be to end the perceived inequitable treatment of households comprised of citizens or eligible immigrants with similar income amounts. In most other circumstances, the entire amount of income for a disqualified individual is counted for the remaining household members. There are limited instances when a pro rata share is counted to the remaining household members. The Department of Social Services (DSS) will continue to prorate the income of persons who are ineligible or disqualified for SNAP benefits for persons whose citizenship in the United States is questionable and persons who cannot or do not provide a social security number. DSS does not have authority to alter the income calculation method in these instances.

All other calculations and actions to determine SNAP eligibility and benefit level are unaffected. The action poses no disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulation will count the full income of an ineligible alien when determining the eligibility and amount of food stamp benefits of a household rather than counting only a prorated amount of the immigrant's income.

Result of Analysis. The proposed change will remove an economic inequality that currently exists between families with an ineligible non-alien and families with an ineligible alien when determining eligibility and amount of benefits in the food stamp program. However, the costs likely exceed the benefits since the proposed change makes some of the food stamp recipients in the Commonwealth worse off without making anyone else in the state better off by a comparable magnitude.

Estimated Economic Impact. These regulations set out rules for the Supplemental Nutrition Assistance Program (SNAP) also known as the "food stamp" program. Prior to the enactment of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), states were required to prorate[1] the income of the ineligible immigrant[2] and count the prorated amount toward the eligibility of the remaining household members for SNAP benefits. PRWORA allowed each state the option to count all of the income of the ineligible immigrant or to prorate the income.[3] Virginia has opted to count the prorated share of income since 1996, but with this action the State Board of Social Services proposes to count the entire income of the immigrant who is ineligible for food assistance.

The eligibility and amount of food stamp benefits are determined by looking at the combined income of the members in the household and the number of eligible members among other criteria. The eligibility determination counts full income of all individuals in the household unless the individual is an alien who is ineligible for food assistance. Even though their incomes are counted, benefits are not issued to ineligible individuals, aliens or non-aliens alike.

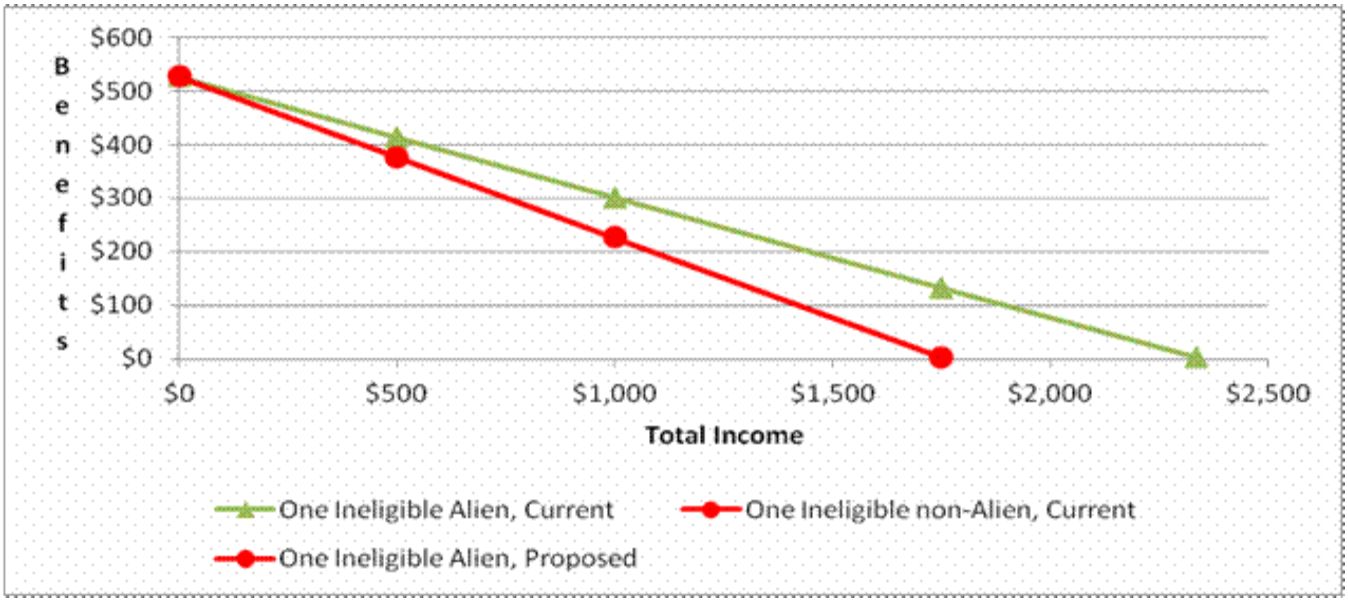
Since currently less than the full amount of the ineligible alien's income is counted in eligibility determinations, families with an ineligible alien are favored by the eligibility rules compared to the families with an ineligible non-alien member where every member's full income is counted.[4] The logic behind this conclusion is that a family with an ineligible alien is more likely to be determined eligible for food assistance and qualify for higher benefits due to the lower combined family income. Conversely, a family with an ineligible non-alien is less likely to be determined eligible for food assistance and qualify for lower benefits due to the higher combined family income. Thus, there exists a fairness

issue in determining combined family income for purposes of food stamp eligibility and benefit amount.

The figure in the following page shows the relationship between monthly income and benefits for two families for various income levels:[5] the red line marked with circles represents the income-benefit relationship for a family of four with one ineligible non-alien and the green line marked with triangles represents the same relationship for a family of four with one ineligible alien. For simplicity, each family is assumed to have two income earning adults and two minor children. Each adult is assumed to make one half of the total family income.

The graph shows that both families would receive $526 in benefits if they had no income. If the family income were $500 a month, the red line shows that the family with one ineligible non-alien member would receive $376 in food assistance compared to $413 for the family with one ineligible alien as indicated by the green line. The family with one ineligible alien would receive higher benefits compared to the family with one illegible non-alien for all income levels up to $1,750. The family with one ineligible non-alien would not be eligible for assistance beyond $1,750 income level. In contrast, the family with one ineligible alien would continue to be eligible up to $2,333 income level. The fairness issue appears to be prompted by the differential treatment of a family with an ineligible alien and a family with an ineligible non-alien.

*Income-Benefit Relationship for Two Families under Current and Proposed Rules*




The main economic impact of this proposed change will be on families that have at least one ineligible alien. First, their chances for food stamp eligibility will be reduced as the level of counted family income used for eligibility will be higher, or a lower level of total family income will render them ineligible.[6] According to the Department of Social Services (DSS), in the month of February 2012, approximately $117 million in SNAP benefits were issued to 914,445 persons in 439,966 households. Of the eligible persons, approximately 15,614 were excluded in the month of September 2011 from the program because of their immigration status. This suggests that the proposed regulation may affect approximately 7,500 families.[7] Among these families, the ones with high income levels will have a reduced chance to qualify for food assistance. Second, among the 7,500 families, the ones with lower income levels will have their benefit amounts reduced because their counted income will be higher.

The impact of the proposed change on the income-benefit relationship of a family with an ineligible alien is illustrated in the graph by tilting the lower part of the green line to the left so that it completely overlaps the red line and becomes identical to it. In other words, the proposed change aligns the income-benefit relationship of a family containing an ineligible alien with that of a family containing an ineligible non-alien so that there is no differential treatment between the two families.

The fact that the food stamp program is financed 100% by the federal government has a crucial role in determining the economic impact of this change to the Commonwealth. Since the families with an ineligible alien either will cease to receive benefits, or start receiving reduced benefits, a reduction in the funds coming into the Commonwealth from the federal government is expected. Unlike the state or private funds, influx of federal funds coming into the Commonwealth does not have offsetting reductions in funds elsewhere in the state and thus has significant positive impact on the state's economy. A reduction in net influx of federal spending directed to residents of Virginia is expected to start a chain reduction in economic activity. The first effect would be a

reduction in revenues of retailers. Then, retailers would buy less from their suppliers and hire fewer employees, creating more negative economic effects and so on. Even though the magnitude of the revenue loss to retailers is highly uncertain, the impact of such reduction would have negative consequences on Commonwealth's economy. Currently, there are 5,580 authorized retailers accepting food stamps in Virginia though households are not limited to use their benefits in Virginia.

The proposed change will also require DSS to reprogram the statewide eligibility system, change the program guidance, and train eligibility workers in local departments of social services. DSS estimates that three to four system experts would be involved in making the required system change over a three-month period. Also, approximately 2,500 local eligibility workers are estimated to be involved with the SNAP program and would have to be educated about this change. However, training usually covers multiple topics. Thus, the proposed change may be responsible for only a portion of the training costs that may accrue. Even though the proposed change is likely to create additional costs in terms of reprogramming, changing guidance documents, and training, DSS expects that these costs will be absorbed within existing budgets. On the other hand, the proposed change will also provide some administrative cost savings due to the expected reduction in the SNAP caseloads. Administrative costs of social services are funded 50% by federal government, 34.5% by state government, and 15.5% by local governments. While the administrative cost savings would work to offset some of the negative impact of reduced spending funded by the federal government to some extent, administrative costs are usually a fraction of benefits provided by most public assistance programs and therefore these savings are not likely to fully offset the expected negative impact.

Businesses and Entities Affected. The proposed regulation applies to SNAP program. In February 2012, there were approximately 914,445 persons in 439,966 households receiving benefits. Approximately 15,614 individuals in estimated 7,500 households were excluded in September 2011 from the program because of their immigration status. There are approximately 5,580 authorized retailers participating and about 2,500 eligibility workers involved in the program.

Localities Particularly Affected. The proposed regulation applies throughout the Commonwealth.

Projected Impact on Employment. The estimated reduction in the net influx of federal funds coming into the Commonwealth and reduction in caseloads are likely to reduce the demand for labor in Virginia. This reduction may be temporarily offset to a small degree by the increased labor demand necessary to reprogram the statewide eligibility system, to update guidance materials, and to attend and to provide training.

Effects on the Use and Value of Private Property. The proposed regulation does not have a direct effect on the use and value of private property. However, a reduction in food benefits would reduce revenues of authorized retailers participating in the program. A reduction in revenues may have a negative impact on the asset value of such businesses.

Small Businesses: Costs and Other Effects. The number of small businesses among the 5,580 authorized retailers is probably significant. The proposed change is expected to reduce issuance of food benefits in Virginia and consequently the revenues of retailers some of which may be small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes the adverse impact on small businesses while accomplishing the same goals.

Real Estate Development Costs. No effect on real estate development costs is expected.

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

Appendix

*Income-Benefit Comparison for Two Families under Current and Proposed Rules*

| *One Ineligible Non-Alien* | | *One Ineligible Alien* | | | |
|---|---|---|---|---|---|
| *Current and Proposed Rules* | | *Current Rules* | | *Proposed Rules* | |
| *Total Income* | *Benefits* | *Counted Income* | *Benefits* | *Counted Income* | *Benefits* |
| $0 | $526 | $0 | $526 | $0 | $526 |
| $500 | $376 | $375 | $413 | $500 | $376 |
| $1,000 | $226 | $750 | $301 | $1,000 | $226 |
| $1,750 | $2 | $1,312 | $132 | $1,750 | $2 |
| $2,333 | Ineligible | $1,750 | $2 | $2,333 | Ineligible |

[1] Prorate in this context means the income of the ineligible alien divided by the number of all household members is disregarded when calculating the total family income.

[2] Ineligible immigrant is referred in 7 CFR 273.11(c)(3)(i) to as someone: "who is not lawfully admitted for permanent residence; who is not granted asylum; who is not admitted as a refugee; who is not paroled; whose deportation or removal has not been withheld; who is not aged, blind, or disabled and is not admitted for temporary or permanent residence; or who is not a special agricultural worker admitted for temporary residence."

[3] See federal regulations at 7 CFR 273.11(c)(3)(i).

[4] Based on the comments provided, the impetus for this proposed change appears to originate from the eligibility workers at local departments of social services who believe there is a fairness issue involved in determining income for purposes of SNAP assessment.

[5] The values the graph is derived from are provided in a table in the appendix.

[6] This action will align SNAP guidance with that of Medicaid and Temporary Assistance to Needy families, as these programs count the full amount of ineligible immigrant's income in the eligibility determination.

[7] 15,614/(914,445/439,966)=7,512.

Agency's Response to Economic Impact Analysis: This document represents the Department of Social Services' response to the Department of Planning and Budget's revised economic impact analysis of the proposed change to the Supplemental Nutrition Assistance Program at 22VAC40-601.

DPB EIA: The proposed change will remove an economic inequality that currently exists between families with an ineligible non-alien and families with an ineligible alien when determining eligibility and amount of benefits in the food stamp program. However, the costs likely exceed the benefits since the proposed change makes some of the food stamp recipients in the Commonwealth worse off without making anyone else in the state better off by a comparable magnitude.

Agency Response: Treating all households in similar situations is paramount and overrides any other economic considerations, especially when households with all citizen members are penalized and receive lower benefits than households with non-citizen members under the current eligibility rules. The agency believes that all households should be treated equitably, and while it is unfortunate that households with non-citizens may have their benefits reduced, this regulation will subject them to the same eligibility rules that currently reduce benefits for households containing all citizen members.

DBP EIA: The main economic impact of this proposed change will be on families that have at least one ineligible alien. First, their chances for food stamp eligibility will be reduced as the level of counted family income used for eligibility will be higher, or a lower level of total family income will render them ineligible. According to the Department of Social Services (DSS), in the month of February 2012, approximately $117 million in SNAP benefits were issued to 914,445 persons in 439,966 households. Of the eligible persons, approximately 15,614 were excluded in the month of September 2011 from the program because of their immigration status. This suggests that the proposed regulation may affect approximately 7,500 families. Among these families, the ones with high income levels will have a reduced chance to qualify for food assistance.

Agency Response: The agency does not agree. The proposed regulation will put households with an ineligible alien on par with a household with an ineligible citizen, giving both households an equal chance of accessing the same benefit when their incomes are the same.

DPB EIA: The fact that the food stamp program is financed 100% by the federal government has a crucial role in determining the economic impact of this change to the Commonwealth. Since the families with an ineligible alien either will cease to receive benefits, or start receiving reduced

benefits, a reduction in the funds coming into the Commonwealth from the federal government is expected.

Agency Response: The DPB EIA overlooks the fact that federal SNAP benefits are financed by taxpayer dollars, including Virginia taxpayers. At a time when $.40 of every federal dollar spent is used to pay the federal debt, we should be very critical to cut federal spending if there is an inequity that favors one group over another. The federal deficit has long-term consequences to the Commonwealth if not resolved, compared to the one-time loss of federal SNAP funding. In addition, the American Recovery and Reinvestment Act increased SNAP benefit levels by 13.6% in March 2009, which was directly intended to stimulate economic activity in Virginia's retail grocery stores and businesses that support the grocery industry.

DPB EIA: The proposed change will also require DSS to reprogram the statewide eligibility system, change the program guidance, and train eligibility workers in local departments of social services. DSS estimates that three to four system experts would be involved in making the required system change over a three-month period. Also, approximately 2,500 local eligibility workers are estimated to be involved with the SNAP program and would have to be educated about this change. However, training usually covers multiple topics. Thus, the proposed change may be responsible for only a portion of the training costs that may accrue.

Agency Response: The programming changes will be minor since the system currently calculates the benefit for ineligible citizens without prorating the benefit. The training effort will also be minor since eligibility workers in local departments of social services know how to calculate the income of ineligible citizens without prorating. It is important to note that during the public comment period local staff overwhelmingly supported the proposed regulation as they recognize the inequity in the current benefit calculation for ineligible citizens.

DPB EIA: The estimated reduction in the net influx of federal funds coming into the Commonwealth and reduction in caseloads are likely to reduce the demand for labor in Virginia. This reduction may be temporarily offset to a small degree by the increased labor demand necessary to reprogram the statewide eligibility system, to update guidance materials, and to attend and to provide training.

Agency Response: The DPB EIA seems to indicate that high public assistance caseloads and individual dependence on public assistance are positive for Virginia's economy. To the contrary, Virginia's economy is the strongest when public assistance caseloads are low and individuals who were dependent on assistance have regained employment and are contributing to the Commonwealth's economic prosperity. In 1995, when Governor Robert F. McDonnell served in the Virginia House of Delegates, he was a very strong proponent of reforming Virginia's welfare system. He strongly supported the passage of the Virginia Independence Program as a way to reduce dependence on government assistance programs and promote personal responsibility through work.

Chapter 450 of the 1995 Acts of Assembly, the Virginia Independence Program, sets five goals that the legislation was intended to accomplish:

1. Offer Virginians living in poverty the opportunity to achieve economic independence by removing barriers and disincentives to work and providing positive incentives to work;

2. Provide families living in poverty with the opportunities and work skills necessary for self-sufficiency;

3. Allow families living in poverty to contribute materially to their own self-sufficiency;

4. Set out the responsibilities of and expectations for recipients of public assistance and the government; and

5. Provide families living in poverty with the opportunity to obtain work experience through the Virginia Initiative for Employment Not Welfare (VIEW).

During the deliberations on HB 2001, there was no discussion on the negative impact of reduced federal funding associated with falling caseloads, but rather the overall health of a Commonwealth that has citizens who support themselves and their families and do not depend on government assistance. The agency takes the same position on this proposed regulation.

Summary:

*The proposed amendment requires that the income of persons who are ineligible for SNAP benefits because of their immigration status will be used in its entirety to determine the SNAP eligibility of the remaining eligible household members and alters current processes by using the full amount of an ineligible immigrant's income instead of a prorated amount of the income.*

**22VAC40-601-70. Income calculation method of ineligible immigrants.**

The income and resources of an ineligible alien shall count in their entirety, and the ineligible alien's deductible expenses shall continue to apply to the remaining household members. The requirements of this section do not apply to those aliens described in 7 CFR 273.11(c)(3)(i)(A) through (G).

VA.R. Doc. No. R11-2893; Filed October 30, 2013, 8:33 a.m.

## Proposed Regulation

Title of Regulation: **22VAC40-661. Child Care Program (amending 22VAC40-661-10, 22VAC40-661-30, 22VAC40-661-40, 22VAC40-661-57, 22VAC40-661-60, 22VAC40-661-70, 22VAC40-661-80; adding 22VAC40-661-100).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 45 CFR 98.11.

Public Hearing Information:

December 10, 2013 - 6 p.m. - Department of Social Services, Central Regional Office, 1604 Santa Rosa Road, Richmond Room, Henrico, VA 23229

Public Comment Deadline: January 17, 2014.

Agency Contact: Mary Ward, Subsidy Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655, or email mary.ward@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia authorizes the State Board of Social Services to adopt regulations necessary or desirable to carry out the purpose of Title 63.2 (§ 63.2-100 et seq.) of the Code of Virginia. Other authority for the program implemented through this regulation are §§ 63.2-319, 63.2-510, 63.2-611, and 63.2-616 of the Code of Virginia.

Applicable federal laws are the Child Care and Development Block Grant of 1990 as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) and the Balanced Budget Act of 1997 (Public Law 105-33), as implemented in regulation at 45 CFR Parts 98 and 99. Additional federal authority comes from the Food Stamp Act of 1977, as amended.

Purpose: Currently, no statewide automation exists to support the Child Care Subsidy Program. In addition, program guidance currently allows some options for local department administration. These two factors have resulted in a number of variations in local program operations across the state. The proposed amendments will enable the department to initiate the changes necessary to develop a statewide automated program and manage child care providers across the state. An automated program will insure consistent application of program guidance regardless of the locality in which a client lives. State management of child care providers will assure both parents and providers of consistent application of policy and procedures regardless of the locality in which they live and do business. State management will provide a single point of contact for child care providers.

The regulation is essential to protect the health, safety, and welfare of citizens by providing financial assistance for eligible families to help pay the cost of child care so a parent or person who has assumed responsibility for a child can work or attend child care programs.

Substance: The following changes are proposed:

1. Require that all vendors sign and comply with the terms of their vendor agreements including payment processes, holiday schedules, absence policy, and attendance tracking. This change is necessary for vendors to be eligible to participate in the Child Care Subsidy Program and receive payment for their services, and to assure consistent statewide procedures.

2. Require that, to participate in the Child Care Subsidy Program, vendors must have a working telephone on site wherever care is provided. This change is necessary for both the health and safety of children and for participation in a new, centralized payment process for vendors.

3. Cap subsidy payments for care of children with special needs to bring consistency to such payments and to permit programmatic oversight of costs.

4. Allow payment of one annual registration fee to be paid to a child care provider for a child eligible for subsidized child care if the provider charges such a fee to the public. A limitation on payment of registration fees will result in more funding available to assist eligible families.

5. Eliminate payment of activity fees charged by providers, which will result in more funding available to assist eligible families.

6. Require that applicants for child care be at least 18 years of age to ensure that the contractual obligation of parents to pay a portion of their child care costs can be enforced.

7. Require that all applicants and recipients cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for the Child Care Subsidy Program, which will result in additional support and services for families.

8. Require that an appellant repay the amount of all child care payments made on behalf of the family during an appeal process if the action of the local department of social services is upheld by a hearing officer.

9. Require that applications for child care assistance be processed within 30 days. This change from 45 days to 30 days will result in more timely eligibility determination for assistance.

10. Limit receipt of child care assistance to 72 months per family. This change will bring consistency to the program statewide since time limitation on receipt of benefits had previously been an option for local departments. A 72-month lifetime limit for receipt of child care assistance will allow the program to serve more families.

11. Initiate an administrative disqualification hearing process to review allegations of intentional program violations made against a client when the Commonwealth's Attorney has determined that the case does not meet the criteria for prosecution.

12. Require that overpayments made as a result of a local department of social services' error be repaid to the Department of Social Services with local funds.

Issues: The proposed amendments will provide the following advantages to families, local departments of social services, child care providers, and the department:

1. Statewide automation will result in a more efficient and effective Child Care Subsidy Program, thereby providing more expedient receipt of services to families.

2. Statewide automation will insure uniform application of policy and procedures across the state, which will decrease errors.

3. State oversight and management of child care providers will assure families that child care providers have complied with all state requirements for program participation.

4. State oversight will allow providers a single point of contact.

5. Payments to child care providers will be processed more frequently.

6. A cap on the amount a child care provider can charge for the care of children with special needs, limiting payment of registration fees, and eliminating payment of other fees charged by child care providers will result in program savings that can be used to assist more families.

7. The recovery of payments made for services during an appeal process when a local department's decision is upheld will result in the ability to serve more families.

8. A shortened application processing time will result in more timely receipt of assistance to eligible families.

9. Limiting receipt of child care assistance to 72 months for non-TANF families will allow more families to be served.

10. Use of the administrative disqualification hearing process rather than a lengthy and costly court process will result in program savings.

11. The requirement that local departments repay the state with local-only funding when a local department error is discovered will result in Child Care and Development Fund savings and increased program integrity.

Issues that could be considered disadvantages to families are:

1. The requirement that applicants be at least 18 years of age, which could affect less than 1.0% of applicants.

2. A 72-month limitation, which could affect approximately 12% of families in the fee program.

3. Appellants will be required to repay the amount of all payments made during the appeal process when a local department's decision is upheld.

4. A cap on the amount that a provider can charge for care of children with special needs could decrease the number of child care providers willing to accept the approved rate.

5. A requirement to cooperate with DCSE as a condition of eligibility could discourage some applicants.

Issues that could be considered a disadvantage to child care providers are:

1. The requirement to have a working phone on site could result in an additional expense to those providers who do not currently have one.

2. A cap on the amount that a provider can charge for care of children with special needs could decrease the number of providers willing to participate in the program.

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 non-mandated child care subsidy program to facilitate a new statewide child care automation system. The Board specifically proposes to add a number of definitions and add some requirements now in guidance language into regulation. The Board also proposes several substantive changes: 1) the Board proposes to reduce the number of days from initial application to beginning date of service payment from 45 to 30, 2) mandate that Local Departments of Social Services (LDSS) have a 72 month limit on child care subsidy payments and 3) require that applicants for child care subsidy be at least 18 years of age.

Result of Analysis. Benefits likely outweigh costs for most changes. Costs and benefits will not be significantly altered for one proposed change and costs will likely outweigh benefits for one proposed change. There is insufficient information to ascertain whether benefits outweigh costs for one proposed change.

Estimated Economic Impact. Many of the changes that the Board proposes for these regulations will not alter how this child care subsidy program is administered. Definitions for ADH[1] and SNAP[2] are being added, for instance, so that interested parties will be better able to understand regulatory text. Changes like these are likely to have no costs attached. To the extent that these changes clarify the requirements of these regulations, regulated entities will benefit from them. In addition to these instructive changes, the Board proposes several substantive changes.

Currently, LDSS have 45 days to process applications and start child care subsidy payments. The Board proposes to reduce this time to 30 days. This change will likely benefit subsidy recipients as they may receive that subsidy several weeks sooner than they might under current regulations. This change may increase LDSS workload in this area given that they will have to process applications more quickly. However, the state Department of Social Services has recently taken responsibility for the approval of unregulated child care providers who want to participate in the program and for payments to providers. These actions have reduced the local department workload and make the 30-day deadline more feasible.

The Board proposes to add a 72 month limitation on receipt of assistance for those families in the Fee Program (income eligible, non-TANF[3] families and TANF families not in

VIEW[4] who receive assistance to support education or training only). Child Care for TANF working families, VIEW participants, and families receiving Head Start Wrap Around services are not impacted by the time limit in the current or proposed regulation. This change will likely neither reduce nor increase the amount of money dispensed by LDSS, but may allocate it to different families than it would absent this regulatory change.

There is no restriction on the age of parents that may apply for child care subsidies in current regulation. The Board proposes to require that applicant parents be at least 18 years old. Board staff reports that it is not the Board's intention to deny subsidies to underage parents and that the Board intends there to be a process for the parents or guardians of underage parents to apply for the subsidies instead. Proposed regulatory text does not, however, make clear that this is the Board's intention. Additionally, the regulatory text as proposed imposes an outright ban on individuals under 18 applying for a child care subsidy. This means that underage parents who do not have an adult who is legally responsible for them would be precluded from taking advantage of this subsidy program. DPB has pointed this out to Board staff and they have indicated that the Board will reconsider this language before the final stage of this regulatory action.

Businesses and Entities Affected. These proposed regulatory changes will affect all 120 local Departments of Social Services, all parents that receive subsidies through this program and their children and all child care providers that are paid with subsidies from this program.

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.

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[1] Administrative Disqualification Hearing

[2] Supplemental Nutrition Assistance Program

[3] Temporary Assistance for Needy Families

[4] Virginia Initiative for Employment not Welfare

Agency's Response to Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed action modifies the current child care subsidy program to facilitate the development and implementation of a statewide child care automation system and to expedite the automation process by ensuring uniform statewide child care guidance.*

*Proposed changes include (i) new requirements for vendors; (ii) a limitation on fees and rates paid by the program; (iii) a requirement for applicants to be at least 18 years of age; (iv) a requirement for both applicants and recipients to cooperate with the Division of Child Support Enforcement as a condition of eligibility; (v) a requirement that appellants refund the cost of services paid during the appeals process when the local department's decision is upheld; (vi) a decrease in the time allowed for processing applications; (vii) the use of the administrative disqualification hearing process to hear certain cases of alleged recipient fraud; (viii) the establishment of a time limitation for receipt of benefits in the fee program; and (ix) a change to require that overpayments caused as a result of a local department error be repaid to the state Department of Social Services with local funds.*

**22VAC40-661-10. Definitions.**

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

"ADH" means an administrative disqualification hearing, an impartial review by a state hearing officer of an individual's actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Background checks" means a sworn statement or affirmation as may be required by the Code of Virginia, the Criminal History Record Check, the Sex Offender and Crimes Against Minors Registry Check, and the Central Registry Child Protective Services check.

"Child care services" means those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also means activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents, establish paternity, and establish, modify, enforce, ~~or~~ collect, and disburse child support, or child and spousal support.

"Children with special needs" means children with documented developmental disabilities, mental retardation, emotional disturbance, sensory or motor impairment, or significant chronic illness who require special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cooperate with the Division of Child Support Enforcement" means that an applicant or recipient of child care subsidy services must provide the information required by the Division of Child Support Enforcement to locate an absent parent, establish paternity, or establish a support order, unless a basis for good cause for noncooperation is determined by the program.

"Copayment" means a specific fee that is a portion of a household's income that is contributed toward the cost of child care.

"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents; establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support, or child and spousal support.

"Department" means the State Department of Social Services.

"Family" means any individual, adult, or adults and/or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the federal Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include, but is not limited to, copayments, charges above the maximum reimbursable rate, or charges for registration, activities or transportation.

"Fee program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fraud" means the knowing employment of deception or suppression of truth in order to receive services one is not entitled to receive.

~~"FSET" means Virginia's Food Stamp Employment and Training Program, a multi-component employment and training program that provides Job Search, Job Search Training, Education, Training, and Work Experience to certain Food Stamp recipients.~~

"Good cause" means a valid reason why a parent in a two-parent household~~, or any other person under Virginia law responsible for the support of the children~~ cannot provide the needed child care~~,~~ or a valid reason why a parent will not be required to register with the Division of Child Support Enforcement.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five, pregnant women, and their families (as established by the Head Start Act (42 USC § 9840)).

"Income eligible" means that eligibility for subsidy is based on income and family size.

"In-home" means child care provided in the home of the child and parent when all the children in care reside in the home and the provider does not live in the home.

"In loco parentis" means an adult with whom the child is living who has assumed responsibility for the day-to-day care and supervision of the child.

"Intentional program violation" means fraudulent action by a client for the purpose of establishing or maintaining the

family's eligibility for child care subsidy, increasing or preventing a reduction in the amount of the subsidy, or causing an improper payment to be made by intentionally giving false or misleading information.

"Level two provider" means a child care provider who is licensed by the Department of Social Services, approved by a licensed family day system, approved under local ordinance according to § 15.2-914 of the Code of Virginia, or federally approved.

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

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the state Child Care and Development Fund plan filed with the ~~United States~~ U.S. Department of Health and Human Services.

"Noncooperation with DCSE" means failure of an applicant or recipient to provide the local department or the Division of Child Support Enforcement with information required to establish paternity or an order for child support, without good cause.

"Nonfraud overpayment" means an overpayment that was caused by the local department, or by an inadvertent household or provider error.

"Parent" means the primary adult caretaker or guardian of a child.

"Provider" means a person, entity, or organization providing child care services.

"Resource and referral" means services that provide information to parents to assist them in choosing child care, and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

"SNAP" means the Supplemental Nutrition Assistance Program, a program administered by the United States Department of Agriculture to reduce hunger and increase food security.

"SNAPET" means Supplemental Nutrition Assistance Program Employment and Training, which provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

"Subsidy ~~programs"~~ program" means the department ~~programs~~ program that ~~assist~~ assists low income eligible families with the cost of child care~~, including the TANF child care program and the income eligible child care programs~~.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary assistance for needy families" or "TANF" means the program administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy to eligible former TANF recipients after the TANF case closes.

**22VAC40-661-30. Child care programs.**

Child care subsidy, to the extent of available funding, is provided through the following programs:

1. TANF Child Care Program. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed care for the TANF capped child. These services are also provided to:

a. A child who receives Supplemental Security Income (SSI), if the parent is on the TANF grant and if the child would have been in the TANF assistance unit were it not for the receipt of SSI, or

b. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

2. Income eligible child care programs.

a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients to support parental employment if the TANF case is closed, and they are found income eligible.

b. Head Start child care. Head Start child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start core hours.

c. Fee child care. Fee child care subsidy and services are made available to children in eligible low income families who are not receiving TANF, not in the Head Start Program, and who meet the eligibility criteria for child care, to the extent ~~of available~~ funding is available.

3. ~~Food Stamp~~ SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's ~~FSET~~ SNAPET program to allow participation in an approved activity.

**22VAC40-661-40. State income eligible scale and copayments.**

A. State income eligible scale. The department establishes the scale for determining financial eligibility for the income eligible child care programs. Income eligibility is determined by measuring the family's income and size against the percentage of the federal poverty guidelines for their locality. Income to be counted in determining income eligibility

includes all earned and unearned income received by the family except certain disregarded income ~~: Supplemental Security Income; TANF benefits; general relief; food stamp benefits; child support paid to another household; earnings of a child under the age of 18 years; garnished wages; earned income tax credit; lump sum child support payments; and scholarships, loans, or grants for education except any portion specified for child care~~.

Unless a local alternate scale is approved, the income eligibility scale established by the department must be used for the transitional, Head Start and fee programs. Proposed alternate sliding scales must be approved by the department prior to submission to the local board of social services.

B. Copayments. Copayments are established by the department. All families receiving child care subsidy have a copayment responsibility ~~of 10% of their countable monthly income or the copayment established by an approved local alternate scale~~ except that families whose gross monthly income is at or below the federal poverty guidelines who are recipients of TANF, participants in the ~~FSET~~ SNAPET program, or families in the Head Start program will have no copayment.

~~C. Five year limit. Localities may limit receipt of fee child care program subsidies to a maximum of 60 months (five years). Receipt of transitional child care does not count toward the five years.~~

~~D. Waiting list. Local departments must have a waiting list policy for the fee child care program. Prior receipt of TANF must not be a reason for preferential placement on a waiting list. Proposed policy for a waiting list must be approved by the department prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly.~~

**22VAC40-661-57. Provider requirements.**

A. Providers who participate in the subsidy program must be at least 18 years of age, obtain background checks as required by the regulations for their type of child care, and participate in annual training. Providers and other individuals required to have background checks according to § 63.2-1725 of the Code of Virginia who are not otherwise governed by another state regulation requiring background checks shall obtain background checks as defined in this regulation.

B. Background checks for regulated child care providers and local department approved child care providers remain valid according to the provisions of the regulations for their type of child care. Background checks for employees of certified preschools or nursery schools and unregulated family day home providers that participate in the child care subsidy program will remain valid for three years as long as the provider provides continuous services under the child care subsidy program. For any other individual who is required to have background checks according to § 63.2-1725 of the Code of Virginia, the background checks will remain valid for three years as long as the individual maintains continuous employment, residence or volunteer status with that provider.

C. Training requirements will consist of current certification in first aid and cardiopulmonary resuscitation (CPR) as appropriate for the age for the children in care, the cost of which will be borne by the provider. Four hours of skills training will also be required annually. Skills training is available through the department ~~at~~ for a ~~cost of less than $20 per participant~~ nominal fee.

D. All providers who participate in the subsidy program must sign a department-approved agreement that will be based on the level of regulation of the provider. The provider's signature confirms his agreement to comply with the terms of the agreement, including payment processes, absences, and attendance tracking.

E. All providers who participate in the subsidy program must have a working telephone at each site at which child care is provided, as required by the department-approved agreement.

**22VAC40-661-60. Determining payment amount.**

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care.

2. For children with special needs, payment over the maximum reimbursable rate is allowed when this is appropriate as determined by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the reimbursable rate for care of children who do not have special needs.

3. Providers will be paid for the amount of care approved up to the maximum reimbursable rate of the jurisdiction in which the provider is located. ~~Local departments must~~ The department will pay the rates and fees providers charge the general public, up to the maximum reimbursable rate~~, or a negotiated rate that is lower~~.

4. For out-of-state providers, the ~~local department~~ maximum reimbursable rate of the locality in which the local department is located is used.

5. Parents who choose to place a child in a facility with a rate above the maximum reimbursable rate are responsible for payment of any additional amount, unless the local department elects to pay the additional amount out of local funds.

B. In-home care. For in-home child care, payment must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. Registration fee. A single annual registration fee, if charged, will be paid to level two providers. The registration fee may not exceed $100. Transportation fees are paid only when the transportation services are provided by the provider. The total cost of care, excluding the single annual registration

fee, ~~but including special programs, other fees and transportation,~~ must not exceed the maximum reimbursable rate and must be identified as one child care cost.

**22VAC40-661-70. Case management.**

A. Application and assessment. Parents who are not receiving TANF and who are at least 18 years of age and who wish to request child care services are required to sign an application and cooperate with an assessment by the local department. Consumer education, including the selection and monitoring of child care, must be provided to parents to assist them in gaining needed information about child care services and availability of providers. As a condition of eligibility, all applicants and recipients must cooperate with the Division of Child Support Enforcement unless the subsidy program determines that good cause exists for their failure to do so.

B. Service planning. Child care workers must complete a written service plan for each child care case. The service plan outlines the mutually agreed upon activities and responsibilities between the local department and the parent in the provision of child care services.

C. Due process. Applicants and recipients will be afforded due process through timely written notices of any action deciding or affecting his eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a client requests an appeal within 10 days of the effective date of the notice of action, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the client must repay the amount of services paid during the appeal process.

D. Reassessment. Local departments will make regular contacts with a member of the case household or the provider. The purpose of these contacts is to evaluate whether the child care services authorized are meeting the needs of the child and the parent.

E. Beginning date of service payment.

1. The beginning date of service payment is the date the signed application is received in the local department if the family is determined eligible within ~~45~~ 30 days.

2. If the determination is made more than ~~45~~ 30 days after the signed application is received, services may begin only on the date eligibility is actually determined, except in the case of administrative delay.

3. Administrative delay is when either the parent or provider does not provide needed information for eligibility purposes to the local department within the ~~45~~ 30 days due to circumstances beyond their control.

4. Payment cannot be made to licensed providers prior to the effective dates of their initial licenses.

F. Parental responsibilities.

1. Parents must be informed of their responsibility to report changes that could affect their eligibility. These changes must be reported to the local department within 10 calendar days. Parents must be informed that failure to report required changes may result in case closure, repayment of child care costs, or prosecution for fraud.

2. Parents must be informed of their responsibility to pay all fees owed. Parental failure to pay fees may result in case closure.

G. Termination. Local department termination of child care services must be planned jointly with the parent and provider. Adequate documentation supporting the reasons for termination must be filed in the case record. Eligibility in the fee program is limited to a total of 72 months per family. Receipt of assistance in any other category does not count toward the 72-month limitation.

H. Waiting list. When sufficient funds are not available in the fee program, local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list if the family chooses.

**22VAC40-661-80. Fraud.**

A. Fraud.

1. When it is suspected that there has been a deliberate misrepresentation of facts in order to receive services, the local department must determine whether or not fraud was committed. There must be clear and convincing evidence that demonstrates that the household or provider committed or intended to commit fraud. Suspected instances of child care fraud shall be referred to the fraud staff for investigation. If there is clear and convincing evidence that fraud has occurred, the case will be referred to the attorney for the Commonwealth to determine if the case will be prosecuted. If the case does not meet the criteria for prosecution as established by the attorney for the Commonwealth, the case will be referred for an administrative disqualification hearing.

2. Disqualification.

a. Parents will be disqualified from participating in the child care subsidy program for three months upon the first finding of child care fraud or an intentional program violation, 12 months upon the second finding, and permanently upon the third finding.

b. Providers will be permanently disqualified from participating in the child care subsidy program upon the first finding of child care fraud.

B. Repayment. In addition to any criminal punishment, anyone who causes the local department to make an improper ~~vendor~~ provider payment by withholding required information or by providing false information will be required to repay the amount of the improper payment.

~~C. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program, as~~

~~long as a repayment schedule is entered into with the local department and payments are made according to that schedule. If an overpayment was made as result of an error by the local department, the local department will not seek to recoup those funds from the parent or the provider.~~

**22VAC40-661-100. Administration.**

A. Nonfraud overpayment. In cases of nonfraud overpayment, neither the parent nor provider will be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

B. Local department error. If an overpayment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the provider. Any overpayments made as a result of a local department error must be refunded to the Department of Social Services with local-only funds.

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 of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (22VAC40-661)

60 Month Lifetime Limit Letter (undated)

Absent Parent/Paternity Information (undated)

Attesting to the Lack of Information Form (undated)

Good Cause Communication Form, Child Care Subsidy Program (undated)

Notice of Cooperation and Good Cause (undated)

Administrative Disqualification Hearing Decision (undated)

Notice of Disqualification for Intentional Program Violation (undated)

Notice of Intentional Program Violation and Penalties

DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-661)

~~Child Care and Development Fund Plan for FFY 2004-2005, Department of Social Services, effective October 1, 2003.~~

VA.R. Doc. No. R11-2776; Filed October 28, 2013, 4:10 p.m.

## Fast-Track Regulation

Title of Regulation: **22VAC40-690. Virginia Child Care Provider Scholarship Program (amending 22VAC40-690-15, 22VAC40-690-35).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

Effective Date: January 2, 2014.

Agency Contact: Kathy Gillikin, Division of Child Care and Development, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7606, FAX (804) 726-7655, TTY (800) 828-1120, or email kathy.gillikin@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia provides the State Board of Social Services with the authority to promulgate the regulation. Additional statutory authority includes 42 USC § 9858 et seq.; 42 USC § 1958e and h; and §§ 63.2-206 and 63.2-207 of the Code of Virginia.

Purpose: The regulation is needed to provide the legal right to appeal eligibility decisions regarding scholarship awards for child care providers or those intending to become providers. Modifications are required to bring the regulation in compliance with current state law, including citation updates and revisions to the appeal process to protect the health, welfare, and safety of the public.

Rationale for Using Fast-Track Process: During the public comment period of the periodic review process, there were no comments made about this regulation. As part of the periodic review, the Office of the Attorney General recommended the use of the fast-track rulemaking process to make a very minor Code of Virginia citation update and to update the appeal process, as these actions are not expected to be controversial.

Substance: The amendments (i) update a Code of Virginia citation; (ii) update the current appeal process to conform to the Administrative Process Act; and (iii) revise the application form to include date-of-birth, last five digits of the social security number, and updated Virginia Community College System course information, which will be helpful in tracking applicants' use of the program.

Issues: The primary advantage to the public with these changes is that the Code of Virginia citation will be correct for easier reference and the appeal information will coincide with the Administrative Process Act. Additionally, the application form was revised to require better data tracking information on each applicant with the new online application and tracking system. There are no disadvantages to the public or the Commonwealth for making these changes.

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 State Board of Social Services (Board) proposes to amend its regulations that govern the Virginia Child Care Provider Scholarship Program which provides funds to child care providers to pay for undergraduate courses. The Board proposes to update Code of Virginia citations, clarify that the

program is subject to availability of funds and update the form number.

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

Estimated Economic Impact. While current language in these regulations does not specify that scholarships dispersed under this program are subject to availability of funds; by statute, they are. The Board proposes to specify in the regulations that this program is subject to the availability of funds. This change provides greater conformity to authorizing statutes and adds clarity to these regulations which will benefit interested parties.

The Board also proposes to update regulatory language that lays out the appeals process so that it conforms to the Administrative Process Act and to update a reference to the form that scholarship applicants have to fill out. Again, these changes add clarity to the regulations and, therefore, will benefit interested parties. No entity is likely to incur costs on account of any of these proposed changes.

Businesses and Entities Affected. Board staff reports that only a small number of child care providers receive scholarships under this program so only a small number of individuals will be affected by these proposed changes.

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, 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 Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The amendments update a Code of Virginia citation, revise the appeal process to comply with the Virginia Administrative Process Act, and update the application form.*

**22VAC40-690-15. Purpose and intent.**

The purpose of the Virginia Child Care Provider Scholarship Program is to provide tuition assistance to child care providers. The intent of the program is to provide child care providers with a foundation in child care and child development. The anticipated benefit of an increased knowledge and skills base for child care providers will be an improved level of care provided to Virginia's children. This program is subject to the availability of funds.

**22VAC40-690-35. Appeal process.**

A. Any person denied a scholarship who believes the denial was contrary to law or regulations may ~~request an informal conference, as provided for by § 9-6.14:11 of the Code of Virginia, with the designee of the Commissioner, by filing a written Notice of Appeal with the department within 33 days of the date on the denial letter. The Notice of Appeal must be received by the department within the 33-day time period. The decision of the informal conference shall constitute a final agency case decision and shall be appealable as provided for in Article 4 (§ 9-6.14:15 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia.~~ appeal the denial pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Section 2.2-4019 of the Code of Virginia provides the aggrieved party the right to request an informal conference. This request shall be made within 15 days of the date of denial. The informal conference is a fact-finding process and gives the aggrieved party an opportunity to present information that the denial decision was based on factual error or misinterpretation of facts. The aggrieved party may be required to provide verification of facts. The department then has 90 days from the date of the informal

conference to issue its official decision in writing, including information concerning the aggrieved party's right to continue the appeal process pursuant to the Administrative Process Act. The informal conference may be conducted by telephone if both parties consent.

B. No person shall have a right to appeal any denial due to lack of scholarship funds, untimely application, or incomplete application.

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 of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (22VAC40-690)

~~Virginia Child Care Provider Scholarship Program Application, Form # 032-05-0032-03 (eff. 3/08)~~

Virginia Child Care Provider Scholarship Program Application, Form # 032-05-0032-06-eng (eff. 10/12)

VA.R. Doc. No. R14-3399; Filed October 23, 2013, 1:51 p.m.

## Final Regulation

Title of Regulation: **22VAC40-730. Investigation of Child Abuse and Neglect in Out of Family Complaints (amending 22VAC40-730-10, 22VAC40-730-20, 22VAC40-730-30, 22VAC40-730-40, 22VAC40-730-60 through 22VAC40-730-115, 22VAC40-730-130).**

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

Effective Date: January 1, 2014.

Agency Contact: Mary Walter, Child Protective Services Consultant, Division of Family Services, Department of Social Services, 801 East Main Street, 11th Floor, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, TTY (800) 828-1120, or email mary.walter@dss.virginia.gov.

Summary:

*The amendments make changes to the definitions and other regulatory language to conform this regulation to the regulation that governs child protective services (22VAC40-705).*

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

Part I
Definitions

**22VAC40-730-10. Definitions.**

~~The~~ In addition to the definitions contained in 22VAC40-705-10, the following words and terms when used in conjunction with this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"Caretaker," for the purpose of this chapter, means any individual determined to have the responsibility of caring for a child.~~

~~"Child day center" means a child day program operated in other than the residence of the provider or any of the children in care, responsible for the supervision, protection, and well-being of children during absence of a parent or guardian, as defined in § 63.2-100 of the Code of Virginia. For the purpose of this chapter, the term shall be limited to include only state licensed child day centers and religiously exempted child day centers.~~

~~"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.~~

~~"Complaint" means a valid report of suspected child abuse or neglect which must be investigated by the local department of social services.~~

~~"Department" means the Department of Social Services.~~

~~"Disposition" means the determination of whether abuse or neglect occurred.~~

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children as defined in § 63.2-100 of the Code of Virginia.

"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, child day ~~centers~~ programs, ~~state regulated family day homes,~~ and residential facilities.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

~~"Family day home," for the purpose of this chapter, means a child day program as defined in § 63.2-100 of the Code of Virginia where the care is provided in the provider's home and is state regulated; locally approved or regulated homes are not included in this definition.~~

~~"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.~~

~~"Local agency" means the local department of social services responsible for conducting investigations of child abuse or neglect complaints as per § 63.2-1503 of the Code of Virginia.~~

"Participate" means to take part in the activities of the joint investigation as per a plan for investigation developed by the CPS worker with the facility administrator or regulatory authority or both.

"Physical plant" means the physical structure/premises of the facility.

"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care, maintenance, protection, and guidance is provided to children separated from their parents or legal guardians, that is subject to licensure or certification pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, ~~group residences,~~ secure ~~custody~~ facilities, ~~self-contained residential facilities,~~ temporary care facilities, and respite care facilities.

Part II
Policy

Article 1
Out of Family Investigation Policy

**22VAC40-730-20. General.**

~~Complaints~~ Valid complaints of child abuse or neglect involving caretakers in out of family settings are for the purpose of this chapter valid complaints in state licensed and religiously exempted child day ~~centers~~ programs, ~~regulated family day homes,~~ private and public schools, ~~group~~ residential facilities, hospitals, or institutions. These valid complaints shall be investigated by qualified staff employed by local departments of social services ~~or welfare~~.

Staff shall be determined to be qualified based on criteria identified by the department. All staff involved in investigating a valid complaint must be qualified.

This regulation is limited in scope to the topics contained herein. All issues regarding investigations, findings and appeals are found in Child Protective Services, 22VAC40-705, and as such are cross referenced and incorporated into and apply to out of family cases to the extent that they are not inconsistent with this regulation.

In addition to the authorities and the responsibilities specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is set out in 22VAC40-730-30 through 22VAC40-730-130.

**22VAC40-730-30. ~~Initial~~ Safety assessment.**

If the valid complaint information received is such that the local ~~agency~~ department is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety. If, in the judgment of the child protective services/CPS worker, the situation is such that the child or children should be immediately removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a safety plan which addresses the child's or children's immediate safety needs.

**22VAC40-730-40. Involvement of regulatory agencies.**

The authority of the local ~~agency~~ department to investigate valid complaints of alleged child abuse or neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these facilities to investigate alleged violations of standards.

1. For valid complaints in state regulated facilities and religiously exempted child day ~~centers~~ programs, the local ~~agency~~ department shall contact the regulatory authority and share the valid complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

2. The CPS worker assigned to investigate and the appointed regulatory staff person will discuss their preliminary joint investigation plan.

a. The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

b. The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.

**22VAC40-730-60. Contact with CPS regional coordinator.**

A. The local ~~agency~~ department shall contact the department's regional CPS coordinator as soon as is practical after the receipt of the valid complaint. The regional coordinator will review the procedures to be used in investigating the valid complaint and provide any case planning assistance the local worker may need.

B. The regional coordinator shall be responsible for monitoring the investigative process and shall be kept informed of developments which substantially change the original case plan.

C. At the conclusion of the investigation the local ~~agency~~ department shall contact the department's regional CPS coordinator to review the case prior to notifying anyone of the disposition. The regional coordinator shall review the facts gathered and policy requirements for determining whether or not abuse or neglect occurred. However, the statutory authority for the disposition rests with the local ~~agency~~ department. This review shall not interfere with the requirement to complete the investigation in the legislatively mandated time frame.

**22VAC40-730-70. Contact with the facility administrator.**

A. The CPS worker shall initiate contact with the facility administrator or designee at the onset of the investigation.

B. The CPS worker shall inform the facility administrator or his designee of the details of the valid complaint. When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in developing the plan for investigation, including decisions about who is to be present in interviews. If the administrator or designee is the alleged abuser or neglector, this contact should be initiated with the individual's superior, which may be the board of directors, etc. If there is no superior, the CPS worker may use discretion in sharing information with the administrator.

C. Arrangements are to be made for:

1. Necessary interviews;

2. Observations including the physical plant; and

3. Access to information, including review of pertinent policies and procedures.

D. The CPS worker shall keep the facility administrator or designee apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.

**22VAC40-730-80. Contact with the alleged victim child.**

The CPS worker shall interview the alleged victim child and shall determine along with a regulatory staff person or facility administrator or designee who may be present in the interview. Where there is an apparent conflict of interest, the ~~CPS agency~~ local department shall use discretion regarding who is to be included in the interview.

**22VAC40-730-90. Contact with the alleged abuser or neglector.**

A. The CPS worker shall interview the alleged abuser or neglector according to a plan developed with the regulatory staff person, facility administrator, or designee. Where there is an apparent conflict of interest, the ~~CPS agency~~ local department shall use discretion regarding who is to be included in the interview. At the onset of the initial interview with the alleged abuser or neglector, the CPS worker shall notify him in writing of the general nature of the valid complaint and the identity of the alleged victim child to avoid any confusion regarding the purpose of the contacts.

B. The alleged abuser or neglector has the right to involve a representative of his choice to be present during his interviews.

**22VAC40-730-100. Contact with collateral children.**

The CPS worker shall interview nonvictim children as collaterals if it is determined that they may have information which would help in determining the finding in the valid complaint. Such contact should be made with prior consent of the nonvictim child's parent, guardian or agency holding custody. If the situation warrants contact with the nonvictim child prior to such consent being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.

**22VAC40-730-110. Report the findings.**

Written notification of the findings shall be submitted to the facility administrator or designee and the regulatory staff person involved in the investigation, if applicable, at the same time the alleged abuser or neglector is notified.

If the facility administrator is the abuser or neglector, written notification of the findings shall be submitted to his superior if applicable.

**22VAC40-730-115. Procedures for conducting an investigation of a teacher, principal or other person employed by a local school board or employed in a nonresidential school operated by the Commonwealth.**

A. Each local department of social services and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

B. These procedures for investigating school personnel amplify or clarify other Child Protection Services (CPS) regulations.

1. In determining the validity of a report of suspected abuse or neglect pursuant to § 63.2-1511 of the Code of Virginia, the local department must consider whether the school employee used reasonable and necessary force. The use of reasonable and necessary force does not constitute a valid report.

2. The local department shall conduct a face-to-face interview with the person who is the subject of the valid complaint or report.

3. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the valid complaint and the identity of the alleged child victim regarding the purpose of the contacts.

4. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the valid complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.

5. If the local department determines that the alleged abuser's actions were within the scope of his employment and were taken in good faith in the course of supervision, care or discipline of students, then the standard for determining a founded finding of abuse or neglect is

whether such acts or omissions constituted gross negligence or willful misconduct.

6. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.

7. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.

8. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:

a. The identity of the person making the report.

b. Information provided by any law-enforcement official.

c. Information that may endanger the well-being of the child.

d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

No information shall be released by the local department in cases that are being criminally investigated unless the release is authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

Article 2

Local Staff Qualifications in Out of Family Investigations

**22VAC40-730-130. Requirements.**

A. In order to be determined qualified to conduct investigations in out of family settings, local CPS ~~staff~~ workers shall meet minimum education standards established by the department including:

1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and

2. Completion of out of family policy training.

B. The department and each local ~~agency~~ department shall maintain a roster of personnel determined qualified to conduct these out of family investigations.

VA.R. Doc. No. R11-2527; Filed October 23, 2013, 8:58 a.m.

## Withdrawal of Proposed Regulation

Title of Regulation: **22VAC40-740. Adult Protective Services (amending 22VAC40-740-10, 22VAC40-740-21, 22VAC40-740-31, 22VAC40-740-40, 22VAC40-740-50, 22VAC40-740-60, 22VAC40-740-70, 22VAC40-740-80; adding 22VAC40-740-45).**

Statutory Authority: Chapters 803 and 835 of the 2012 Acts of Assembly.

The State Board of Social Services has WITHDRAWN the proposed regulatory action for 22VAC40-740, Adult Protective Services, which was published in 29:2 VA.R. 312-322 September 24, 2012. Enactment 65 of Chapters 803 and 835 of the 2012 Acts of Assembly transferred powers related to the administration of auxiliary grants and the provision of adult services and adult protective services from the Department of Social Services to the Department for Aging and Rehabilitative Services effective July 1, 2013. Therefore, this action is being withdrawn because the board no longer has authority to complete this regulatory action.

Agency Contact: Karin Clark, Manager, Legislative and Regulatory Affairs, Office of Commissioner, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

VA.R. Doc. No. R11-2684; Filed October 23, 2013, 3:16 p.m.

## Fast-Track Regulation

Title of Regulation: **22VAC40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Record (amending 22VAC40-910-10, 22VAC40-910-80, 22VAC40-910-90).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 18, 2013.

Effective Date: January 2, 2014.

Agency Contact: Treina Owen, Board Liaison, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7903, FAX (804) 726-7906, or email treina.owen@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to carry out the purposes of social services programs. Sections 63.2-102 through 63.2-105 of the Code of Virginia govern confidentiality of public assistance and social services records and information.

Purpose: Public assistance, child support enforcement, and social services programs are essential to protecting the health, safety, and welfare of citizens. This regulation assists these programs in protecting the health, safety, and welfare of citizens by ensuring that public assistance, child support enforcement, and social services confidential client information is protected and released only according to federal and state laws and regulations. This regulation provides separate sections for public assistance, child support enforcement, and social services programs. Each section includes the applicable statutory and regulatory citations or provisions, or both, related to confidentiality. The regulation helps ensure compliance with confidentiality requirements, thereby affording greater protection of privacy to all Virginians.

The three amendments to the regulation are necessary to clarify a key definition and update references to applicable regulation.

Rationale for Using Fast-Track Process: The agency does not expect the amendments to the regulation to be controversial. The change to the definition of "research" better frames the term as it is used in the regulation, was recommended by the Office of Attorney General, and is within the agency's authority. Replacing references to a repealed regulation is necessary in order to keep this regulation current. The three amendments are not anticipated to be problematic in any way.

Substance: In 22VAC40-910-10, the current definition of "research" is broad and may allow for the disclosure of public assistance information in violation of federal confidentiality regulations. As recommended by the Office of Attorney General, the amendment tightens the definition to reference research to contribute to general knowledge related to specific programs.

22VAC40-910-80 relates to confidential client information pertaining to public assistance. 22VAC40-910-80 D provides that release of client records to law enforcement and Commonwealth's and county or city attorneys is governed by 22VAC40-320 (Disclosure of Information to Law-Enforcement Officers in the Aid to Families with Dependent Children (AFDC) Program). 22VAC40-320 has been repealed. The amendment replaces reference to the repealed regulation with the appropriate federal citation, 7 CFR 272.1(c)(1).

22VAC40-910-90 relates to confidential client information pertaining to child support enforcement. 22VAC40-910-90 D 6 provides that release of client records to law enforcement and Commonwealth's and county or city attorneys is governed by 22VAC40-320 (Disclosure of Information to Law-Enforcement Officers in the Aid to Families with Dependent Children Program). 22VAC40-320 has been repealed. The amendment replaces reference to the repealed regulation with the appropriate Virginia Administrative Code reference, 22VAC40-880-520 B.

Issues: The primary advantage of the regulation overall to the public, the Department of Social Services, and the Commonwealth is that it ensures that public assistance, child support enforcement, and social services client information is protected and released only according to federal and state laws and regulations. The three amendments facilitate the accuracy and effectiveness of the regulation and allow for continued enforcement of the regulation.

The agency is not aware of disadvantages to the public or Commonwealth.

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 Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to amend its regulations that govern the handling of confidential information to update obsolete administrative code references and to add clarifying language to the definition of research.

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

Estimated Economic Impact. Current regulations have two outdated references to another chapter in the Virginia Administrative Code. The Board now proposes to delete these obsolete references and replace them with, respectively, a reference to the Code of Federal Regulations and a reference to another of the Board's chapters in the Virginia Administrative Code. The Board also proposes to clarify that, for the purposes of these regulations, research must relate to specific social services programs.

No affected entity is likely to incur any additional costs on account of the three proposed changes to these regulations. To the extent that these changes eliminate now incorrect references and allow a better understanding of how the Board defines research, affected entities will get a benefit from the clarity added.

Businesses and Entities Affected. The Department of Social Services (DSS) reports these proposed regulatory changes will affect all individuals who have disclosed confidential or identifying information to any (Local or State) Department of Social Services.

Localities Particularly Affected. No localities 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 Response to Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The amendments (i) tighten the definition of "research" to ensure that disclosure of confidential information is done within the confines of federal confidentiality regulations and (ii) replace references to repealed 22VAC40-320 with applicable current citations.*

**22VAC40-910-10. Definitions.**

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

"Agency" means a local department of social services.

"Agent" means any individual authorized to act on behalf of or under the direction of the Commissioner of the Virginia Department of Social Services or State Board of Social Services for the sole purpose of accessing confidential client records in the administration of public assistance, child support enforcement, or social services programs.

"Client" means any applicant for or recipient of public assistance or social services or any individual about whom the child support enforcement division maintains information.

"Client record" or "client information" means any identifying or nonidentifying information, including information stored in computer data banks or computer files relating to a client.

"Department" means the Virginia Department of Social Services.

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

"Legally responsible person" means (i) the biological or adoptive parent or other relative with whom the child primarily resides and who has legal custody of the child; (ii) the biological or adoptive parent with whom the child does not primarily reside and who has legal custody of the child; or (iii) a committee or guardian appointed by a court to represent the interest of a client.

"Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Serious or critical condition is a life-threatening condition or injury.

"Provider" means any person, agency or organization providing public assistance, child support enforcement services, or social services through a contract or an agreement with the department or agency.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to general knowledge related to specific programs, including research for the development of new knowledge or techniques that would be useful in the administration of public assistance, child support enforcement, or social services programs.

"Social services program" means foster care, adoption, adoption assistance, adult services, adult protective services, child protective services, domestic violence services, family preservation, or any other services program implemented in accordance with regulations promulgated by the State Board of Social Services.

**22VAC40-910-80. Confidential client information pertaining to public assistance.**

A. Confidentiality of client information of public assistance programs is assured by §§ 63.2-102 and 63.2-805 G of the Code of Virginia.

B. Information may be released only for a purpose directly connected with the administration of a public assistance program, except as herein provided or pursuant to §§ 63.2-102 and 63.2-805 G of the Code of Virginia.

C. Purposes directly related to the administration of a public assistance program include but are not limited to:

1. Establishing eligibility;

2. Determining the amount of public assistance;

3. Providing services for public assistance clients; and

4. Conducting or assisting in an investigation or prosecution of a civil or criminal proceeding related to the administration of the public assistance program.

D. Release of client records to law-enforcement agencies and Commonwealth's and county or city attorneys is governed by ~~22VAC40-320~~ 7 CFR 272.1(c)(1).

**22VAC40-910-90. Confidential client information pertaining to child support enforcement.**

A. Confidentiality of child support enforcement client information is assured by §§ 63.2-102 and 63.2-103 of the Code of Virginia.

B. Information may be released only for a purpose directly connected with the administration of the child support enforcement program, except as herein provided or pursuant to §§ 63.2-102, 63.2-103, 63.2-1906 and 63.2-1940 of the Code of Virginia.

C. Purposes directly related to the administration of the child support enforcement program include but are not limited to:

1. Determining the amount of child support;

2. Providing child support enforcement services; and

3. Conducting or assisting in an investigation or prosecution of a civil or criminal proceeding related to the administration of the child support enforcement program.

D. The following regulatory provisions provide guidance on the release of child support enforcement client information:

1. Entities to whom the Division of Child Support Enforcement can release client information is governed by 22VAC40-880-520;

2. The release of client information to and from the Internal Revenue Service is governed by 22VAC40-880-530;

3. Request for client information from the general public is governed by 22VAC40-880-540;

4. Requests for client information from parents is governed by 22VAC40-880-550;

5. Release of health insurance information is governed by 22VAC40-880-560; and

6. Release of client records to law-enforcement agencies and Commonwealth's and county or city attorneys is governed by ~~22VAC40-320~~ 22VAC40-880-520 B.

VA.R. Doc. No. R14-3042; Filed October 23, 2013, 1:42 p.m.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC15-20, Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010).

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

The comment period begins November 18, 2013, and ends December 9, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

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

## DEPARTMENT OF FORENSIC SCIENCE

### Approval of Field Tests for Detection of Drugs

In accordance with 6VAC40-30, Regulations for the Approval of Field Tests for Detection of Drugs, and under the authority of the Code of Virginia, the following field tests for detection of drugs are approved field tests:

| | |
|---|---|
| O D V INCORPORATED<br>13386 INTERNATIONAL PARKWAY<br>JACKSONVILLE, FLORIDA 32218-2383 | |
| **ODV NarcoPouch** | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Heroin | 902 – Marquis Reagent |
| Amphetamine | 902 – Marquis Reagent |
| Methamphetamine | 902 – Marquis Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 902 – Marquis Reagent |
| Cocaine Hydrochloride | 904 or 904B – Cocaine HCl and Base Reagent |
| Cocaine Base | 904 or 904B – Cocaine HCl and Base Reagent |
| Barbiturates | 905 – Dille-Koppanyi Reagent |
| Lysergic Acid Diethylamide (LSD) | 907 – Ehrlich's (Modified) Reagent |
| Marijuana | 908 – Duquenois – Levine Reagent |
| Hashish Oil | 908 – Duquenois – Levine Reagent |
| Marijuana | 909 – K N Reagent |
| Hashish Oil | 909 – K N Reagent |
| Phencyclidine (PCP) | 914 – PCP Methaqualone Reagent |
| Heroin | 922 – Opiates Reagent |
| Methamphetamine | 923 – Methamphetamine/Ecstasy Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 923 – Methamphetamine/Ecstasy Reagent |
| Heroin | 924 – Mecke's (Modified) Reagent |
| Diazepam | 925 – Valium/Ketamine Reagent |
| Ketamine | 925 – Valium/Ketamine Reagent |
| Ephedrine | 927 – Ephedrine Reagent |
| gamma–Hydroxybutyrate (GHB) | 928 – GHB Reagent |

| **ODV NarcoTest** | |
|---|---|
| Drug or Drug Type: | Manufacturer's Field Test: |
| Heroin | 7602 – Marquis Reagent |
| Amphetamine | 7602 – Marquis Reagent |
| Methamphetamine | 7602 – Marquis Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 7602 – Marquis Reagent |
| Barbiturates | 7605 – Dille-Koppanyi Reagent |
| Lysergic Acid Diethylamide (LSD) | 7607 – Ehrlich's (Modified) Reagent |
| Marijuana | 7608 – Duquenois Reagent |
| Hashish Oil | 7608 – Duquenois Reagent |
| Marijuana | 7609 – K N Reagent |
| Hashish Oil | 7609 – K N Reagent |
| Cocaine Hydrochloride | 7613 – Scott (Modified) Reagent |
| Cocaine Base | 7613 – Scott (Modified) Reagent |
| Phencyclidine (PCP) | 7614 – PCP Methaqualone Reagent |
| Heroin | 7622 – Opiates Reagent |
| Methamphetamine | 7623 – Methamphetamine/Ecstasy Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 7623 – Methamphetamine/Ecstasy Reagent |
| Heroin | 7624 – Mecke's Reagent |
| Diazepam | 7625 – Valium/Ketamine Reagent |
| Ketamine | 7625 – Valium/Ketamine Reagent |
| Ephedrine | 7627 – Chen's Reagent - Ephedrine |
| gamma – Hydroxybutyrate (GHB) | 7628 – GHB Reagent |
| SIRCHIE FINGERPRINT LABORATORIES<br>100 HUNTER PLACE<br>YOUNGSVILLE, NORTH CAROLINA 27596 | |
| **NARK** | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Narcotic Alkaloids | 1 – Mayer's Reagent |
| Heroin | 1 – Mayer's Reagent |
| Morphine | 1 – Mayer's Reagent |
| Amphetamine | 1 – Mayer's Reagent |
| Methamphetamine | 1 – Mayer's Reagent |
| Opium Alkaloids | 2 – Marquis Reagent |
| Heroin | 2 – Marquis Reagent |
| Morphine | 2 – Marquis Reagent |
| Amphetamine | 2 – Marquis Reagent |
| Methamphetamine | 2 – Marquis Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 2 – Marquis Reagent |
| Meperidine (Demerol) (Pethidine) | 2 – Marquis Reagent |
| Heroin | 3 – Nitric Acid |
| Morphine | 3 – Nitric Acid |
| Cocaine Hydrochloride | 4 – Cobalt Thiocyanate Reagent |
| Cocaine Base Reagent | 4 – Cobalt Thiocyanate Reagent |
| Procaine Reagent | 4 – Cobalt Thiocyanate Reagent |
| Tetracaine Reagent | 4 – Cobalt Thiocyanate Reagent |
| Barbiturates | 5 – Dille-Koppanyi Reagent |
| Heroin | 6 – Mandelin Reagent |
| Morphine | 6 – Mandelin Reagent |
| Amphetamine | 6 – Mandelin Reagent |
| Methamphetamine | 6 – Mandelin Reagent |
| Lysergic Acid Diethylamide (LSD) | 7 – Ehrlich's Reagent |
| Marijuana | 8 – Duquenois Reagent |

| | |
|---|---|
| Hashish | 8 – Duquenois Reagent |
| Hashish Oil | 8 – Duquenois Reagent |
| Tetrahydrocannabinol (THC) | 8 – Duquenois Reagent |
| Marijuana | 9 – NDB (Fast Blue B Salt) Reagent |
| Hashish | 9 – NDB (Fast Blue B Salt) Reagent |
| Hashish Oil | 9 – NDB (Fast Blue B Salt) Reagent |
| Tetrahydrocannabinol (THC) | 9 – NDB (Fast Blue B Salt) Reagent |
| Cocaine Base | 13 – Cobalt Thiocyanate/Crack Test |
| **NARK II** | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Narcotic Alkaloids | 01 – Marquis Reagent |
| Heroin | 01 – Marquis Reagent |
| Morphine | 01 – Marquis Reagent |
| Amphetamine | 01 – Marquis Reagent |
| Methamphetamine | 01 – Marquis Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 01 – Marquis Reagent |
| Morphine | 02 – Nitric Acid |
| Heroin | 02 – Nitric Acid |
| Barbiturates | 03 – Dille-Koppanyi Reagent |
| Lysergic Acid Diethylamide (LSD) | 04 – Ehrlich's Reagent |
| Marijuana | 05 – Duquenois – Levine Reagent |
| Hashish | 05 – Duquenois – Levine Reagent |
| Hashish Oil | 05 – Duquenois – Levine Reagent |
| Tetrahydrocannabinol (THC) | 05 – Duquenois – Levine Reagent |
| Cocaine Hydrochloride | 07 – Scott's (Modified) Reagent |
| Cocaine Base | 07 – Scott's (Modified) Reagent |
| Phencyclidine (PCP) | 09 – Phencyclidine Reagent |
| Opiates | 10 – Opiates Reagent |
| Heroin | 10 – Opiates Reagent |
| Morphine | 10 – Opiates Reagent |
| Buprenorphine | 10 – Special Opiates Reagent |
| Heroin | 11 – Mecke's Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 11 – Mecke's Reagent |
| Pentazocine | 12 – Talwin/Pentazocine Reagent |
| Ephedrine | 13 – Ephedrine Reagent |
| Diazepam | 14 – Valium Reagent |
| Methamphetamine | 15 – Methamphetamine (Secondary Amines Reagent) |
| Narcotic Alkaloids | 19 – Mayer's Reagent |
| Heroin | 19 – Mayer's Reagent |
| Morphine | 19 – Mayer's Reagent |
| Amphetamine | 19 – Mayer's Reagent |
| Methamphetamine | 19 – Mayer's Reagent |
| 3,4-Methylenedioxypyrovalerone (MDPV) | 24 – MDPV (Bath Salts) Reagent |
| Beta-keto-N-methyl-3,4-benzodioxyolybutanamine (butylone) | 24 – MDPV Synthetic Cathinones Reagent |
| 3,4-methylenedioxyethcathinone (ethylone) | 24 – MDPV Synthetic Cathinones Reagent |
| 3,4-methylenedioxymethcathinone (methylone) | 24 – MDPV Synthetic Cathinones Reagent |
| Naphthylpyrovalerone (naphyrone) | 24 – MDPV Synthetic Cathinones Reagent |
| Beta-keto-methylbenzodioxolylpentanamine (pentylone) | 24 – MDPV Synthetic Cathinones Reagent |
| 4-Methylmethcathinone (Mephedrone) | 25 – Mephedrone (Bath Salts) Reagent |
| Alpha-pyrrolidinovalerophenone (alpha-PVP) | 26 – A-PVP (Synthetic Stimulant) Reagent |
| 4-Bromo-2,5-dimethoxyphenethylamine (2C-B) | 29 – 2C Reagent |
| 2-(4-Chloro -2,5-dimethoxyphenyl)ethanamine (2C-C) | 29 – 2C Reagent |
| 4-Ethyl-2,5-dimethoxyphenethylamine (2C-E) | 29 – 2C Reagent |

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| 4-Iodo-2,5-dimethoxyphenethylamine (2C-I) | 29 – 2C Reagent |
| 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N) | 29 – 2C Reagent |
| 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) | 29 – 2C Reagent |
| Psilocybin | 30 – Psilocybin/Psilocin Reagent |
| Methamphetamine | 31 – Liebermann Reagent |
| Morphine | 31 – Liebermann Reagent |
| ARMOR HOLDINGS, INCORPORATED<br>13386 INTERNATIONAL PARKWAY<br>JACKSONVILLE, FLORIDA 32218-2383 | |
| **NIK** | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Heroin | Test A 6071 – Marquis Reagent |
| Amphetamine | Test A 6071 – Marquis Reagent |
| Methamphetamine | Test A 6071 – Marquis Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | Test A 6071 – Marquis Reagent |
| Morphine | Test B 6072 – Nitric Acid Reagent |
| Barbiturates | Test C 6073 – Dille-Koppanyi Reagent |
| Lysergic Acid Diethylamide (LSD) | Test D 6074 – LSD Reagent System |
| Marijuana | Test E 6075 – Duquenois – Levine Reagent |
| Hashish Oil | Test E 6075 – Duquenois – Levine Reagent |
| Tetrahydrocannabinol | Test E 6075 – Duquenois – Levine Reagent |
| Cocaine Hydrochloride | Test G 6077 – Scott (Modified) Reagent |
| Cocaine Base | Test G 6077 – Scott (Modified) Reagent |
| Cocaine Hydrochloride | 6500 or 6501 – Cocaine ID Swab |
| Cocaine Base | 6500 or 6501 – Cocaine ID Swab |
| Phencyclidine (PCP) | Test J 6079 – PCP Reagent System |
| Heroin | Test K 6080 – Opiates Reagent |
| Heroin | Test L 6081 – Brown Heroin Reagent System |
| gamma–Hydroxybutyrate (GHB) | Test O 6090 – GHB Reagent |
| Ephedrine | Test Q 6085 – Ephedrine Reagent |
| Pseudoephedrine | Test Q 6085 – Ephedrine Reagent |
| Diazepam | Test R 6085 – Valium Reagent |
| Methamphetamine | Test U 6087 – Methamphetamine Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | Test U 6087 – Methamphetamine Reagent |
| Methadone | Test W 6088 – Mandelin Reagent System |
| MISTRAL SECURITY INCORPORATED<br>7910 WOODMONT AVENUE, SUITE 820<br>BETHESDA, MARYLAND 20814 | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Heroin | Detect 4 Drugs Aerosol |
| Amphetamine | Detect 4 Drugs Aerosol |
| Methamphetamine | Detect 4 Drugs Aerosol |
| Marijuana | Detect 4 Drugs Aerosol |
| Hashish Oil | Detect 4 Drugs Aerosol |
| Methamphetamine | Meth 1 and 2 Aerosol |
| Heroin | Herosol Aerosol |
| Marijuana | Cannabispray 1 and 2 Aerosol |
| Hashish Oil | Cannabispray 1 and 2 Aerosol |
| Cocaine Hydrochloride | Coca-Test Aerosol |
| Cocaine Base | Coca-Test Aerosol |
| Marijuana | Pen Test – D4D |
| Phencyclidine | Pen Test – D4D |

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| Amphetamine | Pen Test – D4D |
| Ketamine | Pen Test – D4D |
| Methamphetamine | Pen Test – D4D |
| Ephedrine | Pen Test – D4D |
| Heroin | Pen Test – D4D |
| Methadone | Pen Test – D4D |
| Buprenorphine | Pen Test – D4D |
| Opium | Pen Test – D4D |
| Phenobarbital | Pen Test – Barbitusol |
| Marijuana | Pen Test – Cannabis Test |
| Phencyclidine | Pen Test – Coca Test |
| Cocaine Hydrochloride | Pen Test – Coca Test |
| Cocaine base | Pen Test – Coca Test |
| Buprenorphine | Pen Test – C&H Test |
| Cocaine Hydrochloride | Pen Test – C&H Test |
| Cocaine base | Pen Test – C&H Test |
| Ephedrine | Pen Test – C&H Test |
| Ketamine | Pen Test – C&H Test |
| Heroin | Pen Test – C&H Test |
| Lysergic Acid Diethylamide (LSD) | Pen Test – C&H Test |
| Methadone | Pen Test – C&H Test |
| Methamphetamine | Pen Test – C&H Test |
| Heroin | Pen Test – Herosol |
| Methadone | Pen Test – Herosol |
| Lysergic Acid Diethylamide (LSD) | Pen Test – LSD Test |
| Methamphetamine | Pen Test – Meth/X Test |
| 3,4–Methylenedioxymethamphetamine (MDMA) | Pen Test – Meth/X Test |
| Morphine | Pen Test – Opiatest |
| Opium | Pen Test – Opiatest |
| Diazepam | Pen Test – BZO |
| Ephedrine | Pen Test – Ephedrine |
| Pseudoephedrine | Pen Test – Ephedrine |
| Amphetamine | 101 PDT Marquis Reagent |
| Heroin | 101 PDT Marquis Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 101 PDT Marquis Reagent |
| Phenobarbital | 107 PDT Dille-Koppanyi Reagent |
| Cocaine Hydrochloride | 122 PDT Modified Scott Reagent |
| Cocaine base | 122 PDT Modified Scott Reagent |
| Methaqualone | 143 PDT Methaqualone/PCP Reagent |
| Heroin | 140 PDT Modified Mecke's Reagent |
| gamma-Hydroxybutyrate (GHB) | 149 PDT GHB Reagent |
| Ephedrine | 155 PDT Chen's Reagent |
| Diazepam | 158 PDT Valium/Rohypnol Reagent |
| Flunitrazepam | 158 PDT Valium/Rohypnol Reagent |
| Methamphetamine | 164 PDT Methamphetamine (MDMA/Ecstasy) Reagent |
| 3,4–Methylenedioxymethamphetamine (MDMA) | 164 PDT Methamphetamine (MDMA/Ecstasy) Reagent |
| 3,4–Methylenedioxypyrovalerone (MDPV) | 170 PDT Bath Salts: MDPV Reagent |
| Morphine | 137 PDT Opiates Reagent |

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| JANT PHARMACAL CORPORATION<br>16255 VENTURA BLVD., #505<br>ENCINO, CALIFORNIA 91436<br>Formerly available through:<br>MILLENNIUM SECURITY GROUP | |
| **Accutest IDenta** | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Marijuana | Marijuana/Hashish (Duquenois-Levine Reagent) |
| Hashish Oil | Marijuana/Hashish (Duquenois-Levine Reagent) |
| Heroin | Heroin Step 1 and Step 2 |
| Cocaine Hydrochloride | Cocaine/Crack Step 1 and Step 2 |
| Cocaine Base | Cocaine/Crack Step 1 and Step 2 |
| 3,4–Methylenedioxymethamphetamine (MDMA) | MDMA Step 1 and Step 2 |
| Methamphetamine | Methamphetamine Step 1 and Step 2 |
| COZART PLC<br>92 MILTON PARK<br>ABINGDON, OXFORDSHIRE ENGLAND OX14 4RY | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Cocaine | Cocaine Solid Field Test |
| LYNN PEAVEY COMPANY<br>10749 WEST 84TH TERRACE<br>LEXEXA, KANSAS 66214 | |
| **QuickCheck** | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Marijuana | Marijuana – 10120 |
| Marijuana | Marijuana – 10121 |
| Hashish Oil | Marijuana – 10120 |
| Hashish Oil | Marijuana – 10121 |
| Heroin | Marquis – 10123 |
| Heroin | Heroin - 10125 |
| Cocaine Hydrochloride | Cocaine – 10124 |
| Cocaine Base | Cocaine – 10124 |
| Methamphetamine | Meth/Ecstasy – 10122 |
| Methamphetamine | Marquis – 10123 |
| MDMA | Meth/Ecstasy – 10122 |
| MDMA | Marquis - 10123 |
| M.M.C. INTERNATIONAL B.V.<br>FRANKENTHALERSTRAAT 16-18<br>4816 KA BREDA<br>THE NETHERLANDS | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Heroin | Opiates/Amphetamine Test (Ampoule) |
| Morphine | Opiates/Amphetamine Test (Ampoule) |
| Amphetamine | Opiates/Amphetamine Test (Ampoule) |
| Methamphetamine | Opiates/Amphetamine Test (Ampoule) |
| Codeine | Opiates/Amphetamine Test (Ampoule) |
| Marijuana | Cannabis Test (Ampoule) |
| Hashish Oil | Cannabis Test (Ampoule) |
| Cocaine Hydrochloride | Cocaine/Crack Test (Ampoule) |
| Cocaine base | Cocaine/Crack Test (Ampoule) |
| Heroin | Heroin Test (Ampoule) |
| Ketamine | Ketamine Test (Ampoule) |
| Methadone | Methadone Test (Ampoule) |

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| Methamphetamine | Crystal Meth/XTC Test (Ampoule) |
| 3,4–Methylenedioxymethamphetamine (MDMA) | Crystal Meth/XTC Test (Ampoule) |
| Morphine | M&H Test (Ampoule) |
| Heroin | M&H Test (Ampoule) |
| Ephedrine | Ephedrine HCL Test (Ampoule) |
| Pseudoephedrine | Ephedrine HCL Test (Ampoule) |
| Pentazocine | Pentazocine Test (Ampoule) |
| Buprenorphine | Buprenorphine HCL Test (Ampoule) |
| gamma–Butyrolactone (GBL) | GHB Test (Ampoule) |
| gamma–Hydroxybutyric acid (GHB) | GHB Test (Ampoule) |
| Oxycodone | Oxycodone Test (Ampoule) |
| Oxymetholone | Steroids Test B (Ampoule) |
| Testosterone | Steroids Test B (Ampoule) |
| Methandrostenolone | Steroids Test B (Ampoule) |
| Phenylacetone | PMK/BMK(BMK) Test (Ampoule) |
| Lysergic Acid Diethylamide (LSD) | LSD Test (Ampoule) |
| Phencyclidine (PCP) | PCP Test (Ampoule) |
| Methaqualone | Methaqualone Test (Ampoule) |
| Amobarbital | Barbiturates Test (Ampoule) |
| Pentobarbital | Barbiturates Test (Ampoule) |
| Phenobarbital | Barbiturates Test (Ampoule) |
| Secobarbital | Barbiturates Test (Ampoule) |
| Propoxyphene | Propoxyphene Test (Ampoule) |
| Diazepam | V&R Test (Ampoule) |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Cocaine Hydrochloride | Cocaine/Crack Test (Spray) |
| Cocaine base | Cocaine/Crack Test (Spray) |
| Cocaine Hydrochloride | Cocaine Trace Wipes |
| Cocaine base | Cocaine Trace Wipes |
| Morphine | Opiate Cassette |
| Heroin | Opiate Cassette |
| 3,4–Methylenedioxymethamphetamine (MDMA) | MDMA/Ecstasy Cassette |
| Methamphetamine | Methamphetamine Cassette |
| Amphetamine | Amphetamine Cassette |
| REDXDEFENSE<br>7642 STANDISH PLACE<br>ROCKVILLE, MARYLAND 20855 | |
| **XCAT** | |
| Drug or Drug Type: | Manufacturer's Field Test: |
| Cocaine Hydrochloride | COC-210 Card |
| Cocaine base | COC-210 Card |
| Phencyclidine | COC-210 Card |
| Heroin | HER-110 Card |
| Amphetamine | AMP-500 Card |
| Methamphetamine | AMP-500 Card |
| 3,4–Methylenedioxymethamphetamine (MDMA) | AMP-500 Card |
| Butylone | AMP-500 Card |
| Methedrone | AMP-500 Card |
| Methylone | AMP-500 Card |
| Mephedrone | AMP-500 Card |
| N-Benzylpiperazine (N-BZP) | AMP-500 Card |
| Mescaline | AMP-500 Card |
| 2C-I | AMP-500 Card |

## DEPARTMENT OF LABOR AND INDUSTRY

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Labor and Industry has conducted a small business impact review of **16VAC15-21, Maximum Garnishment Amounts,** and determined that this regulation should be retained in its current form. The Department of Labor and Industry is publishing its report of findings dated October 21, 2013, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation was amended in 2009. There is a continuing need for the regulation because it is required by state law. No comments were received during the public comment period. The regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation. Since this regulation was amended in 2009, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Contact Information: Reba O'Connor, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email reba.oconnor@dol.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 October 18, 2013, and October 25, 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, 201 North 9th Street, 2nd Floor, Richmond, VA.

Director's Order Number Four (14)

Virginia's Instant Game Lottery 1428 "Wild Number Bingo" Final Rules for Game Operation (effective October 23, 2013)

Director's Order Number Eighty-Six (13)

Virginia's Online Game Lottery; "Virginia's New Year's Millionaire Raffle" Final Rules for Game Operation (effective October 23, 2013)

Director's Order Number Ninety-Three (13)

Virginia's Ninth Online Game Lottery Mega Millions Final Rules for Game Operation (effective with drawings beginning October 22, 2013, as set forth in the Multi-State "Mega Millions" Official Game Rules, revised accordingly, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Ninety-Seven (13)

This order rescinds Director's Order Number 79 (13): "Virginia's Megaply It!" Consumer Promotion Final Rules for Operation (effective October 14, 2013)

Director's Order Number Ninety-Eight (13)

Virginia's "Megaply It!" Consumer Promotion Final Rules for Operation (effective October 16, 2013)

Director's Order Number One Hundred (13)

Virginia's Instant Game Lottery 1437 "Happy Holidays" Final Rules for Game Operation (effective October 25, 2013)

Director's Order Number One Hundred One (13)

Virginia's Instant Game Lottery 1439 "Jolly Jingle Jackpot" Final Rules for Game Operation (effective October 23, 2013)

Director's Order Number One Hundred Two (13)

Virginia's Instant Game Lottery 1441 "Poker" Final Rules for Game Operation (effective October 23, 2013)

Director's Order Number One Hundred Three (13)

Virginia's Instant Game Lottery 1438 "Tic Tac Snow" Final Rules for Game Operation (effective October 23, 2013)

Director's Order Number One Hundred Four (13)

Virginia's Instant Game Lottery 1333 "Hit the Jackpot" Final Rules for Game Operation (effective October 23, 2013)

Director's Order Number One Hundred Five (13)

Virginia's Instant Game Lottery 1452 "Cash!" Final Rules for Game Operation (effective October 23, 2013)

Director's Order Number One Hundred Six (13)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on October 11, 2013:

| | |
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| Game 1228 | King of Ca$h |
| Game 1272 | Winning Spades |
| Game 1300 | Treasure |
| Game 1308 | Money Roll |
| Game 1317 | Cherry Twist |
| Game 1322 | The Money Game |
| Game 1327 | Red Hot Slots |
| Game 1330 | $150,000 Players Club |

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| Game 1339 | Hot Chile Tripler |
| Game 1340 | Hit $20,000 |
| Game 1349 | Find the 9's |
| Game 1353 | Pinball Payout |
| Game 1380 | $2,000 Spin |
| Game 1387 | 7-11-21 |
| Game 1389 | Power 9's |
| Game 1394 | Good Deal |
| Game 1402 | EZ 1040 |
| Game 1420 | Daily Crossword |
| Game 1422 | Frisbee |
| Game 1424 | Skeeball (TOP) |
| Game 1430 | Corn Hole Cash |

The last day for lottery retailers to return for credit unsold tickets from any of these games will be November 15, 2013. The last day to redeem winning tickets for any of these games will be April 9, 2014, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of April 9, 2014, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

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

This Director's Order is effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
October 13, 2013

Director's Order Number One Hundred Seven (13)

Certain Virginia Game Promotion; End of Promotion.

In accordance with the authority granted by §§ 2.2-4002B (15) and 58.1-4006A of the Code of Virginia, I hereby give notice that the following Virginia Lottery sweepstakes will officially end at close of business on Monday, October 7, 2013:

Virginia Lottery's "Z-VA" (88 13) (effective nunc pro tunc to October 7, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Eight (13)

Virginia Lottery's "Z-VA Promotion" Final Requirements for Operation (effective October 13, 2013)

Director's Order Number One Hundred Nine (13)

Virginia Lottery's "$250 Winter Bonus" Sweepstakes Final Rules for Operation (effective October 29, 2013)

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy is conducting a periodic review and small business impact review of **4VAC25-125, Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities**.

The review of this regulation will be guided by the principles in Executive Order 14 (2010).

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

The comment period begins November 18, 2013, and ends December 9, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Michael Skiffington, Program Support Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email michael.skiffington@dmme.virginia.gov.

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

## STATE WATER CONTROL BOARD

### Proposed Consent Order for Bristow Development Corporation

An enforcement action has been proposed for the Bristow Development Corporation for violations of the State Water Control Law and Regulations in Prince William County. The State Water Control Board proposes to issue a consent order resolving violations at the Bristow Manor Golf Course Wastewater Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from November 19, 2013, through December 19, 2013.

### Proposed Consent Order for Mena Farm, LLC

An enforcement action has been proposed for Mena Farm, LLC, for violations of the State Water Control Law and Regulations in Prince William County. The consent order describes a settlement to resolve an unauthorized discharge to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from November 19, 2013, through December 19, 2013.

### Proposed Consent Order for SV5 One Vintage Park, LLC

An enforcement action has been proposed for SV5 One Vintage Park, LLC for violations of the State Water Control Law and Regulations in Sterling, Virginia. The consent order describes a settlement to resolve the unauthorized discharge of oil to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from November 19, 2013, through December 19, 2013.

## 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.