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).

August 2014 through August 2015

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
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31:10	December 23, 2014 **(Tuesday)**	January 12, 2015
31:11	January 7, 2015	January 26, 2015
31:12	January 21, 2015	February 9, 2015
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31:24	July 8, 2015	July 27, 2015
31:25	July 22, 2015	August 10, 2015
31:26	August 5, 2015	August 24, 2015

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Agency Decision

Title of Regulation: **12VAC30-120. Waivered Services.**

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

Name of Petitioner: Michele Frances Jackson.

Nature of Petitioner's Request: Per this document http://townhall.virginia.gov/UM/chartpetitionpublic.pdf, I would like to use § 2.2-4007 of the Code of Virginia to request that the Department of Medical Assistance Services (DMAS) change the regulations relating to the Medicaid Elderly or Disabled with Consumer-Direction (EDCD) Waiver.

1) Repeal all Medicaid Elderly or Disabled with Consumer Direction Waiver regulations into one regulation that assertively promotes the home and community presence and participation of persons with disabilities. For example, the EDCD Waiver should seek to encourage disabled people eating in restaurants with wait staff and flying airplanes to national and international destinations. Repeal 12VAC30-120-900, 12VAC30-120-980, 12VAC30-120-930, 12VAC30-120-920, 12VAC30-110, 12VAC30-20-500 through 12VAC30-20-560, 12VAC30-120-758, 12VAC30-120-762, 12VAC30-120-2000, 12VAC30-120-2010 and any other regulation about the EDCD Waiver into one regulation that clearly and completely explains the program.

2) Change the EDCD Waiver regulation to increase $11.47 hourly personal attendant wage by multiples, so that the personal attendants who are often family of the disabled individual will have the freedom of choice to purchase their own charitable contributions, housing, utilities, car, food, clothing, medical, entertainment, travel and other needs and wants. Persons with disabilities and their caretakers should have the income to eat in restaurants with wait staff, to fly and to participate in other good and enjoyable things. This is a love, truth and disability rights issue. Many personal attendants are family members and friends of persons with disabilities who do not want their family and friends to end up in foster care, nursing facilities, assisted-living facilities, other mental health institutions, group homes, etc. Freedom of choice allows family and friends, the best people, the biggest lovers of persons with disabilities (after God and persons with disabilities), to be caregivers for persons with disabilities.

3) Change the EDCD Waiver regulation to include an annual cost of living increase for the personal attendants.

4) Change the EDCD Waiver regulation, so that personal attendants and the employer of record can be the same person. Single parents need to be able to be both the personal attendant and the employer of record. Many single parents go through obtaining custody and child support for the disabled child because the noncustodial parent refuses to provide for the disabled child financially and in other ways. Married couples also benefit when a personal attendant and the employer of record are the same person. For example, a husband who is primarily the employer of record and a wife who is primarily the personal attendant can switch roles allowing the husband to serve as the personal attendant. Some personal attendants work more than 40 hours weekly and need rest. All personal attendants should be paid. Some family have more than one elderly or disabled member and also need flexibility of personal attendants and the employer of record being the same person.

5) Change the EDCD Waiver regulation, so that an individual age 18 and older can be a personal attendant including parents of minor disabled children, spouses of disabled individuals, all biological/adoptive family members and others. Encourage family to be personal attendants.

6) Change EDCD Waiver regulation, so that an individual age 17 and younger who is the mother/father of a disabled individual can serve as a personal attendant/employer of record.

7) Repeal EDCD Waiver regulation implementing periodic authorization. There should be one evaluation to qualify for the EDCD Waiver and no further authorizations. Disabilities like autism and Down Syndrome are life-long. Also, institutions have a long history of discriminating against persons with disabilities.

8) Change EDCD Waiver regulation, so that disabled individuals have compliments or complaints handled by the EDCD program head. Disabled individuals or their representatives are not to go through the Medicaid appeals process. EDCD Waiver is to handle compliments/complaints as an opportunity to improve the EDCD Waiver service not as a way to reduce or deny benefits/income to disabled individuals and their personal attendants. EDCD Waiver should strive to ensure that personal attendants are continuously paid and providing service to elderly or disabled individual from day one of birth and older until end of disability or death.

9) Change EDCD Waiver regulation, so that service facilitators are visiting disabled individuals and their representatives once annually to inform them about the EDCD Waiver, check that the personal attendants are being paid continuously and trouble shoot payment problems.

10) Repeal EDCD Waiver regulation where service facilitator is collecting data on the disabled individual and their family/personal attendants as it relates to the periodic authorization. (See point 7 where the periodic authorization is repealed.)

11) Change EDCD Waiver regulation, so that service facilitators are responsible for informing local medical facilities, mental health facilities, schools and government agencies about the EDCD Waiver with the goal that these groups will tell persons with disabilities and their families and friends about the EDCD Waiver. One of the goals should be that when parents receive genetic counseling they are also told about the EDCD Waiver, so that from day one if a disabled individual is born, they are enrolled in the EDCD Waiver receiving personal attendant and other services. Another goal is to end situation where some family have disabled members in foster care, nursing facilities, assisted living facilities, group homes and other institutions not because they want them there but because they have no knowledge of or little knowledge of the EDCD Waiver.

12) Change EDCD Waiver regulation, so that service facilitators assist a disabled person holding a Virginia EDCD Waiver with a move to another state and his/her personal attendant not lose any income.

13) Change EDCD Waiver regulation, so that service facilitators work on problem of how to help a disabled person with an EDCD Waiver from another state to move to Virginia without his/her personal attendant losing income.

14) EDCD Waiver should be a tool to empower disabled person to live daily the best possible life.

Agency Decision: Request denied.

Statement of Reason for Decision: DMAS declines to initiate the requested rulemaking action pursuant to § 2.2-4007 C of the Code of Virginia. DMAS has been undergoing a rulemaking action for the EDCD waiver for the last several years that it believes may address a number of this petitioner's issues once its final stage regulations can take effect. The agency's statement of its reasoning follows:

1. The petitioner requested that DMAS repeal its regulations for the Elderly or Disabled with Consumer Direction (EDCD) waiver (12VAC30-120-900 et seq.), its provider and Medicaid enrollee appeals regulations (respectively, 12VAC30-20-500 through 12VAC30-20-560 and 12VAC30-110), regulations in the Individual and Family Developmental Disability (DD) waiver concerning assistive technology and environmental modification services (12VAC30-120-758 and 12VAC30-120-762, respectively) and its Money Follows the Person regulations (12VAC30-120-2000 and 12VAC30-120-2010). The petitioner requested that these regulations be combined into one regulation that clearly and completely explains the program.

DMAS Response: The EDCD waiver currently serves 30,078 individuals across the Commonwealth who are either elderly or disabled or both. It covers personal care services (help with Activities of Daily Living (such as bathing, eating, toileting, dressing)), adult day health care, respite care, limited assistive technology, Personal Emergency Response Systems (PERS), PERS medication monitoring, limited environmental modifications, transition coordination and services. It has thousands of providers enrolled to render services. It has been operating across the Commonwealth since 1982 and annually brings more than $27 million in federal funds into the Commonwealth (State Fiscal Year 2013). The Virginia General Assembly appropriates more than $27 million annually for this waiver.

The individuals served in this waiver depend on these services to enable them to remain in their homes and communities thereby avoiding more restrictive and costly institutionalization in nursing facilities. Enrollees served in the waiver, in the aggregate, can no longer remain in their communities when the costs of their community care exceed the comparable aggregated institutional care.

These enrollees are permitted to self-direct their care via the consumer-directed model or have a home care agency direct their care.

Merging the EDCD waiver regulations, the provider and Medicaid enrollee appeals regulations, the DD waiver sections for assistive technology and environmental modification services and the Money Follows the Person regulations into one regulation is not a workable proposition. Each of these programs serve a unique population, or address a separate and unique function. Combining all these regulations would in fact create confusion for both providers and waiver individuals. The purpose of regulations is to establish rules that govern the coverage, provision and reimbursement of Medicaid-covered services, in compliance with federal and state laws. Medicaid regulations are necessary to protect individual rights and support the agency's claims for Federal Financial Participation. They are often unavoidably complex, but are also not designed to be voluminous. DMAS therefore publishes other materials, such as Medicaid memoranda, manuals and handbooks that are designed to provide a fuller explanation of Medicaid requirements.

Finally, DMAS maintains two separate sets of appeal regulations, one for individuals and another for providers, because these two populations are distinctly different and the legal processes for their appeals are unique to each population, precluding the application of one set of rules to both populations. Therefore, DMAS must necessarily maintain the separate status of these two sets of regulations in particular.

2. The petitioner requested that the EDCD waiver regulations increase the hourly personal attendant wages (currently $11.47 per hour) so that such attendants can have the freedom to purchase their needs and wants.

DMAS Response: Within constraints set by the Virginia General Assembly, DMAS is required by federal law to establish payment rates sufficient to attract enough providers to meet the medical care needs of its covered Medicaid individuals. DMAS has no data to indicate that the EDCD waiver does not enroll sufficient numbers of personal care attendants for the number of waiver individuals. DMAS' provider payment rates are constrained by the General Assembly's appropriations and the related federal matching dollars, and are intended to reimburse providers for their costs, plus a reasonable profit. The Virginia General Assembly provides for DMAS reimbursement in accordance with this principle, and it is not responsible to provide a certain standard of living for Medicaid providers.

3. The petitioner recommended that an annual cost of living increase be provided for personal attendants.

DMAS Response: The amounts the agency can reimburse providers are determined, in part, through federal law but largely through the Virginia legislative process. The General Assembly controls the agency's budget and DMAS has no independent authority to raise or reduce reimbursement rates. The agency encourages the petitioner to address these concerns with the General Assembly.

4. The petitioner requested that the regulations permit the personal attendant and the employer of record to be the same individual.

DMAS Response: Personal attendants in the EDCD waiver are responsible for providing personal care or respite services that can be directed by the employer of record (EOR) in the consumer-directed model of care. Employers of record (EOR) in the EDCD waiver are responsible for performing the functions of the employer in the consumer-directed model of service delivery and may be the waiver individual, a family member, caregiver or other person. The current regulations and the previously referenced final stage regulations do not permit the personal attendant and EOR to be the same person because a person cannot simultaneously be the employer and the employee due to conflicts of interest. Individuals who elect to use the consumer-directed model of care are being required, in the new final stage regulations, to receive services from CD services facilitators (SFs). SFs are prohibited from being the waiver individual, the attendant, a service provider, spouse or parent of the waiver individual or the EOR.

5. The petitioner requested that parents, spouses, and all biological/adoptive family members be allowed to be personal attendants for individuals enrolled in the EDCD waiver.

DMAS Response: This is permitted for some family members, in limited circumstances, in the current regulations and the new EDCD final stage regulations. Spouses and parents of minor children are not currently permitted to be paid caregivers nor is this allowed in the new final regulations. In limited circumstances when a family member or caregiver lives under the same roof with the individual with a disability they are permitted to be paid caregivers. In such instances, when either the consumer-directed services facilitator or the agency-directed nurse supervisor documents in the record that there are no other providers or aides, then DMAS does permit family members to be paid caregivers.

6. The petitioner requested that a person aged 17 years and younger, who is the parent of a disabled individual in the waiver, be permitted to serve as the individual's personal attendant and employer of record.

DMAS Response: In the earlier referenced final stage regulations, DMAS is requiring persons serving as personal care attendants (consumer-directed model) and personal care aides (agency-directed model) to be at least 18 years of age. As the age of majority in Virginia, it is therefore the youngest age at which a person is legally responsible for his actions. DMAS must be able to enforce its program requirements with persons who can be held legally responsible for their actions. This rule is in place to protect the health and safety of waiver individuals.

7. The petitioner requested that the periodic authorizations be discontinued as disabilities like autism and Down Syndrome are life-long.

DMAS Response: While it is true that disabilities like autism and Down Syndrome are life-long, individuals with such disabilities can frequently experience changes in their medical, social and cognitive conditions. Such changes must be identified promptly so that required service changes can also be implemented promptly. DMAS' mechanism for quickly ensuring that changes are identified and responded to is the periodic authorizations.

8. The petitioner requested that waiver individuals' complaints be handled by the head of the EDCD waiver program instead of the appeal process.

DMAS Response: An appeal is defined in the existing EDCD waiver regulations as, "the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560." Complaint is defined in DMAS regulations and documents as a "grievance." Grievance is defined as "an expression of dissatisfaction about any matter 'other than an adverse action'." Possible subjects for grievances include, but are not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the individual's rights.

Complaints or grievances are handled by the EDCD waiver personnel or contractors. They do not rise to the level of appeals. Appeals of agency or contractor decisions that are adverse to the individual, as per 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560, carry appeal rights to DMAS. The resolution of complaints and grievances is the responsibility of the head of the EDCD waiver program or his or her designee (contract monitor, contract manager), or appropriate supervisory personnel for the actual EDCD waiver provider. Appeals of adverse actions are required by federal law.

9. The petitioner requested that service facilitators visit the waiver individuals and their representatives only once annually to check that personal attendants are being paid continuously and trouble shoot payment problems.

DMAS Response: In the current regulations as well as in its pending final stage regulations, DMAS is requiring that services facilitators (SF) monitor, at least every 90 days, the delivery of services set out in the waiver individuals' plans of care (POC). The SF are being required to review the utilization of services to evaluate the adequacy and appropriateness of CD services as compared to waiver individuals current functioning, cognitive status, and medical and social needs. The SF is also charged with reviewing the time sheets submitted by the attendant to ensure that hours approved in the POC are being provided and not exceeded. The SFs' documentation of such visits and reviews must record individuals' status, satisfaction with and adequacy of the services, the presence of any suspected neglect or abuse, any special tasks performed by attendants, any hospitalization or changes in medical condition, functioning, or cognitive status. In light of the fact that the EDCD waiver serves individuals who are elderly or disabled, or both, DMAS believes that this frequency of SF monitoring is appropriate given how quickly such individuals' conditions can and do change. This rule is in place to protect the health and safety of waiver individuals.

10. The petitioner requested that the services facilitator stop collecting data about the individual and their representative as it relates to the periodic authorization.

DMAS Response: DMAS requires SFs to collect only that data about individuals that is sufficient to ensure that they are adequately and appropriately cared for by their attendants. This oversight is meant to ensure that the services being provided are consistent with the plan of care. This policy is in place to ensure the health and safety of individuals who are enrolled in the EDCD waiver.

11. The petitioner requested that the services facilitators be responsible for informing local medical facilities, schools, mental health facilities, etc., about the existence of the EDCD waiver program. The goal would be the enrollment from day one of birth of an individual with a disability or disabilities.

DMAS Response: DMAS can reimburse providers only for Medicaid-covered health care services rendered to Medicaid enrolled individuals. The agency is not legally permitted to require providers to perform outreach of the nature suggested. Automatic eligibility from day one after birth is not legally permissible. Waiver eligibility is based upon a disability determination process, which is a federally required process and cannot be sidestepped.

12. The petitioner requested that services facilitators be responsible for moving a disabled person to another state so that his personal attendant does not lose any income.

DMAS Response: SFs may assist individuals who move to another state with the medical logistics associated with a move, but DMAS cannot require this. Moving to another state is not a Medicaid-covered service and Medicaid providers can only be required to perform those services for which they can seek Medicaid reimbursement.

13. The petitioner requested that services facilitators work on the problem of how to move disabled persons to other states without the personal attendants losing income.

DMAS Response: DMAS is not required to guarantee personal income nor a certain standard of living to personal care attendants. Reimbursement is paid for Medicaid-covered services designated in the plan of care. If an individual moves away from Virginia, attendants can work for other individuals in need of personal care services.

14. The petitioner requested that the EDCD waiver be made "a tool to empower disabled person to live daily the best possible life."

DMAS Response: DMAS believes that its revised final stage regulations accomplish this recommendation of the petitioner.

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

VA.R. Doc. No. R14-26; Filed July 31, 2014, 11:34 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider (i) repealing **2VAC5-110, Rules and Regulations Pertaining to a Pound or Enclosure to be Maintained by Each County or City**, and (ii) adopting **2VAC5-111, Rules and Regulations Pertaining to Public and Private Animal Shelters**, to update requirements and in accordance with changes in the Code of Virginia enacted by Chapter 148 of the 2014 Acts of Assembly. The purpose of the proposed action is to ensure that a consistent standard of confinement and care is applied to all companion animals held in trust, whether by public or private animal shelters. In addition, the agency has determined that it is in the public interest to ensure that all companion animals subject to a holding period in shelter facilities be maintained in a manner that protects the animals from injury, illness, and theft for this short period, while allowing public animal shelters greater freedom in housing animals that have satisfied holding period requirements.

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

Statutory Authority: § 3.2-6501 of the Code of Virginia.

Public Comment Deadline: September 24, 2014.

Agency Contact: Dr. Dan Kovich, Staff Veterinarian, Animal Care and Health Policy, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1771, FAX (804) 371-2380, TTY (800) 828-1120, or email dan.kovich@vdacs.virginia.gov.

VA.R. Doc. No. R14-4009; Filed July 29, 2014, 12:38 p.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-40. Voter Registration (amending 1VAC20-40-10).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: August 11, 2014.

Agency Contact: Susan Lee, Manager, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, or email susan.lee@sbe.virginia.gov.

Summary:

The amendments change the definition of "valid" for all purposes related to voter identification, including the length of time an expired identification document will be accepted. The board initially proposed accepting identification documents up to 30 days after expiration. The final amendments allow acceptance of documents that have expired within the preceding 12 months.

Article 1
General Provisions

1VAC20-40-10. Definitions.

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

"Abode" or "place of abode" means a physical place where a person dwells. One may have multiple places of abode, such as a second home.

"Address" or "residence address" for purposes of voter registration and address confirmation means the address of residence in the precinct required for voter registration. An alternative mailing address may be included on a voter registration application when: (i) the residence address of the applicant cannot receive mail; or (ii) the voter is otherwise eligible by law to provide an alternative mailing address. Alternative mailing addresses must be sufficient to enable the delivery of mail by the United States Postal Service. The post office box for published lists may be provided either by the United States Postal Service or a commercial mail receiving agency (CMRA) described in the United States Postal Service Domestic Mail Manual.

"Authorized personnel" means the designated individuals of a general registrar's office or the Department of Elections who are permitted to access the voter registration database and capture information necessary to generate photo identification cards.

"Domicile" means a person's primary home, the place where a person dwells and which he considers to be the center of his domestic, social, and civil life. Domicile is primarily a matter of intention, supported by an individual's factual circumstances. Once a person has established domicile, establishing a new domicile requires that he intentionally abandon his old domicile. For any applicant, the registrar shall presume that domicile is at the address of residence given by the person on the application. The registrar shall not solicit evidence to rebut this presumption if the application appears to be legitimate, except as provided in 1VAC20-40-40 B and C.

"Permanent satellite location" means an office managed, maintained, and operated under the control of the general registrar for the locality that is consistently operational throughout the year and is not the principal office of the general registrar. Offices of other agencies where registration takes place pursuant to § 24.2-412 B of the Code of Virginia are not considered permanent satellite locations.

"Residence," "residency," or "resident" for all purposes of qualification to register and vote means and requires both domicile and a place of abode.

"Valid" for all purposes related to voter identification means [~~documents~~ (i) the document] ~~containing the name and photograph of the voter~~ [~~having legal effect, legally or officially acceptable or of binding force, and~~ appearing appears] to be genuinely issued by the agency or issuing entity appearing upon the document [~~where~~, (ii)] the bearer of the document reasonably appears to be the person whose photograph is contained thereon [, and (iii) the document shall be current or have expired within the preceding 12 months. The officer of election shall determine whether the document is officially acceptable based on its face]. ~~Other data contained on the document, including but not limited to expiration date, shall not be considered in determining the validity of the document.~~ [~~Such documents shall be accepted up to 30 days after expiration.~~]

"Voter photo identification card" means the official voter registration card containing the voter's photograph and signature referenced in § 24.2-404 A 3 of the Code of Virginia.

VA.R. Doc. No. R14-4093; Filed August 11, 2014, 4:22 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: **2VAC5-440. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine (amending 2VAC5-440-10, 2VAC5-440-40, 2VAC5-440-50, 2VAC5-440-110).**

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

Effective Date: September 24, 2014.

Agency Contact: Andres Alvarez, Director, Division of Consumer Protection, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 225-3821, FAX (804) 371-7479, TTY (800) 828-1120, or email andres.alvarez@vdacs.virginia.gov.

Summary:

The amendments (i) clarify definitions and certain provisions, (ii) update the regulation to reflect the current operation of the Boll Weevil Eradication and Exclusion Program and the department's enforcement activities, and (iii) reduce the penalty for late payments and acreage underreporting.

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

2VAC5-440-10. Definitions.

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

"Authorized inspector" means any person employed by a state or federal regulatory plant pest agency and trained to inspect for and identify boll weevil in any living stage.

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

"Boll weevil" means the live insect, "Anthonomus grandis grandis" Boheman, in any stage of development.

"Boll Weevil Eradication and Exclusion Program" or "program" means the program conducted by the Virginia Department of Agriculture and Consumer Services and the Southeastern Boll Weevil Eradication Foundation, Inc., to eradicate the boll weevil and subsequently prevent its reintroduction into areas where it has been eradicated.

"Certificate" means a document issued or authorized by an inspector to be issued under this chapter to allow the movement of regulated articles to any destination.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services or his designee.

"Compliance agreement" means a written agreement between a grower, dealer, or mover of regulated articles, and the Virginia Department of Agriculture and Consumer Services, United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.

"Cotton" means parts and products of plants of the genus "Gossypium," before processing.

"Cottonseed" means cottonseed from which the lint has been removed.

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

"FSA" means the United States Department of Agriculture, Farm Service Agency.

"Gin trash" means all of the material produced during the cleaning and ginning of seed cotton, bollies, or snapped cotton, except for the lint, cottonseed, and gin waste.

"Grower" means a farm operator or producer, whether the owner of the land or not.

"Infestation" means the presence of the boll weevil, or the existence of circumstances that make it reasonable to believe that boll weevil is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine and regulations.

"Limited permit" means a document issued by an inspector to allow the movement of noncertifiable regulated articles to a specified destination for limited handling, use, processing, or treatment.

"Lint" means all forms of raw ginned cotton, either baled or unbaled, except linters and waste.

~~"Moved (movement, move)"~~ "Move," "moved," or "movement" means shipped; offered for shipment to a common carrier; received for transportation or transported by a common carrier; or carried, transported, moved, or allowed to be moved by any means.

"NASS" means the U.S. Department of Agriculture, National Agricultural Statistics Service.

"Person" means any individual, corporation, company, society, or association or other organized group.

"Regulated area" means any state or country in which the boll weevil is known to exist or areas where circumstances make it reasonable to believe that the boll weevil is present.

"Scientific permit" means a document issued by the Virginia Department of Agriculture and Consumer Services to authorize movement of regulated articles to a specified destination for scientific purposes.

"Seed cotton" means cotton as it comes from the field prior to ginning.

"Used cotton harvesting equipment" means equipment previously used to harvest, strip, transport or destroy cotton.

"Waybill" means a document containing the details of a shipment of goods.

2VAC5-440-40. Requirements for program participation.

A. All cotton farm operators in Virginia are hereby required to participate in the ~~eradication/exclusion program~~ Boll Weevil Eradication and Exclusion Program. Participation shall include timely reporting of acreage and field locations, compliance with regulations, and payment of fees. ~~Farm operators within the Commonwealth shall be notified through either the extension offices, the department, FSA, or newspapers of their program costs on a per acre basis on or before April 1 of each year.~~ The department shall notify farm operators of their program costs on a per acre basis. The following procedures are required for participation in the program:

1. ~~Completing a Cotton Acreage Reporting Form at~~ Report cotton acreage and cotton field location or locations to the FSA office by July 1 of the current growing season for which participation is required. ~~At this time the farm operator shall pay a nonrefundable fee in an amount sufficient to cover estimated program costs as determined by the commissioner. The commissioner shall set this fee following consultation with state, federal, and private organizations responsible for implementation and funding of boll weevil eradication/exclusion programs conducted in the Commonwealth. Such fee shall be based upon prior year's expenses and projected cotton acreage for the current growing season. Those farm operators not reporting their acreage by July 1 will not be considered as program participants and will be subject to a penalty.~~ Any farm operator who does not report his cotton acreage and cotton field location or locations by July 1 will not be considered a program participant and may be subject to a penalty of 10% of the fee due for his unreported cotton acreage.

2. ~~All fees shall be paid by the farm operator.~~ A farm operator shall pay a nonrefundable fee in an amount sufficient to cover estimated program costs as determined by the commissioner. Fees shall be made payable to Treasurer of Virginia ~~and collected by FSA~~ and must be paid within 30 days of the invoice date. The commissioner shall set this fee following consultation with state, federal, and private organizations responsible for the implementation and funding of the Boll Weevil Eradication and Exclusion Program conducted in the Commonwealth.

3. ~~Noncommercial cotton~~ Cotton grown for noncommercial purposes shall not be planted in Virginia unless the grower applies for and receives an exemption to grow cotton from the commissioner. Applications~~, in writing,~~ shall be made in writing to the ~~Program Manager, Office of Plant and Pest Services, 1100 Bank Street, Room 703, Richmond, VA 23219~~ commissioner, stating the conditions under which the grower requests such exemption. The decision whether all or part of these requirements shall be exempted shall be based on the following:

a. Location of growing area;

b. Size of growing area;

c. Pest conditions in the growing area;

d. Accessibility of growing area;

e. Any stipulations set forth in a compliance agreement between the individual and the ~~Department of Agriculture and Consumer Services~~ department that are necessary for the effectuation of the program.

B. ~~Farm operators~~ A farm operator whose ~~FSA measured~~ acreage, as determined by FSA, exceeds the ~~grower reported~~ acreage that was reported by the farm operator by more than 10%~~,~~ shall be assessed ~~an additional $5.00 per acre~~ a penalty of 10% of the fee due on that acreage in excess of the reported acreage.

C. A farm operator may apply for a waiver requesting delayed payment under conditions of financial hardship. Any farm operator applying for a waiver shall make application in writing to the ~~Program Manager, Office of Plant and Pest Services, 1100 Bank Street, Richmond, VA 23219~~ commissioner stating the reason a waiver is necessary. ~~This request must be accompanied by a financial statement from a state or federally chartered bank or lending agency supporting such request. The decision of whether to waive all or part of these additional assessments or payment dates shall be made by the program manager and notification given to the farm operator within two weeks after receipt of such application.~~ The commissioner's decision whether to delay payment shall be based on, but not limited to, the following: (i) meteorological conditions, (ii) economic conditions, and (iii) any other uncontrollable destructive forces. If a waiver is granted, payment shall be due at the time the cotton is sold, or ~~by December 1~~ within 30 days of the invoice date, whichever is ~~sooner~~ later.

D. Failure to pay all fees ~~on or before July 1~~ within 30 days of the invoice date will result in a penalty of ~~$5.00 per acre~~ 10% of the total fee due. Failure by a farm operator to pay all program costs ~~by August 1~~ within 30 days of the invoice date shall be a violation of ~~The Virginia Cotton Boll Weevil Quarantine~~ this chapter. If such farm operator fails to comply with ~~these regulations~~ this chapter, the ~~Commissioner of Agriculture and Consumer Services~~ commissioner, through his duly authorized agents, may proceed to trap all cotton acreage found in violation and initiate actions to recover all trapping program costs through established policies and procedures identified in the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia).

~~E. Acreage subject to emergency or hardship conditions after all the growers' share of the program have been paid and prior to the initiation of field operations may be considered~~

~~for a refund. The refund amount will be determined by the actual program cost per acre up to the time of emergency or hardship.~~

~~F.~~ E. The commissioner may purchase growing cotton when he deems it in the best interest of the program, provided that the funding necessary to purchase the cotton is available. Purchase price shall be based on ~~the FSA farm established yield for the current year~~ an average of the previous five years of cotton yield figures, as determined by NASS, for the locality in which the growing cotton that may be purchased by the commissioner is located.

~~G.~~ F. If necessary to prevent boll weevil reinfestation of the Commonwealth, the farm operator, upon notification by the commissioner, shall completely destroy all cotton ~~determined to threaten~~ that the commissioner deems to pose a threat to the safety of Virginia's cotton industry. If such farm operator fails to comply with ~~these regulations~~ this chapter, the ~~Commissioner of Agriculture and Consumer Services~~ commissioner, through his duly authorized agents, shall proceed to destroy such cotton and shall compute the actual costs of labor and materials used, and the farm operator shall pay to the commissioner such assessed costs. No ~~damage~~ damages shall be awarded the grower of such cotton for entering ~~thereon~~ his cotton field and destroying any cotton when done by the order of the commissioner.

2VAC5-440-50. Conditions governing the issuance of certificates and permits to allow the movement of regulated articles.

A. Certificates shall be issued by an authorized inspector for movement of the regulated articles designated in 2VAC5-440-30 under any of the following conditions when:

1. In the judgment of the authorized inspector, they have not been exposed to boll weevil in any living stage.

2. They have been examined by the authorized inspector and found to be free of boll weevil in any living stage.

3. They have been treated to destroy boll weevil, under the observation of the authorized inspector, according to methods selected by him from procedures known to be effective under the conditions in which applied.

4. Grown, produced, stored, or handled in such manner that, in the judgment of the authorized inspector, no boll weevil would be transmitted.

B. Limited permit. Limited permits may be issued by an authorized inspector for the movement of noncertified regulated articles specified under 2VAC5-440-30 to specified destinations for limited handling, use, processing, or treatment, when he determines that no hazard of spread of the boll weevil exists.

C. Special permits. Special permits may be issued by the ~~Virginia Department of Agriculture and Consumer Services~~ department to allow the movement of boll weevil in any living stage and any other regulated articles for scientific purposes, under conditions prescribed in each specific case.

D. Compliance agreement. Compliance agreements for the movement of regulated articles may be issued by an authorized inspector. ~~As a condition of receiving a certificate or limited permit for the movement of regulated articles,~~ A compliance agreement may be issued to any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating, or moving ~~such~~ a regulated article ~~may be required to sign a compliance agreement~~. ~~The~~ A compliance agreement shall ~~stipulate that~~ include the required safeguards against the establishment and spread of infestation ~~will be maintained~~ and ~~will comply with~~ the conditions governing the maintenance of identity, the handling~~,~~ and the subsequent movement of ~~such~~ regulated articles, and the cleaning and treatment of means of conveyance and containers.

E. Use of certificates or permits with shipments. If a certificate or permit is required for the movement of regulated articles, the regulated articles are required to have a certificate or permit attached when offered for movement. If a certificate or permit is attached to the invoice or ~~way bill~~ waybill, and the articles are adequately described on the certificate, the attachment of a certificate or limited permit to the regulated article will not be required. Certificates or permits attached to the invoice, ~~way bill~~ waybill, or other shipping document~~,~~ shall be given by the carrier to the consignee at the destination of the shipment~~,~~ or to an inspector when requested.

F. Assembly of articles for inspection. Persons intending to move any regulated articles shall apply for inspection as far in advance as possible. They shall safeguard the articles from infestation. The articles shall be assembled at a place and in a manner designated by the inspector to facilitate inspection.

G. Disposition of certificates and permits. In all cases, certificates and permits shall be furnished by the carrier to the consignee at the destination of the shipment.

2VAC5-440-110. Determination of reasonableness of costs for services, products, or articles.

The commissioner, pursuant to § 3.2-711 of the Code of Virginia, may determine that costs for services, products, or articles ~~that~~ shall be paid by the persons affected when the commissioner determines that those services, products, or articles are beyond the reasonable scope of administering the ~~law~~ Virginia Tree and Crop Pests Law (§ 3.2-700 et seq. of the Code of Virginia).

~~FORMS (2VAC5-440)~~

~~Cotton Acreage Reporting Form (rev. 3/99).~~

VA.R. Doc. No. R12-3186; Filed July 31, 2014, 10:59 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

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

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

Contact Information: Cindy Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4378, FAX (804) 698-4019, or email cindy.berndt@deq.virginia.gov.

FORMS (9VAC25-32)

~~Virginia Pollution Abatement Permit Application, General Instructions (rev. 4/09)~~

~~Virginia Pollution Abatement Permit Application, Form A, All Applicants (rev. 4/09)~~

Virginia Pollution Abatement Permit Application, General Instructions (rev. 5/14)

Virginia Pollution Abatement Permit Application, Form A, All Applicants (rev. 6/14)

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

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

Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids Cover Page (rev. 6/13):

Part D-I: Land Application of Municipal Effluent (rev. 4/09)

Part D-II: Land Application of Biosolids (rev. 10/13)

Part D-III: Effluent Characterization Form (rev. 4/09)

Part D-IV: Biosolids Characterization Form (rev. 6/13)

Part D-V: Non-Hazardous Waste Declaration (rev. 6/13)

Part D-VI: Land Application Agreement - Biosolids and Industrial Residuals (rev. 9/12)

Part D-VII: Request for Extended Setback from Biosolids Land Application Field (rev. 10/11)

Application for Land Application Supervisor Certification (rev. 2/11)

Application for Renewal of Land Application Supervisor Certification (rev. 2/11)

Sludge Disposal Site Dedication Form, Form A-1 (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement (rev. 10/13)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance (rev. 10/13)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form III, Corporate Letter (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form IV, Corporate Guarantee (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form V, Letter of Credit (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VI, Trust Agreement (rev. 11/09)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VII, Local Government Financial Test (rev. 10/13)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VIII, Local Government Guarantee (rev. 10/13)

VA.R. Doc. No. R14-4131; Filed August 6, 2014, 10:23 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (adding 18VAC90-20-215).**

Statutory Authority: §§ 54.1-2400 and 54.1-3017.1 of the Code of Virginia.

Public Hearing Information:

September 16, 2014 - 10:30 a.m. - Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: October 24, 2014.

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

Basis: Regulations are promulgated under § 54.1-2400 of the Code of Virginia, which provides the Board of Nursing the

authority to promulgate regulations to administer the regulatory system, and § 54.1-3017.1 of the Code of Virginia, which provides specific authorization for the board to promulgate regulations for provisional licensure for registered nurse (RN) applicants.

Purpose: The purpose of this regulatory action is to comply with the statutory mandate of Chapter 712 of the 2011 Acts of the Assembly, which provides for issuance of a provisional license to an applicant for registered nurse licensure in order to obtain the clinical experience specified in regulation. The provisional licensee is to practice under supervision "in accordance with regulations established by the Board." This action makes permanent emergency regulations that have been in place since August 1, 2013.

The legislation authorizes the board to provide a pathway to licensure by the issuance of a provisional license to allow a graduate who has met the educational and examination requirements but is lacking clinical experience to obtain such experience by practicing under the supervision of a registered nurse for a period of time. The proposed regulations for provisional licensure will protect the public health, safety, and welfare by assuring that the RN applicant gains experience across the life span in all areas of nursing practice and that his practice will be overseen by an RN with at least two years of clinical practice experience. The supervisor is responsible for the assignment of duties consistent with the knowledge and skills of the provisional licensee and must be prepared to intervene if necessary for the health and safety of clients receiving care from a provisional licensee.

Substance: The proposal provides an alternative for qualifying for licensure by granting a provisional license to an RN applicant who has otherwise met the educational and examination requirements but is lacking clinical experience in the role of an RN. The proposal allows an applicant credit for supervised clinical hours in a current educational program and for holding an active, current license as a licensed practical nurse. The applicant will be given a year in which to complete 500 hours (or less with prior credits), which may be accomplished on a part-time basis. The proposal requires appropriate oversight of a provisional licensee practice across all aspects of nursing practice to assure that the RN is minimally competent to practice upon the granting of full licensure.

Issues: The primary advantage to the public is the potential for an increased supply of registered nurses who are qualified by education and supervised clinical experience to provide care to patients. There is also an advantage to certain graduates of educational programs who are not qualified for licensure because they lack the requisite clinical experience; the proposed regulation offers a pathway to licensure. There are no disadvantages to the public.

There are no advantages or disadvantages to the Commonwealth or the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation: Pursuant to Chapter 712 (Senate Bill 1245) of the 2011 Acts of the Assembly, the Board of Nursing (Board) proposes to revise its regulations to provide for provisional licensure for applicants as registered nurses to obtain clinical experience. Specifically, the Board proposes to establish: 1) requirements for qualification and submission of documents for approval as a provisional licensee, 2) requirements for 500 hours of direct client care in the role of a registered nurse including various areas of nursing, 3) provisions for acceptance of previous clinical experience towards meeting the 500-hour requirement, 4) requirements for supervision of a provisional licensee, including the qualifications and responsibilities of the supervising nurse, and 5) provision for expiration and renewal of a provisional license.

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

Estimated Economic Impact. The Regulations of the Board of Nursing (Section 120) require that "A nursing education program preparing for licensure as a registered nurse shall provide a minimum of 500 hours of direct client care supervised by qualified faculty." So approved programs based in Virginia that prepare for licensure as a registered nurse (RN) provide at least 500 hours of supervised clinical experience; thus the proposed provisional license will not directly affect individuals graduating from Virginia RN programs.

The proposed provisional license is relevant for graduates of out-of-state RN programs that provide less than 500 hours of supervised clinical experience. The proposed provisional license will provide these individuals with a feasible pathway to become licensed as an RN in the Commonwealth. This proposal should provide a net benefit in that it will enable additional qualified individuals to work in the Commonwealth.

Businesses and Entities Affected. The proposal to create an RN provisional license for applicants who need additional clinical experience will affect out-of-state RN programs that provide less than 500 hours of supervised clinical experience and their students who may wish to gain RN licensure in Virginia. The Department of Health Professions estimates that 25 or fewer individuals will seek provisional licensure per annum. By moderately adding to the supply of RNs in the Commonwealth, the proposal may moderately affect some hospitals, doctor's offices, and other entities seeking to employ RNs as well.

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

Projected Impact on Employment. The proposed amendments will likely moderately increase the supply of qualified RNs in the Commonwealth. This will likely moderately increase the number of individuals working as RNs in Virginia.

Effects on the Use and Value of Private Property. Through the associated moderate increase in supply of RNs, the proposed amendments may help some firms find and hire an RN.

Small Businesses: Costs and Other Effects. By moderately adding to the supply of RNs in the Commonwealth, the proposed amendments may moderately reduce the cost of finding and employing RNs for some small firms that employ them.

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

Agency's Response to Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget.

Summary:

Chapter 712 of the 2011 Acts of Assembly authorizes the board to adopt regulations that provide a licensure pathway through issuance of a provisional license to a registered nurse (RN) applicant who has otherwise met the educational and examination requirements but is lacking clinical experience. The proposed regulation includes (i) requirements for qualification and submission of documents for approval as a provisional licensee; (ii) requirements for 500 hours of direct client care in the role of an RN including various areas of nursing; (iii) provisions for acceptance of previous clinical experience towards meeting the 500-hour requirement; (iv) requirements for supervision of a provisional licensee, including the qualifications and responsibilities of the supervising nurse; and (v) provisions for expiration and renewal of a provisional license.

18VAC90-20-215. Provisional licensure of applicants for licensure as registered nurses.

A. Pursuant to § 54.1-3017.1 of the Code of Virginia, the board may issue a provisional license to an applicant for the purpose of meeting the 500 hours of supervised, direct (hands-on) client care required of an approved registered nurse education program.

B. Such applicants for provisional licensure shall submit:

1. A completed application for licensure by examination and fee;

2. Documentation that the applicant has successfully completed a nursing education program; and

3. Documentation of passage of NCLEX in accordance with 18VAC90-20-190.

C. Requirements for hours of direct client care with a provisional license.

1. To qualify for licensure as a registered nurse, direct, hands-on hours of supervised clinical experience shall include the areas of adult medical/surgical nursing, geriatric nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, nursing fundamentals, and pediatric nursing. Supervised clinical hours may be obtained in employment in the role of a registered nurse or without compensation for the purpose of meeting these requirements.

2. Hours of direct, hands-on clinical experience obtained as part of the applicant's nursing education program and noted on the official transcript shall be counted towards the minimum of 500 hours and in the applicable areas of clinical practice.

3. For applicants with a current, active license as an LPN, 150 hours of credit shall be counted towards the 500-hour requirement.

4. Up to 100 hours of credit may be applied towards the 500-hour requirement for applicants who have successfully completed a nursing education program that:

a. Requires students to pass competency-based assessments of nursing knowledge as well as a summative performance assessment of clinical competency that has been evaluated by the American Council on Education or any other board-approved organization; and

b. Has a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the

cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.

5. An applicant for licensure shall submit verification from a supervisor of the number of hours of direct client care and the areas in which clinical experiences in the role of a registered nurse were obtained.

D. Requirements for supervision of a provisional licensee.

1. The supervisor shall be on site and physically present in the unit where the provisional licensee is providing clinical care of clients.

2. In the supervision of provisional licensees in the clinical setting, the ratio shall not exceed two provisional licensees to one supervisor at any given time.

3. Licensed registered nurses providing supervision for a provisional licensee shall:

a. Notify the board of the intent to provide supervision for a provisional licensee on a form provided by the board;

b. Hold an active, unrestricted license or multistate licensure privilege and have at least two years of active clinical practice as a registered nurse prior to acting as a supervisor;

c. Be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the supervisee's clinical knowledge and skills;

d. Be required to monitor clinical performance and intervene if necessary for the safety and protection of the clients; and

e. Document on a form provided by the board the frequency and nature of the supervision of provisional licensees to verify completion of hours of clinical experience.

E. The provisional status of the licensee shall be disclosed to the client prior to treatment and shall be indicated on identification worn by the provisional licensee.

F. All provisional licenses shall expire six months from the date of issuance and may be renewed for an additional six months. Renewal of a provisional license beyond the limit of 12 months shall be for good cause shown and shall be approved by the board. A request for extension of a provisional license beyond 12 months shall be made at least 30 days prior to its expiration.

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 (18VAC90-20)

Application for Licensure by Endorsement -- Registered Nurse (rev. 5/11)

Instructions for Licensure by Endorsement -- Registered Nurse (rev. 5/11)

Instructions for Licensure by Endorsement -- Licensed Practical Nurse (rev. 5/11)

Application for Licensure by Endorsement -- Licensed Practical Nurse (rev. 6/11)

Verification of Clinical Practice -- Licensure by Endorsement (rev. 1/10)

Instructions and Application for Licensure by Examination for Registered Nurses (rev. 8/11)

Instructions and Application for Licensure by Examination -- Licensed Practical Nurse (rev. 8/11)

Instructions and Application for Licensure by Repeat Examination for Registered Nurse (rev. 8/11)

Instructions and Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. 8/11)

Instructions and Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. 6/11)

Instructions and Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. 6/11)

Declaration of Primary State of Residency for Purposes of the Nurse Licensure Compact (rev. 6/11)

Instructions for Application for Reinstatement -- Registered Nurse (rev. 10/10)

Application for Reinstatement -- Registered Nurse (rev. 6/11)

Instructions for Application for Reinstatement -- Licensed Practical Nurse (rev. 2/10)

Application for Reinstatement of License as a Licensed Practical Nurse (rev. 6/11)

Instructions and Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation (rev. 6/11)

Instructions and Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation (rev. 6/11)

License Verification Form (rev. 10/09)

Procedure (rev. 3/10) and Application for Registration as a Clinical Nurse Specialist (rev. 6/11)

Application for Reinstatement of Registration as a Clinical Nurse Specialist (rev. 6/11)

Application to Establish a Nursing Education Program (rev. 6/11)

Agenda and Survey Visit Report -- Registered Nurse Education Program (rev. 4/08)

Agenda and Survey Visit Report -- Practical Nurse Education Program (rev. 4/08)

NCLEX Survey Visit Report (rev. 4/08)

Application for Registration for Volunteer Practice (rev. 7/07)

Sponsor Certification for Volunteer Registration (rev. 8/08)

Verification of Supervised Clinical Practice -- Registered Nurse Provisional License (undated)

Notification of Intent to Supervise Clinical Practice -- Registered Nurse Provisional License (undated)

VA.R. Doc. No. R13-2989; Filed August 6, 2014, 11:54 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Commonwealth Transportation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **24VAC30-41. Rules and Regulations Governing Relocation Assistance (amending 24VAC30-41-30, 24VAC30-41-220, 24VAC30-41-290, 24VAC30-41-300, 24VAC30-41-310, 24VAC30-41-320, 24VAC30-41-340, 24VAC30-41-360, 24VAC30-41-390, 24VAC30-41-400, 24VAC30-41-430, 24VAC30-41-510, 24VAC30-41-520, 24VAC30-41-540, 24VAC30-41-550, 24VAC30-41-570, 24VAC30-41-580, 24VAC30-41-620 through 24VAC30-41-660, 24VAC30-41-680).**

Statutory Authority: § 25.1-402 of the Code of Virginia; 42 USC § 4601 et seq.; 49 CFR Part 24.

Effective Date: October 1, 2014.

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Summary:

The amendments raise the authorized payment to a displaced homeowner from $22,500 to $31,000, reduce the number of days that may pass between displacement and negotiations for the acquisition of property before such payment is authorized from 180 to 90 days, and increase the maximum payment permitted to a person leasing or renting a comparable replacement dwelling for a period of 42 months from $5,250 to $7,200. The amendments conform to Chapter 218 of the 2014 Acts of Assembly.

24VAC30-41-30. Definitions.

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

"Business" means any lawful activity, except a farm operation, that is conducted:

1. Primarily for the sale of services to the public;

2. Primarily for the purchase, sale, lease, rental or any combination of these, of personal or real property, or both, or for the manufacture, processing, or marketing of products, commodities, or any other personal property;

3. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

4. By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

"Comparable replacement housing" means a dwelling that is:

1. Decent, safe and sanitary (defined below).

2. Functionally equivalent to the displacement dwelling in that it performs the same function and provides the same utility. While every feature of a displacement dwelling need not be present, the principal features must be provided. Functional equivalency reflects the range of purposes for which the various physical features of a building may be used. Special consideration will be given to the number of rooms, and area of living space. VDOT may consider reasonable trade offs for specific features when the replacement unit is equal to or better than the displacement dwelling.

3. Adequate in size to accommodate the displacee.

4. In a location generally not less desirable than the displacement dwelling with respect to public utilities, commercial and public facilities, and is reasonably accessible to the displacee's place of employment.

5. On a site typical in size for residential use, with normal site improvements. (The site need not include features such as swimming pools or outbuildings.)

6. Currently available to the displaced person on the private market. However, a publicly owned or assisted unit may be comparable for a person displaced from the same type of unit. In such cases, any requirements of the public housing assistant program relating to the size of the replacement dwelling shall apply.

7. Within financial means of the displaced person.

Comparable replacement housing is the standard for replacement housing that VDOT is obligated to make available to displaced persons. It also is the standard for establishing owner and rental purchase supplement benefits.

"Contributes materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as VDOT determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least $5,000;

2. Had average annual net earnings of at least $1,000; or

3. Contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, VDOT may approve the use of other criteria as determined appropriate.

"Decent, safe and sanitary housing" means that a dwelling:

1. Meets local housing and occupancy codes, is structurally sound, weather tight and in good repair;

2. Has a safe electrical wiring system adequate for lighting and appliances;

3. Contains a heating system capable of maintaining a healthful temperature;

4. Is adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced household;

5. Has a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains sink, toilet, and bathing facilities (shower or bath, or both), all operational and connected to a functional water and sewer disposal system;

6. Provides unobstructed egress to safe open space at ground level; and

7. Is free of barriers to egress, ingress and use by a displacee who is disabled.

This is the qualitative and safety standard to which displacees must relocate in order to qualify for replacement housing payment benefits provided by VDOT. Decent, safe and sanitary is also an element in the definition of comparable replacement housing defined above.

"Displaced person" means any person who moves from real property or moves personal property from real property as a direct result of the initiation of negotiations for the acquisition of the property; the acquisition of the real property, in whole or in part, for a project; as a direct result of rehabilitation or demolition for a project; or as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. If the move occurs after a written order to vacate is issued, the occupant is considered a displaced person even though the property is not acquired.

Persons who do not qualify as a displaced person under these regulations include:

1. A person who moves before the initiation of negotiations, unless VDOT determines that the person was displaced as a direct result of the project;

2. A person who initially enters into occupancy of the property after the date of its acquisition for the project;

3. A person who is not required to relocate permanently as a direct result of a project. VDOT, after weighing the facts, shall make such determination on a case-by-case basis;

4. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amendments (42 USC § 4601 et seq.);

5. A person who, after receiving a notice of relocation eligibility, is notified in writing that it would not be necessary to relocate. Such notice shall not be issued unless the person has not moved and VDOT agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

~~6. An owner-occupant who voluntarily conveys a property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, VDOT will not acquire the property. In such cases, tenants who are displaced are eligible for relocation benefits;~~

~~7.~~ 6. A person whom VDOT determines is not displaced as a direct result of a partial acquisition;

~~8.~~ 7. A person who is determined by VDOT to be in unlawful occupancy or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations for the property; or

~~9.~~ 8. A person determined to be not lawfully present in the United States.

Only parties designated as "displaced persons" are eligible for relocation benefits.

"Dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house, a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

"Dwelling site" means land area that is typical in size for dwellings located in the same neighborhood or rural area.

"Family" means two or more individuals, one of whom is the head of a household plus all other individuals, regardless of blood or legal ties, who live with and are considered part of the family unit. Where two or more individuals occupy the same dwelling with no identifiable head of household, they

shall be treated as one family for replacement housing payment purposes.

"Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

"Financial means" of the displaced person means:

1. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least ~~180~~ 90 days prior to initiation of negotiations ~~(180-day~~ (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all eligible incidental expenses.

2. A replacement dwelling rented by an eligible displaced person is considered to be within their financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

3. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if VDOT pays that portion of the monthly housing costs of a replacement dwelling ~~which~~ that exceeds the person's base monthly rent for the displacement dwelling. Such rental assistance must be paid under last resort housing.

"Increased interest payment" means the amount ~~which~~ that will reduce the mortgage balance on a new mortgage to an amount that will be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling.

"Nonprofit organization" means an organization that is incorporated under the applicable laws of a state as a nonprofit organization and exempt from paying federal income taxes under § 501 of the Internal Revenue Code (26 USC § 501).

"Owner" means any person who purchases or holds any of the following interests in real property:

1. Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition;

2. An interest in a cooperative housing project ~~which~~ that includes the right to occupy a dwelling; or

3. A contract to purchase any of the interests or estates described in the preceding two descriptions of interests in real property.

"Person" means any individual, family, partnership, corporation or association.

"Purchase supplement" means the amount ~~which~~ that, when added to the acquisition value, equals the cost of comparable replacement housing.

"Rent supplement" means the amount ~~which~~ that equals 42 times the difference between base monthly rental of a displacement dwelling including utilities and the monthly rent of a comparable dwelling including utilities.

"Small business" means any business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites operated solely by outdoor advertising signs, displays or devices do not qualify as a small business eligible for reestablishment expenses.

"State agency" means any department, agency, or instrumentality of the Commonwealth; public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; person who has the authority to acquire property by eminent domain under state law; or two or more of the aforementioned, which carries out projects that cause people to be displaced.

24VAC30-41-220. Moving expense schedule.

A. In lieu of a payment for actual costs, a displaced person or family who occupies the acquired dwelling may choose to be reimbursed for moving costs based on a moving expense schedule established by VDOT based on a room count. The schedule is revised periodically, based on a survey of movers, to reflect current costs. The schedule is used by all acquiring agencies throughout the state by agreement coordinated by the Federal Highway Administration.

The room count used will include occupied rooms within the dwelling unit plus personal property located in attics, unfinished basements, garages and outbuildings, or significant outdoor storage. Spaces included in the count must contain sufficient personal property as to constitute a room.

B. A person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons, or if the move is performed by VDOT at no cost to the person, shall be limited to $50.

C. The cost to move a retained dwelling, any other structure, or any item determined to be real estate prior to the move, is not a reimbursable moving cost. However, if an owner-occupant retains the dwelling, including a mobile home, and chooses to use it as a means of moving personal belongings and furnishings, the owner-occupant may receive a moving cost payment based upon the moving expense schedule.

D. A discussion of residential move reimbursement options is contained in the "Guidance Document for Determination of Certain Financial Benefits to Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014.

24VAC30-41-290. Actual direct losses of tangible personal property.

A. Actual, direct losses of tangible personal property are allowed when a person who is displaced from a business, farm or nonprofit organization is entitled to relocate such property but elects not to do so. This may occur if an item of equipment is bulky and expensive to move, but is obsolete and the owner desires to replace it with a new item that performs the same function. Payments for actual, direct losses can be made only after an effort has been made by the owner to sell the item involved. When the item is sold, payment will be determined in accordance with subsection B or C of this section. If the item cannot be sold, the owner will be compensated in accordance with subsection D of this section. The sales prices and the cost of advertising and conducting the sale, must be supported by copies of bills, receipts, advertisements, offers to sell, auction records and other data supporting the bona fide nature of the sale.

B. If an item of personal property which is used in connection with the business is not moved but is replaced with a comparable item at the new location, the payment will be the lesser of:

1. The replacement cost minus the net proceeds of the sale. Trade-in value may be substituted for net proceeds of sale where applicable; or

2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles.

C. If the item is not to be replaced in the reestablished business, the payment will be the lesser of:

1. The difference between the market value of the item in place for continued use at its location prior to displacement less its net proceeds of the sale; or

2. The estimated cost of moving the item to the replacement site but not to exceed 50 miles. (See "Guidance Document for Determination of Certain Financial Benefits for Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014, for example.)

D. If a sale is not effected under subsection B or C of this section because no offer is received for the property and the property is abandoned, payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles, whichever is less, plus the cost of the attempted sale, irrespective of the cost to VDOT of removing the item.

E. The owner will not be entitled to moving expenses or losses for the items involved if the property is abandoned with no effort being made to dispose of it by sale, or by removal at no cost. The district manager may allow exceptions to this requirement for good cause.

F. The cost of removal of personal property by VDOT will not be considered as an offsetting charge against other payments to the displaced person.

24VAC30-41-300. Searching expenses.

A. A displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed $2,500, as VDOT determines to be reasonable, which are incurred in searching for a replacement location, and includes expenses for:

1. Transportation. A mileage rate determined by VDOT will apply to the use of an automobile;

2. Meals and lodging away from home;

3. Time spent searching, based on reasonable salary or earnings;

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site;

5. Time spent in obtaining permits and attending zoning hearings; and

6. Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

B. Documentation for a move search claim will include expense receipts and logs of times, dates and locations related to the search. (See "Guidance Document for Determination of Certain Financial Benefits for Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014, for example).

24VAC30-41-310. Reestablishment expenses.

A. A small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed $25,000, for expenses actually incurred in reestablishing operations at a replacement site. A small business, farm or nonprofit organization that elects a fixed payment in lieu of actual moving expenses is not eligible for a reestablishment expense payment.

B. Eligible expenses. Reestablishment expenses must be reasonable and actually incurred. They may include the following items:

1. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance;

2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;

3. Construction and installation costs for exterior signing to advertise the business;

4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;

5. Licenses, fees and permits when not paid as part of moving expenses;

6. Advertisement of replacement location;

7. Increased costs of operation during the first two years at the replacement site for such items as:

a. Lease or rental charges;

b. Personal or real property taxes;

c. Insurance premiums; and

d. Utility charges, excluding impact fees~~.~~; and

8. Other items that VDOT considers essential to the reestablishment of the business.

A discussion of business reestablishment costs is contained in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014.

C. Ineligible expenses. The following is a nonexclusive listing of ineligible reestablishment expenditures.

1. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures;

2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation;

3. Interest on money borrowed to make the move or purchase the replacement property; and

4. Payment to a part-time business in the home ~~which~~ that does not contribute materially to the household income.

24VAC30-41-320. Fixed payment in lieu of actual costs.

A. A displaced business, farm or nonprofit organization, meeting eligibility criteria may receive a fixed payment in lieu of a payment for actual moving and related expenses. The amount of this payment is equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than $1,000 nor more than $75,000.

B. Criteria for eligibility. For an owner of a displaced business to be entitled to a payment in lieu of actual moving expenses, the district office must determine that:

1. The business owns or rents personal property ~~which~~ that must be moved in connection with such displacement and for which an expense would be incurred in such move~~;~~, and~~,~~ it vacates or relocates from its displacement site.

2. The displaced business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless VDOT determines, for a stated reason, that it will not suffer a substantial loss of its existing patronage.

3. The business is not part of a commercial enterprise having more than three other entities ~~which~~ that are not being acquired by VDOT and ~~which~~ that are under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, any remaining business facility that did not contribute materially to the income of the displaced person during the two taxable years prior to displacement shall not be considered "other entity.")

4. The business is not operated at displacement dwelling or site solely for the purpose of renting such dwelling or site to others.

5. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement. However, VDOT may waive this test for good cause. A part-time individual or family occupation in the home that does not contribute materially to the displaced owner is not eligible.

C. In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled;

3. The entities are held out to the public and to those customarily dealing with them, as one business; and

4. The same person, or closely related persons own, control, or manage the affairs of the entities.

The district office will make a decision after consideration of all the above items and so advise the displacee.

D. A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with subsection E of this section, but not less than $1,000 nor more than $75,000. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if VDOT determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

2. The partial acquisition caused a substantial change in the nature of the farm operation.

A displaced nonprofit organization may choose a fixed payment of $1,000 to $75,000 in lieu of the payments for actual moving and related expenses if VDOT determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test~~,~~ unless VDOT demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

Gross revenues for a nonprofit organization include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are for administrative support, such as rent, utilities, salaries,

advertising and other like items, as well as fund raising expenses. Operating expenses are not included in administrative expenses.

E. Payment determination. The term "average annual net earnings" means one-half of all net earnings of the business or farm before federal, state and local income taxes, during the two tax years immediately preceding the tax year in which the business or farm is relocated. If the two years immediately preceding displacement are not representative, VDOT may use a period that would be more representative. For instance, proposed construction may have caused recent outflow of business customers, resulting in a decline in net income for the business.

The term "average annual net earnings" include any compensation paid by the business to the owner, spouse, or dependents during the two-year period. In the case of a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For the purpose of determining majority ownership, stock held by a husband, his wife and their children shall be treated as one unit.

If the business, farm or nonprofit organization was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate.

F. Information to be provided by owner. For the owner of a business, farm or nonprofit organization to be entitled to this payment, the owner must provide information to support the net earnings of the business, farm or nonprofit organization. State or federal tax returns for the tax years in question are the best source of this information. However, certified financial statements can be accepted as evidence of earnings. The tax returns furnished must either be signed and dated or accompanied by a certification from the business owner that the returns being furnished reflect the actual income of the business as reported to the Internal Revenue Service or the State Department of Taxation for the periods in question. The owner's statement alone would not be sufficient if the amount claimed exceeded the minimum payment of $1,000.

A more complete discussion of this benefit is contained in the "Guidance Document for Determination of Certain Financial Benefits for Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014.

24VAC30-41-340. Fully eligible occupants.

A. A fully eligible owner-occupant of ~~180~~ 90 days or more may receive either a purchase supplement payment plus increased mortgage interest costs and incidental costs not to exceed ~~$22,500~~ $31,000 or a rent supplement ~~not to exceed $5,250~~ subject to the conditions set forth in 24VAC30-41-510.

A fully eligible ~~owner-occupant of between 90 and 180 days or a~~ tenant-occupant of at least 90 days may receive either a down payment supplement including closing costs, not to exceed ~~$5,250~~ $7,200 and subject to the conditions set forth in 24VAC30-41-570, or a rent supplement, not to exceed ~~$5,250~~ $7,200.

B. The above limits of ~~$22,500~~ $31,000 and ~~$5,250~~ $7,200 do not apply if a displacee's circumstances with regard to available replacement housing require the use of ~~Last Resort Housing~~ last resort housing provisions. It is VDOT's obligation to enable the displacee to relocate to comparable replacement housing while retaining original status as either an owner or a tenant. This obligation overrides any monetary limit, which would otherwise apply. Refer to Part XI (24VAC30-41-650 et seq.) of this chapter for last resort housing provisions.

24VAC30-41-360. Requirements to receive payment.

A. In addition to length of occupancy provisions, the displaced person must occupy a decent, safe and sanitary dwelling, as defined in 24VAC30-41-30, within one year, beginning on the following dates:

1. Owner-occupant of ~~180~~ 90 days or more. The date on which the owner received payment of the entire consideration for the acquired dwelling in negotiated settlements~~;~~, or in the case of condemnation, the date on which the certificate was filed and the amount set forth in the certificate was made available for the benefit of the owner.

2. Tenant-occupant of 90 days or more. The date on which the move occurs. An occupancy affidavit (Form RW-62C) shall be secured as evidence of occupancy.

A displaced person who cannot occupy the replacement dwelling within the one-year time period because of construction delays beyond reasonable control, will be considered to have purchased and occupied the dwelling as of the date of the contract to purchase. The replacement housing payment under these conditions may be deferred until replacement housing is actually occupied.

B. Upon relocating, the displacee must properly complete the appropriate application, Library Form RW-65A(1), RW-65B(1), or RW-65C(1) to receive a replacement housing payment and submit them to the district manager. The application must be filed no later than six months after the expiration of the one-year period specified in subdivisions A 1 and A 2 of this section. In condemnation cases the one-year period is extended to six months after final adjudication. The district office must stamp the application to show the date of its receipt. Where husband and wife both hold title to the property, or there is more than one owner-occupant, each owner must sign the application for payment. In the case of tenant-occupants, each must sign the application for payment.

C. The payment may be made directly to the displaced persons whose names are on the application for payment. On written instruction from a tenant-displacee, payment may be made to the lessor for rent. For an owner, payment may be

made to the seller or lending agency at closing on the replacement property. If payment is made at closing, it will be personally delivered by a district office employee who will remain present to assure that the full purchase supplement amount is credited to the purchase of the replacement dwelling. If this is performed, the occupancy requirement will be considered met at the completion of closing, providing an occupancy agreement has been signed.

Part VIII
Replacement Housing Payments for Owner-Occupants ~~for 180~~ of 90 Days or More

24VAC30-41-390. General.

A displaced owner-occupant of a dwelling may receive a replacement housing payment, the elements of which will not exceed ~~$22,500~~ $31,000 except when last resort housing has been authorized. The elements included in the replacement housing payment are: additional costs necessary to purchase replacement housing (purchase supplement); compensation to the owner for the increased interest cost and other debt service costs ~~which~~ that are incurred in connection with a mortgage or mortgages on the replacement dwelling; and reimbursement to the owner for expenses incidental to the purchase of replacement housing when such costs are incurred as specified by the provisions of this chapter.

The purchase supplement is the amount, if any, which when added to the amount for which VDOT acquired the dwelling, equals the actual cost ~~which~~ that the owner is required to pay for a decent, safe and sanitary dwelling or, if lesser, the amount determined by VDOT as necessary to purchase a comparable decent, safe and sanitary dwelling.

24VAC30-41-400. Eligibility.

An owner-occupant is entitled to a replacement housing payment when:

1. The owner is in occupancy at the initiation of negotiations for the acquisition of the property, or is in occupancy at the time a written notice of intent to acquire is delivered by VDOT;

2. Such ownership and occupancy has been for at least ~~180~~ 90 consecutive days immediately prior to the earlier of the initiation of negotiations, or the date of vacation if a notice of intent to acquire has been issued;

3. Purchase and occupancy of a decent, safe and sanitary dwelling has occurred within the specified time period; and

4. If otherwise eligible, the owner-occupant can receive these payments if the move was a result of the initiation of negotiations, even though VDOT did not acquire the property.

24VAC30-41-430. Purchase supplement payment computation.

A. Method.

1. The probable selling price of a comparable dwelling will be determined by the district office by analyzing at least three dwellings from the inventory of available housing, Library Form RW-69B, which are available on the private market and which meet the criteria of a comparable replacement dwelling. Less than three comparables may be used for this determination when fewer comparable dwellings are available. The relocation agent performing the determination must provide a full explanation supporting the determination, including a discussion of efforts to locate more than one comparable. One comparable, from among those evaluated and considered, will be selected as the basis for the purchase supplement determination. The selection will be made by careful consideration of all factors in the dwellings being considered which affect the needs of the displacee with reference to the elements in the definition of comparable replacement housing.

Refer to the "Guidance Document for Determination of Certain Financial Benefits for Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014, for a step-by-step summary of the determination process, and an example of the purchase supplement payment computation.

2. If comparable decent, safe and sanitary housing cannot be located, after a diligent search of the market, available non-decent, safe and sanitary replacement dwellings may be used as the basis for the maximum amount of the purchase supplement. In these cases, the maximum payment will be established by obtaining cost estimates from persons qualified to correct the decent, safe and sanitary deficiencies and adding this amount to the probable selling price of the available replacement housing.

A displacee will not be required to vacate the displacement dwelling until decent, safe and sanitary housing has been made available.

B. Major exterior attributes. When the dwelling selected in computing the payment is similar, except it lacks major exterior attributes present at the displacement property such as a garage, outbuilding, swimming pool, etc., the appraised value of such items will be deducted from the acquisition cost of the acquired dwelling for purposes of computing the payment. No exterior attributes are to be added to the comparable. However, the added cost of actually building an exterior attribute at the replacement property occupied, may be added to the acquisition cost provided major exterior attributes having the same function are found in the displacement property and in the comparable used to determine the maximum payment.

The following calculation shows how a purchase supplement is determined when a major exterior attribute is present:

Example
Major Exterior Attribute (swimming pool)

The appraiser assigned $5,000 contributing value for the pool, and a total property value of $100,000. A comparable house, not having a pool, is listed for sale at $105,000. After a ~~3%~~ 3.0% adjustment, a probable selling price of $101,850 is determined for the comparable property. The purchase supplement amount is computed below:

Comparable Dwelling (adjusted)	$101,850
Less:	
Displacement property value	$100,000
Less value of the pool	$5,000
Adjusted displacement property value	$95,000
Purchase Supplement Amount	$6,850

C. Comparable housing not available.

1. In the absence of available comparable housing upon which to compute the maximum replacement housing payment, the district office may establish the estimated selling price of a new comparable decent, safe and sanitary dwelling on a typical home site. To accomplish this, the district office will contact at least two reputable home builders for the purpose of obtaining firm commitments for the cost of building a comparable dwelling on a typical home site.

2. If the only housing available greatly exceeds comparable standards, a payment determination may be based on estimated construction cost of a new dwelling ~~which~~ that meets, but does not exceed, comparable standards.

24VAC30-41-510. Owner-occupant ~~for 180~~ of 90 days or more who rents.

A. An owner-occupant eligible for a replacement housing payment under this section who elects to rent a replacement dwelling is eligible for a rental replacement housing payment. The amount of a rent supplement also will not exceed the amount the displaced family would have received had the family purchased replacement housing.

B. The payment is to be computed and disbursed in accordance with the provisions of 24VAC30-41-520, except that the present rental rate for the displacement dwelling will be the economic rent.

C. An owner-displacee retains eligibility for a replacement housing payment if replacement housing is purchased and occupied within one year after the date of final payment is received for the acquired property. Further, eligibility to submit a claim for relocation benefits extends for 18 months from the date of final payment for the acquired property. An owner who initially rents replacement housing may later purchase and qualify for a replacement housing payment. The total amount of the rent and the purchase supplements, however, will not exceed the amount that would have been received if the displacee had initially purchased replacement housing.

Part IX
Replacement Housing Benefits for Tenants~~, and Owners Who Choose to Rent Replacement Housing~~

24VAC30-41-520. General.

A. A residential tenant who was in occupancy at the displacement dwelling for 90 days or more before the initiation of negotiations for the property is eligible to receive a rent supplement to provide for relocation to comparable replacement housing. ~~An owner-displacee who was in occupancy from 90-179 days before the initiation of negotiations is eligible for the same benefits as the tenant-displacee of 90+ days.~~

B. A ~~displaced owner or~~ tenant eligible under this category can receive a replacement housing payment not to exceed ~~$5,250~~ $7,200 to rent a decent, safe and sanitary replacement dwelling. A tenant may be eligible for a down payment supplement up to ~~$5,250~~ $7,200. The monetary limit of ~~$5,250~~ $7,200 for a rental replacement housing payment, or a down payment supplement, does not apply if provisions of ~~Last Resort Housing~~ last resort housing are applicable (see Part XI (24VAC30-41-650 et seq.)).

C. A discussion of rent supplement determination is found in the "Guidance Document for the Determination of Certain Financial Benefits to Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014.

24VAC30-41-540. Disbursement of rental replacement housing payment.

The rental payment~~, in the amount of $5,250 or less,~~ as determined in 24VAC30-41-530 shall be paid in a lump sum, unless the district manager determines that it should be paid in installments.

24VAC30-41-550. ~~$5,250~~ $7,200 limit on offers.

A rent supplement payment offer is limited to ~~$5,250~~ $7,200 under normal program authority. VDOT has an overriding responsibility, however, to enable tenant displacees to rent replacement housing within their financial means. See 24VAC30-41-30 for the definition of "financial means." If the payment computation exceeds ~~$5,250~~ $7,200, last resort housing provisions are applicable. See Part XI (24VAC30-41-650 et seq.) of this chapter for last resort housing provisions.

24VAC30-41-570. Down payment benefit -- 90-day tenants.

A. A displaced tenant eligible for a rental replacement housing payment who elects to purchase a replacement dwelling in lieu of accepting such rental assistance payment may elect to apply the entire computed payment to the purchase of a replacement dwelling. This payment may be increased to any amount, not to exceed ~~$5,250~~ $7,200, for the

purchase of a replacement dwelling and related incidental expenses.

B. VDOT has a responsibility to enable a displacee to relocate to housing of the same tenancy or ownership status as was occupied before displacement. Efforts will be made through advisory assistance and the down payment benefit to assist a tenant to move to ownership, but the achievement of ownership by tenants is not a program requirement.

24VAC30-41-580. Section 8 Housing Assistance Program for low income families.

A. Program features.

1. Section 8 is a rent subsidy program funded by the U.S. Department of Housing and Urban Development (HUD)~~,~~ to enable low-income families to rent privately owned decent, safe and sanitary housing. Section 8 is administered by local housing agencies. Landlords receive a subsidy representing the difference between 30% of an eligible tenant's adjusted gross household income~~,~~ and reasonable housing rent as determined under program rules.

There are three types of Section 8 housing:

a. A certificate based on the income of the recipient and the rent paid;

b. A voucher, which pays a specific amount toward the recipient's rent; and

c. Market rehab unit.

The first two program types are portable, meaning the benefit moves with the recipient. The market rehab form stays with the housing facility.

2. Section 8 assistance has a feature that is superior to the relocation rent supplement in that it is not limited to 42 months, but continues as long as the recipient household is income eligible. The district office should make every effort to relocate existing Section 8 recipients to units in which their Section 8 benefits will continue. If a normal relocation rent supplement is paid, the local housing agency may consider this income, and disqualify the displaced household from eligibility for Section 8. It may be difficult to reenter the program, as there is usually a long waiting list. The district office should closely coordinate with the administering local housing agency.

B. Replacement housing payment computation. In order to transfer Section 8 benefits the recipient must relocate to a decent, safe and sanitary unit in which the owner agrees to participate in this program. Local housing agencies generally maintain current lists of participating owners and properties.

The criteria below will apply, corresponding to the type of Section 8 program the displacee is receiving:

1. For the certificate program, rent must be less than the ceiling set as fair market rent in the HUD schedule for the local area. Housing agencies will provide a copy of the current HUD established local schedule.

2. For a recipient in the voucher program~~,~~ Section 8 will pay up to the housing authority approved payment standard for the area. This is usually 80-100% of the fair market rent in subdivision 1 of this subsection. The recipient may pay the landlord the difference if actual rent is higher than the standard.

3. Market rehab Section 8 recipients may remain in Section 8 on concurrence of the local housing agency and the landlord.

In determining the rent supplement amount, assume utility costs are the same as before relocation. An effort should be made to use comparable dwellings meeting Section 8 criteria. The standard of base monthly rent should be used, which is the lower of the following: existing rent before subsidy, market rent, or 30% of income. Under the Section 8 certificate program, rent paid should be the same as 30% of income. However, this will not always be the case in the ~~Voucher~~ voucher program. An example is provided below:

Example
Rent Supplement - Section 8 Voucher Program

FACTS BEFORE RELOCATION:	
Displacee household income	$1,000/month
30% of income	$300/month
Fair market rent and contract rent	$550/month
Actual rent paid (Section 8 voucher = $225)	$325/month
AFTER RELOCATION:	

Displacee moves to comparable housing at $550/month and retains Section 8 voucher paying $225 to landlord. VDOT pays rent supplement on incremental difference between 30% of income ($300) and actual replacement rent ($325).

($325 - $300) X 42 months - $1,050

C. Displacee options. The agent will inform the displacee of the replacement housing payment, both with and without Section 8 participation and advise of the following options:

1. Accept VDOT conventional rent supplement, which is limited to 42 months, and may disqualify the displacee for Section 8 in the future;

2. Receive down payment subsidy of ~~$5,250~~ $7,200 to assist in purchase of a replacement dwelling; or

3. Retain Section 8. VDOT will pay rent supplement only to the extent of any difference between Section 8 subsidy and base monthly rent (as in above example). In most cases, the VDOT payment will be $0. Tenants should be encouraged to accept this option if they plan to continue to rent and have no prospects of significant increase of income.

D. Tenant not on Section 8 before displacement. Determine rent supplement based on comparable unsubsidized housing, and the lesser of existing rent, market rent or 30% of income if classified as low income by HUD. This is a conventional rent supplement situation. If the tenant moves to Section 8 housing as a replacement, recalculate based on the net increase (if any) in monthly housing cost to the displacee after applying the Section 8 subsidy.

24VAC30-41-620. Replacement housing payments; general.

A. The ownership or tenancy of the mobile home, not the land on which it is located, determines the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home on the mobile home site will determine the occupant's status as a ~~180-day or~~ 90-day owner or tenant.

The mobile home must be occupied on the same site (or in the same mobile home park) for the requisite 90 ~~or 180~~ days to make the occupant fully eligible for rent or purchase supplement benefits.

B. After the above eligibility determinations are made, the replacement housing payment is computed in two parts:

1. If the mobile home is being acquired, the replacement housing, or rent supplement payment is computed for the mobile home unit in accordance with the same procedures for any other dwelling unit.

2. The replacement housing or rent supplement payment is computed separately for the mobile home site in accordance with normal procedures. The payment amount is limited to the maximums according to the displacee's ownership or tenancy of the land.

The sum of the two parts computed above cannot exceed the maximum limitation of the ~~$5,250~~ $7,200 for 90-day ~~owner and~~ tenant-occupants or ~~$22,500~~ $31,000 for ~~180-day~~ 90-day owner-occupants, unless last resort housing provisions in accordance with Part XI (24VAC30-41-650 et seq.) of this chapter are applicable. Replacement housing and rent supplement offers and payments will be computed in accordance with Parts VIII (24VAC30-41-390 et seq.) and IX (24VAC30-41-520 et seq.) of this chapter. The offer will set the maximum limit of the supplemental payment.

When determining the purchase supplement payment for an owner-occupant-displacee from a mobile home, the cost of a comparable is the reasonable cost of a comparable mobile home, including the site. When a comparable mobile home is not available, the supplement may be determined using a conventional dwelling.

If a mobile home requires repairs or modifications to permit its relocation to another site and the district office determines that it would be practical to make the repairs or modifications, the cost of a comparable dwelling is the value of the displacee's mobile home plus the cost to make the necessary repairs or modifications.

24VAC30-41-630. Replacement housing payments; ~~180-day~~ 90-day owner-occupant.

A. General. A displaced owner of a mobile home who has occupied the home and site for at least ~~180~~ 90 days is eligible for the following as a replacement housing benefit:

1. The additional cost necessary to purchase replacement housing as specified in subsections B, C, D, and E of this section, and in accordance with the provisions of Part VIII (24VAC30-41-390 et seq.) of this chapter;

2. Compensation for the loss of favorable financing on the existing mortgage in the financing of such replacement housing, under the provisions of 24VAC30-41-500; and

3. An amount to reimburse the owner for incidental expenses incident to the purchase of such replacement housing in accordance with the provisions of 24VAC30-41-510.

A displaced owner-occupant of a mobile home eligible for a replacement housing payment as shown above who elects to rent is eligible for a rental replacement housing payment, ~~not to exceed $5,250,~~ in accordance with 24VAC30-41-510.

B. Acquisition of mobile home and site from owner-occupant.

1. The purchase supplement payment will be an amount, if any, which when added to the amount for which VDOT acquired the mobile home and site equals the lesser of:

a. The amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site; or

b. The amount determined by the district office as necessary to purchase a comparable mobile home and site in accordance with the provisions of 24VAC30-41-430.

2. Rental replacement housing payment. If the owner elects to rent, the rent supplement will be determined by subtracting 42 times the economic rent of the mobile home and site from the lesser of:

a. The amount determined by the district office necessary to rent a comparable mobile home and site for a period of 42 months; or

b. Forty-two times the monthly rent paid for the replacement mobile home and site.

C. Acquisition of site only—owner-occupant retains mobile home.

1. Upon acquisition of the site but not the home situated upon the site and the mobile home is required to be moved, the replacement housing payment will be the amount, if any, which when added to the amount for which VDOT acquired the mobile home site equals the lesser of:

a. The amount the owner is required to pay for a comparable site; or

b. The amount determined by the district office as necessary to purchase a comparable mobile home site.

2. If the owner elects to rent, the rent supplement shall be determined by subtracting 42 times the economic rent of the mobile home site from the lesser of:

a. The amount determined as necessary to rent a comparable mobile home site for 42 months; or

b. Forty-two times the monthly rent paid at the replacement mobile home site.

D. Acquisition of mobile home only—owner-occupant rents site.

1. The replacement housing payment is to be the amount, if any, which when added to the amount for which VDOT acquired the mobile home equals the lesser of:

a. The actual amount the owner is required to pay for a replacement dwelling; or

b. The amount determined as necessary to purchase a comparable mobile home, plus the difference in the amount determined by the district office as necessary to rent a comparable mobile home site for a period of 42 months and 42 times the rent being paid on the site acquired.

The entire computed amount may be applied toward the purchase of a comparable mobile home site, if so desired.

2. If the owner elects to rent a replacement mobile home, the rent supplement payment shall be determined by subtracting 42 times the economic rent of the mobile home and the actual rent of the site from the lesser of:

a. The amount determined by the district office as necessary to rent a comparable mobile home and site for 42 months; or

b. Forty-two times the monthly rent paid for the replacement dwelling.

E. Acquisition of rental site only—mobile home not acquired. When the site is acquired but not the mobile home, which must be moved, the owner-occupant of the mobile home is eligible for up to ~~$5,250~~ $7,200 as a rent supplement for a comparable replacement site. This rent supplement payment shall be the difference determined by subtracting 42 times the rent on the site being acquired from the lesser of:

1. The amount determined as necessary to rent a comparable home site for 42 months; or

2. Forty-two times the monthly rent paid for the replacement site.

The entire computed amount may be applied toward the down payment and incidental expenses on a comparable home site.

24VAC30-41-640. Replacement housing payment to tenants of 90 days or more ~~and owner-occupants for 90-179 days~~.

A displaced ~~owner or~~ tenant of a mobile home or site, or both, under this category can receive a replacement housing payment not to exceed ~~$5,250~~ $7,200 (except under last resort housing) to rent a comparable decent, safe and sanitary mobile home or site, or both, or make a down payment on either or both computed as follows:

1. The rental replacement housing payment is to be determined in accordance with the provisions of 24VAC30-41-530.

2. If a purchase decision is made, the entire computed rental payment may be applied towards the purchase, including related incidental expenses for a replacement mobile home, site, or both.

~~3. An owner-occupant under this category is entitled to the same replacement housing payments as the tenant-occupant, except economic rent of the acquired mobile home and site will be used.~~

Part XI
Last Resort Housing

24VAC30-41-650. General.

A. No displaced persons will be required to move until a comparable replacement dwelling is made available within their financial means. Comparable replacement housing may not be available on the private market or does not meet specific requirements or special needs of a particular displaced family. Also, housing may be available on the market, but the cost exceeds the benefit limits for tenants and owners of ~~$5,250~~ $7,200 and ~~$22,500~~ $31,000, respectively. If housing is not available to a displacee and the transportation project would thereby be prevented from proceeding in a timely manner, VDOT is authorized to take a broad range of measures to make housing available. These measures, which are outside normal relocation benefit limits, are called collectively last resort housing.

B. It is the responsibility of VDOT to provide a replacement dwelling, which enables the displacee to relocate to the same ownership or tenancy status as prior to displacement. The displacee may voluntarily relocate to a different status. The district office may also provide a dwelling, which changes a status of the displacee with their concurrence, if a comparable replacement dwelling of the same status is not available.

A more complete discussion of last resort housing appears in the "Guidance Document for Determination of Certain Financial Benefits for Displacees," effective ~~November 21, 2001, revised July 1, 2006~~ October 1, 2014.

24VAC30-41-660. Utilization of last resort housing.

Last resort housing is applicable when:

1. Comparable replacement housing is not available on the housing market; or

2. Comparable replacement housing is available, but:

a. The computed replacement housing payment exceeds the ~~$22,500~~ $31,000 limitation; or

b. The computed rent supplement exceeds the ~~$5,250~~ $7,200 limitation.

3. Comparable housing is not available within the financial means of a displaced person who is ineligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements.

24VAC30-41-680. Last resort housing alternative solutions.

A. VDOT has broad latitude in the methods used and the manner in which it provides housing of last resort. After consideration of all practical options, a method should be selected which provides comparable housing at the most reasonable cost, within the time constraints of roadway project scheduling and urgency of the displacee's need. Methods for providing this housing include, but are not limited to:

1. Making an offer and payment greater than ~~$22,500~~ $31,000 for a displaced owner or ~~$5,250~~ $7,200 for a displaced tenant;

2. Rehabilitation, modifications or additions to an existing replacement dwelling to accommodate displacee needs;

3. The construction of a new replacement dwelling;

4. The relocation and, if necessary, rehabilitation of a replacement dwelling;

5. The purchase of land or a replacement dwelling, or both, by VDOT and subsequent sale, lease to, or exchange with a displaced person;

6. Acting as mortgagee in financing a displacee's purchase of housing; and

7. The provision of features such as entrance ramps, wide doors, etc., which will make a dwelling accessible to a disabled displacee.

B. Under special circumstances, consistent with the definition of a comparable replacement dwelling, consideration will be given to providing replacement housing with space and physical characteristics different from those in the displacement dwelling. This may include upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate families displaced from marginal or substandard housing. In no event, however, will a displaced person be required to move into a dwelling that is not functionally equivalent to the displacement dwelling.

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 (24VAC30-41)

RW-59(1) (Form letter for moving families w/certification of citizenship/legal residence) (rev. 11/98)

RW-59(2) (Form letter for moving personal property w/certification of citizenship/legal residence) (rev. 8/99)

RW-59(3) (Form letter for moving businesses, farms, and nonprofit organizations w/certification of citizenship/legal residence) (rev. 7/06)

Occupancy Agreement (no form number) (rev. 8/99)

RW-60A, Moving Cost Application (Families and Individual/Personal Property only) (rev. 10/00)

RW-60B, Moving Cost Application (Businesses, Farms, and Nonprofit Organizations) (rev. 8/00)

RW-62C, Occupancy Affidavit (Tenants) (rev. 7/06)

~~RW-65A(1), Application for Purchase Replacement Housing Payment (Owner occupant for 180 days or more) (rev. 4/01)~~

~~RW-65B(1), Application for Purchase Replacement Housing Payment (Owner-occupant for less than 180 days but not less than 90 days/Tenant occupant of not less than 90 days) (rev. 4/01)~~

RW-65A(1), Application for Purchase Replacement Housing Payment (Owner-occupant for not less than 90 days) (rev. 10/14)

RW-65B(1), Application for Purchase Replacement Housing Payment (Tenant-occupant of not less than 90 days) (rev. 10/14)

RW-65C(1), Application for Rental Replacement Housing Payment (rev. 11/98)

RW-67A, Moving Cost Payment Claim (Families and Individuals/Personal Property only) (rev. 11/98)

RW-67B, Moving Cost Payment Claim (Businesses, Farms, and Nonprofit Organizations) (rev. 8/99)

RW-69B, Application for Available or Acquired Replacement Housing (rev. 09/08)

DOCUMENTS INCORPORATED BY REFERENCE (24VAC30-41)

~~Guidance Document for Determination of Certain Financial Benefits for Displacees, rev. July 1, 2006, Right of Way and Utilities Division, Virginia Department of Transportation.~~

Guidance Document for Determination of Certain Financial Benefits for Displacees, eff. October 1, 2014, Right of Way and Utilities Division, Virginia Department of Transportation

VA.R. Doc. No. R14-4081; Filed July 29, 2014, 1:06 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **24VAC30-301. Recreational Access Fund Policy (repealing 24VAC30-301-10, 24VAC30-301-20).**

Statutory Authority: §§ 33.1-12 and 33.1-223 of the Code of Virginia.

Effective Date: August 6, 2014.

Agency Contact: David L. Roberts, Policy and Planning Specialist III, Department of Transportation, VDOT Policy Division, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3620, or email david.roberts@vdot.virginia.gov.

Summary:

Chapter 222 of the 2013 Acts of Assembly amended § 33.1-223 of the Code of Virginia to allow guidelines, as opposed to regulations, established by the Commonwealth Transportation Board to be used to administer the Recreational Access Fund Program. This program was originally established by the General Assembly in 1966 to authorize funds for the construction, reconstruction, maintenance, or improvement of access roads to public recreational areas and historical sites, A Program Guide explaining how the program is administered has been included on Virginia Department of Transportation's List of Guidance Documents posted on the Department of Planning and Budget's Regulatory Town Hall.

This regulatory action repeals the Recreational Access Fund Policy to streamline the VDOT's regulatory inventory and render this program consistent with other board funding programs, such as the Revenue Sharing Program, that are administered by means of guidance documents.

VA.R. Doc. No. R14-3747; Filed August 6, 2014, 2:06 p.m.

EXECUTIVE ORDER NUMBER 21 (2014)

Champions for Virginia's Children: Virginia Children's Cabinet

Importance of the Issues

With a longstanding history of prioritizing our youngest generation, Virginia has a distinguished record as one of the best states for children and families. This achievement has been accomplished through a firm commitment to the highest quality of life, health care, public safety, K-12 and higher education, and a vibrant business environment that promotes job growth, employment opportunities, and career advancement.

We must ensure that youth throughout Virginia can excel, beginning in their earliest years. Addressing the challenges that face our children requires a comprehensive approach that focuses on strengthening families and stemming the tide of poverty. To build Virginia's workforce, we must continue to invest in and foster the development of healthy and well-educated children who are prepared to be productive members of our communities as adults.

The Commonwealth of Virginia must cultivate a solid foundation for our children and their families through supportive measures that promote: 1) early childhood development programs and basic health care needs, 2) age-appropriate mental health services, 3) first-rate, coordinated services for at-risk youth, 4) critical educational outcomes and academic readiness to succeed, and 5) nutritional security and access to stable housing. The education, health, safety, and well-being of Virginia's children are fundamental to the Commonwealth's future.

Establishment of the Cabinet

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby initiate Champions for Virginia's Children with the establishment of the Virginia Children's Cabinet ("Children's Cabinet").

Virginia Children's Cabinet

The Children's Cabinet shall develop and implement a comprehensive policy agenda related to the education, health, safety, and well-being of youth throughout the Commonwealth. It shall evaluate and recommend strategies to optimize and align local, state, and federal public resources, and public-private partnerships to enhance current and prospective programs and services for Virginia's children and their families, particularly those at highest risk. It shall also identify best practices and areas for improvement.

Additionally, the Children's Cabinet shall provide leadership and strategic direction, facilitate the sharing of information, and work to improve service delivery of state programs. It shall identify specific goals, outcomes, and metrics to accomplish its work during this administration. These issues are interrelated and require regular communication and collaboration across local, state, and federal agencies, secretariats, industry sectors, and other related constituencies. It will coordinate with other state entities as appropriate to remain apprised of developing issues.

Children's Cabinet Priorities

By collaborating across secretariats and working with local, state, and federal agencies, private industry, and non-profit organizations, the Children's Cabinet will work to ensure that effective supports are in place to achieve the following:

1. Beyond the barriers. Schools in high-poverty communities face numerous systemic societal barriers (such as unstable housing, high crime rates, health, nutritional, and social challenges). The myriad of issues facing these schools and their students must be addressed. Opportunities for increased support will be identified, including, but not limited to, community and social services for Virginia's most vulnerable children and their families.

2. Raising the foundation. High quality early child care, increased access to pre-K, and educational programs lay the foundation for academic achievement. Child care providers must be held accountable to provide quality care so that our youngest children will thrive and obtain the necessary skills to contribute to our communities.

3. Access to basics. Access to health care, housing, and proper nutrition must be facilitated to meet basic needs and ensure the healthy growth, development, and well-being of our children and their families.

4. Triumph over transitions. Services for youth who are transitioning out of Virginia's juvenile justice, mental health, and foster care systems will be assessed. Best practices will be determined, and replication will be encouraged. Factors leading to youth entering the juvenile justice system will be identified to reduce the impact of incarceration. Issues related to educational and work transitions from preschool to K-12 education, and K-12 education to college and/or the workforce, will also be examined.

5. Working parents, building families. Policies and services that encourage workforce development efforts for parents through education, credential training, career development, and employment will be addressed.

Composition of the Children's Cabinet

The Secretaries of Education and Health and Human Resources shall serve as Co-Chairs of the Children's Cabinet.

The Children's Cabinet will be appointed by the Governor and consist of the Lieutenant Governor, the First Lady, the Secretaries of Commerce and Trade, Education, Health and Human Resources, and Public Safety and Homeland Security. The Children's Cabinet Co-Chairs may invite other Secretaries to participate as needed and appropriate.

Staffing

Staff support for the Children's Cabinet will be provided by the Secretaries of Education, Health and Human Resources, and any other agencies or offices as may be designated by the Governor. The Children's Cabinet will serve in an advisory role, in accordance with § 2.2-2100 of the Code of Virginia, and will meet upon the call of the Co-Chairs at least four times per year. The Children's Cabinet will issue an annual report by no later than June 1, and any additional reports and recommendations as necessary or as requested by the Governor.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in force and effect until January 9, 2018, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 11th day of August, 2014.

/s/ Terence R. McAuliffe
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load for Accotink Creek and Long Branch in Fairfax County

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Accotink Creek and Long Branch in the Accotink Creek Watershed in Fairfax County. These streams are listed on the 2012 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for the aquatic life use due to poor health of the benthic macroinvertebrate communities.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Stream Name	Location	Impairment	Length (miles)	Upstream Limit	Down-stream Limit
Accotink Creek	Fairfax County	Aquatic Life Use Benthic Macroinverte-brates	9.92	Lake Accotink	Tidal waters of Accotink Bay
Accotink Creek	City of Fairfax Fairfax County	Aquatic Life Use Benthic Macroinverte-brates	6.2	Headwaters of Accotink Creek	Lake Accotink
Long Branch	Fairfax County	Aquatic Life Use Benthic Macroinverte-brates	2.24	Unnamed tributary at the Route 651 bridge	Accotink Creek

The first public meeting on the development of the TMDL to address the benthic impairments for these segments will be held on Wednesday, September 10, 2014, 6 p.m., Kings Park Library, Meeting Room, 9000 Burke Lake Road, Burke, VA 22015-1683.

In case of inclement weather, the alternate meeting date is Monday, September 29, 2014, 6 p.m., Kings Park Library, Meeting Room, 9000 Burke Lake Road, Burke, VA 22015-1683.

The public comment period will begin September 10, 2014, and end Friday, October 10, 2014. An advisory committee to assist in development of this TMDL is scheduled to convene Tuesday, August 26, 2014.

A component of a TMDL is the wasteload allocations (WLAs); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Virginia Administrative Process Act for any future adoption of the TMDL's associated WLAs.

Information on the development of the TMDLs for the impairments is available upon request. Questions or information requests should be addressed to the DEQ contact person listed below. Please note, all written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Jennifer Carlson, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3859, or email jennifer.carlson@deq.virginia.gov.

Public Comment Period for Revised Draft Water Quality Restoration Study (TMDL) for the James River and Tributaries in Henrico, Prince George, Charles City, and Surry Counties

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing a revised draft total maximum daily load (TMDL) study to restore water quality for the James River and its tributaries in Henrico, Prince George, Charles City, and Surry Counties. DEQ invites the public to share its knowledge of the watershed and learn about pollution affecting community waters. The TMDL document includes an executive summary of information on watershed land use, water quality monitoring data, suspected sources of bacteria, and the reduction of source bacteria required to meet water quality standards.

Description of study: Virginia agencies have been working to identify sources of bacteria in the James River and its tributaries:

Stream	County/City	Length (mi.)	Impairment
Crewes Channel	Henrico	3.19	Bacteria (Primary Contact / Swimming Use)
Western Run	Henrico	1.85	
West Run	Charles City	1.86	
Wards Creek	Prince George	8.47	
Upper Chippokes Creek	Prince George, Surry	5.61	
James River (mainstem)	Prince George, Charles City, Surry	3.76 (sq. miles)	

The above streams failed to meet the primary contact (recreational or swimming) designated use, due to high concentrations of bacteria. The study reports on the sources of bacteria and recommends total maximum daily loads, or TMDLs, for impaired waters. A TMDL is the total amount of

a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels need to be reduced to the TMDL amount. The draft TMDL report will be available at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx on August 25, 2014, for review. A public meeting was held for the original draft TMDL document in August 2013. Subsequent revisions were made to the reduction scenarios that will allow for greater flexibility during implementation of best management practices.

How a decision is made: After public comments have been considered and addressed, DEQ will submit the final TMDL report to the U.S. Environmental Protection Agency and the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include name, address and telephone number and be received by DEQ during the comment period, which begins August 25, 2014, and ends September 25, 2014.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Council of Higher Education for Virginia is conducting a periodic review and small business impact review of **8VAC40-130, Virginia Student Financial Assistance Program Regulations**, and **8VAC40-150, Virginia Two-Year College Transfer Grant Program Regulations**.

The review of these regulations will be guided by the principles in Executive Order 17 (2014). http://dpb.virginia.gov/regs/EO17.pdf.

The purpose of this review is to determine whether these regulations should be repealed, amended, or retained in their current form. Public comment is sought on the review of any issue relating to these regulations, 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 August 25, 2014, and ends September 15, 2014.

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 Wyatt, Senior Associate for Financial Aid, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-4113, FAX (804) 225-2604, or email melissacollumwyatt@schev.edu.

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 BVU Authority

An enforcement action has been proposed for the BVU Authority for violations in the City of Bristol, Virginia. The proposed consent order describes a settlement for a sewage overflow from a collection system manhole that reached state waters and resulted in a fish kill. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from August 26, 2014, to September 24, 2014.

Proposed Enforcement Action for International Paper Company

An enforcement action has been proposed for International Paper Company for violations of the State Water Control Law in Franklin, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from August 25, 2014, to September 17, 2014.

Proposed Enforcement Action for City of Williamsburg

An enforcement action has been proposed for City of Williamsburg for violations of the State Water Control Law in Williamsburg, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-

2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from August 25, 2014, to September 17, 2014.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

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

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code.**

Publication: 30:16 VA.R. 2071-2232 April 7, 2014.

Correction to Final Regulation:

Page 2204, 13VAC5-63-320 B 20, first sentence:

delete "[and add Section 1303.11]"

after "subsections," replace "to" with "[~~to~~ of]"

after "read" add "[as follows and delete Section 1303.11]"

VA.R. Doc. No. R12-3159; Filed August 4, 2014, 3:38 p.m.