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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.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

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

PUBLICATION SCHEDULE AND DEADLINES

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

September 2014 through August 2015

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014
31:8	November 25, 2014 (Tuesday)	December 15, 2014
31:9	December 10, 2014	December 29, 2014
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
31:13	February 4, 2015	February 23, 2015
31:14	February 18, 2015	March 9, 2015
31:15	March 4, 2015	March 23, 2015
31:16	March 18, 2015	April 6, 2015
31:17	April 1, 2015	April 20, 2015
31:18	April 15, 2015	May 4, 2015
31:19	April 29, 2015	May 18, 2015
31:20	May 13, 2015	June 1, 2015
31:21	May 27, 2015	June 15, 2015
31:22	June 10, 2015	June 29, 2015
31:23	June 24, 2015	July 13, 2015
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.

REGULATIONS

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

Symbol Key

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

TITLE 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.

Titles of Regulations: **1VAC20-45. Absent Military and Overseas Voters (amending 1VAC20-45-40).**

1VAC20-70. Absentee Voting (amending 1VAC20-70-20).

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

Effective Date: September 4, 2014.

Agency Contact: Martha Brissette, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

Summary:

The amendments conform the regulations to Chapters 453 and 575, 574, and 580 of the 2014 Acts of Assembly regarding absentee ballots by (i) specifying that omission of the voter's middle name or middle initial does not require rejection of the ballot if the voter's first and last names are provided; (ii) specifying that omission of the date, or any part of the date, including the year, on which the voter signed the statement printed on the back of the envelope does not require rejection of the ballot; and (iii) allowing a ballot to be counted if the inner envelope is imperfectly sealed provided that the outer envelope is sealed. The amendments also require that a voter provide on E nvelope B his generational suffix when one or more individuals with the same name are registered at the same address and that users of Federal Write-In Absentee ballots provide the information required by § 24.2-702.1 of the Code of Virginia needed to determine identity or eligibility.

1VAC20-45-40. Material omissions from Federal Write-In Absentee Ballots.

A. Pursuant to the requirements of §§ 24.2-467, 24.2-702.1, and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186) should not be rendered invalid if it contains an error or omission not material to determining the

eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applications requesting mailed ballots are subject to the mail absentee application deadline in §§ 24.2-459 and 24.2-701 of the Code of Virginia.

C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if on the declaration/affirmation any of the following, or combination thereof, exists:

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;
2. The applicant has omitted the signature of the witness;
~~or~~
3. The applicant did not include the declaration/affirmation page; or
4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine identity or eligibility including, but not limited to, [~~(i)~~] current military or overseas address [: ~~(ii) the street identifier, such as the term "road" or "street" when filling in the legal residence; or (iii) his generational suffix when more than one individual with the same name are registered at the same address, and it is impossible to determine the identity of the voter from the voter declaration/affirmation page]~~.

D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:

1. The applicant has not listed the names specifically in the order of last, first, and middle name;
2. The applicant has listed a middle initial or maiden name, instead of the full middle name;
- [3. The applicant has omitted the street identifier, such as the term "road" or "street," when filling in the legal residence;]
- [4. 3.] The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;
- [5. 4.] The applicant has omitted the zip code;
- [6. 5.] The applicant has omitted the date of the signature of the voter;

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[7. ~~6.~~] The applicant has omitted the address of the witness;

[8. ~~7.~~] The applicant has omitted the date of signature of the witness;

[9. ~~8.~~] The applicant did not seal the ballot within the security envelope, ~~provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement so long as the outside envelope containing the ballot and the voter's declaration/affirmation page arrived sealed;~~ or

[10. ~~9.~~] The applicant has submitted a ballot containing offices or issues for which he is not eligible.

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;

2. The voter did not provide his last name;

3. ~~If the voter has a legal middle name, the voter did not provide at least a middle initial. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter [from Envelope B];~~

4. The voter did not provide his house number and street name [~~with his residential street identifier (e.g., "street," "drive," etc.)~~] or his rural route address;

5. The voter did not provide either his city or zip code;

6. The voter did not sign Envelope B; or

~~7. The voter did not provide the date on which he signed Envelope B; or~~

~~8. 7. The voter's witness did not sign Envelope B.~~

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";

2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;

3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");

4. ~~The voter did not provide his generational suffix. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;~~

[5. The voter did not provide his residential street identifier (Street, Drive, etc.);

6. ~~5.~~] The voter did not provide a zip code, so long as the voter provided his city;

[7. ~~6.~~] The voter did not provide his city, so long as the voter provided his zip code;

[8. ~~7.~~] The voter omitted ~~the year in the date, or provided an incorrect or incomplete date~~ on which he signed Envelope B; or

~~9. The voter provided the incorrect date on which he signed Envelope B; or~~

~~10. [~~8.~~ 9.] The ballot is imperfectly sealed within Envelope B, provided that the ballot is contained within Envelope B, there is evidence that a good faith effort was made to seal the envelope, the outer envelope with Envelope B and the ballot arrived sealed, and the circumstances create no reason to suspect fraud.~~

[~~9.~~ 10.] The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

~~E. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.~~

~~F. E.~~ Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

VA.R. Doc. No. R14-4033; Filed September 2, 2014, 10:52 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-160).

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: September 1, 2014.

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

Summary:

The amendment defines feral hogs (*Sus scrofa*), already identified as a nuisance species, as swine that are wild or for which no proof of ownership can be made.

4VAC15-20-160. Nuisance species designated.

A. The board hereby designates the following species as nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Mammals.
 - a. House mouse (*Mus musculus*);
 - b. Norway rat (*Rattus norvegicus*);
 - c. Black rat (*Rattus rattus*);
 - d. Coyote (*Canis latrans*);
 - e. Feral hog (*Sus scrofa*) ~~scrofa; any swine that are [free-roaming or] wild [or for which no proof of ownership can be made]~~);
 - f. Nutria (*Myocastor coypus*); and
 - g. Woodchuck (*Marmota monax*).
2. Birds.
 - a. European starling (*Sturnus vulgaris*);
 - b. English (house) sparrow (*Passer domesticus*); and
 - c. Pigeon (Rock Dove) (*Columba livia*).
 - d. Other nonnative species as defined in the Migratory Bird Treaty Reform Act of 2004 and regulated under 50 CFR 10.13.

B. It shall be unlawful to take, possess, transport, or sell all other wildlife species not classified as game, furbearer or nuisance, or otherwise specifically permitted by law or regulation.

VA.R. Doc. No. R14-4096; Filed August 29, 2014, 1:51 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-290. **Game:** Permits (amending 4VAC15-290-160).

Statutory Authority: §§ 29.1-103, 29.1-501, 29.1-502, and 29.1-525.2 of the Code of Virginia.

Effective Date: September 1, 2014.

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

Summary:

The amendments (i) restrict issuance of foxhound training preserve permits to facilities that existed on January 1, 2014; (ii) limit the total number of foxes stocked annually

in all preserves to 900; (iii) define the process for determining the number of foxes that can be stocked in each preserve annually; (iv) adjust the statewide fox stocking limit if a preserve permanently ceases operation; (v) establish a reporting system for preserve operators to report the transport and delivery of foxes to preserves; (vi) clarify that permits shall not be denied for recordkeeping failures or technical violations; and (vii) specify that no permits shall remain valid after July 1, 2054.

4VAC15-290-160. Foxhound training preserves.

A. ~~A permit shall be required for the~~ The operation of a foxhound training preserve in the Commonwealth shall be lawful only when conducted in compliance with the requirements of a permit issued by the department. The director or his designee may issue, deny, renew, modify, suspend, and revoke permits for the operation of foxhound training preserves. In accordance with § 29.1-525.2 of the Code of Virginia, a permit may only be issued for a location at which, as of January 1, 2014, a foxhound training preserve existed and was operating under a permit issued by the department.

B. Permit requirements shall include, but not be limited to:

1. Application requirements, including:
 - a. Operator information, including name, date of birth, address, phone number, and email address, as well as an indication as to whether the operator has previously been convicted of any federal or state wildlife law or regulation violation and, if so, a description of such conviction.
 - b. Preserve information, including whether the preserve is public or private, the name and location of the preserve, the names and addresses of adjacent landowners, and the mailing address and phone number of the preserve, if different from the operator.
 - c. Evidence of the size of the preserve. A 7-1/2 minute 1:24,000 topographic map or aerial image indicating the fenced area shall be provided. For preserves under 150 acres, or where determined necessary by the department to determine compliance with minimum acreage requirements, the department shall further require a plat of legible scale by a certified land surveyor that shows ties to property lines (submeter) and is produced using a differential global positioning system capable of producing submeter accuracy positioning, which shall be reviewed by the department and must indicate that the fenced area is 100 acres to an accuracy level of plus or minus one acre.
 - d. An application fee of \$50.
 - e. A certification statement by the operator attesting to the accuracy of the application and agreeing to notification of the department of any change within 30 days.

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2. Provisions establishing a permit term of one year, after which permits may be renewed in accordance with the department's permit renewal procedures.

3. Acreage requirements specifying that each preserve must be at least 100 contiguous acres completely fenced. Facilities that consist of less than 100 contiguous acres permitted prior to August 15, 2013, may remain permitted so long as permit coverage is continuously maintained. The map or aerial image of the preserve boundaries must be on file with the department, and must be updated if any landowner changes, or if boundaries are altered.

4. Fencing requirements sufficient to prevent foxes and hounds from entering or escaping the enclosure. These requirements may include requirements for double strands of barbed wire at the top and electric wire at the bottom of the perimeter fencing and at all gates around the preserve, or other such fencing as deemed necessary. Such requirements shall also require rounded fence corners within the enclosure or the use of interior fencing to provide dog-proof escape areas at nonrounded fence corners.

5. Habitat and escape cover requirements, including adequate natural cover within the enclosure and at least one man-made dog-proof escape structure per 20 acres, unless greater escape cover is deemed necessary based on an inspection of the enclosure. Each escape structure or device must offer foxes effective refuge from dogs at all times and shall be appropriately distributed throughout the enclosure.

6. Requirements that all persons participating in the training of foxhounds in a preserve, unless specifically exempted by law, shall have a valid resident or nonresident Virginia hunting license, or a nonresident license to hunt exclusively in foxhound training preserves. Participants are not required to have a hunting license when participating in a dog field trial authorized by the department.

a. Hunting of any species other than foxes is prohibited within the preserve unless otherwise provided for by the department.

b. A dog field trial permit shall be required for all field trials.

7. Requirements for training and field trials held within the preserve, including:

a. Hound density restrictions specifying the maximum number of dogs that may be trained or participate in field trials in the enclosure at any one time. This maximum hound density shall not exceed one dog per two acres of preserve. When deemed necessary, more restrictive hound densities may be required, based on available escape cover and past history of hound-related mortality events.

b. Limits on the number of days per week during which training or field trials may occur. Training or field trials

with foxhound densities exceeding one dog per 10 acres shall not be permitted for two days prior to and two days after any field trial event and shall be limited to a maximum of five days per week.

c. All dogs training or participating in field trial events within the preserve shall be up to date on their rabies vaccinations. Proof of rabies vaccination status shall consist of a current rabies certificate signed by a licensed veterinarian.

d. No field trial event shall provide for a cash or monetary prize to the participants.

8. Provisions regarding the stocking of the enclosure, including:

a. In accordance with § 29.1-525.2 of the Code of Virginia, the total number of foxes stocked annually in all preserves combined shall not exceed 900. The department shall determine the maximum number of foxes that may be stocked in each preserve based on the proportion of the preserve acreage in relation to the total acreage of all preserves. The department shall make these determinations annually and will provide notice to each permit holder of the permitted allocation for that year at least 30 days in advance of the fox trapping season. If a preserve ceases operation, its allocation of foxes from the previous year shall be deducted from the total number of foxes that may be stocked in all preserves statewide.

~~a. b.~~ The purchase of foxes for the purposes of stocking a preserve shall be prohibited. However, the time and expenses of trappers supplying foxes may be reimbursed, so long as a written receipt detailing the amount paid and the specific expenses being reimbursed is prepared and given to the trapper, with a copy retained by the preserve operator. Receipts shall be retained by both parties for two years and are subject to inspection by the department at any time.

~~b. c.~~ Only wild, live-trapped red (*Vulpes vulpes*) and gray (*Urocyon cinereoargenteus*) foxes may be released into preserves. Foxes may only be trapped for stocking purposes within the Commonwealth. No importation of foxes from out of state is permitted nor may foxes be relocated from one preserve to another, except that foxes may be transported from acclimation training enclosures to another enclosure of the same operator. Release of coyotes into foxhound training preserves is prohibited.

~~c. d.~~ Live-trapped wild foxes may be released only in preserves that are operating under a valid permit and are open to the public for foxhound training purposes.

~~d. e.~~ Acclimation requirements providing a minimum of seven days for foxes to become familiar with available food and habitat resources within the enclosure prior to any dog training or field trial event and 14 days prior to any dog training at hound densities exceeding one dog per 10 acres.

e. f. All preserves shall provide the necessary habitat to meet the food, water, and cover requirements of wild foxes.

f. g. The department shall be notified of any fox mortality or observation of diseased foxes within the preserve. The department may require specific health management procedures as deemed necessary and may suspend the operation of the preserve or halt stocking at any time warranted. Inspection and treatment of foxes by a licensed veterinarian may be required at the operator's expense. In the event of disease outbreaks, costs associated with testing, depopulating, cleaning, and disinfecting shall be the sole expense of the operator.

9. Provisions to prevent the ingress of black bears and, as deemed appropriate, other wildlife into the enclosure, and procedures for reporting the ingress of bears into the enclosure and the removal of bears or other wildlife.

10. Recordkeeping and reporting requirements, including:

a. Maintenance of a registry of the names, addresses, and phone numbers of all hunters training hounds or participating in field trials, the dates hunted, and the number of dogs per hunt. A separate contact list with the complete address and telephone number for each hunter may be maintained in lieu of the contact information in the registry.

b. The development and submission of a report to the department that includes the number, species (red or gray), and source of all foxes trapped and stocked in the preserve, including the name and address of each trapper, the county of origin of each fox, and the capture and release dates of each fox. This report shall be submitted by March 15 of each year, and no permit shall be renewed if the report is not submitted.

c. All records shall be kept current and retained for a period of two years and are subject to inspection by the department at any time.

11. Provisions allowing for inspections of the enclosure and of the permittee's records by the department at the time of application, during annual inspections, or at any other time. The department may also conduct disease testing of transported foxes and wildlife within the enclosure at any time.

12. Such other conditions as may be determined appropriate by the department.

~~B. C.~~ The director or his designee may grant variances to the requirements of subsection A of this section where it is determined by the department that the imposition of a requirement would impose an unreasonable burden on the operator and that the purposes of the requirement can be substantially fulfilled by alternative conditions. Any relief granted shall be the minimum necessary, documented in the operator's permit, and subject to review by the department at each permit renewal.

~~C. D.~~ It shall be lawful for any foxhound training preserve permittee, and licensed trappers designated in writing by the permittee and approved by the department, to live-trap and transport red and gray foxes from September 1 through the last day of February, both dates inclusive, only for the purpose of stocking foxhound training preserves covered by permits issued pursuant to this section. For the purpose of this section, foxes may be live-trapped on private lands with landowner permission or on public lands designated by the department and transported within the Commonwealth, unless otherwise specifically prohibited. Trapping expenses may be reimbursed by the preserve owner as provided in this section; however, in no case shall the direct sale of foxes or payment on a per fox basis be permitted. Except as provided in this section, all trapping shall otherwise comply with laws and regulations governing trapping.

1. The preserve operator may designate in writing no more than 10 licensed trappers from whom foxes may be obtained. Any person convicted of violating any provision of state or federal hunting and trapping laws and regulations shall not be eligible to supply foxes to preserves for at least two years and up to five years following the most recent violation. In determining the appropriate length of restriction, the department shall take into account the nature and severity of the most recent violation and any past violation.

2. All live-trapped foxes must be taken by legal means and foxes transported or held for release shall be kept in safe, sanitary, and humane conditions with water and food available and with protection from the elements.

3. Foxes may be retained for no more than seven days following their capture, and all foxes must be transported to the preserve by the final day of the trapping season. Records shall be maintained by trappers as to the length of time that each fox is retained in their possession and shall be subject to inspection by the department at any time.

4. A department-issued stocking tag is required for each fox stocked in a preserve. Each year, after 2014, the department shall distribute tags to each permit holder at least 30 days prior to the commencement of the fox trapping season. The number of tags the department issues to a permit holder shall correspond with that permit holder's annual allocation of foxes as determined by the department in accordance with § 29.1-525.2 of the Code of Virginia. Permit holders are not required to utilize all tags issued to them. Unused tags shall not be transferrable to any other preserve.

a. A tag must be filled out by the preserve operator prior to transport of each fox to the preserve. The tag number must be provided to the trapper prior to transport of the fox and must be in the possession of the trapper or preserve operator who is delivering the fox to the preserve during transport. Upon receipt of a fox, the preserve operator must (i) provide the trapper with a

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copy of the completed tag, (ii) retain a copy of the tag, and (iii) mail the completed original tag to the department within seven working days. The permit holder and the trapper must retain their copy of the tag for a period of two years following the end of the permit year.

b. Each completed tag shall provide information that includes the species of fox, the name of the trapper, the county where the fox was trapped, the date the fox was trapped, and the date the fox was delivered to the preserve.

Ⓓ. E. Failure to comply with the provisions of a permit or the requirements of this section or other applicable wildlife laws or regulations may result in modification, suspension, or revocation of the permit, or denial of a permit application. The department shall not deny a permit to an existing location solely due to recordkeeping failures or other technical violations of the regulations governing foxhound training preserves. Recordkeeping failure does not include a deceptive practice or a deliberate, intentional, or willful failure to perform recordkeeping, in whole or in part. "Technical violation" means a violation of these regulations that is minor and unintended.

F. No permit shall remain valid after July 1, 2054.

VA.R. Doc. No. R14-4095; Filed August 29, 2014, 11:03 a.m.

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-15, 4VAC20-260-20, 4VAC20-260-40, 4VAC20-260-50).**

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

Effective Date: October 1, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments include changing the definition of "basket"; adding definitions for "clean culled oyster," "oyster," and "seed oyster"; amending the location of the "James River Seed Area"; and making it unlawful for any person to buy, sell, or report clean cull oysters by any measure other than a lawfully described container.

4VAC20-260-15. ~~Definition~~ Definitions.

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

"Basket" means a circular container with straight mesh sides and a straight bottom. A basket shall have the following minimum dimensions, all measured from inside to inside: 17 inches across the top, 13.5 inches across the bottom, and 20.5 inches diagonally from the inside chine to the top plastic mesh container of not less than 2,500 cubic inches but not more than 3,000 cubic inches that may be used for the measurement of oysters to be sold or purchased.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Oyster" means any shellfish of the species Crassostrea virginica.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

4VAC20-260-20. Designation of seed areas and clean cull areas.

A. Seed areas. The following natural public oyster beds, rocks, or shoals are designated for the harvest of seed oysters:

1. James River. ~~All of the public oyster grounds in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of the James River to a line in a northeasterly direction across the James River to the Newport News municipal water tank located on Warwick Boulevard between 59th and 60th Street in the City of Newport News.~~ "James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH", Latitude 37° 00.9815328 N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT", at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3449949' N., Longitude 76° 32.7689936' W.; thence northeasterly to a VMRC Marker "NMT", Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence

westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

2. Deep Water Shoal State Replenishment Seed Area (DWS). That area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

B. Clean cull areas. All natural public oyster beds, rocks, or shoals in the tidal waters of Virginia, except those designated by the Marine Resources Commission as seed areas, shall be considered clean cull areas.

4VAC20-260-40. Culling tolerances or standards.

A. In the clean cull areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel or basket inspected by any police officer, it shall constitute a violation of this chapter, except as described in 4VAC20-260-30 E.

B. In the James River seed areas, if more than a six-quart measure of shells is found in any bushel or basket of seed oysters inspected by any police officer, it shall constitute a violation of this chapter.

C. In the James River seed areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel or basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

D. From the seaside of the Eastern Shore, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found per bushel or basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

E. Any oysters less than the minimum cull size or any amount of shell that exceeds the culling standard shall be returned immediately to the natural beds, rocks, or shoals from where they were taken.

F. Oysters less than the minimum cull size that are adhering so closely to the shell of any marketable oyster as to render

removal impossible without destroying the oysters less than the minimum cull size need not be removed, and those oysters shall be considered lawful and shall not be included in the culling tolerances or standards as described in subsections A through D of this section.

G. It shall be unlawful for any person to sell any oysters less than the minimum cull size as described in this section.

4VAC20-260-50. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board, or in only one basket upon the culling board, and culled by hand at the location of harvest.

1. Culled oysters shall be transferred immediately from the culling board to either the inside open part of the boat, a loose pile, or baskets, but only one transfer method may be used on any boat or vessel in any one day.

a. Oysters shall not be stored in both a loose pile and in baskets.

b. A single basket may be on board any boat during transfer of culled oysters from the culling board to the inside open part of the boat in a loose pile.

2. The entire harvest shall be subject to inspection, as provided in subsection F of this section.

B. Any oysters taken lawfully by hand from natural public beds, rocks, or shoals from the seaside of the Eastern Shore, and held in sacks, bags, or containers, shall be culled when taken and placed in those sacks, bags, or containers for inspection by any police officer as described in subsection G of this section.

C. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this chapter.

~~D. All oysters taken from public grounds shall be sold or purchased in the regular oyster one half bushel or one bushel measure~~ It shall be unlawful for any person to buy, sell, or report clean cull oysters by any measure other than as described in § 28.2-526 of the Code of Virginia, or the alternate container described in subsection E of this section; except that on the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction. It shall be unlawful for any person to sell, purchase, or report the sale or purchase of any clean cull oysters harvested from public grounds, as described in 4VAC20-720-40, in excess of the harvest limits described in 4VAC20-720-80.

E. An alternate container produced by North Machine Shop in Mathews, Virginia, may be used for measuring oysters to be sold or purchased. The dimensions of this metallic cylindrical container shall be 18.5 inches inside diameter and 11 inches inside height.

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F. Oysters may be inspected by any police officer according to any one of the following provisions:

1. For any oysters transferred from the culling board to the inside open part of the boat, vehicle, or trailer or a loose pile, any police officer may use a shovel to take at least one bushel of oysters to inspect, at random, provided that the entire bushel or basket shall be taken from one place in the open pile of oysters.

2. For any oysters transferred from ~~the culling board to one or more baskets~~ a vessel to a motor vehicle or trailer, any police officer may select one or more baskets of oysters and empty the contents of those baskets into a bushel ~~container~~ or basket, as described in § 28.2-526 of the Code of Virginia, for inspection.

G. In the inspection of oysters harvested by hand from waters of the seaside of the Eastern Shore, the police officer may select any sacks, bags, or containers at random to establish a full metallic measuring bushel or basket for purposes of inspection.

V.A.R. Doc. No. R15-4138; Filed September 3, 2014, 11:18 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4VAC20-720. **Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40, 4VAC20-720-60 through 4VAC20-720-80, 4VAC20-720-100; adding 4VAC20-720-15).**

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

Effective Date: October 1, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish (i) the 2014-2015 oyster harvest seasons and areas and (ii) a control date for the management of all public oyster fisheries in Virginia.

4VAC20-720-15. Control date.

The commission hereby establishes July 1, 2014, as the control date for management of all public oyster fisheries in Virginia. Participation by any individual in any public oyster fishery after the control date will not be considered in the calculation or distribution of oyster fishing rights should entry limitations be established. Any individual entering the public oyster fishery after the control date will forfeit any right to future participation in the public oyster fishery should further entry limitations be established by the commission.

4VAC20-720-20. Definitions.

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Coan River Area" means that area of the Coan River inside of Public Grounds 77 and 78 of Northumberland County.

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N., Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37° 59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76° 27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green

Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line of the barrier islands of Milford Haven, connecting headland to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Area" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pierhead at Fleets Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico Lighthouse; thence due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due east to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line, crossing the entrance to Towels Creek at the offshore ends of the jetties

and continuing to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which consist of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"James River Area" means those public grounds of the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH", Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT", at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3449949' N., Longitude 76° 32.7689936' W.; thence northeasterly to a VMRC Marker "NMT", Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

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"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico River near Bridge Creek, beginning at a point approximately 150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude 37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76° 16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Milford Haven" means that area of Milford Haven inside of Public Ground 7 of Mathews County, beginning at a point approximately 1,380 feet east of Point Breeze, said point being Corner 1, located at Latitude 37° 28.3500000' N., Longitude 76° 16.5000000' W.; thence northeasterly to Corner 2, Latitude 37° 28.3700000' N., Longitude 76° 16.4700000' W.; thence southeasterly to Corner 3, Latitude 37° 28.3500000' N., Longitude 76° 16.4200000' W.; thence southwesterly to Corner 4, Latitude 37° 28.3200000' N., Longitude 76° 16.4500000' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

"Mobjack Bay Area" means those areas of Mobjack Bay consisting of Public Ground 25 of Gloucester County (Tow Stake) and that portion of Public Ground 2 of Mathews County known as Pultz Bar described as:

Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000'

W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025' W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38° 08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to

Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an un-named cove at the narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38° 07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster" means any shellfish of the species *Crassostrea virginica*.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public Grounds 9 and 10 of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N., Longitude 75° 42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75°

42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266' W.; thence northeasterly to Corner 19, Latitude 37° 56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W.; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745' W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PTSMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox

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Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northern-most point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northern-most point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37° 40.0400000' N., Longitude 76° 32.2530000' W.; thence west-northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° ~~35.7930000'~~ 36.8200000' N., Longitude 76° ~~14.1800000'~~ 16.9460000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwesterly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude 76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N., Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° 34.5390000' N., Longitude 76° 19.0220000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a

VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwest to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76° 21.1000000' W.; thence southwest to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwest to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N., Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000'

N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwest to VMRC reef marker "Ferry Bar – South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude 76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwest to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

"Thomas Rock Area" means all public grounds and unassigned grounds, in that area of the James River, with an eastern boundary being the upstream side of the James River Bridge (U.S. Route 17), and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point, a point on the shore, in line with VMRC Markers "STH" and "SMT", located at Latitude 37° 00.1965862' N.,

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Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH", Latitude 37° 00.9815328' N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT", at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3449949' N., Longitude 76° 32.7689936' W.; thence northeasterly to a VMRC Marker "NMT", Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.

"Unassigned ground" means all those grounds defined by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwesterly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwesterly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9, Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County and those areas of the South Yeocomico River inside Public Grounds 102, 104, and 107 of Northumberland County.

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude

38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner 1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38° 00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76° 32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB", Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker

"8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. ~~The lawful seasons and areas for the~~ It shall be unlawful to harvest of clean cull oysters from the public oyster grounds and unassigned grounds are except during the lawful seasons and from the lawful areas as described in the following subdivisions of this subsection:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2013~~ 2014, through April 30, ~~2014~~ 2015.
2. James River Area and the Thomas Rock Area (James River): November 1, ~~2013~~ 2014, through January 31, ~~2014~~ 2015.
3. York River Rotation Area ~~2~~ 1: January 1, ~~2014~~ 2015, through February 28, ~~2014~~ 2015.
4. Milford Haven: December 1, ~~2013~~ 2014, through February 28, ~~2014~~ 2015.
5. Deep Rock Area: December 1, ~~2013~~ 2014, through February 28, ~~2014~~ 2015.
6. Rappahannock River Rotation Area ~~2~~ 1: ~~November 1, 2013~~ October 1, 2014, through ~~December 31, 2013~~ November 30, 2014.
7. Rappahannock River Rotation Area ~~4~~ 6: ~~October 1, 2013~~ November 1, 2014, through ~~November 30, 2013~~ December 31, 2014.
8. Rappahannock River Area 7: ~~January 1, 2014~~ December 1, 2014, through ~~February 28, 2014~~ January 31, 2015.
9. Rappahannock River Area 8: ~~December 1, 2013~~ January 1, 2015, through ~~January 31, 2014~~ February 28, 2015.
10. Rappahannock River Area 9: November 1, ~~2013~~ 2014, through December 31, ~~2013~~ 2014.
11. Great Wicomico River Area: December 1, ~~2013~~ 2014, through January 31, ~~2014~~ 2015.
12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, ~~2013~~ 2014, through January 31, ~~2014~~ 2015.
13. Little Wicomico River: October 1, ~~2013~~ 2014, through December 31, ~~2013~~ 2014.
14. Coan River: October 1, ~~2013~~ 2014, through December 31, ~~2013~~ 2014.
15. Yeocomico River: October 1, ~~2013~~ 2014, through December 31, ~~2013~~ 2014.
16. Nomini Creek: October 1, ~~2013~~ 2014, through December 31, ~~2013~~ 2014.

17. Pocomoke and Tangier Sounds Rotation Area ~~4~~ 2: December 1, ~~2013~~ 2014, through February 28, ~~2014~~ 2015.

18. Seaside of the Eastern Shore (for clean cull oysters only): November 1, ~~2013~~ 2014, through ~~February 28, 2014~~ March 31, 2015.

~~19. Pocomoke Sound, Public Ground Number 9: November 1, 2013, through November 30, 2013.~~

~~20. Pocomoke Sound, Public Ground Number 10: December 1, 2013, through December 31, 2013.~~

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in the following subdivisions of this subsection.

1. James River Seed Area: October 1, 2014, through May 31, 2015.

2. Deep Water Shoal State Replenishment Seed Area: October 1, 2014, through May 31, 2015.

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through 17; and 4VAC20-720-40 ~~B 19 and 20~~ C. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed ~~Areas~~ Area, including the Deep Water Shoal State Replenishment Seed Area; the Rappahannock River Area 9; Milford Haven and Little Wicomico, Coan, Nomini and Yeocomico Rivers, except by hand tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters from the seaside of the Eastern Shore area ~~as described in 4VAC20-720-40 B 18~~ by any gear, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation Areas ~~2~~ 1 and ~~4~~ 6, the Rappahannock River Areas 7 and 8, James River Area, Thomas Rock Area, Upper Chesapeake Bay Blackberry

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Hangs Area, York River Rotation Area ~~2~~ 1, ~~Pocomoke Sound Public Ground Numbers 9 and 10~~, and Great Wicomico River Area, except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the ~~area as described in 4VAC20-720-40 B 17 Pocomoke and Tangier Sounds Rotation Area 2~~, except by an oyster dredge.

F. It shall be unlawful to harvest oysters from the Deep Rock Area, except by an oyster patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, York River, ~~Pocomoke Sound~~, and Great Wicomico River, unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish, with an oyster dredge from the public oyster grounds in the ~~area as described in 4VAC20-720-40 B 17 Pocomoke and Tangier Sounds Rotation Area 2~~, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish, with a patent tong from the public oyster grounds in the Deep Rock Area, unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish, with a hand tong from the public oyster grounds, as described in 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

4VAC20-720-80. Quotas and harvest limits.

A. The lawful daily harvest and possession limit of clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through ~~16 and 4VAC20-720-40 B 19 and 20 17~~ shall be eight bushels per registered commercial fisherman licensee who has paid the oyster resource user fee. It shall be unlawful for any registered commercial fisherman licensee to harvest or possess more than eight bushels per day. The lawful daily vessel limit of clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through ~~16 and 4VAC20-720-40 B 19 and 20 17~~ shall be determined as the number of registered commercial fisherman licensees who have paid the oyster resource user fee on board the vessel multiplied by eight bushels with a maximum daily landing and possession limit of 24 bushels of clean cull oysters per vessel. It shall be unlawful to possess on board any vessel or to land more than the lawful daily vessel limit of clean cull oysters described in this subsection.

B. In the ~~area described in 4VAC20-720-40 B 17, where harvesting is allowed by oyster dredge, there shall be a daily~~

~~harvest and possession limit of eight bushels of clean cull oysters per registered commercial fisherman licensee who has paid the oyster resource user fee. It shall be unlawful for any registered commercial fisherman licensee to harvest or possess more than eight bushels per day. The lawful daily vessel limit of clean cull oysters harvested by oyster dredge shall be determined as the number of registered commercial fisherman licensees who have paid the oyster resource user fee on board the vessel multiplied by eight bushels with a maximum daily landing and possession limit of 24 bushels of clean cull oysters per vessel. It shall be unlawful to possess on board any vessel or to land more than the lawful daily vessel limit of clean cull oysters harvested by oyster dredge, as described in this subsection. No Pocomoke and Tangier Sounds Rotation Area 2, no blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.~~

4VAC20-720-100. Seed oyster planting procedures.

A. The marine police officer at the point of seed harvest may require that a marine police officer be present during the seed planting. When this is required, it will be specified on the seed transfer permit. If a marine police officer is required to be present at planting, the planter shall notify the marine police officer in the area prior to planting. It shall be unlawful for the permittee or planter to plant the oysters without a marine police officer being present.

B. The planting of seed oysters shall consist of spreading the oysters loosely on the bottom of the planting area. It shall be unlawful to plant seed oysters in any manner except by spreading the oysters loosely on the bottom.

C. Seed oysters shall be placed on a designated and marked area of the private ground from which said oysters are not to be removed until after ~~April 30~~ May 31. It shall be unlawful to reharvest these seed oysters prior to ~~May 1~~ June 1.

VA.R. Doc. No. R15-4139; Filed September 3, 2014, 1:28 p.m.

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.</p>
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Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).**

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

Effective Date: September 1, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment extends the overall 2014 recreational black sea bass season by three days, through September 21, 2014.

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

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

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

C. The open recreational fishing seasons; in 2014 shall be from May 19 through September ~~18~~ 21 and October 18 through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

VA.R. Doc. No. R15-4141; Filed August 29, 2014, 1:31 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-20, 4VAC20-1230-30).**

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

Effective Date: October 1, 2014.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary

The amendments establish that (i) beginning December 1, 2014, it shall be unlawful for any Marine Resources Commission employee or representative to issue any shellfish license, shellfish permit, or oyster resource user fee to any person, unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course and (ii) it shall be unlawful for any

person to harvest or attempt to harvest shellfish unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course.

4VAC20-1230-20. Definitions.

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

"Clam" means any shellfish of the species *Mercenaria mercenaria* and genera *Noetia* and ~~*Anadara*~~ *Anadara*.

"Container" means any bag, box, sack, tote, or other receptacle that contains shellfish to be held, in any type of conveyance, for transport from the harvest area to the landing site and from the landing site to the point of sale or other use.

"Conveyance" means any form of transport, such as a boat, truck, or other vehicle, or trailer that is used to transport shellfish from the harvest area to the landing site or from the landing site to a licensed buyer or other use.

"Direct marketing" means any shellfish or shellstock that is landed and sold without shucking or postharvest processing.

"Harvest" means the act of removing any shellfish or shellstock from a designated harvest area and placing that shellfish or shellstock in a container or on or in a conveyance.

"Harvest time" means the time from initial harvest to when temperature control of that harvest is required. Harvest time begins once the first harvested shellstock is no longer submerged and extends to the time that any harvested shellstock is placed in Virginia Department of Health, Division of Shellfish Sanitation-approved temperature controlled storage.

"Layer" means a single thickness or coating spread out and covering an entire surface.

"Mechanical refrigeration" means storage in a container that is approved by the Virginia Department of Health, Division of Shellfish Sanitation and capable of cooling to and maintaining an ambient temperature of 45°F or less.

~~"Oysters"~~ "Oyster" means any shellfish of the species *Crassostrea virginica* ~~that is 2 1/2 inches or greater in shell length.~~

"Restricted-use shellstock" means shellstock or shellfish harvested from approved shellfish growing areas that shall not be sold for raw consumption or directly marketed for raw consumption.

"Restricted-use shellstock tag" means a Virginia Marine Resources Commission-issued green tag that shall only be used by a licensed buyer who has a current certificate of inspection as a shucker packer for shellstock or shellfish harvested from a single harvest area in any one day. Use of any such tag indicates that shellstock is intended for further processing prior to distribution to retail or food service.

"Seed clams" means any shellfish of the species *Mercenaria mercenaria* that is less than 30 mm in shell length and more than six months from harvest for human consumption.

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"Seed oysters" ~~oyster~~ means any shellfish of the species *Crassostrea virginica* that is less than 2 1/2 inches in shell length and more than six months from harvest for human consumption ~~oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.~~

"Shading" means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat using a tarp or cover.

"Shellfish" or "shellstock" means all species of bivalve molluscan shellfish.

"Shucker packer" means a person who shucks and packs shellfish under a certificate of inspection issued by the Virginia Department of Health, Division of Shellfish Sanitation.

"VDH-approved temperature controlled storage" means a container or conveyance that is equipped with mechanical refrigeration capable of maintaining 45°F or less or is continuously and completely covering shellfish with a layer of ice, according to procedures approved by the Virginia Department of Health, Division of Shellfish Sanitation.

4VAC20-1230-30. Public health and warm water harvest restrictions for shellfish.

~~A.~~ B. Beginning December 1, 2014, it shall be unlawful for any commission employee or representative to issue any shellfish license, shellfish permit, or oyster resource user fee to any person unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. Beginning January 1, 2015, it shall be unlawful for any person to harvest or attempt to harvest shellfish unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. The Shellfish Harvest Safety Training Certification shall be valid from the date of issuance through the next two calendar years.

~~B.~~ C. No provisions in this chapter shall apply to seed clams or seed oysters.

~~C.~~ D. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of shellfish.

~~D.~~ E. From May 1 through September 30, any vessel used for the harvest of shellfish, from either public or private grounds, shall provide shading over the area that serves as storage for the shellfish when the shellfish are on board that vessel. All shellfish in the vessel shall be offloaded every day. Shading shall not be required for vessels transporting clam seed or seed oysters for replanting.

~~E.~~ F. From May 1 through September 30, all shellfish shall be shaded during land-based deliveries.

~~F.~~ G. From June 1 through August 31, it shall be unlawful for any person to leave the dock or shore, prior to one hour before sunrise, to harvest or attempt to harvest shellfish from private grounds.

VA.R. Doc. No. R15-4143; Filed September 2, 2014, 3:49 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.**

12VAC30-95. Standards Established and Methods Used for Fee-For-Service Reimbursement (amending 12VAC30-95-5).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: October 22, 2014.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, TTY (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

Summary:

This regulatory action amends the definition of "ICD" and accordingly updates references throughout 12VAC30 to the 10th edition of the International Classification of Diseases for claims with dates of service on or after October 1, 2015. The amendments to the regulation conform to changes in federal regulation (79 FR 45134 (August 4, 2014)).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-80)

Approved Drug Products with Therapeutic Equivalence Evaluations, 25th Edition, 2005, U.S. Department of Health and Human Services

International Classification of Diseases, ICD-9-CM 2007 (effective for claims with dates of service through September 30, ~~2014~~ 2015), Physician, Volumes 1 and 2, 9th Revision-Clinical Modification, American Medical Association

Virginia Medicaid Durable Medical Equipment and Supplies Provider Manual, Appendix B (rev. 1/11), Department of Medical Assistance Services

12VAC30-95-5. General definitions.

The following words and terms when used in 12VAC30 shall have the following meanings unless the context clearly indicates otherwise:

"ASAM" means the American Society of Addiction Medicine.

"ICD" means (i) for claims with dates of service on or prior to September 30, ~~2014~~ 2015, the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) Volumes 1, 2, and 3, OptumInsight, Inc., and (ii) for claims with dates of service on or after October 1, ~~2014~~ 2015, the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) and Procedure Coding System (ICD-10-PCS) pursuant to 45 CFR 162.1002, OptumInsight, Inc.

VA.R. Doc. No. R15-4124; Filed August 28, 2014, 12:58 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-90, 18VAC90-30-100, 18VAC90-30-105, 18VAC90-30-120, 18VAC90-30-121; adding 18VAC90-30-122).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Information:

October 8, 2014 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: November 21, 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 the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 of the Code of Virginia provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system. The specific mandate to promulgate regulations for the practice of nurse practitioners is found in § 54.1-2957 of the Code of Virginia.

Purpose: A team care approach emphasizing collaboration and consultation will allow for more creative and fuller utilization of nurse practitioners while ensuring appropriate setting-specific physician input. The law and regulations also embrace technological and communication advances such as telemedicine not envisaged under the earlier statutes. Nurse practitioner mobility and geographic outreach into underserved areas can be facilitated by the revised practice paradigm. Collaboration and consultation on patient care within a patient care team protects public health and safety by utilizing the strengths and expertise of nurse practitioners and physicians.

Substance: The definitions of "collaboration" and "consultation" are added and are identical to the definitions specified in subsection F of § 54.1-2957. The term "licensed physician" is deleted and replaced by the term "patient care team physician," which is the term now used in the Code of Virginia and similarly defined in § 54.1-2900 of the Code of Virginia. Likewise, the requirement for a protocol has been replaced in the law with a practice agreement, as specified in subsection C of § 54.1-2957.

The requirement for supervision of the practice of a nurse practitioner is replaced with a requirement for collaboration and consultation with a patient care team physician as part of a patient care team. The certified registered nurse anesthetist is omitted from this section because the revisions to the Code of Virginia retained the supervisory requirement for that category of nurse practitioners.

The requirements for a practice agreement, which was described as the "protocol" for practice of a nurse practitioner, are established consistent with elements of a practice agreement are found in subsection C of § 54.1-2957.

Issues: The most significant benefit is to the patients and clients in Virginia who may benefit from an expansion of care by nurse practitioners since they are not required to practice in the same location as the patient care team physician and are able to deliver care in a collaborative approach in which each member of the team practices to the extent of his training. There are no disadvantages to the public.

There are no specific advantages to the agency or the Commonwealth except possibly better utilization of nurse practitioners throughout underserved parts of the state. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 213 of the 2012 Acts of the Assembly, the Boards of Nursing and Medicine (Boards) propose to amend these Regulations Governing the Practice of Nurse Practitioners so that they are consistent with the model of collaboration for patient care teams. Specifically, the Boards propose to:

Regulations

1. Add definitions for collaboration and consultation identical to those added to the Code of Virginia (Code) by Chapter 213,
2. Replace references to "licensed physician" with "patient care team physician" to conform the language of these regulations to Code changed by Chapter 213,
3. Remove the requirement for a written protocol and, again to conform these regulations to Code, replace it with a requirement for a practice agreement between nurse practitioners and patient care team physicians,
4. Remove the requirement for supervision of the practice of nurse practitioners and replace it with a requirement for collaboration and consultation with a patient care team physician, and
5. Add language that specifically identifies the rules (which are not changing) that certified registered nurse anesthetists (CRNA) work under because revisions to the Code retained supervision requirements for CRNAs.

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

Estimated Economic Impact. In 2012, the Virginia General Assembly passed legislation (Chapter 213) that restructured how most nurse practitioners may work in collaboration with physicians. This restructuring revised terminology that is used to describe this collaboration and its participants. It also substituted a statutory requirement for a written practice agreement that includes all elements that were in the formerly required written protocols plus provision for periodic review of patients' charts and provision for patient care team physicians to have appropriate input for complex cases and patient emergencies. Chapter 213 also replaced requirements that nurse practitioners, except for CRNAs, be supervised with a structure of collaboration and consultation between physicians and the nurse practitioners with whom they work.

The Boards now propose to revise these regulations to bring them into conformance with Code of Virginia (Code) changes brought about by Chapter 213. Most of these changes are not substantive as they are just making regulatory terminology consistent with that used in Code or are separating rules that are not changing so that they are easily found. No such changes are likely to cause any extra costs of affected entities and all such changes provide the benefit of consistency between regulatory text and Code.

Regulatory changes that set out the content of practice agreements reflect Code changes; the things required in these agreements are more comprehensive than what was formerly required in Code for protocols between physicians and nurse practitioners. As practice agreements will likely be longer than protocols, licensees may incur more time costs in crafting them. These costs are likely outweighed by both the benefit to licensees in having greater definition for their roles in the agreement and by the benefit of having these regulations conform to Code text.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that there are 7,408 licensed nurse practitioners who will be affected by these proposed regulations.

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

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No affected small business is likely to incur any net costs on account of these proposed regulations.

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

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

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

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

Summary:

The proposed amendments revise (i) requirements for the practice of nurse practitioners consistent with a model of

collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team and (ii) terminology and criteria for practice consistent with changes to the Code of Virginia as enacted by Chapter 213 of the 2012 Acts of the Assembly.

Part I

General Provisions

18VAC90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing ~~which that~~ grant a graduate degree in nursing and which hold a national accreditation acceptable to the boards.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

~~"Controlling institution" means the college or university offering a nurse practitioner education program.~~

"Licensed nurse practitioner" means ~~a~~ an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

~~"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathic medicine.~~

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse

midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

~~"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.~~

~~"Protocol"~~ "Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team physician(s) and the licensed nurse practitioner(s) that ~~directs and~~ describes the procedures to be followed and the ~~delegated medical~~ acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable.

18VAC90-30-90. Certifying agencies.

A. The boards shall accept the professional certification by examination of the following:

1. American ~~College of Nurse Midwives~~ Midwifery Certification Council Board;
2. American Nurses Credentialing Center;
3. ~~Council on Certification of Nurse Anesthetists~~ National Board of Certification and Recertification for Nurse Anesthetists;
4. Pediatric Nursing Certification Board;
5. National Certification Corporation ~~for the Obstetric, Gynecologic and Neonatal Nursing Specialties~~; and
6. American Academy of Nurse Practitioners.

B. The boards may accept professional certification from other certifying agencies on recommendation of the Committee of the Joint Boards of Nursing and Medicine provided the agency meets the definition of a national certifying body set forth in 18VAC90-30-10 and that the professional certification is awarded on the basis of:

1. Completion of an approved ~~educational~~ program as defined in 18VAC90-30-10; and
2. Achievement of a passing score on an examination.

18VAC90-30-100. Renewal of licensure.

A. Licensure of a nurse practitioner shall be renewed:

1. Biennially at the same time the license to practice as a registered nurse in Virginia is renewed; or
2. If licensed as a nurse practitioner with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.

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B. The renewal notice of the license shall be ~~mailed~~ sent to the last known address of record of each nurse practitioner. Failure to receive the renewal notice shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

C. The licensed nurse practitioner shall attest to compliance with continuing competency requirements of current professional certification or continuing education as prescribed in 18VAC90-30-105 and the license renewal fee prescribed in 18VAC90-30-50.

D. The license shall automatically lapse if the licensee fails to renew by the expiration date. Any person practicing as a nurse practitioner during the time a license has lapsed shall be subject to disciplinary actions by the boards.

18VAC90-30-105. Continuing competency requirements.

A. In order to renew a license biennially, a nurse practitioner initially licensed on or after May 8, 2002, shall hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90.

B. In order to renew a license biennially ~~on or after January 1, 2004,~~ nurse practitioners licensed prior to May 8, 2002, shall meet one of the following requirements:

1. Hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90; or
2. Complete at least 40 hours of continuing education in the area of specialty practice approved by one of the certifying agencies designated in 18VAC90-30-90 or approved by Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association as a Category I Continuing Medical Education (CME) course.

C. The nurse practitioner shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of ~~its~~ their licensees to determine compliance. The nurse practitioners selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may delegate the authority to grant an extension or exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part III

Practice of Licensed Nurse Practitioners

18VAC90-30-120. Practice of licensed nurse practitioners other than certified registered nurse ~~midwives~~ anesthetists.

A. A nurse practitioner licensed in a category other than certified registered nurse ~~midwife~~ anesthetist shall be authorized to ~~engage in practices constituting the practice of medicine~~ render care in collaboration and consultation with ~~and under the medical direction and supervision of a licensed patient care team physician~~ as part of a patient care team.

B. The practice of all licensed nurse practitioners shall be based on specialty education preparation as ~~a nurse practitioner~~ an advanced practice registered nurse in accordance with standards of the applicable certifying organization ~~and written protocols as defined in 18VAC90-30-10,~~ as identified in 18VAC90-30-90. A nurse practitioner licensed in the category of a certified nurse midwife shall practice in accordance with the Standards for the Practice of Midwifery (Revised 2011) defined by the American College of Nurse-Midwives.

~~C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:~~

- ~~1. In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician;~~
- ~~2. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and~~
- ~~3. Not in conflict with federal law or regulation.~~

~~D. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Scope and Standards for Nurse Anesthesia Practice, Revised 2005) and under the medical direction and supervision of a doctor of medicine or a doctor of osteopathic medicine or the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry.~~

~~E. For purposes of this section, the following definitions shall apply:~~

~~"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.~~

~~"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and~~

define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

18VAC90-30-121. Practice of nurse practitioners licensed as certified registered nurse midwives anesthetists.

A. A nurse practitioner licensed as a certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration and consultation with a licensed physician.

B. The practice of certified nurse midwives shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10.

C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:

1. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the supervising physician;
2. Permitted by § 54.1-2957.02 of the Code of Virginia or applicable sections of the Code of Virginia; and
3. Not in conflict with federal law or regulation.

D. A certified nurse midwife, in collaboration and consultation with a duly licensed physician, shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 2003) defined by the American College of Nurse-Midwives.

E. For purposes of this section, the following definition shall apply:

"Collaboration and consultation" means practice in accordance with the Standards for the Practice of Midwifery (Revised 2003) defined by the American College of Nurse-Midwives to include participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; periodic joint evaluation of services provided; and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

A. A nurse practitioner licensed in a category of certified registered nurse anesthetist shall be authorized to render care under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.

B. The practice of a certified registered nurse anesthetist shall be based on specialty education preparation as an advanced practice registered nurse in accordance with standards of the applicable certifying organization and with the functions and standards defined by the American Association of Nurse Anesthetists (Standards for Nurse Anesthesia Practice, Revised 2013).

18VAC90-30-122. Practice agreements.

A. All nurse practitioners licensed in any category shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-30-10.

B. The written or electronic practice agreement shall include provisions for:

1. The periodic review of patient charts or electronic patient records by a patient care team physician and may include provisions for visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team;
2. Appropriate physician input in complex clinical cases and patient emergencies and for referrals; and
3. The nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, and endorsements provided it is:
 - a. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the patient care team physician;
 - b. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and
 - c. Not in conflict with federal law or regulation.

C. The practice agreement shall be maintained by the nurse practitioner and provided to the boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner shall be responsible for providing a copy to the boards upon request.

DOCUMENTS INCORPORATED BY REFERENCE (18VAC90-30)

Scope and Standards for Nurse Anesthesia Practice, revised 2005, American Association of Nurse Anesthetists.

Standards for the Practice of Midwifery, revised 2003, American College of Nurse-Midwives.

Standards for Nurse Anesthesia Practice, revised 2013, American Association of Nurse Anesthetists

Standards for the Practice of Midwifery, revised 2011, American College of Nurse-Midwives

VA.R. Doc. No. R13-3349; Filed September 3, 2014, 4:42 p.m.

Regulations

Proposed Regulation

Title of Regulation: 18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10, 18VAC90-40-40, 18VAC90-40-60, 18VAC90-40-90, 18VAC90-40-110, 18VAC90-40-130; repealing 18VAC90-40-100).

Statutory Authority: §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Public Hearing Information:

October 8, 2014 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: November 21, 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 the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 of the Code of Virginia provides the Boards of Nursing and Medicine the authority to promulgate regulations to administer the regulatory system. The specific mandate to promulgate regulations for the prescriptive authority for nurse practitioners is found in § 54.1-2957.01 of the Code of Virginia:

Purpose: The proposed amendments achieve the goal of increasing access chiefly by elimination of identified obstacles, such as the current requirement for the physician to regularly practice or make site visits to the setting where nurse practitioners prescribe. Through appropriate collaboration and consultation, patient health and safety are protected by having an agreement between parties that includes the prescriptive authority for the nurse practitioner.

Substance: The following changes are proposed: (i) definitions are revised for consistency with definitions in §§ 54.1-2900 and 54.1-3000 of the Code of Virginia; (ii) provisions relating to a practice agreement are amended to delete the requirement for the agreement to be submitted to the boards and approved prior to issuance of an authorization or following a revision of an agreement and to require that the practice agreement either be signed or clearly state the name of the physician who has entered into the practice agreement; (iii) the previous ratio of four nurse practitioners with prescriptive authority for each supervising physician has been increased to six nurse practitioners per patient care team physician; (iv) 18VAC90-40-100 is being repealed because it is inconsistent with the model of collaboration and consultation of a patient care team (the requirement for the physician to regularly practice in the same location was eliminated by Chapter 213 of the 2012 Acts of Assembly); (v) requirements for prescriber information on prescriptions are amended for consistency with requirements for other types of prescribers; and (vi) requirements on disclosure to patients

are amended for consistency with subdivision E 1 of § 54.1-2957.01 of the Code of Virginia.

Issues: The most significant benefit is to the patients/clients in Virginia who may benefit from an expansion of care by nurse practitioners since they are not required to practice in the same location as the patient care team physician and are able to deliver care in a collaborative approach in which each member of the team practices to the extent of his training. There are no disadvantages to the public. There are no specific advantages to the agency or to the Commonwealth except possibly better utilization of nurse practitioners throughout underserved parts of the state. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 213 of the 2012 Acts of the Assembly, the Boards of Nursing and Medicine (Boards) propose to amend these Regulations Governing Prescriptive Authority for Nurse Practitioners so that they are consistent with the model of collaboration for patient care teams. Specifically, the Boards propose to:

1. Revise provisions relating to practice agreements to delete the requirement that they be submitted to the Boards for approval prior to their issuance or revision and to allow such agreements to be in electronic form,
2. Replace the number of nurse practitioners that each supervising physician may supervise (4) so that these regulations comport with Code changes that allow six nurse practitioners to work in collaboration and consultation with each patient care team physician,
3. Repeal 18VAC90-40-100 which has rules supervision of nurse practitioners and site visits as these rules are not consistent with the model of collaboration and consultation laid out in Chapter 213, and
4. Amend disclosure requirements to eliminate the requirement for nurse practitioners who have a Drug Enforcement Administration (DEA) number to also have a Board issued prescriptive authority number and also mandate that nurse practitioners disclose to patients on their first contact that they are being treated by a licensed nurse practitioner. The Boards also propose to change the requirement that patients also automatically receive the name and contact information of the nurse practitioner's supervising physician to a requirement that such information (for the patient care team physician) be disclosed upon request of the patient.

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

Estimated Economic Impact. Currently, these regulations require written practice agreement between nurse practitioners and supervising physicians to be submitted for approval by the Boards before they can be initially

implemented and when they are revised. As the authorizing law does not require that practice agreements go through a board approval process, the Boards now propose to eliminate that step and instead only require affected nurse practitioners and patient care team physicians to develop, and maintain an electronic or written copy of, a practice agreement that includes information required by the Code of Virginia (Code) or these regulations. These changes will likely benefit patient care team physicians and nurse practitioners as it eliminates one of the steps they must currently complete before they can start cooperatively caring for patients under a practice agreement and it allows them to complete practice agreements electronically. No entity is likely to incur costs or harm from this change because practice agreements will still have to include all information required by Code or regulation.

Current regulations allow supervising physicians to supervise up to four nurse practitioners with prescriptive authority. These regulations also lay out rules for supervision that require supervising physicians, with some exceptions, to "regularly practice" in the same location as the nurse practitioners with prescriptive authority that he supervises. Revisions to the Code now allow patient care team physicians to supervise up to six nurse practitioners with prescriptive authority and set a model for collaboration and consultation of a patient care team that is inconsistent with current regulations. Specifically, Code revisions eliminated the requirement that physicians practice in the same location as the nurse practitioners with whom they collaborate. The Boards now propose to amend these regulations by updating the numbers of nurse practitioners that may be on a patient care team with a physician and repealing the section that sets rules for supervision and site visits (18VAC90-40-100). These changes will benefit physicians and nurse practitioners as they allow greater flexibility to arrange patient care teams to increase efficiency and increase the amount of care that can be offered to patients. These changes will also provide a benefit by removing current inconsistencies between these regulations and the Code as revised.

Current regulations require all nurse practitioners with prescriptive authority to have a prescriptive authority number issued by the Boards. All nurse practitioners with prescriptive authority who prescribe any drugs but Schedule VI drugs must also have a DEA number. The Board proposes to eliminate the need to obtain a prescriptive authority number for those who already have a DEA number and only retain this requirement for nurse practitioners who solely prescribe Schedule VI drugs. This change will benefit affected nurse practitioners as it eliminates the need to obtain a prescriptive authority number that is duplicative in use to their DEA number and will also eliminate any confusion that might arise as to which number is supposed to be included on prescriptions.

Currently, nurse practitioners are required to disclose that they are nurse practitioners to patients and to also disclose the

name and contact information for their supervising physician. Regulations do not, however, set a timeframe for this information to be disclosed. To make these regulations consistent with the Code as it was revised, the Boards proposes to require nurse practitioners to disclose that they are nurse practitioners on their first contact with patients. Nurse practitioners will also be required to give the name and contact information for the patient care team physician upon request of the patient. These changes will benefit all interested parties as they bring these regulations into conformity with the Code so that any possible confusion is eliminated.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports these proposed regulatory changes will affect the 4,641 nurse practitioners with prescriptive authority for controlled substances.

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

Projected Impact on Employment. Code changes that increase the number of nurse practitioners that may work under practice agreements with any given physician may increase employment opportunities for nurse practitioners in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that these regulatory changes, and the Code revisions that drive them, increase business opportunities and profits for affected nurse practitioners and patient care team physicians, the value of their licenses will likely also increase.

Small Businesses: Costs and Other Effects. No affected small business is likely to incur costs on account of these proposed regulations.

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

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

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

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

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

Summary:

The proposed amendments revise (i) requirements for prescriptive authority for nurse practitioners consistent with a model of collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team and (ii) terminology and criteria for practice consistent with changes to the Code of Virginia as enacted in Chapter 213 of the 2012 Acts of the Assembly.

Part I
General Provisions

18VAC90-40-10. Definitions.

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

"Boards" means the Virginia Board of Medicine and the Virginia Board of Nursing.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

"Nurse practitioner" means a an advanced practice registered nurse who has met the requirements for licensure as a nurse practitioner as stated in 18VAC90-30.

"Practice agreement" means a written or electronic agreement jointly developed by the supervising patient care team physician and the nurse practitioner for the practice of the nurse practitioner that also describes and directs the prescriptive authority of the nurse practitioner, if applicable.

~~"Supervision" means that the physician documents being readily available for medical consultation with the licensed nurse practitioner or the patient, with the physician collaborating with the nurse practitioner for the agreed-upon course of treatment and medications prescribed.~~

18VAC90-40-40. Qualifications for initial approval of prescriptive authority.

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a nurse practitioner in the Commonwealth of Virginia; and
2. Provide evidence of one of the following:
 - a. Continued professional certification as required for initial licensure as a nurse practitioner; or
 - b. Satisfactory completion of a graduate level course in pharmacology or pharmacotherapeutics obtained as part of the nurse practitioner education program within the five years prior to submission of the application; or
 - c. Practice as a nurse practitioner for no less than 1000 hours and 15 continuing education units related to the area of practice for each of the two years immediately prior to submission of the application; or
 - d. Thirty contact hours of education in pharmacology or pharmacotherapeutics acceptable to the boards taken within five years prior to submission of the application. The 30 contact hours may be obtained in a formal academic setting as a discrete offering or as noncredit continuing education offerings and shall include the following course content:
 - (1) Applicable federal and state laws;
 - (2) Prescription writing;
 - (3) Drug selection, dosage, and route;
 - (4) Drug interactions;
 - (5) Information resources; and
 - (6) Clinical application of pharmacology related to specific scope of practice.
3. ~~Submit~~ Develop a practice agreement between the nurse practitioner and the supervising patient care team physician as required in 18VAC90-40-90. ~~The practice agreement must be approved by the boards prior to issuance of prescriptive authority;~~ and
4. File a completed application and pay the fees as required in 18VAC90-40-70.

18VAC90-40-60. Reinstatement of prescriptive authority.

A. A nurse practitioner whose prescriptive authority has lapsed may reinstate within one renewal period by payment of the current renewal fee and the late renewal fee.

B. A nurse practitioner who is applying for reinstatement of lapsed prescriptive authority after one renewal period shall:

1. File the required application ~~and a new practice agreement;~~
2. Provide evidence of a current, unrestricted license to practice as a nurse practitioner in Virginia;
3. Pay the fee required for reinstatement of a lapsed authorization as prescribed in 18VAC90-40-70; and

4. If the authorization has lapsed for a period of two or more years, the applicant shall provide proof of:

- a. Continued practice as a licensed nurse practitioner with prescriptive authority in another state; or
- b. Continuing education, in addition to the minimal requirements for current professional certification, consisting of four contact hours in pharmacology or pharmacotherapeutics for each year in which the prescriptive authority has been lapsed in the Commonwealth, not to exceed a total of 16 hours.

C. An applicant for reinstatement of suspended or revoked authorization shall:

- 1. Petition for reinstatement and pay the fee for reinstatement of a suspended or revoked authorization as prescribed in 18VAC90-40-70;
- 2. Present evidence of competence to resume practice as a nurse practitioner with prescriptive authority; and
- 3. Meet the qualifications and resubmit the application required for initial authorization in 18VAC90-40-40.

Part III
Practice Requirements

18VAC90-40-90. Practice agreement.

A. A nurse practitioner with prescriptive authority may prescribe only within the scope of a the written or electronic practice agreement with a supervising patient care team physician to be submitted with the initial application for prescriptive authority.

B. At any time there are changes in the primary supervising patient care team physician, authorization to prescribe, or scope of practice, the nurse practitioner shall submit a revised revise the practice agreement to the board and maintain the revised agreement.

C. The practice agreement shall contain the following:

- 1. A description of the prescriptive authority of the nurse practitioner within the scope allowed by law and the practice of the nurse practitioner.
- 2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.
- 3. The signatures of the primary supervising physician and any secondary physician who may be regularly called upon in the event of the absence of the primary physician signature of the patient care team physician who is practicing with the nurse practitioner or a clear statement of the name of the patient care team physician who has entered into the practice agreement.

D. In accordance with § 54.1-2957.01 of the Code of Virginia, a physician shall not serve as a patient care team physician to more than six nurse practitioners with prescriptive authority at any one time.

18VAC90-40-100. Supervision and site visits. (Repealed.)

~~A. In accordance with § 54.1-2957.01 of the Code of Virginia, physicians who enter into a practice agreement with a nurse practitioner for prescriptive authority shall supervise and direct, at any one time, no more than four nurse practitioners with prescriptive authority.~~

~~B. Except as provided in subsection C of this section, physicians shall regularly practice in any location in which the licensed nurse practitioner exercises prescriptive authority.~~

- ~~1. A separate practice setting may not be established for the nurse practitioner.~~
- ~~2. A supervising physician shall conduct a regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.~~

~~C. Physicians who practice with a certified nurse midwife or with a nurse practitioner employed by or under contract with local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs shall:~~

- ~~1. Either regularly practice at the same location with the nurse practitioner or provide supervisory services to such separate practices by making regular site visits for consultation and direction for appropriate patient management. The site visits shall occur in accordance with the protocol, but no less frequently than once a quarter.~~
- ~~2. Conduct a regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.~~

18VAC90-40-110. Disclosure.

A. The nurse practitioner shall include on each prescription written or dispensed his signature and prescriptive authority number as issued by the boards and the Drug Enforcement Administration (DEA) number, when applicable. If his practice agreement authorizes prescribing of only Schedule VI drugs and the nurse practitioner does not have a DEA number, he shall include the prescriptive authority number as issued by the boards.

B. The nurse practitioner shall disclose to patients at the initial encounter that he is a licensed nurse practitioner and the name, address and telephone number of the supervising physician. Such disclosure may be included on a prescription pad or may be given in writing to the patient.

C. The nurse practitioner shall disclose, upon request of a patient or a patient's legal representative, the name of the patient care team physician and information regarding how to contact the patient care team physician.

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Part IV
Discipline

18VAC90-40-130. Grounds for disciplinary action.

A. The boards may deny approval of prescriptive authority, revoke or suspend authorization, or take other disciplinary actions against a nurse practitioner who:

1. Exceeds his authority to prescribe or prescribes outside of the written practice agreement with the ~~supervising~~ patient care team physician;
2. Has had his license as a nurse practitioner suspended, revoked, or otherwise disciplined by the boards pursuant to 18VAC90-30-220;
3. Fails to comply with requirements for continuing competency as set forth in 18VAC90-40-55.

B. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall be grounds for disciplinary action.

V.A.R. Doc. No. R13-3350; Filed September 8, 2014, 10:51 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Final Regulation

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-80).**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-40).

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

Effective Date: October 22, 2014.

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

Summary:

The amendments (i) increase fees charged to nursing home administrators, assisted living administrators, preceptors, and administrator-in-training program applicants; (ii) establish a new fee of \$1,000 for reinstatement after disciplinary action; and (iii) establish a one-time shortfall assessment fee for license renewal.

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

18VAC95-20-80. Required fees.

[A.] The applicant or licensee shall submit all fees below which apply:

- | | |
|-------------------------------|------------------------|
| 1. A.I.T. program application | \$185 \$215 |
| 2. Preceptor application | \$50 \$65 |
| 3. Licensure application | \$200 \$315 |

- | | |
|---|-----------------------------------|
| 4. Verification of licensure requests from other states | \$25 \$35 |
| 5. Nursing home administrator license renewal | \$225 \$315 |
| 6. Preceptor renewal | \$50 \$65 |
| 7. Penalty for nursing home administrator late renewal | \$65 \$110 |
| 8. Penalty for preceptor late renewal | \$20 \$25 |
| 9. Nursing home administrator reinstatement | \$315 \$435 |
| 10. Preceptor reinstatement | \$95 \$105 |
| 11. Duplicate license | \$15 \$25 |
| 12. Duplicate wall certificates | \$25 \$40 |
| <u>13. Reinstatement after disciplinary action</u> | <u>\$1,000</u> |

[B. For the first renewal after the effective date of this regulation, the following one-time shortfall assessment shall apply:

- | | |
|---------------------------------|-------------------|
| 1. Nursing home license renewal | \$100 |
| 2. Preceptor renewal | \$20] |

18VAC95-30-40. Required fees.

A. The applicant or licensee shall submit all fees below that apply:

- | | |
|--|-----------------------------------|
| 1. ALF AIT program application | \$185 \$215 |
| 2. Preceptor application | \$50 \$65 |
| 3. Licensure application | \$200 \$315 |
| 4. Verification of licensure requests from other states | \$25 \$35 |
| 5. Assisted living facility administrator license renewal | \$225 \$315 |
| 6. Preceptor renewal | \$50 \$65 |
| 7. Penalty for assisted living facility administrator late renewal | \$65 \$110 |
| 8. Penalty for preceptor late renewal | \$20 \$25 |
| 9. Assisted living facility administrator reinstatement | \$315 \$435 |
| 10. Preceptor reinstatement | \$95 \$105 |
| 11. Duplicate license | \$15 \$25 |
| 12. Duplicate wall certificates | \$25 \$40 |
| 13. Returned check | \$35 |
| <u>14. Reinstatement after disciplinary action</u> | <u>\$1,000</u> |

GOVERNOR

EXECUTIVE ORDER NUMBER 25 (2014)

Establishing the Governor's Task Force on Combating Campus Sexual Violence

Importance of the Taskforce

Nationwide, colleges and universities are increasingly aware of the necessity to combat sexual violence on campus. While institutions of higher education are typically safe environments for students to thrive, both academically and personally, sexual violence is an issue that colleges and universities should confront and strive to prevent.

Virginia's colleges and universities have signed a Joint Declaration pledging to work together to prevent sexual violence. Moreover, they are each committed to providing an atmosphere designed to promote the fair and equitable investigation, adjudication, and timely reporting of sexual violence. Our institutions of higher learning already offer both mandatory and voluntary programs for awareness and prevention of sexual violence. For those adversely affected by sexual violence, Virginia's campuses also furnish resources, or coordinate referral to external, community-based resources, such as counseling, medical care, and alternative living and educational environments.

Through this Executive Order, I am collaborating with the Attorney General of Virginia, who has a critical role as counsel to Virginia's public colleges and universities, and encouraging leaders from college campuses, law enforcement, mental health, and advocacy groups, to seek and recommend solutions that will bring critical awareness and identify best practices to aggressively combat sexual violence on campus.

Establishment of the Task Force

Accordingly, with the authority vested in me by Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby create the Governor's Task Force on Combating Campus Sexual Violence.

Governor's Task Force on Combating Campus Sexual Violence

The Task Force's responsibilities shall include the following:

- Recommend best practices for protocols used by campus officials, including campus police, Title IX Coordinators, and others, to respond to sexual violence on campus.
- Recommend best practice to reinforce existing relationships and form new relationships between Virginia's institutions of higher education, campus police, local law enforcement, commonwealth's attorneys, crisis response centers, mental health counselors, and advocacy

organizations, to include the development of a model memorandum of understanding that will delineate respective responsibilities for investigations, sharing of information, and training.

- Recommend best practices for policies governing sexual violence and associated procedures for the investigation and resolution of complaints, and revise such policies and procedures, if needed, to meet all legal requirements.
- Examine sexual violence prevention and awareness programs and recommend measures to maximize best practices for sexual violence training for students, faculty, and staff, as well as bystander intervention programs and mandatory training for incoming residential students, at all of Virginia's universities and colleges.
- Recommend measures to encourage reporting of sexual violence.
- Assess the degree of accessibility of campus services and programs, coordination with community resources and programs, and efforts to make students aware of these resources.

Task Force Membership

The Task Force will be chaired by the Attorney General of Virginia. The Task Force will be comprised of the Secretaries of Education, Health and Human Resources, Public Safety and Homeland Security, representatives of the higher education community, law enforcement, community advocates, health professionals, and relevant government agencies, not to exceed more than thirty members, as appointed by the Governor. The Governor may appoint any other person(s) and support staff deemed necessary and proper to carry out the assigned functions.

Task Force Staffing and Funding

Staff support for the Task Force's work during its existence shall be furnished by the Office of the Governor, and the Offices of the Secretary of Education and the Secretary of Public Safety and Homeland Security, as well as other agencies and offices designated by the Governor.

The Office of the Attorney General will provide legal staff to the Task Force, both through the OAG representatives serving on the Task Force and others, as needed.

Necessary funding to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Task Force, as authorized by § 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Task Force are \$5,000 per year.

The Task Force will serve in an advisory role and will provide a final report to the Governor by no later than

June 1, 2015. The Task Force will issue other reports as necessary or as requested by the Governor.

Effective Date of the Executive Order

This Executive Order shall be effective upon signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in force and effect for one year from its signing unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 21st day of August, 2014.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 26 (2014)

Establishing the New Virginia Economy Strategic Plan and Steering Committee

Importance of the Taskforce

The Commonwealth of Virginia features vast natural and human resources that serve as the foundation of our economic strength. Our unparalleled educational system, highly educated workforce, competitive business climate, central mid-Atlantic location, and premium infrastructure have afforded Virginia years of recognition as a preeminent state for business and job growth.

Virginia is well-positioned to capitalize on opportunities in various high-growth industries with high-wage employment, including healthcare, bio sciences, cyber security, and energy. According to the Information Technology and Innovation Foundation, the Commonwealth ranks among the nation's best knowledge-based, globalized, entrepreneurial, IT-driven, and innovation-based economies. Moreover, Virginia has one of the largest higher educational systems and among the most educated populations in the nation.

Virginia is an international gateway to move people and products quickly and efficiently, with fourteen commercial airports, including Dulles International. We offer the third largest state-maintained transportation network with six major interstates, an extensive railroad system, and a technologically-advanced port, capable of handling Post Panamax vessels. With agriculture as our largest industry, the Commonwealth will use these assets as we seek to increase agriculture and forestry shipments worldwide and to become the East Coast capital for agricultural exports.

While Virginia enjoys inherent advantages and assets, we are facing unique economic headwinds. Recent federal budget cuts, reductions in defense spending, and the impact of sequestration have presented pressing challenges for Virginia's economy. In this season of federal contraction, we must balance public and private sector enterprise for fiscal resilience. This vital imperative can be achieved by enhancing our fundamentals and addressing our challenges as an opportunity. By recalibrating our fiscal pathway and focusing

our efforts on diversified, sustainable, and prospering industry sectors, the Commonwealth will excel in the global marketplace strengthened by a New Virginia Economy.

Establishment of the Steering Committee

By virtue of the authority vested in me as Governor under Article V, Section 1 of the Constitution of Virginia, and Section 2.2-205 of the Code of Virginia, I hereby establish the Governor's New Virginia Economy Steering Committee (Steering Committee). The purpose of this Steering Committee is to create a four-year strategic plan for economic development, in collaboration with the business community, local and state officials, and economic development professionals.

The Commonwealth must attract new jobs and investment, and cultivate the next generation of job creators and entrepreneurs. My administration's four-year strategic plan will focus on: 1) enhancing our infrastructure, 2) diversifying and growing our strategic industry sectors, 3) solidifying and promoting our competitive business climate, 4) nurturing a sustainable entrepreneurial environment, and 5) equipping Virginia's workforce with in-demand skill sets to meet current and future business needs. The plan will also recommend specific executive and legislative actions to achieve these goals.

Composition of the Steering Committee

The Secretary of Commerce and Trade will chair the Steering Committee. The Steering Committee will be composed of the Secretaries of Agriculture and Forestry, Finance, and Veterans and Defense Affairs, as well as the Secretaries of Administration, Education, Health and Human Resources, Natural Resources, Technology, and Transportation, as specified in Section 2.2-205 B of the Code of Virginia. The Steering Committee will engage representatives of relevant state agencies, local and regional economic development organizations and chambers of commerce, leaders in sectors significant to Virginia's economy, and other organizations or individuals as designated by the Governor.

Strategic Plan Priorities:

The four-year strategic plan will address five economic development priorities:

1. "Project Ready" Infrastructure – Virginia must ensure that our infrastructure assets and resources, such as healthcare, energy, housing, and broadband are ready to attract small, medium, and large scale projects throughout the Commonwealth and advance our competitive position locally, regionally, and globally.
2. Diversified High-Growth Industries – Virginia must devote vital resources to strengthen thriving industries, while diversifying targeted high-growth industry sectors and expanding trading partnerships.

Governor

3. Preeminent Business Climate – Virginia must ensure that tax, regulatory, and incentive policies sustain Virginia's position as the best state to start, grow, and locate a business.

4. Innovation and Entrepreneurs – Virginia must pursue policies and public-private partnerships that attract talent, promote business and social entrepreneurship, business development and investment, and encourage the creation and commercialization of new products and services.

5. "Skills to Jobs" Workforce – Virginia must align higher education system priorities and resources to supply in-demand workers, transition veterans, and meet current and future employer needs, in the private and public sectors.

Staffing

Staff support for the Steering Committee will be provided by the Office of the Governor, the Office of the Secretary of Commerce and Trade, the various secretariats and their agencies represented on the Steering Committee, and other agencies as may be designated by the Governor. All executive branch agencies will cooperate fully with the Steering Committee and will render such assistance as may be requested by the Chair. The Secretary of Commerce and Trade will ensure coordination between the development of the New Virginia Economy Strategic Plan and the Workforce Initiative.

The Steering Committee will provide a report to the Governor by no later than December 1, 2014, setting forth the Commonwealth's proposed economic development strategic plan. The Steering Committee shall report annually to the Governor by no later than December 1 on progress toward achieving the goals established in the strategic plan.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 27th day of August 2014.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Availability of Agricultural Stewardship Act Annual Report, April 1, 2013 - March 31, 2014

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report of the Agricultural Stewardship Act entitled "Agricultural Stewardship Act Annual Report, April 1, 2013 – March 31, 2014." Copies of this report can be obtained by contacting Joyce Knight at telephone (804) 786-3538, or email joyce.knight@vdacs.virginia.gov. The report is also available on the agency's website at <http://www.vdacs.virginia.gov/stewardship/index.shtml>. A written request may be sent to the address below. Copies of the report are available without charge.

Virginia Department of Agriculture and Consumer Services
Office of Policy, Planning and Research
P. O. Box 1163
Richmond, VA 23218

If you have questions regarding the report, please contact the agency at the telephone number listed above.

AIR POLLUTION CONTROL BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Air Pollution Control Board conducted a small business impact review of **9VAC5-45, Consumer and Commercial Products**, and determined that this regulation should be retained in its current form. The Air Pollution Control Board is publishing its report of findings dated August 27, 2014, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last updated in 2010. In that time, it has gotten generally less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of

emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Air Pollution Control Board conducted a small business impact review of **9VAC5-80, Permits for Stationary Sources**, and determined that this regulation should be retained in its current form. The Air Pollution Control Board is publishing its report of findings dated August 27, 2014, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last updated in 2009. This regulation continues to contribute to the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions through public discussion and direct review of permitting actions by the board.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

General Notices/Errata

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load for Crooked Run, Stephens Run, West Run, Happy Creek, Manassas Run, Willow Brook, Borden Marsh Run, and Long Branch in Frederick, Warren, and Clarke Counties

Public meetings: A meeting will be held Tuesday, September 23, 2014, at 6.30 p.m. at the North Warren Fire Hall, 266 Rockland Court, Front Royal, VA 22630. This meeting will be open to the public and all are welcome. In the case of inclement weather, please contact Tara Sieber at telephone (540) 574-7870.

Purpose of notice: The Department of Environmental Quality (DEQ), its contractors, Virginia Tech's Biological Systems Engineering Department, and the Technical Advisory Committee comprised of local landowners and interested parties, will present the results of a water quality study known as a total maximum daily load (TMDL) for Crooked Run and its tributaries, including Stephens Run and West Run, Happy Creek, Manassas Run, Willow Brook, Borden Marsh Run and Long Branch. This is an opportunity for local residents to learn more about the water quality study and find out how they can help. A public comment period will follow the meetings (September 23, 2014, through October 24, 2014).

Meeting description: A public meeting will be held to introduce to the local community the water quality improvement process in Virginia, known as the TMDL Process, review the work of the Technical Advisory Committee, solicit the input of the community, and review the next steps. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Description of study: Several streams in the Shenandoah River watershed do not meet Virginia's water quality standards due to excessive bacteria and have been placed on the 2006, 2008, and 2010 § 303(d) TMDL Priority List and Report as impaired. The bacteria standard preserves the "primary contact (recreational or swimming)" designated use for Virginia waterways. Excessive bacteria levels may pose a threat to human health. This water quality study reports on the sources of bacterial contamination and recommends reductions to meet total maximum daily loads (TMDLs) for the 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. Virginia agencies are working to identify sources of bacterial contamination in the tributaries to the Shenandoah River, which will include the following waterways:

Stream	County	Length (miles)	Impairment
Crooked Run	Frederick/Warren	8.87 mi	bacteria (E. coli)
Stephens Run	Frederick	0.95 mi	
West Run	Frederick/Warren	6.12 mi	
Happy Creek	Warren	8.42 mi	
Manassas Run	Warren	9.15 mi	
Willow Brook	Warren	3.95 mi	
Borden Marsh Run	Clarke/Warren	9.46 mi	
Long Branch	Clarke	3.63 mi	

In addition, Happy Creek does not host a healthy and diverse population of aquatic life, and subsequently was listed as impaired for the "general benthic (aquatic life)" water quality standard. This water quality study (TMDL) reviewed all data collected and determined the cause of the benthic impairment to be excess sediment. Reductions and a TMDL for sediment were developed as part of this water quality study.

Stream	County	Length (miles)	Impairment
Happy Creek	Warren	8.42 mi	aquatic life

How to comment: The public comment period for these public meetings will end on October 24, 2014. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to: Tara Sieber, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

Water Quality Improvement Plan for Crab Creek in Montgomery County and the Town of Christiansburg

The Virginia Department of Environmental Quality will hold a public meeting to present the draft water quality improvement plan for reducing agricultural, residential, and urban sources of fecal bacteria and sediment in Crab Creek in Montgomery County and the Town of Christiansburg on Tuesday, October 7, 2014. The meeting will be held from 6 p.m. to 8 p.m. at the Town Hall Building in the Town of Christiansburg at 100 East Main Street.

Segments of Crab Creek do not meet state water quality standards for fecal bacteria (i.e., *E. coli*) and aquatic life. Elevated levels of *E. coli* indicate an increased risk of illness for people who come in contact with water in the affected streams. Identified sources of *E. coli* in these watersheds include failing septic systems, discharges of untreated human waste (i.e., straight pipes), pets, and livestock waste. Low aquatic life scores in Crab Creek are affected by sedimentation and are an indication of reduced water quality. Sediment sources include stream channel erosion, runoff from pastureland and cropland, and stormwater runoff from residential and urban areas.

The public meeting provides an opportunity for citizens and interested parties to ask questions and provide comments on the plan. The meeting will begin a 30-day period during which written public comments on the plan will be accepted. The comment period will close on November 7, 2014.

Questions, information requests, and comments should be addressed to Chris Burcher, Nonpoint Source Pollution Coordinator, Virginia Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210, email chris.burcher@deq.virginia.gov, or telephone (276) 676-4803.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on September 2, 2014. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number One Hundred Four (14)

Virginia Lottery's "Money Ball Monday" Final Rules for Operation (effective September 15, 2014)

Director's Order Number One Hundred Nine (14)

Virginia Lottery's "Game Face" Promotion Final Rules for Operation (This Director's Order is effective nunc pro tunc to Tuesday, August 5, 2014, rescinds Director's Order Eighty-Eight (88) (14) and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Twelve (14)

Virginia's Computer-Generated Game Lottery "Fastplay \$15,000 Cash Blast" Final Rules for Game Operation (effective September 8, 2014)

Director's Order Number One Hundred Thirteen (14)

Virginia's Computer-Generated Game Lottery "Fastplay \$50,000 Blackjack" Final Rules for Game Operation (effective September 8, 2014)

Director's Order Number One Hundred Fourteen (14)

Virginia's Computer-Generated Game Lottery "Fastplay Bankroll Bingo" Final Rules for Game Operation (effective September 8, 2014)

Director's Order Number One Hundred Fifteen (14)

Virginia's Computer-Generated Game Lottery "Fastplay Hallo-Win" Final Rules for Game Operation (effective September 8, 2014)

Director's Order Number One Hundred Sixteen (14)

Virginia Lottery's "NASCAR® Championship Banquet" Event Promotion Final Rules for Operation (This Director's Order is effective nunc pro tunc to Wednesday, June 11, 2014, rescinds Director's Order 87 (14), and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Nineteen (14)

"\$1,000,000 Money Ball Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on September 2, 2014, and shall remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

BOARD OF MEDICAL ASSISTANCE SERVICES

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 Board of Medical Assistance Services is currently reviewing each of the regulations listed below to determine whether it should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine 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.

12VAC30-5, Public Participation Guidelines

12VAC30-10, State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions

12VAC30-20, Administration of Medical Assistance Services

The comment period begins September 22, 2014, and ends October 22, 2014.

General Notices/Errata

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: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, or email victoria.simmons@dmass.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

VIRGINIA WASTE MANAGEMENT BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-170, Transportation of Solid and Medical Wastes on State Waters**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated August 27, 2014, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The primary goal of this regulation is to protect the environment from discharges of solid wastes, regulated medical wastes, and municipal and industrial sludge from vessels transporting these wastes on state waters. The regulation contains specific container standards that must be met to transport these wastes. These requirements are continued to be needed to protect the environment from spills of these wastes that may occur during the transportation of these wastes.

During the public comment period for this periodic review commenters requested the regulation be modified to include auto-shredder residue (ASR), ash, and construction and demolition debris (CDD) as wastes that can be handled in bulk and that are not required to be containerized. The commenters stated they believed cargoes of ASR, ash, and CDD have no more, and sometimes less, potential for impact than numerous other non-waste cargoes handled in bulk. The agency does not believe that it would be protective of state waters to allow these wastes to be transported by the barge itself being the container. Due to the testing requirements for containers, the regulation is very specific concerning standards containers must meet prior to transportation of wastes on state waters. The standards included in the regulation make the regulation appear to be complex and technical; however, the regulated community is accustomed to

implementing and using technical container standards in everyday practice.

There are no applicable federal requirements for waste to be containerized to be transported on state waters.

The regulation was originally adopted in November of 2003. The regulation was amended in 2006, 2010, 2011, and 2012.

The agency believes the regulation should not be amended or repealed, to minimize the economic impact of the regulation on small businesses. The standards for transporting solid waste on Virginia waterways are necessary to protect Virginia waterways from the release of waste into state waters.

STATE WATER CONTROL BOARD

Proposed Consent Order for Burke Petroleum Realty, LLC

An enforcement action has been proposed for Burke Petroleum Realty, LLC in Burke and Falls Church, Virginia. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with Exxon R/S #28066 and Exxon R/S #22693. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 23, 2014, through October 23, 2014.

Proposed Consent Order for Fairfax Petroleum Realty, LLC and Dogwood Petroleum Realty, LLC

An enforcement action has been proposed for Fairfax Petroleum Realty, LLC and Dogwood Petroleum Realty, LLC in Fairfax County, Virginia. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with Exxon R/S #26180 and Exxon R/S #28875. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 23, 2014, through October 23, 2014.

Proposed Consent Order for NOVA Petroleum Suppliers, LLC and Dogwood Petroleum Realty, LLC

An enforcement action has been proposed for NOVA Petroleum Suppliers, LLC and Dogwood Petroleum Realty, LLC in Alexandria, Virginia. The consent order describes a

settlement to resolve violations of State Water Control Law and the applicable regulations associated with Shell #6117, Shell #6136, and Shell #8500. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 23, 2014, through October 23, 2014.

Proposed Enforcement Action for TAI Oak Hall, LLC

An enforcement action has been proposed for TAI Oak Hall LLC for alleged violations of the State Water Control Law at the Oak Hall Shopping Center in Oak Hall, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Mr. Robin Schuhmann will accept comments by email at robin.schuhmann@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 September 22, 2014, through October 22, 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.

