



VIRGINIA

REGISTER OF REGULATIONS

VOL. 31 ISS. 3

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

OCTOBER 6, 2014

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Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for \$209.00 per year. Periodical postage is paid in Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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>).

October 2014 through August 2015

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

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health has WITHDRAWN the Notice of Intended Regulatory Action (NOIRA) for **12VAC5-410, Regulations for the Licensure of Hospitals in Virginia**, and **12VAC5-411, Regulations for Inpatient Hospital Licensure**, which was published in [24:20 VA.R. 2834 June 9, 2008](#). The board has been unable to make progress on this action following publication of the NOIRA in 2008. A new NOIRA will be filed at a future date.

Agency Contact: Joseph Hilbert, Director of Governmental and Regulatory Affairs, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7001, or email joe.hilbert@vdh.virginia.gov.

VA.R. Doc. No. R08-1333; Filed September 5, 2014, 1:10 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

CEMETERY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Cemetery Board intends to consider amending **18VAC47-20, Cemetery Board Rules and Regulations**. The purpose of the proposed action is to make clarifying changes, incorporate language as necessary to implement new statutory requirements for interment of pets (Chapter 500 of the 2014 Acts of Assembly), ensure consistency with Virginia law, and make any other changes that may be considered necessary.

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

Statutory Authority: §§ 54.1-201 and 54.1-2312.01 of the Code of Virginia.

Public Comment Deadline: November 5, 2014.

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

VA.R. Doc. No. R15-4107; Filed September 9, 2014, 8:20 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Fast-Track Regulation

Title of Regulation: **4VAC50-85. Nutrient Management Training and Certification Regulations (amending 4VAC50-85-10, 4VAC50-85-100, 4VAC50-85-110, 4VAC50-85-140).**

Statutory Authority: § 10.1-104.2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 5, 2014.

Effective Date: November 20, 2014.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Basis: Sections 10.1-104.2 and 10.1-505 of the Code of Virginia provide authority to the Virginia Soil and Water Conservation Board to promulgate Nutrient Management Training and Certification Regulations and amendments thereto.

Section 10.1-104.5 of the Code of Virginia specifies that golf course nutrient management plans may be good for up to five years. This regulatory action amends the Nutrient Management Training and Certification Regulations (4VAC50-85) to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5 of the Code of Virginia, which was added pursuant to Chapters 341 and 353 of the 2011 Acts of Assembly.

Purpose: This is a technical amendment requested by the Virginia Agribusiness Council to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5 of the Code of Virginia. The Nutrient Management Training and Certification Regulations provide a tool through which the Commonwealth manages both urban and agricultural nutrients found in fertilizers, manure, biosolids, and other sources so that they retain their efficient use yet do not impair the quality of Virginia's ground and surface waters. The protection of water quality has a positive impact on public health, safety, and welfare. This action clarifies the implementation of these water quality

regulations related to the duration of golf course nutrient management plans.

Rationale for Using Fast-Track Process: In the past, a clarifying technical amendment of this nature to conform state regulations with the Code of Virginia would typically have been exempt; however, legislation was passed in 2011 limiting the exemption in § 2.2-4006 A 4 a of the Code of Virginia, to those actions taken within 90 days of the of the law's effective date.

A review of the regulations in 2011, following the passage of the legislation, did not identify a need for any amendments to the regulations. However, in recent months, the Virginia Agribusiness Council has requested that the Nutrient Management Training and Certification Regulations be amended to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5 of the Code of Virginia.

Accordingly, the action cannot be considered exempt as over 90 days have lapsed since the passage of the legislation, and the use of a fast-track action is the next best option available to make this conforming technical amendment.

Substance: This regulatory action amends the Nutrient Management Training and Certification Regulations to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5 of the Code of Virginia.

Issues: This is a clarifying technical amendment to conform state regulations to the Code of Virginia as requested by the Virginia Agribusiness Council. The regulatory amendment creates no new requirements. There are no disadvantages.

Department of Planning and Budget Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Soil and Water Conservation Board (Board) proposes to add language to the Nutrient Management Training and Certification Regulations in order to make clear that golf course nutrient management plans may be good for up to five years before they must be revised and resubmitted for approval to the Department of Conservation and Recreation.

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

Estimated Economic Impact. The Board's proposal to add clarifying language in the regulation does not change requirements. It creates no costs and is potentially beneficial in that it may reduce the likelihood of confusion over the law.

Businesses and Entities Affected. The proposed amendment is a clarification and does not change requirements. In that the clarification concerns golf courses, the proposed amendment pertains to businesses and other entities that own golf courses. According to the National Golf Federation there are 336 golf courses in Virginia.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular entities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate.

General: 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 Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed 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.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,

- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

Agency's Response to Economic Impact Analysis: The Department of Conservation and Recreation concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the proposed amendment to the Nutrient Management Training and Certification Regulations.

Summary:

The amendments (i) clarify that nutrient management plans for golf courses may be good for up to five years (as opposed to three years) pursuant to Chapters 341 and 353 of the 2011 Acts of Assembly, (ii) update Code of Virginia references pursuant to Chapters 881 and 929 of the 2007 Acts of Assembly, and (iii) update Virginia Administrative Code references to reflect the transfer of authority for the biosolids regulations to the State Water Control Board.

4VAC50-85-10. Definitions.

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

"Application rate" or "nutrient rate" means the quantity of major nutrients, nitrogen as N, phosphorus as P₂O₅, and potassium as K₂O on a per acre basis to supply crop or plant nutrient needs, and to achieve realistic expected crop yields.

"Banding" or "sideband" means the placement of fertilizer approximately two inches to the side and two inches below the seed.

"Best management practice" means a conservation or pollution control practice that manages soil, nutrient losses, or other potential pollutant sources to minimize pollution of water resources, such as split applications of nitrogen, or use of cereal grain cover crops to trap available nitrogen and reduce soil erosion.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing, or distribution in accordance with ~~12VAC5-585, Biosolids Use Regulations of the Board of Health~~ 9VAC25-31, Virginia Pollutant Discharge Elimination System

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(VPDES) Permit Regulation, and 9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation, of the State Water Control Board.

"Broadcast" means the uniform application of a material over a field.

"Calibration" means the systematic determination of the operational parameters, such as speed and quantity delivered, of application equipment.

"Cereal crop" or "small grain" means barley, rye, triticale, or wheat.

"Certified nutrient management planner" or "nutrient management planner" or "planner" means a person who holds a current Virginia nutrient management certificate of competence.

"Cool season grass" means grass species of temperate zone origin which exhibit the greatest rates of dry matter production in the day/night temperature range of 60°/50°F to 80°/70°F. Examples of cool season grasses include fescue, bluegrass, and ryegrass.

"Commonwealth" means the Commonwealth of Virginia.

"Composted organic nutrient source" means the relatively stable, humus-like product resulting from the controlled aerobic, thermophilic biological decomposition of organic material that bears little physical resemblance to the raw materials from which it originated.

"Cover crop" means a crop including, but not limited to, cereal grains, which is planted following the harvest of the preceding crop for the purpose of:

1. Seasonal protection of soil, or
2. Assimilation of residual soil nitrogen left from a previous crop or from continued mineralization of nitrogen.

"Crop" means cultivated plants or agricultural produce such as grain, silage, forages, oilseeds, vegetables, fruit, nursery stock, or turfgrass.

"Cropland" means land used for the production of grain, oilseeds, silage, industrial crops, and any other category of crop not defined as specialty crop, hay, or pasture.

"Crop nutrient needs" means the primary nutrient requirements of a crop determined as pounds per acre or pounds per 1,000 square feet of nitrogen as N, phosphorus as P₂O₅, and potassium as K₂O required to support crop growth for production of an expected crop yield based upon soil analysis results as specified in Virginia Nutrient Management Standards and Criteria, revised July 2014, or Virginia Commercial Vegetable Production Recommendations for 2005.

"Crop nutrient removal" means the amount of nutrients per acre expected to be taken up by a plant and removed from the site in the harvested portion at the expected yield level, generally expressed as tons per acre or bushels per acre, at

rates specified in Virginia Nutrient Management Standards and Criteria, revised July 2014.

"Crop rotation" means one complete sequence of one or more crops grown in succession that may assist in minimizing disease, insects and weeds. For permanent hay, pasture, or a single crop planted continuously, the crop rotation is defined as the life of the nutrient management plan.

"Department" means the Department of Conservation and Recreation.

"Double crop" means the production and harvesting of two crops in succession within a consecutive 12-month growing season.

"Dry manure" or "semisolid manure" means manure containing less than 85.5% moisture.

"Environmentally sensitive site" means any field which is particularly susceptible to nutrient loss to groundwater or surface water since it contains or drains to areas which contain sinkholes, or where at least 33% of the area in a specific field contains one or any combination of the following features:

1. Soils with high potential for leaching based on soil texture or excessive drainage;
2. Shallow soils less than 41 inches deep likely to be located over fractured or limestone bedrock;
3. Subsurface tile drains;
4. Soils with high potential for subsurface lateral flow based on soil texture and poor drainage;
5. Floodplains as identified by soils prone to frequent flooding in county soil surveys; or
6. Lands with slopes greater than 15%.

"Expected crop yield" means a realistic crop yield for a given farm field determined by using yield records or soil productivity information.

"Fertilizer" means any organic or inorganic material of natural or synthetic origin that is added to a soil to supply certain nutrients essential to plant growth.

"Field" means a unit of contiguous nonwooded land generally used for crop production that is separated by permanent boundaries, such as fences, permanent waterways, woodlands, croplines not subject to change because of farming practices, and other similar features or as determined by the United States Department of Agriculture Farm Service Agency.

"Field identification number" means a number used by a farmer (or the United States Department of Agriculture Farm Service Agency) to distinguish or identify the location of a field on a farm.

"Grid soil sampling" means a process whereby farm fields or other areas are subdivided into smaller areas or squares for the purpose of obtaining more detailed soil analysis results.

"Groundwater" means any water beneath the land surface in a water saturated layer of soil or rock.

"Hay" means a grass, legume, or other plants, such as clover or alfalfa, which is cut and dried for feed, bedding, or mulch.

"Hydrologic soil group" means a classification of soils into one of four groups, A, B, C, or D, according to their hydrologic properties, ranging from low runoff potential (high infiltration potential) in group A to high runoff potential (low infiltration potential) in group D.

"Incorporation" means the process whereby materials are mixed into soils and not exposed on the soil surface, such as would be achieved by disking one time to a depth of six inches.

"Industrial waste" means liquid or other waste resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Irrigation" means the application of water to land to assist in crop growth.

"Irrigation scheduling" means the time and amount of irrigation water to be applied to an area for optimum crop growth and to minimize leaching and runoff.

"Leaching" means the movement of soluble material, such as nitrate, in solution through the soil profile by means of percolation.

"Legume" means a plant capable of fixing nitrogen from the atmosphere such as peas, soybeans, peanuts, clovers, and alfalfas.

"Legume nitrogen credit" means the amount of nitrogen a legume is expected to supply to a succeeding crop.

"Liming" means the application of materials containing the carbonates, oxides, or hydroxides of calcium or magnesium in a condition and in a quantity suitable for neutralizing soil acidity.

"Liquid manure" means manure containing at least 85.5% moisture or which can be applied through subsurface injection or surface application with liquid application equipment.

"Livestock" means domesticated animals such as cattle, chickens, turkeys, hogs, and horses raised for home use or for profit.

"Manure" or "animal waste" means animal fecal and urinary excretions and waste byproducts, which may include spilled feed, bedding litter, soil, lactase, process wastewater, and runoff water from animal confinement areas.

"Mehlich I" means the North Carolina Double-Acid soil analysis procedure to determine extractable levels of certain nutrients in soils as described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996.

"Mehlich III" or "Mehlich 3" means a modified version of the Mehlich I method used to determine extractable levels of certain nutrients in soils as described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996 and in Reference

Soil and Media Diagnostic Procedures for the Southern Region of the United States, Southern Cooperative Series Bulletin No. 374.

"Micronutrient" means a nutrient necessary only in extremely small amounts for plant growth.

"Mineralization" means the process when plant unavailable organic forms of nutrients are converted to a plant available inorganic state as a result of soil microbial decomposition.

"No-till" means the soil is left undisturbed from the time of harvest or the killing of the preceding crop or cover crop until and including the time of planting of the current crop except for strips up to 1/3 of the row width that are disturbed by coulters or disk openers during the planting operation.

"NRCS" means the United States Department of Agriculture, Natural Resource Conservation Service, formerly the Soil Conservation Service (SCS).

"Nutrient" means an element or compound essential as raw materials for plant growth and development such as carbon, nitrogen, and phosphorus.

"Nutrient content" means the percentage of any primary nutrients such as nitrogen as N, phosphorus as P₂O₅, and potassium as K₂O contained in any type or source of plant nutrients.

"Nutrient management plan" or "plan" means a plan prepared by a Virginia certified nutrient management planner to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, or other materials containing plant nutrients in order to reduce nutrient loss to the environment and to produce crops.

"Nutrient Management Training and Certification Fund" means the fund established by § 10.1-104.2 of the Code of Virginia to support the department's Nutrient Management Training and Certification Program.

"Organic nutrient source" or "organic source" means manure, biosolids, sludge, industrial waste, green manure, compost, or other plant or animal residues which contain plant nutrients.

"Organic residuals" means nutrients released over time from manure, biosolids, industrial wastes, legumes, or other organic sources of nutrients.

"Pasture" means land which supports the grazing of animals for forages.

"Person" means an individual, corporation, partnership, association, a governmental body and its subordinate units, a municipal corporation or any other legal entity.

"Phosphorus index" means the Virginia Phosphorus Index Version 2.0 Technical Guide, revised October 2005.

"Phosphorus saturation level" means the ratio of phosphorus to aluminum plus iron (P/(Al+Fe)) in a soil using the Acid Ammonium Oxalate in Darkness method described in Methods of Soil Analysis, Part 3, Chemical Methods, 1996 (pp. 649-650) or estimated with another extraction procedure

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correlated to the Acid Ammonium Oxalate in Darkness method and approved by the department.

"Plant available nutrients" means the portion of nutrients contained in nutrient sources which is expected to be available for potential use by plants during the growing season or the crop rotation.

"Pre-sidedress nitrate test" or "PSNT" means a procedure used to determine soil nitrate-nitrogen levels at a specific time during a corn crop growing season.

"Primary nutrients" means nitrogen as N, phosphorus as P₂O₅, and potassium as K₂O.

"Residual nutrients" means the level of nitrogen, phosphorus, and potassium remaining or available in the soil from previously applied nutrient sources, or unharvested plants or plant parts, or naturally occurring nutrient levels in the soil.

"Runoff" means that part of precipitation, snow melt, or irrigation water that runs off the land into streams or other surface water which can carry pollutants from the land.

"RUSLE2" means the USDA—NRCS Revised Universal Soil Loss Equation Version 2 software package.

"Secondary nutrient" means calcium, magnesium, or sulfur.

"Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues which contain materials removed from municipal or domestic wastewater during treatment including primary and secondary residues. Other residuals or solid wastes consisting of materials collected and removed by sewage treatment, septage, and portable toilet wastes are also included in this definition. Liquid sludge contains less than 15% dry residue by weight or can be applied through subsurface injection or surface application with liquid application equipment. Dewatered sludge contains 15% or more dry residue by weight.

"Shall" means a mandatory requirement.

"Should" means a recommendation.

"Sidedress" means the placement of fertilizer beside or between the rows of a crop after crop emergence.

"Sinkhole" means a depression in the earth's surface caused by dissolving of underlying limestone, salt, or gypsum having drainage patterns through underground channels.

"Slope" means the degree of deviation of a surface from horizontal, measured as a percentage, as a numerical ratio, or in degrees.

"Slowly available nitrogen" means nitrogen sources that have delayed plant availability involving compounds which dissolve slowly, materials that must be microbially decomposed, or soluble compounds coated with substances highly impermeable to water such as polymer coated products, methylene urea, isobutylidene diurea (IBDU), urea formaldehyde based (UF), sulfur coated urea, and natural organics.

"Soil erosion" or "erosion" or "soil loss" means the wearing away of the land surface by water, wind, or waves.

"Soil management group" means a grouping of soils based on their similarity in profile characteristics which affect crop production and require specific soil and crop management practices.

"Soil pH level" means the negative logarithm of the hydrogen-ion activity of a soil which measures the relative acidity or alkalinity of the soil. The pH level affects the availability and plant utilization of nutrients.

"Soil productivity group" means a grouping of soils based upon expected yield levels for a given crop type.

"Soil series" means a classification of a specific soil type by name based on the morphological, chemical and physical properties of the soil.

"Soil survey" means a published or electronically available document developed by a governmental entity using the standards and protocols of the National Cooperative Soil Survey that includes detailed descriptions and classifications of soils, mapping of various soil series, and the interpretation of soils according to their adaptability for various crops and trees.

"Specialty crop" means vegetables, tree crops, perennial vine crops, ornamentals, horticultural crops, and other similar crops.

"Split application" means utilizing a sequence of two or more nutrient applications, separated by approximately three weeks or more, to a single crop in order to improve nutrient uptake efficiency.

"Surface water" means all water whose surface is exposed to the atmosphere.

"Tilled" means soil is disturbed between the time of harvest of the preceding crop through the time of planting of the current crop in that greater than 1/3 of the row width is disturbed by tillage implements such as moldboard plows, chisel plows, subsoilers, disks, field cultivators, roto-tillers, coulters or disk openers.

"Tillering" means the formation of lateral shoots from the axillary buds of small grains and grasses.

"Tissue test" means an analysis of crop tissue for the percentage of nitrogen at key growth stages, and used as an intensive nutrient management technique with small grain crops.

"Topdress" means broadcast applications of fertilizer on crops such as small grains or forage after crop emergence has occurred.

"Trap crop" means a timely planted cereal crop for the purposes of capturing residual soil nitrogen and nitrogen that is released during the decomposition of manure or biosolids in order to manage limited manure or sewage sludge storage availability.

"Turfgrass" means selected grass species planted or sodded and managed for such uses as home lawns, golf courses, office parks and rights-of-way.

"Volatilization" means a process by which nitrogen is lost to the atmosphere as ammonia gas.

"Warm season grass" means a grass species of tropical origin that exhibits the highest rate of dry matter production in the day/night temperature range of 90°/79°F at a minimum to a maximum of 97°/88°F. Examples of warm season grasses include zoysia and bermuda grasses.

"Water insoluble nitrogen" or "WIN" means the amount of a type of slowly available nitrogen listed on fertilizer bags and reported as a percentage.

"Watershed" means a drainage area or basin in which all land and water areas drain or flow toward a central collector such as a stream, river, or lake at a lower elevation.

"Watershed code" means the letter and number used by the department to identify a watershed or hydrologic unit area.

"Zadoks' growth stage" means the numerical scale ranging from 0-93 which assigns values to small grain growth stages, e.g. Growth Stage 30 is just prior to the stem elongation phase in wheat growth.

4VAC50-85-100. Recordkeeping and reporting requirements.

A. Certified nutrient management planner reporting requirements. A person who holds a certificate under these regulations shall keep records and file with the department by September 30 of each year an annual activity report on a form supplied by the department covering the previous year (July 1 through June 30). The annual activity report shall contain the following information:

1. Name and certificate number of the certified nutrient management planner;
2. Any change of mailing address during the previous year;
3. Number of nutrient management plans completed;
4. Acreage covered by plans and planned acreage by county and state watershed codes specified by plan categories of new or revised;
5. Breakdown of planned acreage by cropland, hay, pasture, and specialty crops by county and watershed code specified by plan categories of new or revised; and
6. Other information indicating number of practices facilitated by the planner such as manure testing and use of the PSNT.

B. Certified nutrient management planner recordkeeping requirements. The department may periodically inspect nutrient management plans prepared by certified persons and required records for the purpose of review for compliance with 4VAC50-85-130 and 4VAC50-85-140. A certified nutrient management planner shall maintain the following plan records for a period of not less than three years from the date the plan was prepared:

1. A complete copy of each nutrient management plan prepared and shall make such plans available for inspection by department personnel upon request within one week of receiving such request;

2. Records for each plan with all of the following information if the information is not already contained in the plan:

- a. Representative soil analysis results for fields, or field grids if grid soil sampling is used, dated not more than three years prior to the date the nutrient management plan was completed to include information on soil fertility levels for phosphorus and potassium, and pH level;
- b. Copies of soil survey maps or a soil survey book containing maps for each field unless a soil survey has not been published for the county;
- c. Yield records for each field to include calculations used to determine the planning yield if upward adjustments to soil productivity based yields were made to more than 20% of the fields covered by the plan;
- d. Type and number of livestock, if any, as well as a description of the livestock to include average weight;
- e. Calculations or records indicating annual quantity of manure produced or expected to be produced; and
- f. Organic nutrient source analysis, if applicable, to include information on percentage of moisture, total nitrogen or total Kjeldahl nitrogen, ammonium nitrogen, total phosphorus, and total potassium.

3. A summary listing of all plans prepared to include landowner or operator's name and the date the plan was prepared or revised.

C. Certified nutrient management planners shall provide the department with a copy of a nutrient management plan within two weeks following the modification of any plan required by regulations promulgated under § ~~32.1-164.5~~ 62.1-44.19:3 for sewage sludge, § 62.1-44.17:1 for animal waste, and § 62.1-44.17:1.1 for poultry waste.

4VAC50-85-110. Compliance with regulations and disciplinary action.

If the department finds that a certified person or an applicant for certification violated any requirements of this chapter, including the circumstances listed below, the department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

1. Providing misleading, false, or fraudulent information in applying for a certificate;
2. Providing the department with any misleading, false, or fraudulent report;
3. Offering or preparing a nutrient management plan claimed to be prepared by a person certified as a nutrient

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management planner in Virginia as provided by these regulations without a certificate;

4. Offering, preparing, modifying, or revising a nutrient management plan that does not comply with the requirements of these regulations;

5. Failing to promptly provide any report or to allow the department access to inspect any records required to be kept by these regulations;

6. Failing to provide the department with a copy of a nutrient management plan within two weeks following the modification of any plan required by regulations promulgated under § ~~32.1-164.5~~ 62.1-44.19:3 of the Code of Virginia for sewage sludge, § 62.1-44.17:1 of the Code of Virginia for animal waste, or § 62.1-44.17:1.1 of the Code of Virginia for poultry waste; or

7. Conviction of a felony related in any way to the responsibilities of a certified nutrient management planner.

4VAC50-85-140. Required nutrient management plan procedures.

A. Nutrient application.

1. A certified nutrient management planner shall include, in each plan, nutrient application practices for each field in the plan. The nutrient application rates shall be calculated for nitrogen (N), phosphate (P₂O₅), and potash (K₂O). Individual field recommendations shall be made after considering nutrients contained in fertilizers, manure, biosolids, industrial wastes, legumes in the crop rotation, crop residues, residual nutrients, and all other sources of nutrients. Individual fields may be grouped together if similar soil productivity levels, soil fertility levels, and environmentally sensitive site features exist.

2. Nutrient application rates.

a. Determination of crop nutrient needs shall be consistent with tables and procedures contained in Virginia Nutrient Management Standards and Criteria, revised July 2014, and the Commercial Vegetable Production Recommendations, 2005 (Virginia Cooperative Extension Publication 456-420), and shall be based on soil test results for P₂O₅ and K₂O.

b. Nitrogen applications rates in nutrient management plans shall not exceed crop nutrient needs in subdivision 2 a of this subsection.

c. Phosphorus application rates shall be managed to minimize adverse water quality impacts consistent with subdivisions 2 c (1) through (5) of this subsection.

(1) Phosphorus applications from inorganic nutrient sources shall not exceed crop nutrient needs over the crop rotation based on a soil test.

(2) Phosphorus applications shall not be included in nutrient management plans developed after December 31, 2005, for soils exceeding 65% phosphorus saturation levels as listed in Virginia Nutrient Management

Standards and Criteria, revised July 2014, regardless of the outcome of other procedures specified in this subsection except as allowed in subdivision 2 c (4) of this subsection.

(3) Whenever possible, phosphorus applications from organic nutrient sources should not exceed crop needs based on a soil test over the duration of the crop rotation. If this is not possible, maximum phosphorus application rates and phosphorus control practices contained in nutrient management plans shall be consistent with the phosphorus management provisions contained in Virginia Nutrient Management Standards and Criteria, revised July 2014, except as allowed in subdivision 2 c (4) of this subsection.

(4) Fields controlled by existing operations that receive phosphorus applications only from on-farm or on-site generated liquid dairy manure, liquid swine manure, or liquid sewage sludge shall be limited to a maximum of crop removal amounts of applied phosphorus until December 31, 2010, if the field exceeds 65% phosphorus saturation levels or has a phosphorus index rating that exceeds 100. New operations that begin production after December 31, 2005, or operations that expand after December 31, 2005, by increasing the total phosphorus generated in liquid dairy manure, liquid swine manure or liquid sewage sludge by more than 10% shall not be considered existing operations.

(5) A single phosphorus application may be recommended to address multiple crops in the crop rotation identified within the timeframe covered by the nutrient management plan consistent with 4VAC50-85-140 D 1 if the single application does not exceed the sum of the appropriate application rates for individual crops as determined by subdivisions 2 c (1) through (3) of this subsection.

d. Recommended application rates for secondary nutrients and micronutrients should be at agronomically or economically justifiable levels for expected crop production. Potassium applications sufficient to meet crop nutrient needs shall be included in nutrient management plans for all fields consistent with recommendations contained in Virginia Nutrient Management Standards and Criteria, revised July 2014.

e. Expected crop yield shall be determined from any of the following methods on a given field:

(1) Soil productivity group expected crop yields based on and consistent with soil productivity information contained in Virginia Nutrient Management Standards and Criteria, revised July 2014;

(2) The farmer's past experience with crop yields in specific fields may be used to make reasonable adjustments to expected crop yields in subdivision 2 e (1) of this subsection in lieu of verifiable yield records

provided the upward adjustments impact no more than 20% of the acreage of any crop on a particular farm; or

(3) Verifiable past crop yields are utilized to determine expected crop yield. The calculation of expected crop yield shall be an average of the three highest yielding years taken from the last five years the particular crop was grown in the specific field.

f. Representative soil analysis results for fields shall be determined by using standard soil sampling and analysis methods according to Methods of Soil Analysis, Part 3, Chemical Methods, 1996, utilizing the Mehlich I extraction procedure for phosphorus or other methods and laboratories approved by the department and correlated to Mehlich I and utilizing correlation procedures contained in Virginia Nutrient Management Standards and Criteria, revised July 2014. Soil analysis results shall be dated no more than three years prior to the beginning date of the nutrient management plan. A single composite soil sample should represent an area up to approximately 20 acres. Fields such as those common to strip cropping may be combined when soils, previous cropping history, and soil fertility are similar. Representative soil sample cores shall be obtained from the soil surface to a depth of four inches (0-4") for fields that have not been tilled within the past three years, and from the soil surface to a depth of six inches (0-6") for fields ~~which~~ that are tilled or have been tilled within the past three years. Soil sampling of fields based on subfield grids or management zones may be utilized.

g. For existing operations, the most recent organic nutrient source analysis results or an average of past nutrient analysis results for the specific operation within the last three-year period shall be used to determine the nutrient content of organic nutrient sources. Manure analyses shall include percent moisture, total nitrogen or total Kjeldahl nitrogen, ammonium nitrogen, total phosphorus, and total potassium determined using laboratory methods consistent with Recommended Methods of Manure Analysis, publication A3769, University of Wisconsin, 2003, or other methods approved by the department. For plans on new animal waste facilities, average analyses published in Virginia Nutrient Management Standards and Criteria, revised July 2014, should be utilized unless proposed manure storage and treatment conditions warrant the use of alternative data. Plant available nutrient content shall be determined using the mineralization rates and availability coefficients found in Virginia Nutrient Management Standards and Criteria, revised July 2014, for different forms and sources of organic nutrients. Mineralization of organic nutrients from previous applications shall be accounted for in the plan.

h. The expected nitrogen contributions from legumes shall be credited when determining nutrient application

rates at levels listed in Virginia Nutrient Management Standards and Criteria, revised July 2014.

3. Soil pH influences nutrient availability and crop nutrient utilization and should be adjusted to the level suited for the crop. Nutrient management plans shall contain lime recommendations to adjust soil pH to a level within the appropriate agronomic range for the existing crop or crop(s) to be grown. Recommendations shall address lime application if soil pH is below the optimal range. Nutrient management planners shall not recommend the application of lime, lime-amended materials, or nutrient sources that are expected to raise the soil pH to a level that exceeds the appropriate agronomic range for the growing crop or crop(s) to be grown based on recommendations contained in Virginia Nutrient Management Standards and Criteria, revised July 2014.

4. Nutrient application timing.

a. Timing recommendations for nutrient sources containing nitrogen shall be as close to plant nutrient uptake periods as reasonably possible. A certified nutrient management planner shall utilize procedures contained in Virginia Nutrient Management Standards and Criteria, revised July 2014, to determine the timing of nutrient applications. To reduce the potential for nutrient leaching or runoff, a certified nutrient management planner shall recommend applications of nitrogen-containing materials only to sites where an actively growing crop is in place at the time of application or where a timely planted crop will be established within 30 days of the planned nutrient application, except as specified in subdivisions 4 b through e of this subsection. If such nutrient applications are made to fall-seeded crops such as small grain, the crop planted shall be capable of germination and significant growth before the onset of winter so the crop is able to take up the available applied nitrogen.

b. Organic nutrient source applications may be applied at differing times than specified in subdivision 4 a of this subsection in order to manage storage constraints in accordance with the following conditions:

(1) Applications of organic nutrient sources shall be within 60 days of planting a spring seeded crop to sites that are not environmentally sensitive sites as identified in 4VAC50-85-10 or the Virginia Nutrient Management Standards and Criteria, revised July 2014, except as specified in subdivision 4 b (2) of this subsection. Such nutrient applications shall not exceed allowable application rates of the spring seeded crop;

(2) Applications shall be within 90 days of planting a spring seeded crop to sites that meet all of the following requirements:

(a) Are not environmentally sensitive sites as identified in 4VAC50-85-10 or the Virginia Nutrient Management Standards and Criteria, revised July 2014;

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(b) Have slopes of less than 7.0% throughout the application area unless: (i) at least 60% uniformly distributed crop residue cover exists following application or (ii) the application and any associated tillage is in conformance with an existing and implemented soil conservation plan meeting NRCS requirements for the site; and

(c) The organic sources being applied are one of the following: semi-solid beef manure, semi-solid dairy manure with sawdust bedding or straw bedding, dewatered anaerobically digested sewage sludge, or dewatered lime stabilized sewage sludge. Such nutrient applications shall not exceed allowable application rates of the spring planted crop;

(3) Applications of organic nutrient sources may occur prior to the times specified in subdivisions 4 b (1) and (2) of this subsection on:

(a) Sites that are not environmentally sensitive sites if all of the following requirements are met: (i) a trap crop exists that has reached a Zadoks growth stage of 23 or greater having a uniform stand throughout the site area of at least 20 plants per square foot; (ii) the trap crop shall be allowed to continue growing on the entire site until within two weeks of the spring crop planting date; (iii) all such nitrogen applications of organic nutrient sources to trap crops shall not exceed the crop nutrient needs of the upcoming spring planted crop subtracting at least 30 pounds per acre of nitrogen to be reserved for use as a banded starter fertilizer at the time of spring planting; and (iv) the rate of organic nutrient source applied does not smother the crop.

(b) Environmentally sensitive sites as identified in 4VAC50-85-10 or the Virginia Nutrient Management Standards and Criteria, revised July 2014, in addition to those criteria outlined in subdivision 4 b (3) (a) of this subsection, such applications to a trap crop must be within 60 days of planting a spring planted crop.

c. The nutrient timing requirements of subdivisions 4 a and b of this subsection for application of sewage sludge to nonenvironmentally sensitive sites in nutrient management plans shall not be effective until January 1, 2009. The delayed implementation time is provided to allow for the development of adequate winter storage capacity, landfilling, or alternative uses. All applications of sewage sludge to environmentally sensitive sites in nutrient management plans will fully comply with the requirements of subdivisions 4 a and b of this subsection by January 11, 2006.

d. Composted organic nutrient sources having a final carbon to nitrogen ratio of 20:1 or greater are exempt from requirements of subdivisions 4 a and b of this subsection if analyzed for carbon to nitrogen ratio at the conclusion of the composting process and results are obtained prior to land application. The planner shall

recommend soil nitrate testing to determine nitrogen application rates during the growing season following the application of composted organic nutrient sources.

e. The nutrient management planner shall recommend split application of inorganic nitrogen fertilizers as starter or broadcast and sidedressing or top dressing in row crops and small grains consistent with procedures contained in Virginia Nutrient Management Standards and Criteria, revised July 2014, on environmentally sensitive sites as identified in 4VAC50-85-10. Split applications of inorganic nitrogen fertilizers and irrigation scheduling shall be recommended for crops to receive irrigation. The use of a pre-sidedress nitrogen test (PSNT) can help to determine nitrogen needs during the growing period. In lieu of split applications, the planner may recommend the application of the total nitrogen requirement for spring-planted row crops within one week prior to planting if at least 50% of the plant available nitrogen requirement of the crop is supplied with slowly available nitrogen sources.

f. Nutrient management plans shall include a statement indicating that applications of inorganic nutrient sources, liquid manure, liquid sewage sludge, or liquid industrial waste are not to occur on frozen or snow-covered ground. When ground is frozen, dry or semi-solid manures, dewatered sludges, or dewatered industrial wastes may only be applied if the field has: (i) slopes not greater than 6.0%; (ii) 60% uniform ground cover from crop residue or an existing actively growing crop such as a small grain or fescue with exposed plant height of three inches or more; (iii) a minimum of a 200-foot vegetated or adequate crop residue buffer between the application area and all surface water courses; and (iv) soils characterized by USDA as "well drained."

5. Application method for nutrients.

a. The application of nitrogen containing materials shall be managed to minimize runoff, leaching, and volatilization losses.

b. Applications of liquid manures or sludges utilizing irrigation shall not be recommended to be applied at hydraulic rates above those contained in Virginia Nutrient Management Standards and Criteria, revised July 2014.

c. Plans shall not recommend liquid manure or sludge application rates utilizing nonirrigation liquid spreading equipment which exceed 14,000 gallons per acre (approximately one-half (0.5) inch) per application. The amount of liquid manure or sludge application in plans will not exceed the hydraulic loading capacity of the soil at the time of each application. If a subsequent pass across a field is necessary to achieve the desired application rate, the plan will allow for sufficient drying time.

d. Where possible, the planner should recommend that biosolids, industrial wastes and manures be incorporated or injected in the crop root zone in order to reduce losses of nitrogen to the atmosphere and to increase the plant available nitrogen to phosphorus ratio of these nutrient sources relative to crop nutrient needs. Lime stabilized biosolids should not be injected due to the creation of a localized band of high soil pH unless subsequent practices are utilized, such as disking, in order to adequately mix the soil.

e. The planner shall recommend setbacks around wells, springs, surface waters, sinkholes, and rock outcrops where manure, biosolids, or industrial waste should not be applied. Such setbacks recommended shall be consistent with criteria contained in Virginia Nutrient Management Standards and Criteria, revised July 2014, unless alternative setbacks or buffers are specified in regulations or permits pertaining to the site. For sites impacted by other regulations or permits, the planner shall include the setbacks and buffers specified in regulations promulgated under ~~§ 32.1-164.5~~ 62.1-44.19:3 of the Code of Virginia for sewage sludge, § 62.1-44.17:1 of the Code of Virginia for animal waste, § 62.1-44.17:1.1 of the Code of Virginia for poultry waste, and Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia for sites in Chesapeake Bay Preservation areas, and permits for industrial waste land application. The land area within setback and buffer areas shall be deducted from field acreage to determine usable field acreage for nutrient application in nutrient management plans.

B. Manure production and utilization.

1. The planner shall estimate the annual manure quantity produced on each farm utilizing tables and forms contained in Virginia Nutrient Management Standards and Criteria, revised July 2014, or from actual farm records of manure pumped or hauled during a representative 12-month period.

2. The nutrient management plan shall state the total amount of manure produced and the amount that can be used on the farm, utilizing the information and methods provided in the Virginia Nutrient Management Standards and Criteria, revised July 2014. The plan shall discuss any excess manure and shall provide recommendations concerning options for the proper use of such excess manure.

C. Plans shall identify and address the protection from nutrient pollution of environmentally sensitive sites.

D. Plan maintenance and revisions.

1. A site-specific nutrient management plan developed in accordance with all requirements of these regulations, including specified crops or crop rotations, shall provide information on soil fertility and seasonal application of required nutrients for one to five years of crop production. Plans developed for a period of time greater than three

years and up to five years shall be limited to sites in permanent pasture or continuous hay or that are golf courses.

2. The plan shall state a need for immediate modification if (i) animal numbers are to increase above the level specified in the plan; (ii) animal types including intended market weights are to be changed; (iii) additional imported manure, biosolids, or industrial waste that was not identified in the existing plan is to be applied to fields under the control of the operator; or (iv) available land area for the utilization of manure decreases below the level necessary to utilize manure in the plan. The plan shall also state a need for modification prior to subsequent nutrient applications if cropping systems, rotations, or fields are changed and phosphorus will be applied at levels greater than crop nutrient needs based on soil analysis as determined from procedures in Virginia Nutrient Management Standards and Criteria, revised July 2014.

3. Adjustments to manure production and application should be made if there are increases in animal numbers or changes in how animal waste is stored or applied, or when there are changes in nutrient content of manure resulting from changing feed rations, animal types, or new sampling and analysis for nutrient content and application rate calculations.

4. Soil analysis shall be recommended for each field at least once every three years to determine the soil fertility and pH, and to update the nutrient management plan.

5. Manure analysis shall be recommended before field application until a baseline nutrient content is established for the specific manure type on the corresponding farm operation. After a baseline nutrient content is established, a manure analysis shall be recommended at least once every three years for dry or semisolid manures, and at least once every year for liquid manures.

6. Modified top dressing or sidedressing application rates of nitrogen may be recommended if a pre-sidedress nitrogen test (PSNT) administered during the growing season indicates different levels of nitrogen than planning time calculations if the use of the PSNT and interpretation of the test results are consistent with Virginia Nutrient Management Standards and Criteria, revised July 2014.

VA.R. Doc. No. R15-3954; Filed September 14, 2014, 5:23 p.m.



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TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

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

Title of Regulation: **9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining.**

Agency Contact: Cindy M. Berndt, Director Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4019, or email cindy.berndt@deq.virginia.gov.

FORMS (9VAC25-190)

[Department of Environmental Quality Water Division Permit Application Fee \(rev. 5/13\)](#)

~~[Virginia Pollutant Discharge Elimination System Change of Ownership Agreement Form \(undated\)](#)~~

~~[Virginia Pollutant Discharge Elimination System General Permit Registration Statement - Nonmetallic Mineral Mining Change of Ownership Agreement Form \(rev. 3/14\)](#)~~

[VPDES General Permit for Nonmetallic Mineral Mining \(VAG84\) - Notice of Termination \(eff. 7/14\)](#)

[VPDES General Permit Registration Statement - Nonmetallic Mineral Mining \(rev. 2014\)](#)

V.A.R. Doc. No. R15-4169; Filed September 17, 2014, 1:15 p.m.

Forms

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

Title of Regulation: **9VAC25-194. General Permit for Vehicle Wash Facilities and Laundry Facilities.**

Agency Contact: Cindy M. Berndt, Director Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone

(804) 698-4378, FAX (804) 698-4019, or email cindy.berndt@deq.virginia.gov.

FORMS (9VAC25-194)

[Registration Statement for the General Virginia Pollutant Discharge Elimination System \(VPDES\) Permit for Vehicle Wash Facilities and Laundry Facilities 2012 Reissuance \(rev. 8/14\)](#)

V.A.R. Doc. No. R15-4166; Filed September 17, 2014, 12:26 p.m.

Forms

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

Title of Regulation: **9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities.**

Agency Contact: Cindy M. Berndt, Director Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4019, or email cindy.berndt@deq.virginia.gov.

FORMS (9VAC25-880)

[Department of Environmental Quality Construction Activity Operator Permit Fee Form \(rev. 1/14\)](#)

[Notice of Termination - General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) \(rev. 1/14\)](#)

~~[Registration Statement - General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) \(rev. 01/2014\)](#)~~

[Registration Statement - General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) \(rev. 7/14\)](#)

[Transfer Agreement - General VPDES Permit for Discharges of Stormwater from Construction Activities \(VAR10\) \(rev. 1/14\)](#)

V.A.R. Doc. No. R15-4167; Filed September 17, 2014, 12:43 p.m.



TITLE 11. GAMING**VIRGINIA LOTTERY BOARD****Final Regulation**

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

Titles of Regulations: 11VAC5-11. Public Participation Guidelines (amending 11VAC5-11-10, 11VAC5-11-20).

11VAC5-20. Administration Regulations (amending 11VAC5-20-10, 11VAC5-20-60, 11VAC5-20-80, 11VAC5-20-160 through 11VAC5-20-200).

11VAC5-31. Licensing Regulations (amending 11VAC5-31-10 through 11VAC5-31-80, 11VAC5-31-130, 11VAC5-31-140, 11VAC5-31-160 through 11VAC5-31-200).

11VAC5-41. Lottery Game Regulations (amending 11VAC5-41-10, 11VAC5-41-60, 11VAC5-41-80, 11VAC5-41-100 through 11VAC5-41-190, 11VAC5-41-220, 11VAC5-41-230, 11VAC5-41-250, 11VAC5-41-290 through 11VAC5-41-320).

Statutory Authority: §§ 2.2-4007.02 and 58.1-4007 of the Code of Virginia (11VAC5-11-10, 11VAC5-11-20).

§ 58.1-4007 of the Code of Virginia (all other sections).

Effective Date: November 5, 2014.

Agency Contact: Amy Roper, Regulatory Coordinator, Virginia Lottery, 900 East Main Street, 9th Floor, Richmond, VA 23219, telephone (804) 692-7133, FAX (804) 692-7325, or email aroper@valottery.com.

Summary:

The amendments conform regulations to changes to the Code of Virginia pursuant to (i) Chapter 225 of the 2014 Acts of Assembly, which changes the name of the "State Lottery Department" to the "Virginia Lottery," and (ii) Chapter 224 of the 2014 Acts of Assembly, which establishes a new waiting period for relicensing of retailers under § 58.1-4009 D of the Code of Virginia.

Part I**Purpose and Definitions****11VAC5-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment, or repeal of the regulations of the State Virginia Lottery Department. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the

Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

11VAC5-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the State Virginia Lottery Department, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online

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public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended, and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part I General Parameters

11VAC5-20-10. Definitions.

The following words and terms when used in any of the ~~department's~~ agency's regulations shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Virginia Lottery created by the Virginia Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Appeal" means a proceeding initiated by a retailer, bidder, or offeror (for a contract negotiated on a sole source basis), contractor or individual for an informal conference or formal hearing contesting the director's decision (i) to refuse to issue or renew, to suspend or to revoke a lottery license; or (ii) regarding a procurement action.

"Bank" means any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America ~~which that~~ is designated by the State Treasurer to perform functions, activities or services in connection with the operations of the lottery for the deposit, handling and safekeeping of lottery funds, accounting for those funds and the safekeeping of records.

"Board" means the State Virginia Lottery Board established by the State Virginia Lottery Law.

"Conference" or "consultation" means a type of appeal in the nature of an informational or factual proceeding of an informal nature provided for in § 2.2-4019 of the Administrative Process Act.

"Conference officer" means the director, or a person appointed by the director, who is empowered to preside at informal conferences or consultations and to provide a recommendation, conclusion or decision in such matter.

"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.

"Contract" means a binding agreement, enforceable by law, between two or more parties for the supply of goods or services.

~~"Department" means the State Lottery Department created by the State Lottery Law.~~

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the ~~department~~ agency, or any state agency that performs any or all of the following activities or services for the lottery:

1. The safekeeping and distribution of tickets to retailers;
2. The handling of lottery funds;
3. The deposit of lottery funds; or
4. The accounting for lottery funds.

"Director" means the Executive Director of the State Virginia Lottery ~~Department~~ or his designee.

"Electronic funds transfer (~~EFT~~)" or "EFT" means a computerized transaction that withdraws or deposits money from or to a bank account.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.

"Household" means members of a group who reside at the same address.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Inspection" means the close and critical examination of goods and services delivered to determine compliance with applicable contract requirements or specifications. It is the basis for acceptance or rejection.

"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

"Lottery" or "state lottery" means the lottery or lotteries established and operated pursuant to Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia.

"Person" means a natural person and may extend and be applied to groups of persons, as well as a corporation, company, partnership, association, club, trust, estate, society, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, as well as all departments, commissions, agencies, and instrumentalities of the

Commonwealth, including counties, cities, municipalities, political subdivisions, agencies and instrumentalities thereof.

"Procurement" means the process for obtaining goods or services, including all activities from planning and preparation to processing of a request through the processing of a final invoice for payment.

"Retailer and sales agent" means a person or business licensed by the department agency as an agent to sell lottery tickets or shares.

"Sales," "gross sales," "annual sales" and similar terms mean total ticket sales including any discount allowed to a retailer for his compensation.

"Services" means any work performed by an independent contractor where the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sole source" means that only one source is practicably available to furnish a product or service.

~~"State Lottery Law" means Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia.~~

"Surety bond" means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department agency in the event the retailer fails to meet his obligations to the department agency.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

"Vendor" means one who provides goods or services to the department agency.

"Virginia Lottery Law" means Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia.

11VAC5-20-60. Advertising.

A. Advertising may include, but is not limited to, print advertisements; radio and television advertisements; digital, electronic, and video advertisements; billboards; point of purchase materials; point-of-sale display materials; and Internet and social media.

B. Any lottery retailer may use his own advertising materials unless the department agency objects thereto. The department agency shall develop written guidelines for such materials.

C. The department agency may provide information displays or other material to the retailer, who shall position the material so it can be seen easily by the general public.

D. The department agency may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

Part II
Banks and Depositories

11VAC5-20-80. Approval of banks.

A. The State Treasurer, with the concurrence of the director, and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department agency.

B. A bank or banks shall serve as agent or agents for electronic funds transfers between the department agency and lottery retailers as required by ~~Chapters 20 (11VAC5-20), 31 (11VAC5-31), and 41 (11VAC5-41)~~ and by contracts between the department agency, the State Treasury, retailers, and the banks.

11VAC5-20-160. Procedure for appealing a licensing decision.

A. Upon receiving a notice that (i) an application for a license or the renewal of a license has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, the applicant or licensed retailer may appeal by filing a written notice of appeal requesting a conference on the licensing action. The notice of appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt of a notice of the licensing action that is mailed in an envelope bearing a United States Postal Service postmark is presumed to have taken place not later than the third day following the day of mailing to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer unless a more current address has been provided to the department agency by the applicant or licensed retailer.
2. The notice of appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in subdivision 1 of this subsection.

B. A notice of appeal may be mailed or hand delivered to the director at the State Virginia Lottery Department headquarters office.

1. A notice of appeal delivered by hand will be timely only if received at the headquarters of the State Virginia Lottery Department within the time allowed by subsection A of this section.
2. Delivery to any other State Virginia Lottery Department office or to lottery sales personnel by hand or by mail is not sufficient.
3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

C. The notice of appeal shall state:

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1. The decision of the director that is being appealed;
2. The legal and factual basis for the appeal;
3. The retailer's license number; and
4. Any additional information the appellant may wish to include concerning the appeal.

11VAC5-20-170. Procedures for conducting informal fact-finding licensing conferences.

A. The conference officer will conduct an informal fact-finding conference with the appellant for the purpose of resolving the licensing action at issue.

B. The conference officer will hold the conference as soon as possible but not later than 30 days after the notice of appeal is filed, unless an alternate date is designated by the conference officer or his designee and accepted by the appellant. A notice setting out the conference date, time, and location will be sent to the appellant, by certified mail, return receipt requested, at least 10 days before the day set for the conference, unless a shorter time is agreed to by the appellant.

C. A conference may be conducted by telephone, at the option of the appellant.

D. The conferences shall be informal.

1. The conferences will be electronically recorded. The recordings will be kept until the time limit for any subsequent appeal has expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the ~~department~~ agency. The transcript shall become part of the ~~department's~~ agency's records.

3. The appellant may appear in person or may be represented by counsel to present his facts, argument, or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The ~~department~~ agency will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the conference officer's prerogative to regulate the order of presentation in a manner ~~which that~~, in his sole discretion, best serves the interest of fairly developing the facts.

6. The conference officer may exclude information at any time that he believes, in his sole discretion, is not germane or that repeats information already received.

7. The conference officer shall declare the conference completed when the time established by the conference officer has expired.

E. Normally, the conference officer shall issue his decision within 15 days after the conclusion of an informal conference. However, for a conference with a court reporter, the conference officer shall issue his decision within 15 days after

receipt of the transcript of the conference. In all cases the agency shall comply with the APA. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

F. After receiving the conference officer's decision on the informal conference, the appellant may elect to appeal to the board for a formal hearing on the licensing action. The request for appeal shall:

1. Be submitted in writing within 15 days of receipt of the conference officer's decision on the informal conference.

2. Be mailed or hand delivered to the chairman of the board at the headquarters of the ~~State~~ Virginia Lottery ~~Department~~.

3. Be governed by the same procedures in 11VAC5-20-160 B for filing the original notice of appeal.

4. State:

a. The decision of the conference officer that is being appealed;

b. The legal and factual basis for the appeal;

c. The retailer's license number; and

d. Any additional information the appellant may wish to include concerning the appeal.

11VAC5-20-180. Procedures for conducting formal licensing hearings.

A. The board will conduct a formal hearing at its next regularly scheduled meeting following the receipt of a notice of appeal on a licensing action if the date of the scheduled meeting permits the required 10 days notice to the appellant or at a date to be determined by the chairman of the board and accepted by the appellant.

B. A majority of members of the board is required to hear an appeal. If the chairman and vice chairman of the board are not present, the members present shall choose one from among them to preside over the hearing.

C. The board chairman, at his discretion, may designate a committee of the board to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board. If the chairman of the board is not present, the members of the committee shall choose one from among them to preside over the hearing.

D. A notice setting the hearing date, time, and location will be sent to the appellant by certified mail, return receipt requested, at least 10 days before the day set for the hearing, unless a shorter time is agreed to by the appellant.

E. The hearing shall be conducted in accordance with the provisions of Article 3 (§ 2.2-4018 et seq.) of the APA and shall be open to the public.

1. The hearing will be electronically recorded and the recording will be kept until any time limits for any subsequent court appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the ~~department~~ agency. The transcript shall become part of the ~~department's~~ agency's records.

3. The provisions of §§ 2.2-4020 through 2.2-4023 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the ~~department~~ agency.

F. Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing. In all cases the agency shall comply with the APA.

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained by the ~~department~~ agency and become a part of the case file.

2. The written decision will contain:

- a. A statement of the facts to be called "Findings of Facts";
- b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and
- c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

G. After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the APA.

Part IV
Procurement

11VAC5-20-200. Procurement in general.

The State Virginia Lottery Department will purchase goods or services in accordance with procedures established by the board, after consultation with the director, pursuant to Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia.

11VAC5-31-10. Definitions.

The following words and terms when used in any of the ~~department's~~ agency's regulations shall have the same meanings as defined in this chapter unless the context clearly indicates otherwise:

"Agency" means the Virginia Lottery created by the Virginia Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Board" means the State Virginia Lottery Board established by the State Virginia Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

~~"Department" means the State Lottery Department created by the State Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).~~

"Director" means the Executive Director of the State Virginia Lottery Department or his designee.

"License" means the certificate issued by the ~~department~~ agency to a retailer who has met the requirements established by the ~~department~~ agency to sell lottery products.

"Lottery retailer," "lottery sales agent" or "retailer" means a person licensed by the director to sell and dispense lottery tickets or products and act as the ~~department's~~ agency's representative to collect, preserve, and account for Commonwealth of Virginia trust funds.

"Person," for purposes of licensing, means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, as well as all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, municipalities, political subdivisions, agencies and instrumentalities thereof.

"Vacuum fluorescent display" means a player display unit that, when connected to the lottery terminal, presents messages to the customer, such as customer transaction totals, validation and cancellation amounts, and jackpot drawing messages.

11VAC5-31-20. Eligibility.

Any person who is 18 years of age or older may submit an application for licensure as a lottery retailer in accordance with the provisions and requirements of the ~~department's~~ agency's licensing procedures, except no person may submit an application for licensure:

- 1. Who will be engaged primarily in the business of selling lottery tickets;
- 2. Who is a board member, officer, or employee of the State Virginia Lottery Department or who resides in the same household as a board member, officer, or employee of the ~~department~~ agency; or
- 3. Who is a board member, officer, or employee of any vendor to the ~~department~~ agency of lottery ticket goods or services, working directly on a contract with the ~~department~~ agency, or whose business owns, is owned by or controlled by, or affiliated with that vendor.

11VAC5-31-30. Application procedure.

A. Any eligible person shall first file an application with the ~~department~~ agency by completing all information requested

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on forms supplied for that purpose, along with submitting any required fees.

B. The submission of application forms or data for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

C. In the event an applicant is a former lottery sales agent whose license was suspended, revoked, or refused renewal pursuant to § 58.1-4009 or 58.1-4012 of the Code of Virginia, no application for a new license to sell lottery tickets or shares shall be considered for a minimum period of 90 days following the suspension, revocation, or refusal to renew.

D. The person shall submit all required forms and information to the ~~department~~ agency to be considered for licensing. Failure to submit required forms within the ~~department's agency's~~ licensing procedures may result in the loss of opportunity to become or remain a licensed retailer.

11VAC5-31-40. General standards for licensing.

A. The director or his designee may license those persons who, in his opinion, will best serve the public interest and convenience and public trust in the lottery and promote the sale of lottery tickets. Before issuing or renewing a license, the director may consider factors including, but not limited to, the following:

1. Those factors set out in § 58.1-4009 of the Code of Virginia, these regulations, and the ~~department's~~ agency's licensing procedures;
2. The ability to offer a high level of customer service to lottery players;
3. The person's prior history, record, and performance with the ~~department~~ agency;
4. Whether the place of business caters to or is frequented predominately by persons under 18 years of age;
5. Whether the nature of the business constitutes a threat to the health or safety of prospective patrons;
6. Whether the nature of the business is consonant with the probity of the Commonwealth; and
7. Whether the person or retailer has (i) committed any act of fraud, deceit, misrepresentation, moral turpitude, or illegal gambling or (ii) engaged in conduct prejudicial to public confidence in the state lottery.

B. Special retailer licensing.

1. The director may license special lottery retailers subject to such conditions or limitations as the director may deem prudent and if the director finds there is a need to develop alternative business models to engage in partnerships with certain retailers that are consistent with the laws of the Commonwealth of Virginia and these regulations. These limitations or conditions may include, but are not limited to:

- a. Length of license period;
- b. Hours or day of sale;

c. Selling of only limited products;

d. Specific persons who are allowed to sell lottery tickets;

e. Specific sporting, charitable, social, or other special events where lottery tickets may be sold if in conformity with law; or

f. Different commission and payment structures and bonding requirements.

2. Special licensed agents will be subject to these regulations.

11VAC5-31-50. Bonding of lottery retailers.

A. A lottery retailer shall have and maintain a surety bond from a surety company entitled to do business in this Commonwealth. The surety bond shall be in an amount as deemed necessary to secure the interests of the Commonwealth and the ~~department~~ agency, in the sole discretion of the director, and shall be payable to the ~~department~~ agency and conditioned upon the faithful performance of the lottery retailer's duties.

B. The ~~department~~ agency may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

C. Prior to issuance of a license, every lottery sales agent shall either (i) be bonded by a surety company entitled to do business in this Commonwealth in such amount and penalty as may be prescribed by the regulations of the department or (ii) provide such other surety as may be satisfactory to the director, payable to the ~~department~~ agency, and conditioned upon the faithful performance of his duties. Such alternate surety instruments or arrangements may include, but not be limited to, a combination of surety instruments, including cash.

11VAC5-31-60. Lottery bank accounts and electronic funds transfer (EFT) authorization.

A. A lottery retailer shall have and maintain a separate bank account in a bank participating in the Automatic Clearing House (ACH) system. This account shall be styled in the name of the retailer followed by "Virginia Lottery Trust" and shall be used exclusively for lottery business.

B. The lottery account shall be used by the retailer to make funds available to permit withdrawals and deposits initiated by the ~~department~~ agency through the EFT process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the ~~department~~ agency through the EFT process in accordance with the ~~department's~~ agency's licensing procedures, unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. The director will establish a schedule for processing the EFT transactions against retailers' lottery trust accounts and issue instructions regarding the settlement of accounts.

11VAC5-31-70. License term and periodic review.

A. A general license for an approved lottery sales agent shall be issued for a specific term and is thereafter subject to a periodic determination of continued retailer eligibility and the payment of any fees fixed by the board.

B. The director may issue special licenses to persons for specific events and activities in accordance with the requirements of the ~~department's~~ agency's licensing procedures.

11VAC5-31-80. License fees.

An initial licensing fee up to \$100 and an annual license fee up to \$70 shall be collected from each lottery sales agent and shall be paid in accordance with the ~~department's~~ agency's licensing procedures. These fees are nonrefundable, unless otherwise determined by the director in his sole discretion or specified in the ~~department's~~ agency's procedures. The license fees shall be paid for each location.

11VAC5-31-130. Retailers' conduct.

A. Each retailer shall comply with all applicable state and federal laws and regulations, as well as all rules, policies and procedures of the ~~department~~ agency, license terms and conditions, specific rules for all applicable lottery games, directives and instructions that may be issued by the director, and licensing and equipment agreements and contracts signed by the retailer.

B. No retailer or his employee or agent shall attempt through any means whatsoever to identify or otherwise determine whether any unsold ticket creates a winning play. This includes, but is not limited to, trying to determine the numbers or symbols appearing under the removable latex or electronically produced coverings or otherwise attempting to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold.

C. No retailer or his employee or agent shall impose a fee or additional charge for selling a lottery game ticket or for cashing a winning lottery game ticket.

D. No retailer or his employee or agent shall purchase a winning lottery game ticket from a player at a discounted price.

11VAC5-31-140. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transactions or checks.

A. Payments shall be due from retailers as specified by the director in accordance with ~~department~~ agency policies.

B. Any retailer who fails to make payment when payment is due will be contacted by the ~~department~~ agency and instructed to make immediate deposit of the funds due. If the retailer is not able to deposit the necessary funds or if the item is returned to the department unpaid for a second time, the retailer's license may be inactivated. If inactivated, the license will not be reactivated until payment is made by cashier's check, certified check or EFT transaction, and if the retailer is deemed a continuing credit risk by the ~~department~~ agency, not until an informal conference is held to determine if the licensee is able and willing to meet the terms of his retailer contract. Additionally, interest may be charged on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 58.1-15 of the Code of Virginia. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the ~~department~~ agency for deposit.

C. In addition to the penalty authorized by subsection B of this section, the director may assess a \$25 service charge against any retailer whose payment through EFT transaction or by check is dishonored.

D. The service charge, interest, and penalty charges may be waived if it is determined by the ~~department~~ agency that the event that otherwise would result in the assessment of a service charge, interest, or penalty is not in any way the fault of the lottery retailer.

11VAC5-31-160. Denial, suspension, revocation or noncontinuation of license.

A. The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in § 58.1-4009 of the Code of Virginia, these regulations, and in the ~~department's~~ agency's licensing procedures, or if:

1. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, but excluding family-oriented businesses;
2. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;
3. The nature of the person's business is not consonant with the probity of the Commonwealth;
4. The person has committed any act of fraud, deceit, misrepresentation, moral turpitude, or illegal gambling or engaged in conduct prejudicial to public confidence in the state lottery;
5. The person falsifies or misrepresents a material fact on any application, form, document, or data submitted during the licensure process;
6. The person has an unsatisfactory prior history, record, or performance with the lottery;
7. The person's place of business represents a substantial risk for the collection, deposit, preservation, accounting, or

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safeguarding of Commonwealth of Virginia Trust Funds, irrespective of the bond or surety provided by the person;

8. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations or procedures; or

9. The proposed retailer's licensed location or locations does not comply with the requirements of the department's Retailer Accessibility Guidelines effective January 1, 2011, as applicable.

B. The director may suspend, revoke, or refuse to continue a license for any of the reasons enumerated in § 58.1-4012 of the Code of Virginia, in subsection A of this section, in the department's agency's procedures, or for any of the following reasons:

1. Failure to maintain the required lottery trust account;
2. Failure to comply with lottery game rules;
3. Failure to properly care for, or prevent the abuse of, the department's agency's equipment, or failure to properly position and display the vacuum fluorescent display or LED device;
4. Failure to meet minimum point-of-sale standards;
5. Failure to continue to meet the eligibility criteria and standards for licensing; or
6. Failure to comply with (i) any applicable law or statute, rule, policy, or procedure of the department agency; (ii) license terms and conditions; (iii) specific rules for all applicable department agency games; (iv) directives and instructions that may be issued by the director; and (v) licensing and equipment agreements and contracts signed by the retailer.

C. Any person refused a license under subsections A or B of this section may appeal the director's decision in the manner provided by 11VAC5-20-150.

D. Before taking action under subsection A or B of this section, the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a conference. Such notice shall be given to the retailer in accordance with the provisions of the department's agency's regulations.

E. If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing, or investigation into alleged violations is concluded.

F. A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his

possession and give a final lottery accounting of his lottery activities by the date specified by the director.

11VAC5-31-170. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department agency by first notifying the department agency in writing at least 15 calendar days before the proposed termination date. The department agency will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property has been surrendered.

11VAC5-31-180. Inspection of premises.

Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or department agency representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials, equipment, or tickets are stored or kept in order to inspect the licensed premises and inspect, or if necessary remove lottery materials, equipment, or tickets.

11VAC5-31-190. Examination of records and equipment; seizure of records and equipment.

A. Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing and copying, and make all equipment related to his lottery activities available for inspection, as required by the director or department agency representatives during normal business hours of the licensed retailer.

B. All books, records and equipment pertaining to the licensed retailer's lottery activities may be seized with good cause by the director or department agency representatives without prior notice.

11VAC5-31-200. Audit of records.

The director may require a lottery retailer to submit to the department agency an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (11VAC5-31)

~~Retailer License Application, SLD-0062 (rev. 10/07).~~

~~Retailer Contract (rev. 5/10).~~

[Retailer License Application, VAL-0062 \(rev. 9/14\)](#)

[Retailer Contract \(rev. 1/14\)](#)

11VAC5-41-10. Definitions for lottery games.

The following words and terms when used in any of the ~~department's~~ agency's regulations shall have the same meanings as defined in this chapter unless the context clearly indicates otherwise:

"Agency" means the Virginia Lottery created by Virginia Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Altered ticket" means a lottery ticket that has been forged, counterfeited, or tampered with in any manner.

"Board" means the State Virginia Lottery Board established by the State Virginia Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).

"Breakage" means the money accumulated from the rounding down of the pari-mutuel prize levels to the next lowest whole dollar amount.

"Cashing retailer" means ~~a department~~ an agency licensed retailer that sells lottery products and is authorized to pay prizes.

"Computer gaming system" means any computer system owned, operated, or contracted by the ~~department~~ agency that supports the sale, redemption, or validation of lottery tickets or wagers.

"Coupon" is a device (electronic or paper or otherwise) that is approved by the ~~department~~ agency for redemption.

~~"Department" means the State Lottery Department created by State Lottery Law (Chapter 40 (§ 58.1-4000 et seq.) of Title 58.1 of the Code of Virginia).~~

"Director" means the Executive Director of the State Virginia Lottery Department or his designee.

"Drawing" means a formal process of randomly selecting numbers, names, or items in accordance with the specific game or promotion rules for games or promotions requiring the random selection of numbers, names, or items.

"Game" means any individual or particular type of lottery authorized by the board.

"Instant game" means a game that, when played, reveals or informs the player immediately whether he has won a prize, entry into a prize drawing, prize points, or any or all of the aforementioned as specified in game rules.

"Misprinted ticket" means a lottery ticket or play that contains a manufacturing, programming, or printing defect that causes the game to no longer play as defined in game rules or does not properly validate against the game's validation files.

"Natural person" means a human being, and not a corporation, company, partnership, association, trust or other entity.

"Prize" means any cash or noncash award to a holder of a winning entry or play.

"Prize structure" means the number, value, and odds of winning prizes for a game and the prize tiers within a game and the chances of winning a prize in each tier in an individual game as determined by the ~~department~~ agency and as specified in the game rules.

"Probability game" means a game in which all of the tickets sold are potentially winning tickets and the outcome of the game depends entirely upon the player's choice or choices during game play.

"Promotion" ~~is defined as~~ means an "added value" offer to consumers or licensed retailers sanctioned by the director or approved by the board when required.

"Roll stock" or "ticket stock" means the paper roll issued or approved for use by the ~~department~~ agency from which a unique lottery ticket is generated displaying the selected items or numbers.

"Scratch ticket" means a printed instant win ticket with a covering over the play area that when scratched reveals a specific result.

"Share" means a percentage of ownership in a winning ticket, play, or subscription plan.

"Terminal" means a device that is authorized by the ~~department~~ agency to function in an interactive mode with the ~~department's~~ agency's computer gaming system or systems for the purpose of issuing tickets, plays, or an electronic facsimile thereof, and entering, receiving, and processing game-related transactions.

"Terminal ticket" means a computer-generated or electronically-produced ticket issued through the computer gaming system by a retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.

"Ticket number" means the preassigned unique number or combination of letters and numbers or barcode that identifies that particular ticket as one within a particular game or drawing.

"Validation" means the process of reviewing and certifying a lottery ticket to determine whether it is a winning ticket.

"Validation barcode" means the unique number or number-and-letter code or barcode used to determine whether a lottery ticket is a winning ticket.

"Winning ticket," "winning wager," or "winning play" means the ticket, wager, or play that meets the criteria and specific rules for winning prizes as published for each game by the director.

11VAC5-41-60. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the ~~department~~ agency.

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B. Retailers may sell tickets from new instant games upon receipt of the tickets from the ~~department~~ agency, but shall not sell tickets for an instant game after the announced end of that game.

C. Retailers may sell terminal tickets up to a designated time prior to the drawing as specified in the terminal game rules. That time will be designated by the director.

11VAC5-41-80. Scratch ticket returns.

A. Ticket sales to retailers are final. The ~~department~~ agency will not accept returned, unsold tickets for credit except as specifically authorized by and provided for in the ~~department's~~ agency's procedures.

B. Once tickets are accepted by a retailer, the ~~department~~ agency:

1. May hold the retailer financially responsible for the replacement of mutilated, damaged, or otherwise unaccounted for tickets.
2. Will not be responsible for lost, stolen, destroyed, or otherwise unaccounted for tickets, unless specifically authorized and provided for in the ~~department's~~ agency's procedures.

11VAC5-41-100. Validation requirements.

To receive payment for a prize, a Virginia lottery game ticket or play shall be validated by the retailer or the ~~department~~ agency as set out in this chapter and in any other manner that the director may prescribe in the specific rules for the lottery game, which shall include but not be limited to the following:

1. If the game's rules specify that the physical ticket must be presented for validation then:
 - a. The original ticket must be presented for validation;
 - b. The ticket shall not be mutilated, altered, or tampered with in any manner. If a ticket is partially mutilated or if the ticket is not intact and cannot be validated through normal procedures but can still be validated by other validation tests, the director may pay the prize for that ticket;
 - c. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department;
 - d. The ticket shall pass all other confidential security checks of the ~~department~~ agency;
 - e. The ticket validation number shall be present in its entirety; and
 - f. The ticket shall not be counterfeited, forged, fraudulently made, or a duplicate of another winning ticket.
2. Where a winning ticket or play has been issued by a terminal:

a. The ticket or play shall have been issued by the ~~department~~ agency or by a licensed lottery retailer in an authorized manner;

b. The terminal ticket or play shall not have been ~~cancelled~~ canceled or previously paid;

c. The terminal ticket or play shall be validated in accordance with procedures for claiming and paying prizes as set out in the game rules; and

d. The terminal ticket or play data shall have been recorded in the computer gaming system before the drawing or the instant game ticket sale, and the ticket data shall match this computer record in every respect.

3. If the games rules specify that a physical ticket, play, or record of play is not required for validation there may be other lottery requirements, as defined by the director, for winners to collect prizes.

11VAC5-41-110. Use of playslips.

A. A playslip issued by the ~~department~~ agency may be used to select a player's choice or choices to be played in a ~~department-authorized~~ an agency-authorized computer gaming system. If a playslip is used to select the player's choice or choices for use in a computer gaming system, the playslip selections shall be manually or electronically marked as authorized by the ~~department's~~ agency's game rules and not marked by any electro-mechanical, electronic printing, or other automated device, except for play utilizing materials or systems developed by the ~~department~~ agency.

B. Any playslip marked by methods other than those authorized by this chapter is invalid and subject to seizure by the department if presented for play at any lottery terminal. Any tickets produced from the use of invalid playslips are also invalid and subject to seizure by the ~~department~~ agency.

C. Nothing in this chapter shall be deemed to prevent a person with a physical handicap who is unable to mark a playslip manually from using any device intended to permit such person to make such a mark for his sole personal use or benefit.

11VAC5-41-120. Replacement of ticket.

If a misprinted or otherwise defective ticket is purchased, the ~~department's~~ agency's only liability or responsibility shall be to replace the misprinted ticket with an unplayed ticket of equal price from the same or another current game or to refund the purchase price of the defective ticket.

11VAC5-41-130. Terminal-generated winning tickets.

A. When more than one ticket containing the winning numbers is issued for the same drawing of the same game, the holder of each ticket is entitled only to his share of the prize, regardless of whether the other holders of tickets with the winning numbers actually claim their share of the prize.

B. The ~~department~~ agency shall not redeem prizes for tickets that would have been winning tickets but for the fact that they

have been ~~cancelled~~ canceled by the retailer unless specifically authorized by the director.

C. When the ~~department's~~ agency's internal controls indicate that a winning ticket was issued but no claim is made for the prize, there shall be a rebuttable presumption that such ticket was in fact issued and the prize shall be paid in accordance with the provisions of § 58.1-4020 of the Code of Virginia and regulations of the ~~department~~ agency.

11VAC5-41-140. Where prizes claimed.

Winners may claim game prizes as specified in this chapter or in the game rules, including:

1. At ~~department~~ agency headquarters;
2. At a ~~department~~ an agency customer service center;
3. From a cashing retailer;
4. By mail; or
5. At any other location specifically authorized by the ~~department~~ agency.

11VAC5-41-150. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, money order, other cash equivalent or by any combination of these methods.
2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge, interest and penalty payments for referring a debt to the ~~department~~ agency for collection that would apply if the check were made payable to the ~~department~~ agency. A claimant whose prize check is denied shall notify the ~~department~~ agency to obtain the prize.
3. During normal business hours of the lottery retailer with operational validation equipment by which the ticket claim can be validated, a lottery retailer shall pay any lottery prize of \$600 or less, unless otherwise determined by the director, regardless of the location from which the winning ticket was purchased.
4. A prize claim shall be paid only at the location specified on the retailer's license or at a lottery office.
5. The ~~department~~ agency will reimburse a retailer for all valid prizes paid by the retailer within the specified prize redemption period for the game from which the prize resulted.
6. In no case shall a retailer impose a fee, additional charge or discount for cashing a winning lottery game ticket.
7. Retailers who pay claims without validating the tickets do so at their own financial risk.

11VAC5-41-160. No reimbursement for retailer errors.

Unless otherwise determined by the director, the ~~department~~ agency shall not reimburse retailers for prize claims a retailer has paid in error or for which a retailer failed to properly and

completely validate the lottery game tickets in accordance with ~~department~~ agency procedures.

11VAC5-41-170. When prize shall be claimed from the ~~department~~ agency.

A. The ~~department~~ agency will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim ~~which~~ that the retailer otherwise would pay, the ticket holder shall present the original signed ticket to any ~~department~~ agency office including the ~~department's~~ agency's headquarters or mail the signed ticket to the ~~department's~~ agency's headquarters;
2. If a ticket holder is unable to return to any retailer to claim a prize that the retailer otherwise would pay, the ticket holder may present the original signed ticket at any ~~department~~ agency office or mail the signed ticket to the ~~department's~~ agency's headquarters;
3. If the prize amount is more than \$600, the ticket holder may present the original signed ticket at any ~~department~~ agency office or mail the signed ticket to the ~~department~~ agency headquarters; or
4. Where an electronic entry or an electronic record of a ticket is permitted, a presentation of a physical ticket may not be required to claim a prize.

B. The ~~department~~ agency may require a claim form.

C. A player shall bear all risk of loss or damage by sending the ticket through the mail.

11VAC5-41-180. ~~Department~~ Agency action on claims for prizes submitted to ~~department~~ agency.

A. The ~~department~~ agency shall validate the winning ticket claim according to procedures contained in this chapter.

B. If the claim cannot be validated, the ~~department~~ agency will promptly notify the ticket holder.

C. If the claim is mailed to the ~~department~~ agency and the ~~department~~ agency validates the claim, a check for the prize amount, merchandise, or experiential prizes will be presented or mailed to the winner.

D. If an individual presents a claim to the ~~department~~ agency in person and the ~~department~~ agency validates the claim, a check for the prize amount, merchandise, or experiential prizes will be presented to the winner.

11VAC5-41-190. Withholding, notification of prize payments.

A. When paying any prize in excess of \$600, the ~~department~~ agency shall:

1. File the appropriate income reporting forms with the Virginia Department of Taxation and the federal Internal Revenue Service; and
2. Withhold federal and state taxes from any winning ticket in accordance with the tax regulation in effect at the time.

B. Additionally, when paying any cash prize of \$100 or more, the ~~department~~ agency shall withhold any moneys due

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for delinquent debts as provided by the Commonwealth's Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia.

11VAC5-41-220. How prize claim entered.

A prize claim shall be entered in the name of a natural person as prescribed by § 58.1-4019 B of the Code of Virginia. In all cases, the identity and social security number of all natural persons who receive a prize or share of a prize greater than \$100 from a winning ticket redeemed at any ~~department~~ agency office shall be provided.

1. A nonresident alien shall furnish his Immigration and Naturalization Service (INS) Number.
2. Two or more natural persons claiming a single prize may file IRS Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the ~~department~~ agency. This form designates to whom winnings are to be paid and the person or persons to whom winnings are taxable.
3. Two or more natural persons wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form is an irrevocable election that may only be changed by an appropriate judicial order.

11VAC5-41-230. Delay of payment allowed.

A. Subject to the provisions in § 58.1-4013 D of the Code of Virginia, the director may refrain from making payment of a prize pending a final determination by the director under any of the following circumstances:

1. If a dispute arises, or it appears that a dispute may arise, relative to any ownership of a winning ticket or any prize;
2. If there is any question regarding the identity of the claimant;
3. If there is any question regarding the validity of any ticket presented for payment;
4. If there is any question whether a claimant has made a valid cash option election; or
5. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the Setoff Debt Collection Act (Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia) if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the department.

B. The director may, at any time, delay any periodic or installment payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the ~~department's~~ agency's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid

according to the original payment schedule after the director's decision is given.

C. No liability for interest for any delay of any prize payment in accordance with subsections A and B of this section, or any delay beyond the ~~department's~~ agency's control, shall accrue to the benefit of the claimant pending payment of the claim. The ~~department~~ agency is neither liable for nor has it any responsibility to resolve disputes between or among competing claimants.

11VAC5-41-250. Using winners' names and information.

The ~~department~~ agency can use a winner's name and the city, town, or county in which a winner lives, as well as the prizes won, for public information purposes and to foster the integrity of the games. The ~~department~~ agency may require prize winners to participate in news conferences. The ~~department~~ agency can use the winner's information described in this section and winner's photographs for public information or promotional purposes in mediums such as, but not limited to, the ~~department's~~ agency's website (www.valottery.com), social media, in-store, television, Internet, and radio. No consideration shall be paid by the ~~department~~ agency for these purposes.

11VAC5-41-290. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the ~~department~~ agency, the board, the director and employees of the ~~department~~ agency, terminates upon final payment of a lottery prize, or sooner if so provided in the game rules or these regulations.

11VAC5-41-300. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to play a game according to the rules of that specific game or to claim a prize or by the ~~department~~ agency or a retailer to identify or to void the ticket.

11VAC5-41-310. Lost, stolen, or destroyed tickets.

The ~~department~~ agency is not liable for lost, stolen, or destroyed tickets. The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information that demonstrates that the original ticket meets the following criteria and can be validated through other means. Such information may include, but is not limited to, the following:

1. The claim form, if required, and a photocopy of the ticket, or photocopy of the original claim form, if required, and ticket, are timely filed with the ~~department~~ agency;
2. The prize for which the claim is filed is a winning prize that has not been claimed, as verified in the ~~department's~~ agency's records.
3. The claim is filed within the redemption period, as established by the game rules; and
4. Except in extenuating circumstances or for just cause as the director may deem appropriate, the redemption period for claims has expired.

11VAC5-41-320. Unclaimed prizes.

A. Except for a free ticket prize, a claim for a lottery game winning ticket must be mailed in an envelope bearing a postmark of the United States Postal Service or another sovereign nation or received for payment as prescribed in this chapter within either 180 days after the date of the drawing for which the ticket was purchased, or of the event ~~which that~~ caused the ticket to be a winning entry, or, in the case of an instant game ticket, within 180 days after the announced end of the game. In the event that the 180th day falls on a Saturday, Sunday, or legal holiday, the winning ticket will be accepted for validation on the next business day only at a lottery office.

B. Any lottery cash prize that remains unclaimed after either 180 days following the drawing that determined the prize or 180 days after the announced end of the instant game shall revert to the State Literary Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admission to events and the like.

C. All claims for terminal game winning tickets for which the prize is a free ticket must be mailed in an envelope bearing a postmark of the United States Postal Service or another sovereign nation or received for redemption as prescribed in this chapter within 180 days after the date of the drawing for which the ticket was purchased. In the event the 180th day falls on a Saturday, Sunday, or legal holiday, a claimant may only redeem his winning ticket for a free ticket at a cashing retailer on or before the 180th day.

Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the 180th day, claims for such prizes will not be accepted at any lottery office after the ~~sixtieth~~ sixtieth 60th day. This section does not apply to the redemption of free tickets awarded through the subscription program.

D. Any instant game winning ticket of \$25 or less that has been purchased, but that is not claimed within 180 days after the announced end of the instant game, shall revert to the ~~State~~ Virginia Lottery Fund.

E. In case of a prize payable over time, if such prize is shared by two or more winning tickets, one or more of which is not presented to the ~~department~~ agency for payment within the prize redemption period as established by the game rules, the ~~department~~ agency will transfer that portion of the prize to the State Literary Fund in accordance with procedures approved by the State Treasurer.

F. In accordance with the provisions of the Servicemembers Civil Relief Act of 1940 (50 USC App § 526), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable, and in no event later than 180 days after discharge from active military service.

VA.R. Doc. No. R15-4146; Filed September 4, 2014, 2:41 p.m.

TITLE 12. HEALTH**STATE BOARD OF HEALTH****Fast-Track Regulation**

Title of Regulation: **12VAC5-31. Virginia Emergency Medical Services Regulations (amending 12VAC5-31-1140).**

Statutory Authority: §§ 32.1-12 and 32.1-111.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 5, 2014.

Effective Date: November 24, 2014.

Agency Contact: Michael Berg, Regulatory and Compliance Manager, Department of Health, 1041 Technology Park Drive, Glen Allen, VA 23059-4500, telephone (804) 888-9131, or email michael.berg@vdh.virginia.gov.

Basis: Chapters 191 and 328 of the 2013 Acts of Assembly amended § 54.1-3408 of the Code of Virginia permitting certified emergency medical services (EMS) personnel acting within their scope of practice to administer drugs and devices pursuant to an oral or written order or standing protocol. Before the Office of EMS (OEMS) could remove language in the Virginia Emergency Services Regulations (12VAC5-31) that requires EMS personnel to obtain the signature of the medical practitioner who assumes responsibility for the patient, the Board of Pharmacy had to first remove language pertaining to medical practitioner signature in its existing regulations in 12VAC110-20-500. The Board of Pharmacy met on June 18, 2013, and adopted changes in regulation that became effective September 25, 2013. Section 32.1-111.4 of the Code of Virginia provides the statutory authority for the State Board of Health to promulgate these regulations.

Purpose: Each licensed EMS agency is required to have an operational medical director (OMD) who meets specific criteria outlined in the EMS Regulations. Certified EMS providers work under the direction and authorization of the OMD to include performing medical procedures and drug administration. Requiring a medical practitioner to sign patient care reports (electronic or otherwise) documenting drug administration or procedures with which they may not be familiar is onerous to the emergency department practitioner and unnecessary. Approved patient care guidelines (protocols) already exist authorizing the EMS provider to perform the drug administration or medical procedure under the authorization of the OMD. There is documentation (medication administration record) that is part of the patient care report showing what is administered or performed and signed by the EMS provider. This action removes extra, unwanted demands on an already burdened

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medical practitioner in an emergency department, while maintaining a process that can be documented and establishes accountability and protects the health, safety, and welfare of patients.

Rationale for Using Fast-Track Process: This action eliminates unnecessary requirements and additional burdensome documentation for the medical practitioner. Key stakeholder groups and members of the EMS system support this change and no opposition is anticipated or has been voiced for this regulatory change.

Substance: The amendment removes subsection B of 12VAC5-31-1140, which requires the signature of the prescriber.

Emergency medical services providers are certified and authorized to administer drugs pursuant to the regulations of the State Board of Health and an oral or written order or standing protocol of their operational medical director. This amendment allows the EMS provider to document the administration of a drug or procedure as part of the "protocols" as established by their contracted OEMS-approved operational medical director. The drug administration documentation is supported by the Board of Pharmacy regulations (18VAC110-20-500). This amendment will reduce the amount of time an agency needs to be out of service to gain signatures prior to the exchanging of drug kits within facilities and returning the units back to service.

Issues: An advantage to the EMS unit and the public is that amending the identified regulation will permit a quicker "in-service" time for the unit to prepare for the next request for service. The time spent seeking a medical practitioner's signature for medication administration or a specific procedure only delays the in-service time for a response unit. Delays in returning EMS units to service can be particularly troubling in high volume systems or in a rural agency with limited resources trying to meet EMS call demands. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to eliminate the requirement to have a medical practitioner sign a patient care report (electronic or otherwise) attesting to the delivery of a drug or the performance of an invasive procedure when Emergency Medical Services (EMS) personnel administer drugs, perform invasive procedures or assist patients with their medications.

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

Estimated Economic Impact. Each licensed EMS agency is required to have an Operational Medical Director (OMD) who meets criteria specified in the EMS Regulations. Certified EMS providers work under the direction and

authorization of the OMD performing medical procedures and drug administration.

If an EMS provider caring for a patient determines that an invasive procedure is required and that a drug needs to be administered, they can do so under the authorization of the OMD. In most cases, the supplies needed for this action are from a drug kit supplied by the hospital, stocked by and sealed by the pharmacist-in-charge. Once this box is opened, there is documentation by the EMS provider noting the procedures and the drugs administered.

Under the current regulation, the EMS provider needs to track down the practitioner at the receiving facility to have them also sign the documentation. In the event the practitioner refuses to sign the document, the OMD would have 7 days to sign the documentation. Until the documentation is signed by the practitioner, the EMS agency cannot exchange the used kit for a new kit. Finding the practitioner to sign the form, then going to the pharmacy (which may not be on the same floor) can often add significant time before an ambulance at the facility is ready for service for the next call. This has led to ambulances waiting significant times at hospitals for staff to get signatures in order to exchange their drug kit, keeping the ambulances from potentially answering waiting calls for service.

The Board's proposal to eliminate the requirement to have a medical practitioner sign a patient care report attesting to the delivery of a drug or the performance of an invasive procedure when EMS personnel administer drugs, perform invasive procedures or assist patients with their medications would effectively reduce the amount of time an EMS agency at a hospital needs to be out of service to gain signatures prior to the exchanging of drug kits within facilities and returning the units back to service. Effectively this would eliminate unnecessary administrative time spent by the medical practitioner and unnecessary delays in ambulance availability without compromising patient care since the certified EMS providers do work under the direction of the OMD. Thus the proposal, if implemented, should create a net benefit.

Businesses and Entities Affected. The proposed amendment affects the 680 licensed Emergency Medical Services agencies in Virginia.¹

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment is unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. According to data provided by the Virginia Department of Health, 78 of the 680 licensed Emergency Medical Services agencies are commercial entities. The proposed amendment will enable these firms to reduce delays in providing their services.

Small Businesses: Costs and Other Effects. Most of the 78 commercial licensed Emergency Medical Services agencies are likely small businesses. The proposed amendment will

enable these firms to reduce delays in providing their services.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Real Estate Development Costs. The proposed amendment does not significantly affect real estate development costs.

Legal Mandate. General: 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 Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action 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.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

¹ Data source: Virginia Department of Health (as of March 27, 2014)

Agency's Response to Economic Impact Analysis: The Virginia Department of Health concurs with the economic

impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendments eliminate the requirement to have a medical practitioner sign a patient care report (electronic or otherwise) attesting to the delivery of a drug or the performance of an invasive procedure by an emergency medical services provider.

12VAC5-31-1140. Provision of patient care documentation.

A. EMS personnel and EMS agencies shall provide the receiving medical facility or transporting EMS agency with a copy of the prehospital patient care report for each patient treated at the time of patient transfer. Should EMS personnel be unable to provide the full prehospital patient care report at the time of patient transfer, EMS personnel shall provide an abbreviated documented report with the critical EMS findings and actions at the time of patient transfer and the full prehospital patient care report shall be provided to the accepting facility within 12 hours.

~~**B.** The signature of the prescriber, as defined in § 54.1-3401 of the Code of Virginia, who assumes responsibility for the patient shall be included on the prehospital patient care report for an incident when a drug is administered, or self-administration is assisted (excluding oxygen), or an invasive procedure is performed. EMS personnel shall not infer that the prescriber's signature denotes approval, authorization or verification of compliance with protocol, standing orders or medical control orders.~~

~~The receiving prescriber signature requirement above does not apply to drugs that are maintained by EMS personnel during transport of patients between healthcare facilities, provided adequate documentation of ongoing drugs are transferred with the patient by the sending facility.~~

~~If a patient is not transported to the hospital or if the attending prescriber at the hospital refuses to sign the prehospital patient care report, the PPCR shall be signed by the agency's operational medical director within seven days of the administration and a signed copy delivered to the hospital pharmacy that was responsible for any drug kit exchange.~~

VA.R. Doc. No. R15-3900; Filed September 8, 2014, 3:46 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-180).**

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

Effective Date: November 6, 2014.

Agency Contact: Bonnie Winn, Manager, Program Operations Division, Department of Medical Assistance

Regulations

Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-2621, FAX (804) 786-1680, or email bonnie.winn@dmas.virginia.gov.

Summary:

Pursuant to Item 300 H of Chapter 890 of the 2011 Acts of Assembly, the amendments require (i) fee-for-service Medicaid providers to electronically submit claims for services rendered to Medicaid and FAMIS individuals and (ii) providers' payments to be provided by electronic funds transfers. Amendments allow for exceptions to these electronic filing/payment requirements when certain specified standards are met and do not affect the eight Medicaid managed care organizations because they do not file individual claims for services but already file electronic encounter data.

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

12VAC30-20-180. Definition of a claim by service.

A. Claims.

SERVICE	CLAIM
A) Inpatient Hospital	A Bill for Service
B) Outpatient Hospital	A Bill for Service
C) Rural Health Clinic	A Line Item for Service
D) Laboratory and X-Ray	A Line Item of Service
E) Skilled Nursing	A Bill for Service
F) EPSDT	A Bill for Service
G) Family Planning	A Bill for Service or Line Item depending on provider type
H) Physician	A Line Item of Service
I) Other Medical	A Bill for Service or Line Item depending on provider type
J) Home Health	A Bill for Service
K) Clinic	A Line for Service Item
L) Dental	A Line Item of Service
M) Pharmacy	A Line Item of Service
N) Intermediate Care	A Bill for Service
O) Transportation	A Line Item of Service
P) Physical Therapy	A Bill for Service or Line Item depending on provider type
Q) Nurse Midwife	A Line Item of Service
R) Eyeglasses	A Line Item of Service

B. All providers that enroll with Medicaid on or after October 1, 2011, shall submit electronically all claims for covered services they render in the fee-for-service program

under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof, and enroll to receive electronic funds transfer (EFT) for payment of those services. All other providers shall comply with this electronic submission requirement by July 1, 2012.

1. Any provider who cannot comply with this electronic claims submission or EFT requirement may request an exception from DMAS for good cause shown.

2. Good cause may include, but is not limited to, (i) the unavailability of the infrastructure necessary to support electronic claims submission in the provider's geographic region; (ii) the absence of a mechanism for electronic submission for the particular claim type, such as in the case of a temporary detention order; (iii) the provider's inability to transact business through a banking institution capable of EFT; or (iv) financial hardship.

VA.R. Doc. No. R13-2789; Filed September 8, 2014, 2:02 p.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

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

Titles of Regulations: 14VAC5-70. Rules Governing Accelerated Benefits Provisions (amending 14VAC5-70-130).

14VAC5-200. Rules Governing Long-Term Care Insurance (amending 14VAC5-200-140, 14VAC5-200-153).

14VAC5-310. Rules Governing Actuarial Opinions and Memoranda (amending 14VAC5-310-10 through 14VAC5-310-50, 14VAC5-310-90).

14VAC5-319. Life Insurance Reserves (amending 14VAC5-319-10).

14VAC5-321. Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits (amending 14VAC5-321-10, 14VAC5-321-30, 14VAC5-321-40).

14VAC5-322. Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities (amending 14VAC5-322-10).

14VAC5-323. Rules Governing Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities

and Nonforfeiture Values (amending 14VAC5-323-10, 14VAC5-323-40, 14VAC5-323-50).

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

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

Public Comment Deadline: October 31, 2014.

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

Summary:

The proposed amendments update the Code of Virginia citations that will be effective January 1, 2015, to reflect changes enacted by Chapter 571 of the 2014 Acts of Assembly. Chapter 571 is based on revisions to the National Association of Insurance Commissioners' (NAIC) Standard Valuation Law model, which was adopted by the NAIC in 2009. The revised model authorizes a principle-based reserve (PBR) basis for life, annuity, and accident and health contracts, and requires the use of a Valuation Manual, which contains both PBR and non-PBR requirements, as well as actuarial opinion and corporate governance requirements.

AT RICHMOND, SEPTEMBER 16, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2014-00202

Ex Parte: In the matter of Amending the Rules Governing Accelerated Benefits Provisions; the Rules Governing Long-Term Care Insurance; the Rules Governing Actuarial Opinions and Memoranda; Life Insurance Reserves; Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits; Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities; and Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values

ORDER TO TAKE NOTICE

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

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found

at the Commission's website: <http://www.scc.virginia.gov/boi/laws.aspx>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapters 70, 200, 310, 319, 321, 322, and 323 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Accelerated Benefits Provisions, 14 VAC 5-70-10 et seq.; Rules Governing Long-Term Care Insurance, 14 VAC 5-200-10 et seq.; Rules Governing Actuarial Opinions and Memoranda, 14 VAC 5-310-10 et seq.; Life Insurance Reserves, 14 VAC 5-319-10 et seq.; Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits, 14 VAC 5-321-10 et seq.; Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities, 14 VAC 5-322-10 et seq.; and Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values, 14 VAC 5-323-10 et seq. (collectively, "Rules"), respectively, which amend the Rules at 14 VAC 5-70-130; 14 VAC 5-200-140; 14 VAC 5-200-153; 14 VAC 5-310-10 through 14 VAC 5-310-50; 14 VAC 5-310-90; 14 VAC 5-319-10; 14 VAC 5-321-10; 14 VAC 5-321-30; 14 VAC 5-321-40; 14 VAC 5-322-10; 14 VAC 5-323-10; 14 VAC 5-323-40; and 14 VAC 5-323-50.

The proposed amendments to the Rules are necessary to implement the provisions of House Bill 631 passed by the 2014 General Assembly, which amends the Code by adding in Chapter 13 of Title 38.2 an Article numbered 10, consisting of sections numbered 38.2-1365 through 38.2-1385. The revised rules replace the current citations to Title 38.2 of the Code with citations that will be effective on January 1, 2015.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14 VAC 5-70-130; 14 VAC 5-200-140; 14 VAC 5-200-153; 14 VAC 5-310-10 through 14 VAC 5-310-50; 14 VAC 5-310-90; 14 VAC 5-319-10; 14 VAC 5-321-10; 14 VAC 5-321-30; 14 VAC 5-321-40; 14 VAC 5-322-10; 14 VAC 5-323-10; 14 VAC 5-323-40; and 14 VAC 5-323-50 should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Rules Governing Accelerated Benefits Provisions, Rules Governing Long-Term Care Insurance, Rules Governing Actuarial Opinions and Memoranda, Life Insurance Reserves, Use of the 2001 CSO Mortality Table in Determining Reserve Liabilities and Nonforfeiture Benefits, Use of the 2001 CSO Preferred Class Structure Mortality Table in Determining Reserve Liabilities, and Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values, which amend the Rules at 14 VAC 5-70-130; 14 VAC 5-200-140; 14 VAC 5-200-153; 14 VAC 5-310-10 through 14 VAC 5-310-50; 14 VAC 5-310-90; 14 VAC 5-319-10; 14 VAC 5-321-10; 14 VAC 5-321-30; 14 VAC 5-321-40; 14 VAC 5-322-10; 14 VAC 5-323-10; 14 VAC 5-323-40; and 14 VAC 5-323-50

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322-10; 14 VAC 5-323-10; 14 VAC 5-323-40; and 14 VAC 5-323-50 are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support or in opposition to, or request a hearing to oppose amending Chapters 70, 200, 310, 319, 321, 322, and 323 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before October 31, 2014, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2014-00202.

(3) If no written request for a hearing on the proposal to amend Chapters 70, 200, 310, 319, 321, 322, and 323 of Title 14 of the Virginia Administrative Code is received on or before October 31, 2014, the Commission, upon consideration of any comments submitted in support or in opposition to the proposal, may amend the Rules.

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

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

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

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

(8) This matter is continued.

14VAC5-70-130. Actuarial disclosure and reserves.

A. A qualified actuary shall be required to describe the accelerated benefits, the risks, the expected costs and the calculation of statutory reserves in an actuarial memorandum accompanying each filing. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the commission upon request.

B. 1. When benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves shall be determined in accordance with §§ ~~38.2-3126~~ 38.2-1365 through ~~38.2-3144~~ 38.2-1385 of the Code of Virginia. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries. Mortality tables and interest currently recognized for life insurance reserves by the National Association of Insurance Commissioners may be used as well as appropriate assumptions for the other provisions incorporated in the policy form. The actuary must follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate should be sufficient to cover:

- a. Policies upon which no claim has yet arisen.
- b. Policies upon which an accelerated claim has arisen.

2. For policies and certificates which provide actuarially equivalent benefits, no additional reserves need to be established.

3. Policy liens and policy loans, including accrued interest, represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability such excess must be held as a nonadmitted asset.

14VAC5-200-140. Reserve standards.

A. When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with subdivision 7 of § ~~38.2-3130~~ 38.2-1369 of the Code of Virginia. Claim reserves must also be established in the case when such policy or rider is in claim status. Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit. In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

1. Definition of insured events;
2. Covered long-term care facilities;
3. Existence of home convalescence care coverage;

4. Definition of facilities;
5. Existence or absence of barriers to eligibility;
6. Premium waiver provision;
7. Renewability;
8. Ability to raise premiums;
9. Marketing method;
10. Underwriting procedures;
11. Claims adjustment procedures;
12. Waiting period;
13. Maximum benefit;
14. Availability of eligible facilities;
15. Margins in claim costs;
16. Optional nature of benefit;
17. Delay in eligibility for benefit;
18. Inflation protection provisions; and
19. Guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

B. When long-term care benefits are provided other than as in ~~Subsection subsection A above of this section~~, reserves shall be determined in accordance with ~~subdivision 7 of § 38.2-3130 of the Code of Virginia 14VAC5-320~~.

14VAC5-200-153. Premium rate schedule increases.

A. This section applies to any long-term care policy or certificate issued in this Commonwealth on or after October 1, 2003.

B. An insurer shall request the commission's approval of a pending premium rate schedule increase, including an exceptional increase, prior to the notice to the policyholders and shall include:

1. Information required by 14VAC5-200-75;
2. Certification by a qualified actuary that:
 - a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
 - b. The premium rate filing is in compliance with the provisions of this section;
3. An actuarial memorandum justifying the rate schedule change request that includes:
 - a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(1) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(2) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(3) The projections shall demonstrate compliance with subsection C of this section; and

(4) For exceptional increases,

(a) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(b) In the event the commission determines as provided in the definition of exceptional increase in 14VAC5-200-40 that offsets may exist, the insurer shall use appropriate net projected experience;

b. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

c. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

d. A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

e. In the event that it is necessary to maintain consistent premium rates for new policies and policies receiving a rate increase, the insurer will need to file composite rates reflecting projections of new policies;

4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commission; and

5. Sufficient information for review and approval of the premium rate schedule increase by the commission.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:

1. Exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

2. Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

a. The accumulated value of the initial earned premium times 58%;

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- b. Eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis;
- c. The present value of future projected initial earned premiums times 58%; and
- d. Eighty-five percent of the present value of future projected premiums not in subdivision 2 c of this subsection on an earned basis;

3. In the event that a policy form has both exceptional and other increases, the values in subdivisions 2 b and d of this subsection will also include 70% for exceptional rate increase amounts; and

4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in ~~§ 38.2-3132 of the Code of Virginia~~ 14VAC5-320. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for approval by the commission updated projections, as defined in subdivision B 3 a of this section, annually for the next three years and include a comparison of actual results to projected values. The commission may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection K of this section, the projections required by subdivision B 3 a of this section shall be provided to the policyholder in lieu of filing with the commission.

E. If any increased premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, the premiums exceeding 200% shall be clearly identified and lifetime projections, as defined in subdivision B 3 a of this section, shall be filed for approval by the commission every five years following the end of the required period in subsection D of this section. For group insurance policies that meet the conditions in subsection K of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commission.

F. 1. If the commission has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection C of this section, the commission may require the insurer to implement any of the following:

- a. Premium rate schedule adjustments; or
- b. Other measures to reduce the difference between the projected and actual experience.

It is to be expected that the actual experience will not exactly match the insurer's projections. During the period that projections are monitored as described in subsections D and E of this section, the commission should determine

that there is not an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order.

2. In determining whether the actual experience adequately matches the projected experience, consideration should be given to subdivision B 3 e of this section, if applicable.

G. If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

1. A plan, subject to commission approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commission may impose the condition in subsection H of this section; and

2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection C of this section had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in subdivisions C 2 a and c of this section.

H. 1. For a rate increase filing that meets the following criteria, the commission shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

- a. The rate increase is not the first rate increase requested for the specific policy form or forms;
- b. The rate increase is not an exceptional increase; and
- c. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

2. In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commission may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commission may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with any other long-term care insurance product being offered by the insurer or its affiliates.

- a. The offer shall:
 - (1) Be subject to the approval of the commission;
 - (2) Be based on actuarially sound principles, but not be based on attained age; and

(3) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

b. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(1) The maximum rate increase determined based on the combined experience; or

(2) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

I. If the commission determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commission may, in addition to the provisions of subsection H of this section, prohibit the insurer from either of the following:

1. Filing and marketing comparable coverage for a period of up to five years; or

2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Subsections A through I of this section shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in 14VAC5-200-40, if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

a. Sections 38.2-3200 through 38.2-3218 of the Code of Virginia, and

b. Sections 38.2-3219 through 38.2-3229 of the Code of Virginia;

3. The policy meets the disclosure requirements of §§ 38.2-5207.1 and 38.2-5207.2 of the Code of Virginia;

4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

a. Policy illustrations as required by ~~14VAC5-40~~ 14VAC5-41; and

b. Disclosure requirements in ~~14VAC5-40~~ 14VAC5-41;

5. An actuarial memorandum is filed with the commission that includes:

a. A description of the basis on which the long-term care rates were determined;

b. A description of the basis for the reserves;

c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

d. A description and a table of each actuarial assumption used. For expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;

e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

f. The estimated average annual premium per policy and the average issue age;

g. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

h. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

K. Subsections F and H of this section shall not apply to group insurance policies as defined in subsections A and C of § 38.2-3521.1 of the Code of Virginia where:

1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

2. The policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

14VAC5-310-10. Purpose.

The purpose of this chapter (14VAC5-310) is to prescribe:

1. Requirements for statements of actuarial opinion that are to be submitted in accordance with ~~§ 38.2-3127.4~~ 38.2-1367 of the Code of Virginia, and for memoranda in support thereof;

2. Rules applicable to the appointment of an appointed actuary; and

3. Guidance as to the meaning of "adequacy of reserves."

14VAC5-310-20. Authority; effective date.

This chapter (14VAC5-310) is adopted and promulgated by the commission pursuant to §§ 12.1-13, 38.2-223, and ~~38.2-3127.4~~ 38.2-1367 of the Code of Virginia. This chapter will

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take effect for annual statements for the year-ending December 31, 1992. Except as otherwise specifically provided, revisions to this chapter shall be effective upon adoption by the commission and applicable as to annual statements and actuarial opinions, memoranda, and statements of reserves filed with the commission for periods ending on or after December 31 of the year in which the revision is adopted.

14VAC5-310-30. Scope.

A. This chapter (14VAC5-310) shall apply to all companies subject to the provisions of § ~~38.2-3127.1~~ 38.2-1367 of the Code of Virginia, including fraternal benefit societies licensed under Chapter 41 (§ 38.2-4100 et seq.) of Title 38.2 and all other companies licensed under Title 38.2 of the Code of Virginia to write and reinsure policies or agreements providing any form of life, life insurance, or annuity benefits as those terms are defined in §§ 38.2-102 through 38.2-107.1 of the Code of Virginia and also to any life insurer authorized to write or reinsure accident and sickness insurance as defined in § 38.2-109 of the Code of Virginia.

B. This chapter shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice unless the commission determines particular specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items. Particular specifications, including specific methods of actuarial analysis and actuarial assumptions, may be promulgated by rule or order of the commission or by an administrative letter issued by the Commissioner of Insurance.

C. This chapter, as reflected in rules adopted by the commission by order entered November 5, 1992, in Case No. INS920377, shall be applicable to all annual statements filed with the commission on or after December 15, 1992, and before December 31, 2003. On and after December 31, 2003, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with 14VAC5-310-80, and a memorandum in support thereof in accordance with 14VAC5-310-90, shall be required each year in accordance with rules as revised and adopted by order of the commission entered in Case No. INS-2003-00165.

14VAC5-310-40. Definitions.

As used in this chapter unless the context clearly indicates otherwise:

"Actuarial opinion" means the opinion of an appointed actuary regarding the adequacy of reserves and related actuarial items based on an asset adequacy analysis in accordance with 14VAC5-310-80 and with applicable Actuarial Standards of Practice.

"Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"Annual statement" means that statement required by § 38.2-1300 of the Code of Virginia to be filed by the company with the commission annually.

"Appointed actuary" means any individual who is appointed or retained in accordance with the requirements set forth in 14VAC5-310-50 C to provide the actuarial opinion and supporting memorandum as required by § ~~38.2-3127.1~~ 38.2-1367 of the Code of Virginia.

"Asset adequacy analysis" means an analysis that meets the standards and other requirements referred to in 14VAC5-310-50 D.

"Commission" means the Virginia State Corporation Commission.

"Commissioner" means the Commissioner of Insurance in Virginia unless specific reference is made to another state, in which case "commissioner" means the Insurance Commissioner, Director, Superintendent or other supervising regulatory official of a given state who is responsible for administering the insurance laws of that state.

"Company" means a life insurer, company or fraternal benefit society subject to the provisions of this chapter.

"NAIC" means the National Association of Insurance Commissioners.

"Qualified actuary" means any individual who meets the requirements set forth in 14VAC5-310-50 B.

14VAC5-310-50. General requirements for actuarial opinions.

A. The following requirements apply to all companies submitting a statement of actuarial opinion in compliance with § ~~38.2-3127.1~~ 38.2-1367 of the Code of Virginia.

1. There is to be included on or attached to page 1 of the annual statement for each year ending on or after December 31, 1992, the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with 14VAC5-310-80.

2. Upon written request by the company, the commission may grant an extension of the date for submission of the statement of actuarial opinion.

B. A "qualified actuary" is an individual who:

1. Is a member in good standing of the American Academy of Actuaries;
2. Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

3. Is familiar with the valuation requirements applicable to life and health insurance companies;

4. Has not been found by the commission (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing, to have:

- a. Violated any provision of, or any obligation imposed by Title 38.2 of the Code of Virginia or other law in the course of his dealings as a qualified actuary;
- b. Been found guilty of fraudulent or dishonest practices;
- c. Demonstrated his incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;
- d. Submitted to the commission during the past five years, pursuant to this chapter, an actuarial opinion or memorandum that the commission rejected because it did not meet the provisions of this chapter, including standards set by the Actuarial Standards Board; or
- e. Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

5. Has not failed to notify the commission of any action taken by the commissioner of any other state similar to that under subdivision 4 of this subsection.

C. An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this chapter, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commission timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in 14VAC5-310-50 B. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commission timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in 14VAC5-310-50 B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

D. The asset adequacy analysis required by this chapter shall:

- 1. Conform to the Actuarial Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this chapter, which standards are to form the basis of the statement of actuarial opinion in accordance with § this chapter; and
- 2. Be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

E. Liabilities shall be covered in conformity with the following:

1. Under authority of § ~~38.2-3127.1~~ 38.2-1367 of the Code of Virginia, the statement of actuarial opinion shall apply to all in-force business on the statement date, whether directly issued or assumed, regardless of when or where issued; (e.g., reserves reportable for 2002 in Exhibits 5, 5A, 6, and 7 of the NAIC annual statement for life insurers; claim liabilities reported in Exhibit 8 (2002) in Part I of the life insurer's annual statement, and equivalent items in any separate account statement, or other annual financial statements filed pursuant to § 38.2-1300, 38.2-1301 or 38.2-4126 of the Code of Virginia).

2. If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in § 38.2-1311, 38.2-3923, 38.2-4010, 38.2-4011, or § 38.2-4125 of the Code of Virginia; Article ~~3~~ (~~§ 38.2-3136 et seq.~~) 10 (§ 38.2-1365 et seq.) of Chapter ~~31~~ 13 of Title 38.2 of the Code of Virginia; a rule or regulation of the commission applicable to the company; or any additional or further guidance provided by the NAIC Accounting Practices and Procedures Manual, whether in a Statement of Statutory Accounting Principle or in an actuarial guideline or other appendix, the company shall establish the additional reserve.

3. Additional reserves established under subdivision 2 of this subsection and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

14VAC5-310-90. Description of actuarial memorandum issued for an asset adequacy analysis and regulatory asset adequacy issues summary.

A. The following general provisions shall apply with respect to the preparation and submission of the asset adequacy memorandum required by § ~~38.2-3127.1~~ 38.2-1367 of the Code of Virginia.

1. In accordance with § ~~38.2-3127.1~~ 38.2-1367 of the Code of Virginia, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his opinion regarding the reserves. The memorandum shall be made available for examination by the commission upon its request but shall be returned to the company after such examination and shall not be considered a record of the Bureau of Insurance or subject to automatic filing with the commission.

2. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of 14VAC5-310-50 B, with

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respect to the areas covered in such memoranda, and so state in their memoranda.

3. If the commission requests a memorandum and no such memorandum exists or if the commission finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this chapter, the commission may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commission.

4. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commission; however, any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commission and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commission pursuant to the statute governing this chapter. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this chapter for any one of the current year or the preceding three years.

5. In accordance with § ~~38.2-3127.1~~ 38.2-1367 of the Code of Virginia, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection C of this section. The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

B. A section of the memorandum shall document asset adequacy testing by demonstrating that the analysis has been done in accordance with the standards for asset adequacy referred to in 14VAC5-310-50 D and any additional standards under this chapter. It shall specify:

1. For reserves:

- a. Product descriptions including market description, underwriting and other aspects of a risk profile, and the specific risks the appointed actuary deems significant;
- b. Source of liability in force;
- c. Reserve method and basis;
- d. Investment reserves;
- e. Reinsurance arrangements;
- f. Identification of any explicit or implied guarantees made by the general account in support of benefits

provided through a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

g. Documentation of assumptions to test reserves for (i) lapse rates, whether base or excess, (ii) interest crediting rate strategy, (iii) mortality, (iv) policyholder dividend strategy, (v) competitor or market interest rate, (vi) annuitization rates, (vii) commission and expenses, and (viii) morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumption.

2. For assets:

- a. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
- b. Investment and disinvestment assumptions;
- c. Source of asset data;
- d. Asset valuation bases; and
- e. Documentation of assumptions made for (i) default costs, (ii) bond call function, (iii) mortgage prepayment function, (iv) determining market value for assets sold due to disinvestment strategy, and (v) determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumption.

3. For the analysis basis:

- a. Methodology;
- b. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;
- c. Rationale for degree of rigor in analyzing different blocks of business, including the rationale for the level of "materiality" that was used in determining how rigorously to analyze different blocks of business;
- d. Criteria for determining asset adequacy, including in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice; and
- e. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

4. Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

5. Summary of results; and

6. Conclusion.

C. The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be

signed and dated by the appointed actuary rendering the actuarial opinion. The regulatory asset adequacy issues summary also shall include each of the following:

1. Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that reasonably can be expected to arise from the assets and liabilities remaining in force;
2. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different from the assumptions used in the previous asset adequacy analysis;
3. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;
4. Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;
5. The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and
6. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability, including but not limited to those affecting cash flows embedded in fixed income securities, and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

D. The actuarial methods, considerations, and analyses shall conform to appropriate standards of practice and the memorandum shall include the following statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

E. An appropriate allocation of assets in the amount of Interest Maintenance Reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default shall include an

appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets shall not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks shall include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

14VAC5-319-10. Definitions.

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

"1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without 10-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

"Basic reserves" means reserves calculated in accordance with § ~~38.2-3137~~ 38.2-1372 of the Code of Virginia.

"Commission" means the State Corporation Commission when acting pursuant to or in accordance with Title 38.2 of the Code of Virginia.

"Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in this section, (or any other valuation mortality table adopted by the NAIC after January 1, 2000, and promulgated by regulation by the commission for this purpose) and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in 14VAC5-319-40 B.

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t (if G_t never exceeds R_t , the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where G_t and R_t are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

x = original issue age;

k = the number of years from the date of issue to the beginning of the segment;

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$t = 1, 2, \dots$; t is reset to 1 at the beginning of each segment; and

$GP_{x+k+t-1}$ = Guaranteed gross premium per \$1,000 of face amount for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$$

where:

R_t may be increased or decreased by 1.0% in any policy year, at the company's option, but R_t shall not be less than one; and

x , k and t are as defined above; and

$q_{x+k+t-1}$ = valuation mortality rate for deficiency reserves in policy year $k+t$ but using the mortality of 14VAC5-319-40 B 2 if 14VAC5-319-40 B 3 is elected for deficiency reserves. However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1,000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

"Deficiency reserves" means the excess, if greater than 0, of (i) minimum reserves calculated in accordance with § ~~38.2-3441~~ 38.2-1376 of the Code of Virginia over (ii) basic reserves.

"Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

"Maximum valuation interest rates" means the interest rates defined in § ~~38.2-3130~~ 38.2-1371 of the Code of Virginia that are to be used in determining the minimum standard for the valuation of life insurance policies.

"NAIC" means the National Association of Insurance Commissioners.

"Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in 14VAC5-319-60 A 3 or, if none is so described, the minimum premium described in 14VAC5-319-60 A 4.

"Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

1. The present value of the death benefits within the segment, plus

2. The present value of any unusual guaranteed cash value (see 14VAC5-319-50 D) occurring at the end of the segment, less

3. Any unusual guaranteed cash value occurring at the start of the segment, plus

4. For the first segment only, the excess of subdivision 4 a over subdivision 4 b of this definition, as follows:

a. A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.

b. A net one-year term premium for the benefits provided for in the first policy year.

The length of each segment is determined by the "contract segmentation method," as defined in this section.

The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

"Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

"Ten-year select mortality factors" means the select factors adopted by the NAIC with the 1980 amendments to the NAIC Standard Valuation Law.

"This regulation" means Chapter 319 of Title 14 of the Virginia Administrative Code (14VAC5-319-~~10 et seq.~~), which also shall be known as the commission's Rules Establishing Minimum Valuation and Reserve Standards for Life Insurance Policies.

"Twenty-year select mortality factors" means the select factors adopted by the NAIC as part of the Valuation of Life Insurance Policies Model Regulation and shown in the tables in 14VAC5-319-70.

"Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

1. Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

2. Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform

percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of subdivision 2 a over subdivision 2 b of this definition, as follows:

- a. A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
- b. A net one-year term premium for the benefits provided for in the first policy year.

The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

"Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds or other supplementary accounts) and mortality or expense charges are made to the policy.

"YRT" means yearly renewable term.

14VAC5-321-10. Authority.

This chapter is promulgated by the commission, pursuant to § 38.2-223 of the Code of Virginia and in accordance with §§ ~~38.2-3130~~ 38.2-1369, 38.2-3206 through 38.2-3209, and 38.2-4120 of the Code of Virginia and 14VAC5-319-40, to approve, recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table by and for insurers transacting the business of insurance in this Commonwealth.

14VAC5-321-30. 2001 CSO Mortality Table.

A. At the election of the insurer for any one or more specified plans of insurance and subject to the conditions stated in this chapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004, and before the date specified in subsection B of this section to which subdivision 1 of § ~~38.2-3130~~ 38.2-1369 and § 38.2-3209 of the Code of Virginia are applicable. If the insurer elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

B. Subject to the conditions stated in this chapter, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which subdivision 1 of § ~~38.2-3130~~ 38.2-1369 and § 38.2-3209 of the Code of Virginia are applicable.

C. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of 14VAC5-322, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of this chapter.

14VAC5-321-40. Conditions.

A. For policies issued on or after July 1, 2004, with each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

- 1. Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
- 2. Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by § ~~38.2-3141~~ 38.2-1376 of the Code of Virginia and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits; or
- 3. Smoker and nonsmoker mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

B. For policies issued on or after July 1, 2004, with plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

C. For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the insurer for each such plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of 14VAC5-321-50 and 14VAC5-319 relative to use of the select and ultimate form.

D. When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for an insurer, any actuarial opinion in the annual statement filed with the commission shall be based on an asset adequacy analysis that meets the standards and satisfies requirements for an asset adequacy analysis performed pursuant to subdivision A 2 of § 38.2-3127.1-B 38.2-1367 of the Code of Virginia and rules governing actuarial opinions and memoranda at 14VAC5-310.

14VAC5-322-10. Authority.

This chapter is promulgated by the commission, pursuant to § 38.2-223 of the Code of Virginia and in accordance with § ~~38.2-3130~~ 38.2-1369 of the Code of Virginia and 14VAC5-319-40, to approve, recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Preferred Class Structure Mortality Table by and for insurers transacting the business of insurance in this Commonwealth.

14VAC5-323-10. Authority.

This chapter is promulgated by the commission, pursuant to § 38.2-223 of the Code of Virginia and in accordance with §§ ~~38.2-3130~~ 38.2-1369, 38.2-3206 through 38.2-3209, and

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38.2-4120 of the Code of Virginia and 14VAC5-319-40, to approve, recognize, permit, and prescribe the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for insurers offering preneed insurance in this Commonwealth.

14VAC5-323-40. Minimum valuation interest rate standards.

A. The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as defined in §§ ~~38.2-3133 through 38.2-3136~~ § 38.2-1371 of the Code of Virginia.

B. The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as defined in § 38.2-3209 of the Code of Virginia.

14VAC5-323-50. Minimum valuation method standards.

A. The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method defined in §§ ~~38.2-3129~~ 38.2-1368 and ~~38.2-3130~~ 38.2-1369 of the Code of Virginia.

B. The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method defined in § 38.2-3209 of the Code of Virginia.

V.A.R. Doc. No. R15-4085; Filed September 16, 2014, 2:10 p.m.

Final Regulation

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

Title of Regulation: **14VAC5-211. Rules Governing Health Maintenance Organizations (amending 14VAC5-211-20, 14VAC5-211-70, 14VAC5-211-80, 14VAC5-211-90, 14VAC5-211-130, 14VAC5-211-160, 14VAC5-211-170, 14VAC5-211-180, 14VAC5-211-190, 14VAC5-211-210, 14VAC5-211-220, 14VAC5-211-230, 14VAC5-211-240; adding 14VAC5-211-165; repealing 14VAC5-211-60, 14VAC5-211-100, 14VAC5-211-110, 14VAC5-211-120, 14VAC5-211-200, 14VAC5-211-260).**

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

Effective Date: January 1, 2015.

Agency Contact: Robert Grissom, Chief Insurance Market Examiner, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944, or email bob.grissom@scc.virginia.gov

Summary:

The amendments remove conversion requirements, modify point-of-service benefits, and establish "reasonable assurance" criteria to conform to new provisions of the Code of Virginia enacted by the 2014 General Assembly. In addition, the amendments incorporate various new state statutory requirements, including those that appear in §§ 38.2-3444, 38.2-3451, and 38.2-3452 of the Code of Virginia and safeguard against potential conflicts between the rules and the provisions of the Affordable Care Act. Changes since publication of the proposed rule include (i) revising the definitions section by adding a reference to the definition of "excepted benefits" that appears in § 38.2-3431 of the Code of Virginia and revising the definition of "out-of-pocket maximum"; (ii) clarifying the continuation of coverage provisions in subdivisions A 1, 2, and 3 and subsection C of 14VAC5-211-70; (iii) in 14VAC5-211-90, clarifying that a grandfathered plan that excludes a deductible from the out-of-pocket maximum may continue to do so as long as the plan remains grandfathered in; (iv) adding the words "enrollment and" prior to "eligibility requirements" in subdivision B 14 of 14VAC5-211-210; and (v) minor wording changes to clarify several other sections.

AT RICHMOND, SEPTEMBER 9, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2014-00118

Ex Parte: In the matter of
Amending the Rules Governing
Health Maintenance Organizations

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered June 4, 2014, all interested persons were ordered to take notice that subsequent to August 1, 2014, the State Corporation Commission ("Commission") would consider the entry of an order to adopt amendments to the Rules Governing Health Maintenance Organizations at Chapter 211 of Title 14 of the Virginia Administrative Code ("Rules"), which amend the Rules at 14 VAC 5-211-20, 14 VAC 5-211-70 through 14 VAC 5-211-90, 14 VAC 5-211-130, 14 VAC 5-211-160 through 14 VAC 5-211-190, 14 VAC 5-211-210 through 14 VAC 5-211-240; add new Rules at 14 VAC 5-211-165; and repeal the Rules at 14 VAC 5-211-60, 14 VAC 5-211-100 through 14 VAC 5-211-120, 14 VAC 5-211-200, and 14 VAC 5-211-260. These amendments were proposed by the Bureau of Insurance ("Bureau").

The amendments to the Rules were proposed to conform the Rules to new provisions of the Code of Virginia ("Code") passed by the 2014 General Assembly that remove conversion requirements, modify point-of-service benefits, and establish "reasonable assurance" criteria. In addition, the amendments to the Rules incorporate various new state

statutory requirements, including those that appear in §§ 38.2-3444, 38.2-3451, and 38.2-3452 of the Code, and safeguard against potential conflicts between the Rules and the provisions of the federal Affordable Care Act (P.L. 111-148, as amended).

The Order required that on or before August 1, 2014, any person requesting a hearing on the amendments to the Rules shall have filed such request for hearing with the Clerk of the Commission ("Clerk"). No request for a hearing was filed with the Clerk.

The Order also required all interested persons to file their comments in support of or in opposition to the amendments to the Rules on or before August 1, 2014. The Bureau received one comment, which was timely filed with the Clerk, from Kaiser Foundation Health Plan of Mid-Atlantic States, Inc. The Bureau provided a response to these comments, which it filed with the Clerk on August 18, 2014 ("Response").

As a result of the comments received, the Bureau recommended in its Response that the Rules be further revised to include: (i) the addition of a reference to the definition of "excepted benefits" that appears in § 38.2-3431 of the Code into the definition of "individual health insurance coverage" in 14 VAC 5-211-20; (ii) the revision of the definition of "out-of-pocket maximum" in 14 VAC 5-211-20; (iii) the revision of subdivisions A 1, 2, and 3 and subsection C of 14 VAC 5-211-70 to clarify the continuation of coverage provisions; (iv) the addition of subsection C to 14 VAC 5-211-90 to clarify that a grandfathered plan that excludes a deductible from the out-of-pocket maximum may continue to do so as long as the plan remains grandfathered; (v) the revision of subdivision B 14 of 14 VAC 5-211-210 to add in the words "enrollment and" prior to "eligibility requirements"; and (vi) additional minor wording revisions for clarification in several other sections.

The Bureau has submitted the Rules, as amended, to the Commission, and the Bureau recommends that the Rules be adopted as revised.

NOW THE COMMISSION, having considered this matter, the filed comments, the Bureau's Response to the comments, and the Bureau's recommendation to further amend and revise the Rules, is of the opinion that the Rules should be adopted as amended and revised.

Accordingly, IT IS ORDERED THAT:

(1) The amendments and revisions to the Rules Governing Health Maintenance Organizations at Chapter 211 of Title 14 of the Virginia Administrative Code, which amend the Rules at 14 VAC 5-211-20, 14 VAC 5-211-70 through 14 VAC 5-211-90, 14 VAC 5-211-130, 14 VAC 5-211-160 through 14 VAC 5-211-190, 14 VAC 5-211-210 through 14 VAC 5-211-240; add new Rules at 14 VAC 5-211-165; and repeal the Rules at 14 VAC 5-211-60, 14 VAC 5-211-100 through 14 VAC 5-211-120, 14 VAC 5-211-200, and 14 VAC 5-211-260, and are attached hereto and made a part hereof, are hereby ADOPTED to be effective January 1, 2015.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted Rules, shall be sent by the Clerk to the Bureau in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the adopted Rules by mailing a copy of this Order, together with a clean copy of the adopted Rules, to all health maintenance organizations licensed by the Commission, and to all interested persons.

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

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

14VAC5-211-20. Definitions.

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

"ACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) and any federal regulations issued pursuant thereto.

"Allowable charge" means the amount from which the health maintenance organization's payment to a provider for any covered item or service is determined before taking into account the enrollee's cost sharing.

"Basic health care services" means in-area and out-of-area emergency services, inpatient hospital and physician care, outpatient medical services, laboratory and radiologic services, and preventive health services as further described in 14VAC5-211-160 and mental health and substance use disorder services, or all essential health benefits required under § 38.2-3451 of the Code of Virginia. "Basic health care services" also means limited treatment of mental illness and substance abuse in accordance with the minimum standards as may be prescribed by the commission, which shall not exceed the level of services mandated for insurance carriers pursuant to Chapter 34 (§ 38.2-3400 et seq.) of Title 38.2 of the Code of Virginia. In the case of a health maintenance organization that has contracted with this Commonwealth to furnish basic health care services to recipients of medical assistance under Title XIX of the Social Security Act (42 USC § 1396 et seq.) pursuant to § 38.2-4320 of the Code of Virginia, the basic health care services to be provided by the health maintenance organization to program recipients may differ from the basic health care services required by this chapter to the extent necessary to meet the benefit standards

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prescribed by the state plan for medical assistance services authorized pursuant to § 32.1-325 of the Code of Virginia.

"Coinsurance" means a copayment, expressed as a percentage of the allowable charge for a specific health care service.

"Commission" means the State Corporation Commission.

~~"Conversion contract" means an individual contract that the health maintenance organization issues after a conversion option has been exercised.~~

"Copayment" means an amount an enrollee is required to pay in order to receive a specific health care service.

"Cost sharing" means any coinsurance, copayment, or deductible.

"Deductible" means ~~an~~ a dollar amount an enrollee is required to pay out of pocket before the health care plan ~~begins to pay~~ pays the costs associated with certain health care services.

"Dependent" means the spouse, child, or other class of persons of a subscriber or eligible employee, subject to the applicable terms of the policy, contract, or plan.

"Emergency services" shall have the same meaning as § 38.2-3438 of the Code of Virginia and means those health care services that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus. Emergency services provided within the plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the health maintenance organization could reasonably be expected to cause the enrollee's condition to worsen if left unattended.

~~"Enrollee" or "member" means an individual who is enrolled in a health care plan~~ a policyholder, subscriber, participant, member, or other individual covered by a health benefit plan.

"Essential health benefits" includes the following general categories and items and services covered within the categories in accordance with regulations issued pursuant to the ACA: (i) ambulatory patient services; (ii) emergency services; (iii) hospitalization; (iv) laboratory services; (v) maternity and newborn care; (vi) mental health and substance use disorder services; (vii) pediatric services, including oral and vision care; (viii) prescription drugs; (ix) preventive and wellness services and chronic disease management; and (x) rehabilitative and habilitative services and devices.

"Evidence of coverage" means a certificate, individual or group agreement or contract, or identification card issued in conjunction with the certificate, agreement or contract, issued to a subscriber setting out the coverage and other rights to which an enrollee is entitled.

"Excess insurance" or "stop loss insurance" means insurance issued to a health maintenance organization by an insurer licensed in this Commonwealth, on a form approved by the commission, or a risk assumption transaction acceptable to the commission, providing indemnity or reimbursement against the cost of health care services provided by the health maintenance organization.

"Exchange certified stand-alone dental plan" means a limited dental care services plan that has been approved to meet the criteria for certification pursuant to the ACA.

"Grandfathered plan" means coverage provided by a health carrier to (i) a small employer on March 23, 2010; (ii) an individual who was enrolled on March 23, 2010, including any extension of coverage to an individual who becomes a dependent of a grandfathered enrollee after March 23, 2010; or (iii) an employee who enrolls in the employer's grandfathered plan after March 23, 2010, for as long as such plan maintains that status in accordance with the ACA.

"Group contract" means a contract for health care services issued by a health maintenance organization, which by its terms limits the eligibility of subscribers and enrollees to a specified group.

"Group health plan" means an employee welfare benefit plan as defined in § 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC § 1002(1)) to the extent that the plan provides medical care within the meaning of § 733(a) of ERISA (29 USC § 1191b(a)) to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" or "health care plan" means an arrangement in which a person undertakes to provide, arrange for, pay for, or reimburse a part of the cost of health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, including emergency services and services rendered by nonparticipating referral providers, as distinguished from mere indemnification against the cost of the services, on a prepaid basis. For purposes of this chapter, a significant part shall mean at least 90% of total costs of health care services.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law.

"Health care services" means the furnishing of services to an individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability.

"Health insurance exchange" means a health benefit exchange established or operated in the Commonwealth

pursuant to § 1311(b) of the ACA, including the Federally Facilitated Marketplace established pursuant to § 1321 of the ACA.

"Health maintenance organization" means a person who undertakes to provide or arrange for one or more health care plans. A health maintenance organization is deemed to be offering one or more managed care health insurance plans and is subject to Chapter 58 (§ 38.2-5800 et seq.) of Title 38.2 of the Code of Virginia.

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include [~~coverage defined as~~] excepted benefits [as defined in § 38.2-3431 of the Code of Virginia]. Individual health insurance coverage does not include short-term limited duration coverage.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

"Large employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "large employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.

"Large group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a large employer.

"Limited health care services" means dental care services, or vision care services, ~~mental health services, substance abuse services, pharmaceutical services, and other services as may be determined by the commission to be limited health care services. Limited health care services shall not include hospital, medical, surgical or emergency services unless the services are provided incidental to the limited health care services set forth in the preceding sentence.~~

"Medical necessity" or "medically necessary" means appropriate and necessary health care services that are rendered for a condition which, according to generally accepted principles of good medical practice, requires the diagnosis or direct care and treatment of an illness, injury, or pregnancy-related condition, and are not provided only as a convenience.

~~"NAIC" means the National Association of Insurance Commissioners.~~

"Net worth" or "capital and surplus" means the excess of total admitted assets over the total liabilities of the health maintenance organization, provided that surplus notes shall be reported and accounted for in accordance with § 38.2-4300 of the Code of Virginia.

"Nonparticipating referral provider" means a provider who is not a participating provider but with whom a health maintenance organization has arranged, through referral by its participating providers, to provide health care services to enrollees. Payment or reimbursement by a health maintenance organization for health care services provided by nonparticipating referral providers may exceed 5.0% of total costs of health care services, only to the extent that any excess payment or reimbursement over 5.0% shall be combined with the costs for services that represent mere indemnification, with the combined amount subject to the combination of limitations set forth in this definition and in this section's definition of health care plan.

"Out-of-area services" means the health care services that the health maintenance organization ~~covers~~ may cover when its ~~members~~ enrollees are outside the geographical limits of the health maintenance organization's service area.

"Out-of-pocket maximum" means the maximum dollar amount that an enrollee is required to pay during a plan or policy year before the health benefit plan [~~begins to pay~~] 100% of [the allowable charges for] covered basic health care services [for the balance of the plan or policy year]. This amount shall include deductibles, coinsurance or copayments, and any other expenditure required of an enrollee for any covered medical expense. This limit may or may not include premiums, balance billed amounts for out-of-network services, or payments for services that are not basic health care services.

"Participating provider" or "affiliated provider" means a provider who has agreed to provide health care services to enrollees and to hold those enrollees harmless from payment with an expectation of receiving payment, other than copayments or deductibles, directly or indirectly from the health maintenance organization.

"Point-of-service benefit" means a health maintenance organization's delivery system or covered benefits, or the delivery system or covered benefits of another carrier under contract or arrangement with the health maintenance organization, that permit an enrollee to receive covered items and services outside of the provider panel of the health maintenance organization under the terms and conditions of the group contract holder's group health benefit plan with the health maintenance organization or with another carrier arranged by or under contract with the health maintenance organization and that otherwise complies with § 38.2-3407.12 of the Code of Virginia.

"Preexisting condition exclusion" means a limitation or exclusion of benefits, including a denial of coverage, based on the fact that the condition was present before the effective

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date of coverage, or if the coverage is denied, the date of denial, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. "Preexisting condition exclusion" also includes a condition identified as a result of a pre-enrollment questionnaire or physical examination given to an individual, or review of medical records relating to the pre-enrollment period.

"Premium" means all moneys paid by an employer, eligible employee, or covered person as a condition of coverage from a health carrier, including fees and other contributions associated with the health benefit plan.

"Primary care health care professional" means a health care professional who provides initial and primary care to enrollees; who supervises, coordinates, and maintains continuity of patient care; and who may initiate referrals for specialist care, if referrals are a requirement of the enrollee's health care coverage.

"Provider" or "health care provider" means a physician, hospital, or other person that is licensed or otherwise authorized to furnish health care services.

"Rescission" means a cancellation or discontinuance of coverage under a health care plan that has a retroactive effect. "Rescission" does not include: (i) a cancellation or discontinuance of coverage under a health care plan if the cancellation or discontinuance of coverage has only a prospective effect, or the cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or (ii) a cancellation or discontinuance of coverage when the health care plan covers active employees and, if applicable, dependents and those covered under continuation coverage provisions, if the employee pays no premiums for coverage after termination of employment and the cancellation or discontinuance of coverage is effective retroactively back to the date of termination of employment due to a delay in administrative recordkeeping.

"Service area" means a clearly defined geographic area in which the health maintenance organization has directly or indirectly arranged for the provision of health care services to be generally available and readily accessible to enrollees.

"Small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 50 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. Effective January 1, 2016, "small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar

year and who employs at least one employee on the first day of the plan year.

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer.

"Specialist" means a licensed health care provider to whom an enrollee may be referred by his primary care health care professional and who is certified or eligible for certification by the appropriate specialty board, where applicable, to provide health care services in a specialized area of health care.

"Subscriber" means a contract holder, ~~an individual enrollee, or the enrollee in an enrolled family or enrollee~~ who is responsible for payment to the health maintenance organization or on whose behalf the payment is made.

"Supplemental health care services" means health care services that may be offered by a health maintenance organization in addition to the required basic health care services.

"Surplus notes" means those instruments that meet the requirements of 14VAC5-211-40.

Part III

Contract Requirements

14VAC5-211-60. Filing requirements. (Repealed.)

~~A. A contract, evidence of coverage, or amendment shall not be delivered or issued for delivery in this Commonwealth until a copy of the form or amendment has been filed with and approved by the commission pursuant to § 38.2-4306 of the Code of Virginia. The contract, evidence of coverage, or amendment shall be identified by a form number in the lower left hand corner of the first page. If the commission does not disapprove a form within 30 days of its filing, it shall be deemed approved unless the filer is notified in writing that this period is extended by the commission for an additional 30 days.~~

~~B. A schedule of charges or amendment shall not be put into effect in conjunction with a health care plan until a copy of the schedule or amendment has been filed with the commission pursuant to § 38.2-4306 of the Code of Virginia.~~

14VAC5-211-70. Conversion Continuation of coverage.

~~A. A health care plan shall offer to its group contract holders, for an An enrollee whose eligibility for coverage terminates under the group contract, the options to convert to an individual policy or continue coverage as set forth in this section. The group contract holder shall select one of the following options: 1. Conversion of coverage within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60 day period following the date of termination of the enrollee's coverage under the group contract, to an individual contract that provides benefits which, at a minimum, meet the~~

~~requirements of basic or limited health care services as applicable, in accordance with this chapter. Coverage shall not be refused on the basis that the enrollee no longer resides or is employed in the health maintenance organization's service area. The conversion contract shall cover the enrollee covered under the group contract as of the date of termination of the enrollee's coverage under the group contract. Coverage shall be provided without additional evidence of insurability, and no preexisting condition limitations or exclusions may be imposed other than those remaining unexpired under the contract from which conversion is exercised. A probationary or waiting period set forth in the conversion contract shall be deemed to commence on the effective date of coverage under the original contract.~~ 2. Continuation of shall have the opportunity to continue coverage under the existing group contract for a period of at least 12 months immediately following the date of termination of the enrollee's eligibility for coverage under the group contract. Continuation coverage shall not be applicable if the group contract holder is required by federal law to provide for continuation of coverage under its group health plan pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) (P.L. 99-272). Coverage shall be provided without additional evidence of insurability subject to the following requirements:

- ~~a.~~ 1. The application and payment for the [extended continued] coverage is made to the group contract holder within 31 days after issuance of the written notice required in subsection C of this section, but in no event beyond the 60-day period following the date of the termination of the person's eligibility;
- ~~b.~~ 2. Each premium for the [extended continued] coverage is timely paid to the group contract holder on a monthly basis during the 12-month period; and
- ~~c.~~ 3. The premium for continuing the group coverage shall be at the health care plan's current rate applicable to [similarly situated individuals under] the group contract plus any applicable administrative fee not to exceed 2.0% of the current rate.

B. A ~~conversion contract~~ or continuation of coverage shall not be required to be made available when:

- 1. The enrollee is covered by or is eligible for benefits under Title XVIII of the Social Security Act (42 USC § 1395 et seq.) known as Medicare;
- ~~2. The enrollee is covered by or is eligible for substantially the same level of hospital, medical, and surgical benefits under state or federal law;~~
- 3. 2. The enrollee is covered by substantially the same level of benefits under any policy, contract, or plan for individuals in a group;
- 4. 3. The enrollee has not been continuously covered during the three-month period immediately preceding the enrollee's termination of coverage;

5. 4. The enrollee was terminated by the health care plan for any of the reasons stated in 14VAC5-211-230 A 1, 2, or 5 2, or coverage was rescinded; or

~~6.~~ 5. The enrollee was terminated from a plan administered by the Department of Medical Assistance Services that provided benefits pursuant to Title XIX or XXI of the Social Security Act (42 USC § 1396 et seq. or § 1397aa et seq.).

C. The group contract holder shall provide each enrollee or other person covered under the group contract written notice of the ~~availability of the option chosen and the procedures and timeframes for obtaining continuation or conversion of~~ [coverage under] the group contract. The notice shall be provided within 14 days of the group contract holder's knowledge of the enrollee's or other covered person's loss of eligibility under the group contract.

14VAC5-211-80. Coordination of benefits.

A. A health care plan may include in its group or individual contract a provision that the value of any benefit or service provided by the health maintenance organization may be coordinated with other health insurance or health care benefits or services that are provided by other individual or group policies, ~~group~~ contracts, or ~~group~~ health care plans, including coverage provided under governmental programs, so that no more than 100% of the eligible incurred expenses is paid.

B. A health care plan shall not be relieved of its duty to provide a covered health care service to an enrollee because the enrollee is entitled to coverage under other policies, contracts, or health care plans. In the event that benefits are provided by a health care plan and another policy, contract, or health care plan, the determination of the order of benefits shall in no way restrict or impede the rendering of services required to be provided by the health care plan. The health maintenance organization shall be required to provide or arrange for the service first and then, at its option, seek coordination of benefits with any other health insurance or health care benefits or services that are provided by other ~~group~~ policies, ~~group~~ contracts, or ~~group~~ plans. Until a coordination of benefits determination is made, the enrollee shall not be held liable for the cost of covered services provided.

14VAC5-211-90. Copayments Cost sharing.

A. Except for preventive services required by § 38.2-3442 of the Code of Virginia, a health maintenance organization may require a copayment of enrollees as a condition for the receipt of a specific health care service. A copayment shall be shown in the evidence of coverage as either a specified dollar amount or as coinsurance.

B. If the health maintenance organization has an established ~~copayment maximum~~ out-of-pocket maximum for cost sharing, it shall keep accurate records of each enrollee's ~~copayment expenses~~ cost sharing and notify the enrollee

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when his ~~copayment~~ out-of-pocket maximum is reached. The notification shall be given no later than 30 days after the health maintenance organization has processed sufficient claims to determine that the ~~copayment~~ out-of-pocket maximum is reached. The health maintenance organization shall not charge additional ~~copayments~~ cost sharing for the remainder of the contract or calendar year, as appropriate. The health maintenance organization shall also promptly refund to the enrollee all ~~copayments~~ cost sharing payments charged after the ~~copayment~~ out-of-pocket maximum is reached. Any maximum ~~copayment~~ out-of-pocket amount shall be shown in the evidence of coverage as a specified dollar amount, and the evidence of coverage shall clearly state the health maintenance organization's procedure for meeting the requirements of this subsection.

C. ~~[A grandfathered plan that excludes a deductible from the out-of-pocket maximum may continue to do so as long as the plan remains grandfathered.~~

D.] The provisions of this subsection shall not apply to any Family Access to Medical Insurance Security (FAMIS) Plan (i) authorized by the United States Centers for Medicare and Medicaid Services pursuant to Title XXI of the Social Security Act (42 USC § 1397aa et seq.) and the state plan established pursuant to Chapter 13 (§ 32.1-351 et seq.) of Title 32.1 of the Code of Virginia and (ii) underwritten by a health maintenance organization.

14VAC5-211-100. Deductibles. (Repealed.)

~~Except for preventive services required by § 38.2-3442 of the Code of Virginia, a health maintenance organization may require an enrollee to pay an annual deductible in accordance with § 38.2-4303 A 8 of the Code of Virginia.~~

14VAC5-211-110. Description of providers. (Repealed.)

~~A list of the names and locations of all participating providers shall be provided in accordance with § 38.2-3407.10 G of the Code of Virginia.~~

14VAC5-211-120. Description of service area. (Repealed.)

~~A description of the service area in which the health maintenance organization shall provide health care services shall be provided to subscribers by the health maintenance organization at the time of enrollment or at the time the contract or evidence of coverage is issued and shall be made available upon request or at least annually.~~

14VAC5-211-130. Extension of benefits for total disability.

A. A group contract issued by a health maintenance organization in the large group market shall contain a reasonable extension of benefits upon discontinuance of the group contract with respect to ~~members~~ enrollees who become totally disabled while enrolled under the contract and who continue to be totally disabled at the date of discontinuance of the contract.

B. Upon payment of premium, coverage shall remain in full force and effect for a reasonable period of time not less than 180 days, or until the ~~member~~ enrollee is no longer totally

disabled, or a succeeding carrier elects to provide replacement coverage to that ~~member~~ enrollee without limitation as to the disabling condition.

~~C. Upon termination of the extension of benefits, the enrollee shall have the right to convert or continue coverage as provided for in 14VAC5-211-70.~~

~~D. C.~~ The provisions of this section shall not apply to contracts entered into by any health maintenance organization that has contracted with the Virginia Department of Medical Assistance Services to provide health care services to recipients of medical assistance services pursuant to Title XIX of the Social Security Act, as amended, or to individuals covered by the Family Access to Medical Insurance Security Insurance (FAMIS) plan developed pursuant to Title XXI of the Social Security Act, as amended.

Part IV
Services

14VAC5-211-160. Basic health care services.

A. A health maintenance organization that offers coverage in the large group market shall provide, or arrange for the provision of, as a minimum, basic health care services. These services shall include the following:

1. Inpatient hospital and physician services. Medically necessary hospital and physician services affording inpatient treatment to enrollees in a licensed hospital for a minimum of 90 days per contract or calendar year. Hospital services include room and board; general nursing care; special diets when medically necessary; use of operating room and related facilities; use of intensive care unit and services; x-ray, laboratory, and other diagnostic tests; drugs, medications, biologicals, anesthesia, and oxygen services; special duty nursing when medically necessary; short-term physical therapy, radiation therapy, and inhalation therapy; administration of whole blood and blood plasma; and short-term rehabilitation services. Physician services include medically necessary health care services performed, prescribed, or supervised by physicians within a hospital for registered bed patients.
2. Outpatient medical services. Medically necessary health care services performed, prescribed or supervised by physicians for enrollees, which may be provided in a nonhospital based health care facility, at a hospital, in a physician's office, or in the enrollee's home, and shall include consultation and referral services. Outpatient medical services shall also include diagnostic services, treatment services, short-term physical therapy and rehabilitation services the provision of which the health maintenance organization determines can be expected to result in the significant improvement of ~~a member's~~ an enrollee's condition within a period of 90 days, laboratory services, x-ray services, and outpatient surgery.
3. Diagnostic laboratory and diagnostic and therapeutic radiologic services.

4. Preventive health services. ~~Services provided with the goal of early detection and minimization of the ill effects and causes of disease or disability, including well child care from birth, eye and ear examinations for children age 17 and under to determine the need for vision and hearing correction, periodic health evaluations, and immunizations shall be provided in accordance with the provisions of § 38.2-3442 of the Code of Virginia.~~

5. In-area and out-of-area emergency services, including medically necessary ambulance services, available on an inpatient or an outpatient basis 24 hours per day, seven days per week.

6. Mental health and substance use disorder services as follows:

a. ~~Medically necessary services for the treatment of biologically based mental illnesses as defined in § 38.2-3412.1:01 of the Code of Virginia; and~~

b. ~~Except for a group contract issued to a large employer as defined in § 38.2-3431 of the Code of Virginia, services for the treatment of all other mental health and substance use disorders shall at a minimum include:~~

(1) ~~Inpatient services or partial hospitalization for an adult for a minimum period of 20 days per enrollee per contract year;~~

(2) ~~Inpatient services or partial hospitalization for a child or adolescent for a minimum period of 25 days per enrollee per contract year; and~~

(3) ~~Twenty outpatient visits per enrollee per contract year. A medication management visit shall be covered in the same manner as a medication management visit for the treatment of a physical illness and shall not be counted as an outpatient treatment visit in the calculation of the benefit set forth in this subdivision.~~

~~The limits of the benefits set forth in this subdivision shall not be more restrictive than for any other illness, however, the coinsurance applicable to any outpatient visit beyond the first five visits covered per contract year shall not exceed 50%. If all covered expenses for outpatient services apply toward any deductible required by a policy or contract, the visit shall not count toward the outpatient visit benefit maximum set forth in the policy or contract. Definitions set forth in § 38.2-3412.1 of the Code of Virginia shall be applicable to terms used in this subsection.~~

~~Group contracts issued to a large employer as defined in § 38.2-3431 of the Code of Virginia shall provide mental health and substance use disorder benefits shall be provided on parity with the medical and surgical benefits contained in the plan in accordance with the Mental Health Parity and Addiction Equity Act of 2008 (P.L. 110-343).~~

7. Medically necessary dental services as a result of accidental injury, regardless of the date of such injury. Contracts may require that treatment be sought within 60

days of the accident for injuries occurring on or after the effective date of coverage.

B. A health maintenance organization that offers coverage in the individual or small group market shall provide, or arrange for the provision of, as a minimum, the essential health benefits required under § 38.2-3451 of the Code of Virginia.

14VAC5-211-165. Point-of-service benefits.

A. A health maintenance organization shall offer point-of-service benefits to its enrollees in the large group market in accordance with the provisions of § 38.2-3407.12 of the Code of Virginia.

B. If point-of-service benefits are chosen, a description of the procedure for obtaining point-of-service benefits and notification requirements before obtaining these benefits shall be included in the evidence of coverage as well as a description of the restrictions or limitations on such benefits.

14VAC5-211-170. Supplemental health care services.

In addition to the basic health care services required to be provided in 14VAC5-211-160, a health maintenance organization may offer to its enrollees any supplemental health care services it chooses to provide, as allowed by applicable law. These services may be limited as to time and cost and are not subject to copayment and deductible limitations [or may] not be subject to cost sharing limitations or out-of-pocket or deductible maximums that are applicable to basic health care services.

14VAC5-211-180. Out-of-area services.

In addition to out-of-area emergency services required to be provided as basic health care services, a health maintenance organization may offer to its enrollees indemnity benefits covering out-of-area services to its enrollees. A description of the procedure for obtaining out-of-area services and notification requirements before obtaining these services shall be included in the evidence of coverage as well as a description of restrictions or limitations on out-of-area services. Except for out-of-area emergency services, a health care plan that requires the enrollee to contact the health maintenance organization before obtaining out-of-area services shall provide for telephone consultation on a 24-hour per day, seven-day per week basis.

14VAC5-211-190. Limited health care services.

A. A health maintenance organization offering only may offer limited health care services shall provide, or arrange for the provision of, at least one of the following services: in either dental care or vision care services.

1. ~~Dental care services;~~
2. ~~Vision care services;~~
3. ~~Mental health services;~~
4. ~~Substance abuse services;~~
5. ~~Pharmaceutical services;~~
6. ~~Other services as may be determined by the commission.~~

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B. A health maintenance organization shall be reasonably assured that the enrollee has obtained pediatric oral essential health benefits from an exchange-certified stand-alone dental plan for coverage purchased in the individual or small group markets outside the health insurance exchange. A health maintenance organization shall be deemed to have obtained reasonable assurance that such pediatric oral health benefits are provided to the enrollee if:

1. At least one qualified dental plan, as defined in § 38.2-3455 of the Code of Virginia, (i) offers the minimum essential pediatric oral health benefits that are required under the ACA and (ii) is available for purchase by a subscriber or enrollee; and

2. The health maintenance organization prominently discloses, in a form approved by the commission, at the time that it offers the health benefit plan that the plan does not provide ACA-required minimum essential pediatric oral health benefits.

14VAC5-211-200. ~~Essential and standard benefit plans. (Repealed.)~~

~~Health maintenance organizations offering the essential or standard health benefit plans shall offer the benefits specified in 14VAC5-234-50 and 14VAC5-234-60 for these plans.~~

Part V

Disclosure and Prohibitions

14VAC5-211-210. ~~Disclosure~~ Evidence of coverage requirements.

A. ~~A subscriber~~ An enrollee shall be entitled to receive an evidence of coverage under a health care plan provided by a health maintenance organization established or operating in this Commonwealth, including any amendments to it. The evidence of coverage ~~excluding the identification card~~ shall be delivered or issued for delivery within a reasonable period of time after enrollment, but not more than 60 days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment. ~~The~~ An identification card shall be delivered or issued for delivery within 15 days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment.

B. An evidence of coverage delivered or issued for delivery shall contain the following:

1. The name, address, and telephone number of the health maintenance organization;
2. The health care services and other benefits to which the enrollee is entitled under the health care plan;
3. Exclusions or limitations on the services, kind of services, benefits, or kind of benefits to be provided, including any ~~deductible or copayment~~ cost sharing features;
4. Where and in what manner information is available as to how services may be obtained;

5. The effective date and the term of coverage;

6. The total amount of payment for health care services and any indemnity or service benefits that the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory for group certificates;

7. A description of the health maintenance organization's method of resolving enrollee complaints, including a description of any arbitration procedure if complaints may be resolved through a specified arbitration agreement;

8. A list of providers and a description of the service area that shall be provided with the evidence of coverage if the information is not given at the time of enrollment;

9. The right of an enrollee ~~to convert to an individual contract issued by the health maintenance organization or~~ to continue group coverage, ~~as applicable,~~ including the terms and conditions under which coverage may be ~~converted or~~ continued;

10. The terms and conditions under which coverage may be terminated or rescinded;

11. Coordination of benefits provisions, if applicable;

12. Assignment of benefits restrictions in the contract;

13. The health maintenance organization's procedure for filing claims, including any requirements for notifying the health maintenance organization of a claim and requirements for filing proof of loss;

14. The health maintenance organization's [enrollment and] eligibility requirements, including the conditions under which dependents may be added and ~~the~~ any limiting age for dependents ~~and subscribers~~ covered under an individual or group contract;

~~15. An incontestability clause that states that all statements made by a subscriber shall be considered representations and not warranties and that no statement shall be the basis for terminating coverage or denying a claim after the contract has been in force for two years from its effective date, unless the contract can be rescinded under § 38.2-3441 of the Code of Virginia;~~

~~16.~~ 15. A provision that the contract or evidence of coverage and any amendments to it constitutes the entire contractual agreement between the parties involved and that no portion of the charter, bylaws, or other document of the health maintenance organization shall constitute part of the contract unless it is set forth in full in the contract;

~~17.~~ 16. Except for an evidence of coverage that does not provide for the periodic payment of premium or for the payment of any premium, a provision that the contract holder is entitled to a grace period of not less than 31 days for the payment of any premium due except the first premium. The provision shall also state that during the grace period the coverage shall continue in force unless the contract holder has given the health maintenance

organization written notice of discontinuance in accordance with the terms of the contract and in advance of the date of discontinuance. The contract may provide that the contract holder shall be liable to the health maintenance organization for the payment of a pro rata premium for the time the contract was in force during the grace period; and ~~18.~~ 17. Terms and conditions related to the designation of a primary care health care professional.

C. A copy of the evidence of coverage shall be delivered to each enrollee and may be delivered electronically in accordance with the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

14VAC5-211-220. Exclusions for preexisting Preexisting conditions and waiting periods.

~~In addition to the limitations on preexisting conditions exclusions set forth in §§ 38.2-3432.3, 38.2-3444, and 38.2-3514.1 of the Code of Virginia, a health maintenance organization shall not exclude or limit health care services for a preexisting condition when the enrollee transfers coverage from one health care plan to another during open enrollment or when the enrollee converts coverage under his conversion option, except to the extent that a preexisting condition limitation or exclusion remains unexpired under the original contract. Any required probationary or~~ A. In accordance with § 38.2-3444 of the Code of Virginia, a health maintenance organization shall not limit or exclude coverage for an enrollee by imposing a preexisting condition exclusion. This section shall apply to any health maintenance organization providing a health benefit plan in the individual or group markets, including a grandfathered group health plan, but not including a grandfathered plan for individual health insurance coverage.

B. A waiting period not to exceed 90 days may be allowed for a group health plan or excepted benefits policies [or contracts] that do not provide for essential health benefits. Any waiting period is deemed to commence on the effective date for individual coverage, and on the enrollment date of the contract for group coverage or the effective date of the policy, as applicable.

14VAC5-211-230. Reasons for termination or rescission.

A. A health maintenance organization shall not terminate an enrollee's coverage for services provided under a health maintenance organization contract except for one or more of the following reasons:

- ~~1. Failure to pay the amounts due under the contract, including failure to pay a premium required by the contract as shown in the contract or evidence of coverage;~~
2. Material violation of the terms of the contract The policyholder [or contract holder] has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact in connection with the coverage;

~~3. Failure to meet the eligibility requirements under a group contract, provided that a conversion or continuation option is offered The group contract holder has failed to comply with a material plan provision relating to employer contribution or group participation rules; or~~

~~4. Termination Discontinuance of the group contract under which the enrollee was covered; or,~~

~~5. Other good cause as agreed upon in the contract between the health care plan and the group or the subscriber. Coverage shall not be terminated on the basis of the status of the enrollee's health or because the enrollee has exercised his rights under the plan's complaint or appeals system by registering a complaint against the health maintenance organization. Failure of the enrollee and the primary care health care professional to establish a satisfactory relationship shall not be deemed good cause unless the health maintenance organization has in good faith made an effort to provide the opportunity for the enrollee to establish a satisfactory patient physician relationship, including assigning the enrollee to other primary care health care professionals from among the organization's participating providers.~~

B. A health maintenance organization shall not terminate coverage for services provided under a [policy or] contract without giving the subscriber written notice of termination, effective at least 31 days from the date of mailing or, if not mailed, from the date of delivery, except that:

1. For termination due to nonpayment of premium, the grace period as required in 14VAC5-211-210 B ~~17~~ 16 shall apply;
2. For termination due to nonpayment of premium by an employer, the notice provisions required in § 38.2-3542 C of the Code of Virginia shall apply; or
- ~~3. For termination due to activities that endanger the safety and welfare of the health maintenance organization or its employees or providers, immediate notice of termination may be given; or~~
- ~~4. 3. For termination due to change of eligibility status, immediate notice of termination may be given.~~

C. A health maintenance organization shall not rescind coverage for services provided under a contract unless the enrollee or a person seeking coverage on behalf of an enrollee performs an act, practice, or omission that constitutes fraud, or the person makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan. Notice of any rescission shall comply with the requirements of § 38.2-3441 of the Code of Virginia. Upon rescission, a health maintenance organization shall promptly refund all premiums less any claims paid.

14VAC5-211-240. Unfair discrimination.

~~A.~~ A health maintenance organization shall not unfairly discriminate against an enrollee on the basis of the age, sex, health status, race, color, creed, national origin, ancestry,

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religion, marital status, or lawful occupation of the enrollee, or because of the frequency of utilization of services by the enrollee. ~~However, nothing shall prohibit a health maintenance organization from setting rates or establishing a schedule of charges in accordance with relevant actuarial data.~~

~~B. A health maintenance organization shall not unreasonably discriminate against physicians as a class or any class of providers listed in § 38.2-4221 of the Code of Virginia when contracting for specialty or referral practitioners, provided the plan covers services that the class of providers are licensed to render. Nothing in this section shall prevent a health maintenance organization from selecting, in the judgment of the health maintenance organization, the number of providers necessary to render the services offered by the health maintenance organization, or from limiting certain specialty services to particular types of practitioners, provided these services are within the scope of their license.~~

14VAC5-211-260. Penalties. (Repealed.)

~~Any violation of this chapter shall be punished pursuant to § 38.2-218 of the Code of Virginia and any other applicable law of this Commonwealth.~~

VA.R. Doc. No. R14-3888; Filed September 10, 2014, 12:07 p.m.



TITLE 17. LIBRARIES AND CULTURAL RESOURCES

LIBRARY BOARD

Proposed Regulation

Titles of Regulations: **17VAC15-60. Standards for Plats (repealing 17VAC15-60-10 through 17VAC15-60-70).**

17VAC15-61. Standards for Permanent Instruments Recorded by Hard Copy (adding 17VAC15-61-10 through 17VAC15-61-60).

17VAC15-70. Standards for Recorded Instruments (repealing 17VAC15-70-10 through 17VAC15-70-70).

17VAC15-80. Standards for Paper for Permanent Circuit Court Records (repealing 17VAC15-80-10 through 17VAC15-80-40).

Statutory Authority: §§ 42.1-8 and 42.1-82 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 5, 2014.

Agency Contact: Glenn Smith, Records and Information Management Analyst, Library of Virginia, 800 East Broad Street, Richmond, VA 23219, telephone (804) 692-3604, or email glenn.smith@lva.virginia.gov.

Basis: Pursuant to § 42.1-82 of the Code of Virginia the Library Board has the power and duty to issue regulations designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by all agencies. The Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia) defines an agency as: "all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers."

Purpose: This proposed regulation provides a standard to which each circuit court clerk, or his designee, can compare the medium, inscription, and format of paper instruments presented for recording and filing when such instruments will become permanent records. Without regulation of this subject matter, instruments submitted to record may be of such quality that reformatting them to the copy of record, via electronic image or microfilm, for the purpose of producing copies indefinitely, can be significantly hindered. Records with an inferior ability to be read or copied leave the rights of citizens and property holders in jeopardy. The new regulation is streamlined from the three regulations, which will be repealed in this action, and can be consistently applied by all clerks; it will provide the means by which all who submit and all who examine instruments for recordation can understand and apply the requirements accurately and uniformly.

Substance: The proposed amendments repeal 17VAC15-60 (Standards for Plats), 17VAC-70 (Standards for Recorded Instruments), and 17VAC-80 (Paper Used in Permanent Court Records) and promulgate 17VAC15-61 (Standards for Permanent Instruments Recorded by Hard Copy), omitting obsolete sections and combining requirements for medium, inscription, and format quality for plats, written instruments, and other drawings submitted to circuit courts for permanent retention into a simpler and better organized regulation.

Issues: The primary advantage to the circuit court clerks is a clearer, more effectively applied standard that they will be able to present to record submitters when the instrument submitted does not meet the standards. The proposed regulation is intended to be more easily understood and used by the parties submitting instruments for recordation. This provides an overall advantage to the public in that all instruments submitted for permanent recordation that meet the standards in the proposed regulation will be legible and reproducible whenever the record is accessed or duplicated. There are no disadvantages to the public or the Commonwealth as a result of this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Library of Virginia proposes to 1) remove the current exemption allowing plats prepared prior to 1986 to be recorded as a reference in land records if they meet certain criteria even though they are not original or a first generation

copy, and 2) reorganize the existing standards in the regulations.

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

Estimated Economic Impact. One of the proposed changes will remove the current exemption allowing plats prepared prior to 1986 that are not original or a first generation copy to be recorded as a reference in circuit court land records even if they meet certain criteria. This change applies only to the plats that have not been already recorded. For example, if an individual finds a plat prepared prior to 1986 that has not been recorded, and the plat does not meet the standards in the proposed regulation, then he or she will not be able to record it. Individuals who wish to record such plats may have to incur costs to resurvey the subject property. However, the Library of Virginia estimates that the number of plats that may be required to be resurveyed is very small. On the other hand, this change is expected to ensure the quality of plats that can be recorded meets minimum standards which in turn would help improve the accuracy of land records.

All of the remaining changes reorganize the existing standards and are expected to improve the clarity of the existing requirements.

Businesses and Entities Affected. The entities that may be affected are 120 circuit court clerks, property owners, land surveyors, title companies, and real estate attorneys.

Localities Particularly Affected. The regulations apply to all localities in the Commonwealth.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to affect real estate development costs.

Legal Mandate.

General: 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 Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed 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.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The proposed amendments combine the standards for paper, inscription, and format for plats, written instruments, and other drawings submitted for permanent retention by circuit courts currently spread over three regulations (17VAC15-60, 17VAC15-70, and 17VAC15-80) into a single regulation (17VAC15-61) to simplify and better organize the requirements and to omit obsolete sections.

CHAPTER 61

STANDARDS FOR PERMANENT INSTRUMENTS RECORDED BY HARD COPY

17VAC15-61-10. Statement of applicability; definitions.

These standards shall apply to all written instruments, plats, and other drawings submitted, recorded, or filed for permanent retention in the circuit courts of the Commonwealth.

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

"Written instrument" means a writing required by law to be recorded and retained permanently in the clerk's office of the circuit courts of the Commonwealth, excluding wills as set forth in 17VAC15-61-60.

"Plat" means a drawing that shows one or more geometric relationships expressed by a bearing and a distance.

"Other drawing" means any drawing that does not show a geometric relationship expressed by a bearing and a distance.

17VAC15-61-20. Permanent recording and filing medium.

A. Written instruments.

1. Documents submitted, recorded, or filed on paper shall be on paper that is:

- a. Acid free.
- b. Uniformly white.
- c. Opaque.
- d. Smooth in finish.
- e. Unglazed, and
- f. Free of visible watermarks and background logos.

2. Paper size shall be:

- a. No smaller than 8-1/2 x 11 inches, and
- b. No larger than 8-1/2 x 14 inches.

3. Required minimum paper weight is 20 pounds.

4. Negative (white on black background) copies and carbon copies are not acceptable.

B. Plats and other drawings.

1. Plats and other drawings shall be inscribed on either translucent or opaque paper, polyester, or linen.

2. The background quality for opaque paper shall be:

- a. Uniformly white.
- b. Smooth in finish.
- c. Unglazed, and
- d. Free of visible watermarks or background logos.

3. The size for plats and other drawings shall be:

- a. No smaller than 8-1/2 x 11 inches, and
- b. No larger than 18 x 24 inches.

4. Only the original or first generation unreduced black-line or blue-line copy of the original plat or other drawing that meets the standards provided in this section, 17VAC15-61-30 B, and 17VAC15-61-40 B and has the original wet or electronically printed stamp and the original signature of the preparer shall be accepted for recordation.

17VAC15-61-30. Inscription quality.

A. Written instruments.

1. All inscriptions shall be:

a. Black;

b. Solid, where "solid" means the lines forming each letter do not have blank or light spots;

c. Dense, where "dense" means each letter or line is dark;

d. Uniform, where "uniform" means the entire letter or line is the same darkness;

e. Sharp, where "sharp" means the demarcation between each letter or line and the background is abrupt; and

f. Unglazed, where "unglazed" means inscriptions are nonreflective.

2. All signatures shall be original and in dark blue or black ink.

3. Printing size shall be the equivalent of nine-point or larger.

4. Typing shall be elite (12 characters per inch) or pica (10 characters per inch) or larger.

5. The font shall be the equivalent of a normal Arial or Courier.

B. Plats and other drawings.

1. Inscriptions shall be in ink or electrostatic process that produces a permanent image.

2. Color of original inscription shall be black or dark blue.

3. All inscriptions shall be:

a. Solid, where "solid" means the lines forming each letter do not have blank or light spots;

b. Dense, where "dense" means each letter or line is dark;

c. Uniform, where "uniform" means the entire letter or line is the same darkness;

d. Sharp, where "sharp" means the demarcation between each letter or line and the background is abrupt; and

e. Unglazed, where "unglazed" means inscriptions are nonreflective.

4. Lettering shall be no smaller than .09 inch (2.29 millimeters).

5. All signatures shall be:

- a. Original, and
- b. In dark blue or black ink.

6. No ghost lines shall be used.

7. All shading and screening shall be eliminated over written data.

17VAC15-61-40. Format.

A. Written instruments.

1. The top margin shall be no smaller than 1-1/4 inch.

2. The bottom, left, and right margins shall be no smaller than 3/4 inch.

3. All instruments shall be single sided.

B. Plats and other drawings.

1. Margins shall be no smaller than 1/4 inch on all edges.
2. All plats shall be single sided.
3. All pages of a multi-sheet plat shall be the same size.

17VAC15-61-50. Clerk's recording inscription.

Recordation inscriptions shall be by the circuit court clerk's printed certificate, stamping, typing, or handwriting and shall conform to the standards provided in 17VAC15-61-20, 17VAC15-61-30, and 17VAC15-61-40 that are applicable to the submitted instrument.

17VAC15-61-60. Exclusions.

The standards provided in 17VAC15-61-20, 17VAC15-61-30, and 17VAC15-61-40 do not apply to wills.

VA.R. Doc. No. R13-3761; Filed September 17, 2014, 11:39 a.m.

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**TITLE 18. PROFESSIONAL AND
OCCUPATIONAL LICENSING**

**BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE
PATHOLOGY**

Proposed Regulation

Title of Regulation: 18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (adding 18VAC30-20-141).

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

Public Hearing Information:

October 14, 2014 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Conference Center, 2nd Floor, Training Room 2, Richmond, Virginia 23233

Public Comment Deadline: December 5, 2014.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email leslie.knachel@dhp.virginia.gov.

Basis: Regulations Governing the Practice of Audiology and Speech-Language Pathology (18VAC30-20) are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. Subdivision 6 of § 54.1-2400 provides the Board of Audiology and Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system. In addition, the board has general authority to promulgate regulations specifying additional training as necessary pursuant to § 54.1-103 of the Code of Virginia.

Purpose: The purpose of the proposed regulatory action is to establish rules for the training, supervision, and practice of speech-language pathologists (SLPs) in the performance of fiber-optic endoscopic evaluation of swallowing (FEES). This regulation is needed because the board's policy statement

(guidance document) states that an SLP who performs FEES must be "specially trained" and work under the supervision of a physician provided protocols are in place for emergency response.

While the board's guidance document is helpful to the practitioner community, it is not enforceable and does not set forth regulations delineating the meaning of "specially trained." Therefore, SLPs do not have a clear standard for their training and practice, and the board would have difficulty sanctioning an SLP for inadequate training and supervision. There is concern that patient safety and appropriate treatment could be compromised if SLPs perform FEES improperly and without necessary physician supervision and guidance. Proposed regulations will establish specific regulations to address those concerns.

Substance: Proposed regulations set forth the requirements for educational qualifications, supervised experience, and certification for performance of an endoscopic evaluation of swallowing by speech-language pathologists. Additional requirements for endoscopic evaluation include referral from a qualified physician, performance in a health care facility with protocols for emergency medical backup, and reports to the referring physician.

Issues: The primary advantage to the public is access to qualified health care practitioners to perform an evaluative procedure for patients with the protection of appropriate training, supervision, and protocols for emergencies. Patients who have difficulty with transportation or positioning issues may be evaluated in a setting where there is a physician readily available. There are no disadvantages because the requirements are consistent with requirements in other states and with professional standards for FEES. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Audiology and Speech-Language Pathology (the Board) proposes to require 1) that speech language pathologists complete 12 hours of education on endoscopic procedures if they are interested in performing such procedures, 2) that speech language pathologists performing endoscopic procedures maintain a current certification in basic life support, and 3) that successful performance of at least 25 flexible endoscopic procedures under supervision to be permitted to perform such procedures without supervision.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. The Board proposes a few new regulatory requirements and numerous clarifying changes for speech language pathologists. The Board also proposes a grandfathering provision for persons who are currently

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practicing to continue their practice without meeting new requirements. So, the new requirements will apply to speech language pathologists who wish to perform endoscopic procedures after the effective date of these proposed changes.

One of the proposed changes will require that speech language pathologists complete 12 hours of education on endoscopic procedures if they are interested in performing such procedures. According to Department of Health Professions (DHP) endoscopic courses appear to cost approximately \$75 for 2-3 hours and \$380 for 10 hours. The proposed endoscopic courses can be counted toward existing continuing education requirements. Thus, this proposed change may or may not add to the compliance costs of speech language pathologists depending on whether they use the proposed new education on endoscopic procedures in fulfillment of their continuing education requirements. Similarly, this change will add to the demand for endoscopic courses offered by approved providers. Whether or not this demand will add to the provider revenues will depend on whether the speech language pathologists will take these courses in addition to their regular continuing education courses or in lieu of the continuing education courses they are currently taking.

Another proposed change will require that speech language pathologists performing endoscopic procedures maintain a current certification in basic life support. According to DHP, while this is a new requirement for the speech language pathologists, most of them already maintain this certification because it is commonly required by health care institutions where speech language pathologists work. However, if a speech language pathologist is currently not required to maintain certification in basic life support by his or her employer, this proposed requirement is expected to create additional compliance costs. Initial certification or renewal, which generally last two years, is expected to cost approximately \$40 - \$60 in tuition, approximately 2 - 4 hours to complete the curriculum, travel time and travel expenses, and classroom supplies. Similarly, providers of basic life support training would see an increase in demand for their services proportional to the number of speech language pathologists who will have to maintain current certification due to this proposed change.

Another proposed change will require successful performance of at least 25 flexible endoscopic procedures under supervision to be permitted to perform such procedures without supervision. According to DHP, while this is a new requirement, a hospital would typically require 25 or more procedures to be performed under supervision before it would credential a speech language pathologist to do endoscopic procedures. If all of the speech language pathologists complete at least 25 procedures under supervision, the proposed changes would not add to the compliance costs. However, if a speech language pathologist is currently required by his or her employer to complete less than 25 procedures, this proposed change represents additional costs

that may be associated with performing additional procedures under supervision.

The main benefit of the proposed continuing education, maintaining certification in basic life support, and performing a specific number of endoscopic procedures is to make sure that practitioners who are allowed to assist in evaluation of swallowing disorders are qualified and trained to deal with unexpected situations.

Remaining proposed changes include clarifications of current processes, policies, or statutory requirements. Since all of these requirements are currently enforced in practice, no significant economic effect is expected other than improving the clarity of the requirements processes, policies, or statutory requirements enforced under these regulations.

Businesses and Entities Affected. There are approximately 3,737 licensed speech language pathologists in Virginia. However, the number of speech language pathologists who may be interested in endoscopic procedures is expected to be small.

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

Projected Impact on Employment. If the speech language pathologists interested in endoscopic procedures are already meeting the proposed requirements on continuing education, maintaining certification in basic life support, and performing a specific number of endoscopic procedures, no significant effect on employment would be expected. If the proposed changes force them to take additional continuing education courses, obtain certification in basic life support, and perform additional number of endoscopic procedures, an increase in their compliance costs would be expected. If the increase in compliance costs is significant, a decrease in speech language pathologists' demand for labor may occur. On the other hand, an increase in demand for labor to provide additional continuing education, to obtain certification in basic life support, and to perform additional number of endoscopic procedures may also occur.

Effects on the Use and Value of Private Property. Similarly, if the speech language pathologists are already meeting the proposed standards in the absence of regulations no effect on the asset value of their practices would be expected. Otherwise, an increase in the compliance costs would decrease the asset value of their practices.

Small Businesses: Costs and Other Effects. According to DHP, speech language pathologists typically work in large school or hospital systems or as a part of a physician practice. However, for those speech language pathologist practices that may be considered as small business, the proposed changes would introduce costs and other effects unless they already meet the proposed standards.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that

minimizes the adverse impact while accomplishing the same goals.

Real Estate Development Costs. No impact on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.4 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed regulation sets forth (i) the educational qualifications, the supervised experience, and the certification necessary for a speech-language pathologist to perform an endoscopic evaluation of swallowing and (ii) requirements for endoscopic evaluation that include referral from a qualified physician, performance in a health care facility with protocols for emergency medical backup, and reports to the referring physician.

18VAC30-20-141. Performance of flexible endoscopic evaluation of swallowing.

A. For the purposes of this section, an endoscopic procedure shall mean a flexible endoscopic evaluation of swallowing limited to the use of flexible endoscopes to observe, collect data, and measure the parameters of swallowing for the purposes of functional assessment and therapy planning.

B. A speech-language pathologist who performs an endoscopic procedure shall meet the following qualifications:

1. Completion of a course or courses or an educational program offered by a provider approved in 18VAC30-20-300 that includes at least 12 hours on endoscopic procedures;

2. Successful performance of at least 25 flexible endoscopic procedures under the immediate and direct supervision of a board-certified otolaryngologist or another speech-language pathologist who has successfully performed at least 50 flexible endoscopic procedures beyond the 25 required for initial qualification and has been approved in writing by a board-certified otolaryngologist to provide that supervision; and

3. Current certification in basic life support.

C. The speech-language pathologist who qualifies to perform an endoscopic procedure pursuant to subsection B of this section shall maintain documentation of course completion and written verification from the supervising otolaryngologist or speech-language pathologist of successful completion of flexible endoscopic procedures.

D. An endoscopic procedure shall only be performed by a speech-language pathologist on referral from an otolaryngologist or other qualified physician.

E. A speech-language pathologist shall only perform an endoscopic procedure in a facility that has protocols in place for emergency medical backup. A flexible endoscopic evaluation of swallowing shall only be performed by a speech-language pathologist in either:

1. A licensed hospital or nursing home under the general supervision of a physician who is readily available in the event of an emergency, including physical presence in the facility or available by telephone; or

2. A physician's office at which the physician is on premises and available to provide onsite supervision.

F. The speech-language pathologist shall promptly report any observed abnormality or adverse reaction to the referring physician, an appropriate medical specialist, or both. The speech-language pathologist shall provide a report of an endoscopic procedure to the referring physician in a timely manner and, if requested, shall ensure access to a visual recording for viewing.

G. A speech-language pathologist is not authorized to possess or administer prescription drugs except as provided in § 54.1-3408 B of the Code of Virginia.

H. A speech-language pathologist who has been performing flexible endoscopic evaluations of swallowing prior to (insert effective date of regulation) may continue to perform such evaluations provided he has written verification from a board-certified otolaryngologist that he has the appropriate training, knowledge, and skills to safely perform such evaluations.

VA.R. Doc. No. R11-2689; Filed September 8, 2014, 1:51 p.m.

Regulations

BOARD FOR CONTRACTORS

Final Regulation

Title of Regulation: 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-260).

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: December 1, 2014.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Summary:

The amendment requires language to be added to all written contracts for residential contracting services, beginning July 1, 2015, that (i) notifies consumers of the existence of the Virginia Contractor Transaction Recovery Fund and (ii) includes information on how to contact the Board for Contractors for claim information.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.
4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.
5. Negligence and/or incompetence in the practice of contracting.
6. Misconduct in the practice of contracting.
7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

- a. When work is to begin and the estimated completion date;
- b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
- c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
- d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;
- h. Contractor's name, address, license number, class of license, and classifications or specialty services; ~~and~~
- i. ~~Statement~~ A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; ~~and~~
- j. [~~A~~ Effective with all new contracts entered into after July 1, 2015, a] statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any

felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

VA.R. Doc. No. R13-3390; Filed September 11, 2014, 1:15 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Proposed Regulation

Title of Regulation: 18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-436).

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Regulations

Public Hearing Information:

October 7, 2014 - 10 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Suite 201, Board Room #2, Henrico, Virginia 23233

Public Comment Deadline: December 5, 2014.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations, administer a registration and renewal program, and discipline regulated professionals.

Chapter 377 of the 2010 Acts of the Assembly amended § 54.1-2818.1 of the Code of Virginia and provided the specific mandate to adopt regulations for identification of human remains as a prerequisite for cremation.

Purpose: The intent of the regulatory action is compliance with the second enactment of Chapter 377 of the 2010 Acts of the Assembly. While the statute is fairly explicit about the prerequisites for cremation, the regulation further amplifies how visual identification can be done – through viewing the remains or a photograph or by use of unique identifiers and markings. If positive identification must be used, the regulations specify who may be consulted for that purpose.

In order to ensure that authorization for cremation can be obtained in accordance with § 54.1-2818.1 in a timely manner, the proposed regulation expands on the statutory mandate for visual identification or, if that is not feasible, positive identification. Visual identification may be accomplished by viewing unique identifiers or markings (tattoos, birth marks, etc.). If positive identification must be used, a crematory may consult with law enforcement for fingerprints, DNA, etc., with the local medical examiner, or with medical personnel at a hospital or other facility. The proposed amendments clarify the statute for better implementation, and families or designated persons are able to achieve closure in a more humanely and timely manner. Proper identification of human remains prior to cremation is essential to the health, safety, and welfare of the public because it is necessary to ensure that misidentified or unidentified persons are not cremated. Cremation eliminates the possibility that a lost loved one could later be identified or that the remains may provide evidence in a criminal investigation.

Substance: Section 54.1-2818.1 of the Code of Virginia requires "visual identification" of the deceased before cremation; proposed regulations clarify that visual identification may be made by viewing unique identifiers or

markings on the remains. Further, the Code of Virginia allows the use of positive identification if visual identification is not possible. Proposed regulations clarify that a crematory may use positive identification of the deceased in consultation with law enforcement, a medical examiner, or medical personnel.

Issues: The primary advantage to the public is further clarification of the statutory requirements for identification of a body prior to cremation. The proposed amendments allow the statute to be more clearly implemented, and families or designated persons are able to achieve closure in a more humanely and timely manner. There are no disadvantages. While there are no advantages or disadvantages to the agency, greater clarity of law and regulation can resolve questions and issues that are sometimes fielded by board staff.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. To comply with the second enactment of Chapter 377 of the 2010 Acts of the Assembly, the Board of Funeral Directors and Embalmers (Board) proposes to amend its regulations by 1) adding references to the specific Code of Virginia section that sets legislative rules for identification of decedents before they are cremated, 2) adding language that specifies decedents may be identified by viewing unique identifiers or markings on the decedent and 3) clarifying that crematories must consult with law enforcement, a medical examiner or medical personnel before identifying a body when visual identification is not possible.

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

Estimated Economic Impact. Current regulations note that crematories must take certain actions in accordance with the Code of Virginia. The Board now proposes to add the specific Code references (§ 54.1-2818.1, § 54.1-2825 and § 54.1-2984) to which regulated entities can refer in the Code. The Board also proposes to specify that decedents may be identified by unique identifiers or markings and that crematories must identify decedents for whom visual identification is not possible in consultation with law enforcement, a medical examiner or medical personnel.

Adding Code references and clarifying that positive identification (with fingerprints, DNA, dental records, etc.) must be made in consultation with official entities who would ascertain who the decedent is will benefit readers of these regulations and owners of crematories by making the regulations more understandable. No entity is likely to incur costs on account of these changes.

Adding language to these regulations that allows visual identification of a decedent's unique identifiers or markers (scars, birth marks, tattoos, etc.) will benefit family members or friends who have to identify their deceased loved ones. These individuals will have the option of only viewing the identifying markers on the deceased, or even pictures of the

identifying markers, which may make identification a less traumatic experience. Again, no entity is likely to incur costs on account of this change.

Businesses and Entities Affected. The Department of Health Professions reports that there are 97 crematories registered in the Commonwealth.

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

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

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

Small Businesses: Costs and Other Effects. No small business is likely to incur any additional expense on account of these regulatory changes.

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

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

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

Agency's Response to Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the

economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) specify that decedents may be identified by viewing unique identifiers or markings on the decedents and (ii) clarify that crematories must consult with law enforcement, a medical examiner, or medical personnel before identifying a body when visual identification is not possible.

18VAC65-20-436. Standards for registered crematories or funeral establishments relating to cremation.

A. Authorization to cremate.

1. A crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature in accordance with § 54.1-2818.1 of the Code of Virginia.
2. The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. Visual identification may be made by viewing unique identifiers or markings on the remains. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.
3. In the event visual identification is not feasible, a crematory may use other positive identification of the deceased in consultation with law enforcement, a medical examiner, or medical personnel as a prerequisite for cremation pursuant to § 54.1-2818.1 of the Code of Virginia.

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).
2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.
3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.
4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.
5. Whenever a crematory is unable to cremate the remains within 24 hours upon taking custody thereof, the crematory shall maintain the remains in refrigeration at approximately 40° Fahrenheit or less, unless the remains have been embalmed.

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C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

- a. Be composed of readily combustible materials suitable for cremation;
- b. Be able to be closed in order to provide complete covering for the human remains;
- c. Be resistant to leakage or spillage; and
- d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin. If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the next-of-kin so authorized in writing.

3. The identification of the decedent shall be physically attached to the remains and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the next-of-kin or the person authorized by § 54.1-2818.1 of the Code of Virginia to make the identification has made a visual identification of the deceased or evidence of positive identification if visual identification is not feasible;
2. The permission form from the medical examiner;
3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and
4. The form verifying the release of the cremains, including date and time of release, the name of the person

and the entity to whom the cremains were released and the name of the decedent.

VA.R. Doc. No. R13-2543; Filed September 8, 2014, 1:53 p.m.

DEPARTMENT OF HEALTH PROFESSIONS

Fast-Track Regulation

Title of Regulation: 18VAC76-40. Regulations Governing Emergency Contact Information (amending 18VAC76-40-10).

Statutory Authority: § 54.1-2506.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 5, 2014.

Effective Date: November 20, 2014.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4688, FAX (804) 527-4475, or email elaine.yeatts@dhp.virginia.gov.

Basis: The statutory authority for promulgation of 18VAC76-40-10 by the Director of the Department of Health Professions is found in § 54.1-2506.1 of the Code of Virginia, which requires the director to adopt regulations "...that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting." The authority for the initial promulgation of regulation is mandatory; the authority for amending the regulation to add another profession is discretionary.

Purpose: As the emergency contact information (ECI) is being increasingly used by the Department of Health to disseminate public health information as well as to issue notices of a public health emergency, it is important to reach those health care professionals who have responsibility for the health and safety of a vulnerable population in assisted living facilities and nursing homes. Having those practitioners in the ECI system will help ensure that information is reaching the administrators of those facilities. Dental hygienists are often the practitioners who have primary responsibility for the maintenance of dental health; having them appropriately informed about public health information or a public health emergency will benefit the health and safety of the general public.

Rationale for Using Fast-Track Process: This regulatory action is taken at the request of the one of regulated professions who will be affected by it. In addition, the need to implement the emergency contact system to inform health care professionals about a public health emergency could definitely affect the populations at assisted living facilities or nursing homes, so those administrators will benefit from a notification from the Department of Health as soon as possible. Therefore, the director believes the action should have no objection.

Substance: The amendments add dental hygienists, assisted living facility administrators, and nursing home administrators to the listing of professions who are required to report emergency contact information in 18VAC76-40-10.

Issues: The primary advantage to the public is the addition of groups of health care professionals available for contact and assistance in case of a public health emergency or disaster. There are no disadvantages. The Department of Health and the Department of Emergency Management would have access to additional health care workers in case of a public health emergency and would have a direct link to assisted living facilities and nursing homes to disseminate information about an outbreak of a communicable disease. There are no disadvantages.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a periodic review, the Department of Health Professions (DHP) proposes to add nursing home administrators, assisted living facility administrators and dental hygienists to the list of licensees that must provide emergency contact information so that they can be contacted for the purposes of disseminating information in the case of a public health emergency.

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

Estimated Economic Impact. DHP maintains a list of contact information for licensed health care professionals who are required to provide such information so that they can be contacted in the instance of a public health emergency in the Commonwealth. DHP staff reports that the required information is collected at the same time, and on the same form, as license renewal information. DHP proposes to add three new groups of licensees to this list: nursing home administrators, assisted living facility administrators and dental hygienists. Dental hygienists may be the main point of contact for patients seeking dental care so having them be contacted in the case of a public health emergency will allow greater dissemination of that information to those patients. Likewise, having information on hand to more easily contact nursing home and assisted living facility administrators will better allow them to protect and treat the vulnerable, older populations that they serve. Licensees affected by these regulatory changes are unlikely to incur additional costs because they only have to provide their contact information on a form they already fill out and because there is no adverse consequences for failing or forgetting to report. Populations served by these licensees, as well as anyone those populations might secondarily inform, will benefit from these licensees

being able to disseminate public health emergency information.

Businesses and Entities Affected. DHP reports that there are 737 nursing home administrators, 592 assisted living facility administrators and 4,879 dental hygienists in the Commonwealth who will be affected by these 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 no 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 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 businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Department of Health Professions concurs with the economic impact analysis of the Department of Planning and Budget.

Regulations

Summary:

The amendments add dental hygienists, assisted living facility administrators, and nursing home administrators to the listing of health care practitioners from whom emergency contact information is obtained for the purpose of disseminating information in case of a public health emergency.

18VAC76-40-10. Requirement to report.

In accordance with provisions of § 54.1-2506.1 of the Code of Virginia, the following persons or entities who hold a license, certificate, registration or permit issued by a board within the Department of Health Professions and whose address of record is in Virginia, a contiguous state, or the District of Columbia shall report emergency contact information as required by this chapter:

1. Assisted living facility administrators;
2. Athletic trainers;
- ~~2.~~ 3. Certified massage therapists;
- ~~3.~~ 4. Clinical psychologists;
4. 5. Clinical social workers;
- ~~5.~~ 6. Dentists;
7. Dental hygienists;
- ~~6.~~ 8. Funeral service licensees, embalmers and funeral directors;
- ~~7.~~ 9. Licensed acupuncturists;
- ~~8.~~ 10. Licensed practical nurses;
9. 11. Licensed professional counselors;
- ~~10.~~ 12. Medical equipment suppliers;
13. Nursing home administrators;
- ~~11.~~ 14. Pharmacists;
- ~~12.~~ 15. Pharmacy technicians;
- ~~13.~~ 16. Physical therapists;
- ~~14.~~ 17. Physician assistants;
- ~~15.~~ 18. Radiologic technologists;
- ~~16.~~ 19. Registered nurses;
- ~~17.~~ 20. Respiratory care practitioners;
- ~~18.~~ 21. Surface transportation and removal service registrants;
- ~~19.~~ 22. Veterinarians; and
20. 23. Wholesaler distributors of pharmaceuticals.

VA.R. Doc. No. R15-3606; Filed September 8, 2014, 1:55 p.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Fast-Track Regulation

Title of Regulation: 18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-60, 18VAC95-30-70, 18VAC95-30-180, 18VAC95-30-200; repealing 18VAC95-30-95).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 5, 2015.

Effective Date: November 20, 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 lrc@dhp.virginia.gov.

Basis: Regulations Governing the Practice of Assisted Living Facility Administrators (18VAC95-30) are promulgated by the Board of Long-Term Care Administrators under the general authority of Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia, which establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act that are reasonable and necessary for the administration of a regulatory program.

This action is in response to a periodic review of regulations.

Purpose: The overall purpose of the amended regulation is clarification and ease of compliance with requirements for licensure and maintenance of licensure. Regulations governing assisted living facility administrators are essential to oversee the competency and practices of those in charge of facilities serving the most vulnerable citizens. An amendment to the renewal section is intended to specify that practice on an expired license may be grounds for disciplinary action, which would further protect the health, welfare, and safety of these citizens.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is being used because the changes are mostly technical and clarifying. There should be no controversy from these periodic review recommendations.

Substance: Amendments will clarify that practice on an expired license may be grounds for disciplinary action and that a preceptor must be registered by a similar licensing board. A requirement that a trainee whose program is interrupted or terminated notify the board within 10 days is less restrictive than the current requirement of five days. There are no substantive changes to existing regulations.

Issues: There are no advantages or disadvantages to the public. The amendments are clarifying for persons in training or who are currently licensed as assisted living facility administrators. There are no advantages or disadvantages to the Commonwealth.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Long-Term Care Administrators (Board) proposes to: 1) allow trainees additional time to inform the Board if their training program is interrupted, 2) amend language for clarity, and 3) repeal obsolete language.

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

Estimated Economic Impact. In order to become licensed as an assisted living facility administrator, the applicant must receive training under the supervision of a preceptor. Under the current regulations, if the training program is interrupted because the registered preceptor is unable to serve, the trainee must notify the Board within five working days. The Board proposes to extend the notification deadline to ten working days from the current five. This will be beneficial for busy trainees who may find the current deadline difficult to meet. The Board believes notification within ten days will not be problematic. Thus, the proposed change should produce a small net benefit.

Improved clarity in the regulations should also produce a small benefit in that it may reduce the time spent by parties interested in understanding the rules and requirements of the regulations. Repealing obsolete language may reduce time spent on reading irrelevant language.

Businesses and Entities Affected. The proposed regulations potentially affect assisted living administrators-in-training. Currently there are 85 assisted living administrators-in-training in the Commonwealth.¹

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

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to affect real estate development costs.

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

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

¹ Source for number: Department of Health Professions website

Agency's Response to Economic Impact Analysis: The Board of Long-Term Care Administrators concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments are recommended as a result of a periodic review of 18VAC95-30 (Regulations Governing the Practice of Assisted Living Facility Administrators) and are clarifying in nature or intended to make the requirements somewhat less restrictive. Amendments (i) clarify that practice on an expired license may be grounds for disciplinary action, (ii) clarify that a preceptor must be registered by Virginia or a "similar" licensing board in another jurisdiction, and (iii) make the notification requirement less restrictive for a trainee whose program is interrupted or terminated.

Part II

Renewals and Reinstatements

18VAC95-30-60. Renewal requirements.

A. A person who desires to renew his license or preceptor registration for the next year shall, not later than the expiration date of March 31 of each year, submit a completed renewal form and fee.

B. The renewal form and fee shall be received no later than the expiration date. Postmarks shall not be considered.

C. An assisted living facility administrator license or preceptor registration not renewed by the expiration date shall be invalid, and continued practice may constitute grounds for disciplinary action.

18VAC95-30-70. Continuing education requirements.

A. In order to renew an assisted living administrator license, an applicant shall attest on his renewal application to

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completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. A licensee is exempt from completing continuing education requirements ~~and considered in compliance on~~ for the first renewal ~~date~~ following initial licensure in Virginia.

B. In order for continuing education to be approved by the board, it shall be related to the domains of practice for residential care/assisted living and approved or offered by NAB, an accredited educational institution, or a governmental agency.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

- a. Date or dates the course was taken;
- b. Hours of attendance or participation;
- c. Participant's name; and
- d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

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

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

- ~~1. A full time administrator of record in accordance with requirements of 22VAC40-72-200, or an assistant administrator in an assisted living facility, as documented on an application for licensure; or~~
- ~~2. A full time regional administrator with on-site supervisory responsibilities for one or more assisted living~~

~~facilities with at least two years of previous experience as the administrator of an assisted living facility as documented on an application for licensure.~~

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

18VAC95-30-180. Preceptors.

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

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

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

C. A preceptor shall:

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

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

18VAC95-30-200. Interruption or termination of program.

A. If the program is interrupted because the registered preceptor is unable to serve, the trainee shall notify the board within five 10 working days and shall obtain a new preceptor who is registered with the board within 60 days.

1. Credit for training shall resume when a new preceptor is obtained and approved by the board.
2. If an alternate training plan is developed, it shall be submitted to the board for approval before the trainee resumes training.

B. If the training program is terminated prior to completion, the trainee and the preceptor shall each submit a written explanation of the causes of program termination to the board within five working days. The preceptor shall also submit all

required monthly progress reports completed prior to termination.

VA.R. Doc. No. R15-3608; Filed September 8, 2014, 11:27 a.m.

REAL ESTATE APPRAISER BOARD

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 Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-30, 18VAC130-20-60, 18VAC130-20-110, 18VAC130-20-220, 18VAC130-20-230).**

Statutory Authority: §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

Effective Date: January 1, 2015.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

This action amends the board's regulations to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203) on July 21, 2010. Pursuant to this amendment, § 1116 of FIRREA (12 USC § 3345) requires trainee appraisers and supervisory appraisers to meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board (AQB) of The Appraisal Foundation.

The amendments (i) require licensed residential real estate appraiser license applicants to have an associate's degree or complete 30 semester credit hours of accredited college-level education; (ii) require certified residential real estate appraiser and certified general real estate appraiser license applicants to have a bachelor's degree or higher; (iii) eliminate the requirement that appraiser trainee license applicants pass the licensed residential real estate appraiser license examination; (iv) require new trainee license applicants and their supervising appraisers to complete an AQB-approved course specifically oriented to the requirements and responsibilities of supervising appraisers and appraiser trainees; (v) require new supervising appraisers to be state-certified for at least three years and not have been subject to any disciplinary

action within the past three years that affects the supervising appraisers' legal eligibility to engage in appraisal practice; (vi) clarify the details that must be included in the trainee's experience log; (vii) clarify that, aside from completing the 7-Hour Uniform Standards of Professional Appraisal Practice (USPAP) Update Course, licensees cannot receive credit for completing the same continuing education course twice within one two-year licensure term; (viii) add topics to the list of continuing education courses and clarify who may teach the 7-Hour USPAP Update Course; and (ix) provide that licensees can only complete up to one-half of the continuing education requirement by teaching appraisal courses.

18VAC130-20-30. General qualifications for licensure.

Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential real estate appraiser license shall meet the following qualifications:

1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of Professional and Occupational Regulation or its agent prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Professional and Occupational Regulation or its agent.
3. The applicant shall sign, as part of the application, a statement verifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.
4. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification ~~which that~~ was suspended, revoked or surrendered in connection with a disciplinary action or ~~which that~~ has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
5. The applicant may not have been convicted, found guilty, or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision, by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction.
6. The applicant shall be at least 18 years old.

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7. The applicant shall have successfully completed 150 hours for the licensed residential classification, 200 hours for the certified residential classification, and 300 hours for the certified general classification; of approved real estate appraisal courses, including the ~~15-hour~~ 15-Hour National Uniform Standards of Professional Appraisal Practice course, from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The required core curriculum for the certified general or certified residential real estate appraiser is ~~an associate a bachelor's~~ degree or higher from an accredited college or university. ~~In lieu of the required degree, 21 semester credit hours covering the following subject matter courses: English Composition; Principles of Economics (Micro or Macro); Finance; Algebra, Geometry or higher mathematics; Statistics; Introduction to Computers Word Processing/Spreadsheets; and Business or Real Estate Law.~~ The required core curriculum for the certified general licensed residential real estate appraiser is ~~a bachelor's an associate's~~ degree or higher from an accredited college, junior college, community college, or university. In lieu of the required degree, the licensed residential real estate appraiser applicant must complete 30 semester credit hours covering the following subject matter courses: English Composition; Micro Economics; Macro Economics; Finance; Algebra, Geometry or higher mathematics; Statistics; Introduction to Computers Word Processing/Spreadsheets; Business or Real Estate Law; and two elective courses in accounting; geography; ag-economics; business management; or real estate of college-level education from an accredited college, junior college, community college, or university. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser. The classroom hours required for the certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser.

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

8. The applicant shall, as part of the application for licensure, verify his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In addition, all experience must be supported by adequate

written reports or file memoranda, which shall be made available to the board upon request.

a. Applicants for a licensed residential real estate appraiser license shall have a minimum of 2,000 hours appraisal experience, in no fewer than 12 months. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

b. Applicants for a certified residential real estate appraiser license shall have a minimum of 2,500 hours of appraisal experience obtained during no fewer than 24 months. Hours may be treated as cumulative in order to achieve the necessary 2,500 hours of appraisal experience.

c. Applicants for a certified general real estate appraiser license shall have a minimum of 3,000 hours of appraisal experience obtained during no fewer than 30 months. Hours may be treated as cumulative in order to achieve the necessary 3,000 hours of appraisal experience. At least 50% of the appraisal experience required (1,500 hours) must be in nonresidential appraisal assignments and include assignments ~~which~~ that demonstrate the use and understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties ~~which~~ that do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser ~~which~~ that include the use of the income approach.

9. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination developed or endorsed by the Appraiser Qualifications Board and provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

10. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 5 of this section may be approved for licensure following consideration of their application by the board.

18VAC130-20-60. Qualifications for licensure as an appraiser trainee.

An applicant for licensure as an appraiser trainee shall meet the following educational, ~~experience, and examination~~ requirements in addition to those set forth in subdivisions 1 through ~~5~~ 6 and ~~9~~ 10 of 18VAC130-20-30.

~~1. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.~~

~~2.~~ 1. Within the five-year period immediately preceding application for licensure, the applicant shall have successfully completed 75 hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours shall include the ~~45-hour~~ 15-Hour National Uniform Standards of Professional Appraisal Practice course.

2. Complete an Appraiser Qualifications Board approved course specifically oriented to the requirements and responsibilities of supervising appraisers and appraiser trainees.

3. There is no experience requirement for the appraiser trainee classification.

4. Responsibilities of supervising appraisers are described in this subdivision.

a. The appraiser trainee shall be subject to direct supervision by a supervising appraiser who ~~shall be completed an Appraiser Qualifications Board approved course specifically oriented to the requirements and responsibilities of supervising appraisers and appraiser trainees, has been state certified for at least three years, is in good standing, and has not been~~ subject to any disciplinary action within the last ~~two~~ three years that affects the supervising appraiser's legal eligibility to engage in appraisal practice.

b. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:

(1) Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Reviewing the appraiser trainee appraisal report(s); and

(3) Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of the Uniform Standards of Professional Appraisal Practice for the property type.

c. The appraiser trainee is permitted to have more than one supervising appraiser, but a supervising appraiser may not supervise more than three trainees, at one time, unless a state program in the licensing jurisdiction provides for progress monitoring, supervising certified appraiser qualifications, and supervision and oversight requirements for supervising appraisers.

d. An appraisal experience log shall be maintained jointly by the supervising appraiser and the appraiser trainee. It

is the responsibility of both the supervising appraiser and the appraiser trainee to ensure the appraisal experience log is accurate, current, and complies with the board's requirements. At a minimum, the appraisal log requirements are (i) type of property, (ii) date of report, (iii) address of appraised property, (iv) description of work performed by the appraiser trainee and scope of the review and supervision of the supervising appraiser, (v) number of actual work hours by the appraiser trainee on the assignment, and (vi) the signature and state certification number of the supervising appraiser. Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.

18VAC130-20-110. Qualifications for renewal.

A. As a condition of renewal, and under § 54.1-2014 of the Code of Virginia, all active certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers, resident or nonresident, shall be required to complete continuing education courses satisfactorily within each licensing term as follows:

1. All real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than 28 classroom hours during each licensing term.

2. All real estate appraisers may also satisfy up to one half of an individual's continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes, including but not limited to teaching, program development, or authorship of textbooks.

3. Seven of the classroom hours completed to satisfy the continuing education requirements shall be the National Uniform Standards of Professional Appraisal Practice update course or its equivalent.

4. Aside from complying with the requirement to complete the 7-Hour National USPAP Update Course, or its equivalent, appraisers may not receive credit for completion of the same continuing education course within a licensing term.

B. As a condition of renewal, all licensed real estate appraiser trainees shall meet the continuing education requirements set forth in subsection A of this section.

C. All applicants for renewal of a license shall meet the standards for entry as set forth in subdivisions 1, 3, and 4 of 18VAC130-20-30.

D. Applicants for the renewal of a registration shall meet the requirement for registration as set forth in 18VAC130-20-20.

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E. Applicants for the renewal of a certificate as an instructor shall meet the standards for entry as set forth in 18VAC130-20-80.

F. Licensees applying to activate an inactive license must complete all required continuing education hours that would have been required if the licensee was active prior to application to activate the license.

18VAC130-20-220. Standards for the approval of appraisal educational offerings for continuing education credit.

A. Content.

1. The content of courses, seminars, workshops or conferences ~~which~~ that may be accepted for continuing education credit includes, but is not limited to those topics listed in 18VAC130-20-210 A 2 and below.

Ad valorem taxation

Arbitration, dispute resolution

Courses related to the practice of real estate appraisal or consulting

Development cost estimating

Ethics and standards of professional practice, Uniform Standards of Professional Appraisal Practice

Fair housing

Land use planning, zoning

Management, leasing, timesharing

Property development, partial interests

Real estate financing and investment

Real estate law, easements, and legal interests

Real estate litigation, damages, condemnation

Real estate appraisal related computer applications

Real estate securities and syndication

Developing opinions of real property value in appraisals that also include personal property or business value

Seller concessions and impact on value

Energy efficient items and "green building" appraisals

2. Courses, seminars, workshops or conferences submitted for continuing education credit must indicate that the licensee participated in an educational program that maintained and increased his knowledge, skill and competency in real estate appraisal.

3. Credit toward the classroom hour requirement to satisfy the continuing education requirements shall be granted only where the length of the educational offering is at least two hours and the licensee participated in the full length of the program.

B. Instruction. Although continuing education offerings are not required to be taught by board certified instructors, ~~effective January 1, 2003,~~ the Uniform Standards of Professional Appraisal Practice course must be taught by an ~~instructor certified by the~~ Appraiser Qualifications Board certified instructor who is also a state certified appraiser.

18VAC130-20-230. Procedures for awarding prelicense and continuing education credits.

A. Course credits shall be awarded only once for courses having substantially equivalent content.

B. Proof of completion of such course, seminar, workshop or conference may be in the form of a transcript, certificate, letter of completion or in any such written form as may be required by the board. All courses, seminars and workshops submitted for prelicensure and continuing education credit must indicate the number of classroom hours.

C. Information ~~which~~ that may be requested by the board in order to further evaluate course content includes, but is not limited to, course descriptions, syllabi, or textbook references.

D. All transcripts, certificates, letters of completion or similar documents submitted to verify completion of seminars, workshops or conferences for continuing education credit must indicate successful completion of the course, seminar, workshop or conference. Applicants must furnish written proof of having received a passing grade in all prelicense education courses submitted.

E. All courses, seminars, workshops, or conferences, submitted for satisfaction of continuing education requirements must be satisfactory to the board.

F. Prelicense courses. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent provided that the course is approved by the board, the learner successfully completes a written examination proctored by an official approved by the presenting entity, college, or university, the course meets the requirements for qualifying education established by the Appraiser Qualifications Board, the course is equivalent to the minimum of 15 classroom hours and meets one of the following conditions:

1. The course is presented by an accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines; or

2. The course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either the approval of the Appraisal Qualifications Board through its course approval program or the approval of the board for the content of the course.

G. Continuing education. Distance education courses may be acceptable to meet the continuing education requirement provided that the course is approved by the board, is a minimum of two classroom hours, meets the requirements for

continuing education established by the Appraiser Qualifications Board and meets one of the following conditions:

1. The course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance;
2. The course has been presented by an accredited (Commission on Colleges or regional accreditation association) college or university that offers distance education programs in other disciplines and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation that demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable); or
3. The course has received approval of the ~~International Distance Education Certification Center (IDECC)~~ IDECC for the course design and delivery mechanism and either the approval of the Appraiser Qualifications Board through its course approval program or the approval of the board for the content of the course and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation that demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

~~H. A teacher of appraisal courses may receive education credit for the classroom hour or hours taught. These credits shall be awarded only once for courses having substantially equivalent content.~~

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC130-20)

~~Real Estate Appraiser Board License Application, 40LIC (rev. 12/12).~~

~~Real Estate Appraiser Board Experience Log, 40EXP (rev. 7/10).~~

~~Real Estate Appraiser Board Experience Verification Form, 40EXPVER (rev. 4/09).~~

~~Real Estate Appraiser Board Experience Requirements, 40EXPREQ (rev. 4/10).~~

~~Real Estate Appraiser Board Appraiser Trainee License Application, 40TRLIC (rev. 12/12).~~

~~Real Estate Appraiser Board Trainee Supervisor Verification Form, 40TRSUP (rev. 4/09).~~

~~Real Estate Appraiser Board Business Registration Application, 40BUS (rev. 12/09).~~

~~Real Estate Appraiser Board Pre License Course Application, 40CRS (rev. 4/09).~~

~~Real Estate Appraiser Board Instructor Certificate Application, 40INSTR (rev. 5/09).~~

~~Real Estate Appraiser Board Pre License Renewal Course Application, 40RENCRS (rev. 2/09).~~

~~Real Estate Appraiser Board Activate Application, 40ACT (rev. 4/09).~~

~~Real Estate Appraiser Board Temporary Appraiser License Application, 40TLIC (rev. 6/10).~~

[Real Estate Appraiser Board Appraiser License Application, A461-4001LIC-v2 \(rev. 1/15\)](#)

[Real Estate Appraiser Board Experience Log, A461-40EXP-v1 \(rev. 7/13\)](#)

[Real Estate Appraiser Board Appraiser Trainee License Application, A461-4004TRLIC-v2 \(rev. 1/15\)](#)

[Real Estate Appraiser Board Trainee Supervisor Verification Form, A461-40TRSUP-v2 \(rev. 1/15\)](#)

[Real Estate Appraiser Board Business Registration Application, A461-4008BUS-v1 \(rev. 7/13\)](#)

[Real Estate Appraiser Board Pre-License Education Course Application, A461-4006RENCRS-v1 \(rev. 7/13\)](#)

[Real Estate Appraiser Board Instructor Certification Application, A461-4002INSTR-v1 \(rev. 7/13\)](#)

[Real Estate Appraiser Board Pre-License Education Course Renewal Application, A461-4006RENCRS-v1 \(rev. 7/13\)](#)

[Real Estate Appraiser Board Activate License Application, A461-4001AT-v1 \(rev. 7/13\)](#)

[Real Estate Appraiser Board Temporary Appraiser License Application, A461-4005TLIC-v1 \(rev. 7/13\)](#)

VA.R. Doc. No. R15-4118; Filed September 12, 2014, 4:07 p.m.



Regulations

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: 21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-280, 21VAC5-20-285).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

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

Public Comment Deadline: November 5, 2014.

Agency Contact: Hazel Stewart, Section Chief, Securities Division, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9685, FAX (804) 371-9911, or email hazel.stewart@scc.virginia.gov.

Summary:

The proposed amendments make several changes to 21VAC5-20-280 that previously were adopted in 2013. Overall, the revisions change 21VAC5-20-280 to more closely match the language of the rule prior to the amendments in 2013. The amendments (i) remove several provisions of 21VAC5-20-280 A governing the conduct of broker-dealers and broker-dealer agents and create a new subsection that is similar to the former 21VAC5-20-280 E that was removed in 2013, (ii) reintroduce language to specify that certain provisions apply only in connection with the solicitation of a purchase or sale of over-the-counter unlisted non-NASDAQ equity securities, and (iii) include typographical and stylistic changes and corresponding revisions to 21VAC5-20-285.

AT RICHMOND, SEPTEMBER 12, 2014

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2014-00041

Ex Parte: In the matter of

Adopting a Revision to the Rules

Governing the Virginia Securities Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall

have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code, provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website, www.scc.virginia.gov/case.

On June 3, 2013, the Commission adopted numerous changes to its Rules governing broker-dealers, broker-dealer agents and agents of the issuer, 21 VAC 5-20-10 et seq. ("Rules").¹ These changes included substantial revisions to numerous chapters of Title 21 of the Virginia Administrative Code entitled "Securities Act Rules," including Chapter 20 concerning broker-dealers. As part of these revisions, changes were made to Rule 21 VAC 5-20-280, titled "Prohibited Business Conduct," which governs broker-dealer and agent business conduct.

Significant changes to Rule 280 that were adopted in 2013 included the following:

- Repealing Rule 280 E;
- Combining into one subdivision (Rule 280 A (15)) examples of known broker-dealer manipulative, deceptive, or fraudulent practices, including several provisions from former Rule 280 E; and
- Adding new regulations under Rule 280 A, including subdivisions A (32) through A (39), governing broker-dealer business conduct and that included revised provisions previously found in former Rule 280 E (6).

The changes also revised the language of some of the provisions formerly appearing in Rule 280 E. For example, the changes to Rule 280 A (32) through (39) omitted prefatory language of former Rule 280 (E) (6) that stated:

Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities.

Following adoption of the revisions in 2013, the Division of Securities and Retail Franchising ("Division") was alerted to a potential federal preemption problem regarding Rule 21 VAC 5-20-280 A (32). Rule 280 A (32) states as follows:

No broker-dealer who is registered or required to be registered shall . . . [f]ail to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions; . . .

This rule – which was a revised provision of former Rule 280 E (6) (a) – requires disclosures concerning compensation both at the time of solicitation and on the confirmation of sale for the transaction. The concern raised with the Division was that Rule 280 A (32) creates a writing and record requirement at the point of confirmation of sale that may be in conflict with or may exceed requirements under federal securities law and the Securities and Exchange Commission's ("SEC") rules. The concern also noted that the preemption issue was exacerbated because Rule 280 A (32) omitted the prefatory language under former Rule 280 E (6) that had limited application of this rule to certain transactions.

No comments were filed addressing this rule or the possible preemption issue following the Commission's issuance of the notice order proposing the amendment to Rule 21 VAC 5-20-280 A. After consulting with Division's counsel, however, it was concluded that Rule 21 VAC 5-20-280 A (32) may be preempted under the applicable provisions of the National Securities Markets Improvements Act ("NSMIA"), 15 U.S.C. § 78o (i)(1).

On December 16, 2013, the Division issued a policy statement addressing enforcement of Rule 21 VAC 5-20-280 A (32). The policy statement stated that, until such time as the Commission amended the rule, the Division would not audit for compliance or pursue enforcement against any registered broker-dealer agent for failing to comply with the written disclosure requirements of the rule. The policy statement further advised that registered broker-dealers and their agents may operate as they had prior to the adoption of Rule 21 VAC 5-20-280 A (32) with respect to compensation disclosures on sales confirmation related to specific securities transactions consistent with SEC rules.

The Division, however, noted that broker-dealer and broker-dealer agents were not relieved of their obligations under § 13.1-502 of the Act to make adequate material disclosures relating to agent compensation in a securities transaction at the point of sale. The Division also noted that the policy statement should not be construed as precluding the Division from investigating or pursuing enforcement against any broker-dealer or broker-dealer agent for failing to make adequate material disclosures relating to agent compensation at the point of sale.

In conjunction with issuance of the policy statement in December 2013, the Division formed a working group with representatives of certain registered broker-dealers, the Securities Industry and Financial Markets Association, and the Financial Services Institute to work through NSMIA issues concerning Rule 21 VAC 5-20-280 A (32) as well as other similar issues raised by the revisions to Rule 280 adopted in 2013.

As a result of ongoing discussion within this working group, the Division identified several concerns regarding certain provisions of Rule 280 A, including Rule 280 A (32). These concerns included:

- Potential preemption issues and the expansion of the scope of Rule 280 A (32) through (39) following the omission of the prefatory language of former Rule 280 E;
- Compliance issues raised by the industry to satisfy Rule 280 A (32);
- Revised language of certain provisions in Rule 280 A that differed from the language of similar provisions in former Rule 280 E; and
- The lack of uniformity and consistency between Rule 280 and other, similar provisions adopted by the SEC and various states.

The Division proposes to amend Rule 21 VAC 5-20-280 to address these concerns. The proposed changes include:

- (a) removing certain provisions of Rule 280 A, including parts of Rule 280 A (15) and Rule 280 A (32) through (39), that were formerly part of Rule 280 E;
- (b) placing the removed provisions from Rule 280 A into a new proposed Rule 280 D;
- (c) adding the prefatory language under former Rule 280 E (6) to specify that the subject provisions apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities;
- (d) Revising the language of certain provisions under current Rule 280 A (15) (D) (and which the Division proposes moving to Rule 280 D) to more closely match the language of similar provisions under former Rule 280 E; and
- (e) Making certain typographical and stylistic revisions.

The Division also proposes to make conforming amendments to Rule 21 VAC 5-20-280 B (6) and Rule 21 VAC 5-20-285 B that include references to provisions in Rule 280 A for which amendments are proposed.

Through these proposed amendments, the Division intends to avoid the possible preemption issues raised regarding the current rule. Additionally and in the interest of uniformity, the proposed change will harmonize the current rule with other similar rules adopted in other states. Finally, the SEC and the North American Securities Administrators Association ("NASAA") are examining the adequacy of disclosure of certain fees charged by broker-dealers related to certain securities transactions by their customers. Rather than abide by the current rule that ultimately may conflict with proposals by the SEC and NASAA, the Division recommends amending Rule 21 VAC 5-20-280 to make it consistent with the SEC's regulations and NASAA's model rules in this area pending any future change.

Accordingly, the Division has submitted to the Commission proposed revisions to Rule 21 VAC 5-20-280 and Rule 21 VAC 5-20-285 of the Virginia Administrative Code.

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The Division has recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, mail, or e-mail request and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules and requests for hearing with the reasons stated therefore must be received by November 5, 2014.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before November 5, 2014. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2014-00041. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons also may request a copy of the proposed revisions from the Division by telephone, mail, or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Director of the Division of Securities and Retail Franchising, who shall forthwith provide notice of this Order via U.S. mail or e-mail to any interested persons as he may designate.

¹ Ex Parte: In the Matter of Adopting a Revision to the Rules Governing the Virginia Securities Act, Case No. SEC-2012-00038, 2013 S.C.C. Ann. Rept 473, Order Adopting Amended Rules, (May 13, 2013).

21VAC5-20-280. Prohibited business conduct.

A. Every broker-dealer is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. The acts and practices described below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer. The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;
4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;
5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;
6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by FINRA Rule 2264;
7. Fail to segregate customers' free securities or securities held in safekeeping;
8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly

after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, by the following means: (i) hard copy prospectus delivery or (ii) electronic prospectus delivery.

When a broker-dealer delivers a prospectus electronically, it must first allow its clients to affirmatively opt-in to the program. The ~~acknowledgement~~ acknowledgment of the opt-in may be by any written or electronic means, but the broker-dealer is required to acknowledge the opt-in. For any client that chooses not to opt-in to electronic delivery, the broker-dealer shall continue to deliver to the client a hard copy of the prospectus;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. ~~Offer~~ Effect any transaction in, or induce the purchase or sale of, or effect any transaction in, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

~~d. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;~~

~~e. Contradicting or negating the importance of any information contained in a prospectus or other offering materials that would deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner;~~

~~f. Leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security;~~

~~g. Engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;~~

~~h. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities;~~

~~i. Effecting any transaction in or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance~~

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including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts;

~~j. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act;~~

~~k. Failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer;~~

~~l. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited; or~~

~~m. Failing to comply with the following provisions in connection with the solicitation of a purchase or sale of a designated security:~~

~~(1) Failing to disclose to the customer the bid and ask price at which the broker dealer effects transactions with individual, retail customers of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or~~

~~(2) Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:~~

~~(a) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more;~~

~~(b) Transactions that are not recommended by the broker-dealer or agent;~~

~~(c) Transactions by a broker dealer: (i) whose commissions, commission equivalents, and mark ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission equivalents, and mark ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months; and~~

~~(d) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section;~~

~~(3) For purposes of this section, the term "designated security" means any equity security other than a security:~~

~~(a) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;~~

~~(b) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;~~

~~(c) Issued by an investment company registered under the Investment Company Act of 1940;~~

~~(d) That is a put option or call option issued by The Options Clearing Corporation; or~~

~~(e) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within no less than 15 months that the broker dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person; and~~

~~(i) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or~~

~~(ii) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.~~

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede

or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks;

25. In transactions subject to breakpoints, fail to:

a. Utilize advantageous breakpoints without reasonable basis for their exclusion;

b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or

c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction, and apprise the customer of the breakpoint opportunities;

26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales ~~and/or~~ or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales ~~and/or~~ or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

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(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;

27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the NASDAQ system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the securities offered or sold, which shall include, but not be limited to, ascertaining the risks associated with investing in the respective security;

31. Allow any person to represent or utilize its name as a trading platform without conspicuously disclosing the name of the registered broker-dealer in effecting or attempting to effect purchases and sales of securities;

~~32. Fail to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions;~~

~~33. Fail to disclose, both at the time of solicitation and on the confirmation in connection with a principal transaction, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer;~~

~~34. Conduct sales contests in a particular security without regard to an investor's suitability;~~

~~35. Fail or refuse to promptly execute sell orders in connection with a principal transaction after a solicited purchase by a customer;~~

~~36. Solicit a secondary market transaction when there has not been a bona fide distribution in the primary market;~~

~~37. Compensate an agent in different amounts for effecting sales and purchases in the same security;~~

~~38. Fail to provide each customer with a statement of account with respect to all securities in the account, containing a value for each such security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than three months;~~

~~39. Fail to comply with any applicable provision of the FINRA Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC; or~~

~~40.~~ 32. Engage in any conduct that constitutes a dishonest or unethical practice including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization

of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, ~~or 32, 34, 35, 36, 39, or 40~~ of this section;

7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C; or

8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered when representing the dealer in effecting or attempting to effect the purchases or sales of securities.

C. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

D. The purpose of this subsection is to identify practices in the securities business that are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents who are registered or required to be registered.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time,

when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of over the counter (OTC) unlisted non-NASDAQ equity securities:

a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.

c. Conducting sales contests in a particular security.

d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

7. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

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10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the FINRA Rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission

conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of \$4 million as demonstrated by financial statements dated within no less than 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

21VAC5-20-285. Customer notice for designated securities.

A. Broker-dealers that solicit the purchase and sale of designated securities shall provide the following notice to customers:

IMPORTANT CUSTOMER NOTICE-READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK price and the spread?

A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you

bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares X \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$50 (100 shares X \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or FINRA.

B. For the purpose of this section, the term "designated security" shall be defined as in subdivision A 15 m 3 under 21VAC5-20-280 D 13 c.

VA.R. Doc. No. R15-4148; Filed September 15, 2014, 2:57 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 27 (2014)

Facilitating Employee Workplace Giving and Volunteerism

Importance of the Issue

The Commonwealth of Virginia has a dedicated interest in assisting its employees with charitable giving through the provision of an annual single state employee campaign, the Commonwealth of Virginia Campaign (CVC). This vital campaign offers an opportunity for employees to maximize contributions to a wide range of organizations, while minimizing the disruption to the workplace. Employees of the Commonwealth have demonstrated that they share civic responsibility and generosity with other members of their communities, the Commonwealth, and the United States by contributing more than \$3.6 million for the 2013 campaign and over \$41 million since 1998.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-103A and 2.2-104 of the Code of Virginia and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby authorize the continuation of an annual Commonwealth of Virginia Campaign.

The Commonwealth of Virginia Campaign will provide a responsive and convenient system to facilitate charitable giving. The goals of this campaign will be to:

1. Provide assistance to non-profit organizations in serving the needs of the community;
2. Facilitate an efficient and cost-effective vehicle by which state employees can voluntarily contribute to charity;
3. Recognize the generosity of the state workforce;
4. Ensure fiscal accountability;
5. Consolidate all fundraising solicitations into one campaign, and prohibit interruptions in the state workplace from outside fundraising;
6. Encourage employees to volunteer their time and share their talents in their schools and communities.

The Commonwealth of Virginia Campaign will be conducted annually in all state agencies through the participation and leadership of two groups of state employees.

1. The CVC Advisory Council (CVCAC): the state employee committee that oversees, articulates, and reviews the general campaign's goals and procedures. This committee, whose members serve three-year terms, includes one representative from each cabinet secretariat, the legislative branch, the judicial branch, seven regional representatives, and three state employees chosen at-large.

2. Agency Coordinators: appointed by their agency head and tasked with organizing the campaign within the workplace.

The Director of Human Resources Management shall serve as the chairperson of the Advisory Council and will lead the development and implementation of operating procedures for the program's organization and administration. These procedures shall be in concert with the goals of the program as set forth in this Executive Order.

Effective Date of the Executive Order

This Executive Order replaces Executive Order Number 26 (2010), issued by Governor Robert F. McDonnell. This Executive Order shall be effective upon its signing and shall remain in full force and effect until rescinded by further executive order.

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

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Development of Implementation Plans - Hampton Roads Planning District Commission

The Department of Environmental Quality (DEQ), the Hampton Roads Planning District Commission, the City of Hampton, York County, the City of Newport News, and the City of Poquoson invite citizens to a public meeting to discuss the development of implementation plans (IPs) to address fecal bacteria impairments to shellfishing and recreation in the Back and Poquoson River watersheds. Total maximum daily load (TMDL) studies for the impairments were approved by EPA in 2014 and are available on DEQ's website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

The implementation plans will identify ways to meet the pollutant reductions outlined in the TMDL studies.

The first public meeting to begin development of the TMDL implementation plans for the Back and Poquoson River watersheds will be held Wednesday, October 22, 2014, 5:30 p.m., Sandy Bottom Nature Park, 1255 Big Bethel Road, Hampton, VA 23666.

The purpose of the meeting is to discuss the proposed reductions in bacteria needed in the affected watersheds and to solicit public participation for the IP development. The IPs will include the corrective actions needed to reduce bacteria and the associated costs, benefits, and environmental impacts. The IPs will also provide measurable goals and a timeline of expected achievement of water quality objectives. A fact sheet on the development of the IPs is available upon request.

How to comment: The public comment period on development of the IPs will end on November 21, 2014. Oral comments will be accepted and addressed at the public meeting. Additional questions or information requests should be addressed to Dana Gonzalez. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Dana Gonzalez at DEQ or Jill Sunderland at HRPDC:

Dana Gonzalez
TMDL NPS Coordinator
Department of Environmental Quality
Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462
Telephone (757) 518-2137
FAX (757) 518-2009
dana.gonzalez@deq.virginia.gov

Jill Sunderland
Water Resources Planner
Hampton Roads Planning District Commission
723 Woodlake Dr.
Chesapeake, VA 23320
Telephone (757) 420-8300
FAX (757) 523-4881
jsunderland@hrpdcva.gov

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on September 4, 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 Six (14)

Virginia Lottery's "Cash & Gas" Promotion Final Rules for Operation (effective October 14, 2014)

Director's Order Number One Hundred Seven (14)

Virginia Lottery's "The Big \$20 Haul" Promotion Final Rules for Operation (effective October 14, 2014)

Director's Order Number One Hundred Ten (14)

Virginia's Instant Game Lottery 1519 "Casino Cash" Final Rules for Game Operation (effective September 2, 2014)

Director's Order Number One Hundred Twenty (14)

This order rescinds Director's Order Number Eighty-Five (14): "\$1,000,000 Money Ball Retailer Incentive" Final Requirements for Program Operation (effective September 2, 2014)

DEPARTMENT 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 Department of Medical Assistance Services is conducting a periodic review and small business impact review of Part III, HIV Premium Assistance Program (12VAC30-100-250 through 12VAC30-100-360) of 12VAC30-100 (State Programs).

The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 6, 2014, and ends October 27, 2014.

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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, Policy Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, or email victoria.simmons@dmas.virginia.gov.

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

STATE WATER CONTROL BOARD

Proposed Consent Order for the Town of Kilmarnock

An enforcement action has been proposed for Greensville County for alleged violations at the Kilmarnock Wastewater Treatment Plant at 817 Waverly Avenue, Kilmarnock, VA. The State Water Control Board proposes to issue a consent special order to the Town of Kilmarnock to address noncompliance with State Water Control Law. 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>. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 6, 2014, through November 6, 2014.

Proposed Consent Order for King George County Service Authority

Enforcement actions have been proposed for the King George County Service Authority for violations of State Water Control Law and regulations in King George County. The State Water Control Board proposes to issue consent orders to resolve violations at the Dahlgren District Wastewater Treatment Plant, the Purkins Corner Wastewater Treatment Plant, and the Oakland Park Wastewater Treatment Plant. Descriptions of the proposed actions are available at the Department of Environmental Quality office named below or online at <http://www.deq.virginia.gov>. Sarah Baker will accept comments by email at sarah.baker@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 October 7, 2014, through November 6, 2014.

Water Quality Management Planning Regulation

Notice of action: The State Water Control Board is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the Water Quality Management Planning Regulation (9VAC25-720) is to adopt 36 total maximum daily load (TMDL) wasteload allocations (WLAs).

Public comment period: October 6, 2014, through November 6, 2014.

Description of proposed action: DEQ staff will propose amendments of the Water Quality Management Planning Regulation for the James River Basin (9VAC25-720-60 A), Roanoke River Basin (9VAC25-720-80 A), Chowan River – Dismal Swamp Basin (9VAC25-720-100), Chesapeake Bay-Small Coastal-Eastern Shore Basin (9VAC25-720-110 A), and York River Basin (9VAC25-720-120 A). Statutory authority for promulgating these amendments can be found in subdivision 10 of § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend the following: (i) that the board approve the TMDL reports as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments; (ii) that the board authorize inclusion of the TMDL reports in the appropriate Water Quality Management Plan; and (iii) that the board adopt 36 TMDL wasteload allocations as part of the Water Quality Management Planning Regulation in accordance with § 2.2-4006 A 4 c and B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 (§ 2.2-4006 et seq.) of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL WLAs can receive State Water Control Board approval prior to EPA approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. With the exception of the Back Bay, North Landing River, and Pocatoy River watersheds TMDL, which was approved by EPA on June 26, 2014, the other six TMDL reports in this public notice have been reviewed by EPA for required TMDL elements, however, remain in draft form awaiting State Water Control Board approval. The EPA approved report can be found at

<http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx> and the draft reports can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>.

Affected waterbodies and localities:

James River Basin (9VAC25-720-60 A):

1. "Benthic Total Maximum Daily Load (TMDL) Development for the North Creek Watershed"

- The North Creek TMDL, located in Fluvanna County, proposes sediment reductions for the watershed and provides a sediment wasteload allocation of 7.29 tons/yr.
- The North Creek TMDL, located in Fluvanna County, proposes total phosphorus reductions for the watershed and provides a total phosphorus wasteload allocation of 187.3 lbs/yr.

Roanoke River Basin (9VAC25-720-80 A):

2. "TMDLs for Benthic Impairments in Little Otter River (Sediment and Total Phosphorus), Johns Creek, Wells Creek, and Buffalo Creek (Sediment)"

- The Little Otter River, Johns Creek, Wells Creek, and Buffalo Creek Watersheds TMDL, located in the Town of Bedford and Bedford and Campbell Counties, proposes sediment reductions for the Lower Buffalo Creek, Upper Buffalo Creek, Lower Little Otter River, Upper Little Otter River, Johns Creek, and Wells Creek Watersheds and provides sediment wasteload allocations of 13.99 tons/yr, 25.51 tons/yr, 172.81 tons/yr, 24 tons/yr, 32.86 tons/yr, and 1.49 tons/yr.
- The Little Otter River, Johns Creek, Wells Creek, and Buffalo Creek Watersheds TMDL, located in the Town of Bedford and Bedford and Campbell Counties, proposes total phosphorus reductions for the Lower Little Otter River Watershed and provides a total phosphorus wasteload allocation of 2209.2 lbs/yr.

3. "Bacteria TMDL Development for Hyco River, Aarons Creek, Little Buffalo Creek, and Beech Creek Located in Halifax and Mecklenburg Counties, Virginia"

- The Hyco River, Aarons Creek, Little Buffalo Creek, and Beech Creek Watersheds TMDL, located in Halifax and Mecklenburg Counties, proposes bacteria reductions for the Hyco River, Aarons Creek, Beech Creek, and Little Buffalo Creek Watersheds and provides E. coli wasteload allocations of 2.72E+12 cfu/yr, 3.54E+11 cfu/yr, 5.06E+10 cfu/yr, and 1.02E+11 cfu/yr.

4. "Sediment TMDL Development for the Coleman Creek Watershed Located in Halifax County, Virginia"

- The Coleman Creek Watershed TMDL, located in Halifax County, proposes sediment reductions for the Coleman Creek Watershed and provides a sediment wasteload allocation of 22.3 tons/yr.

Chowan River – Dismal Swamp Basin (9VAC25-720-100):

5. "Total Maximum Daily Load Development for the Back Bay, North Landing River, and Pocaty River Watersheds"

- The Back Bay, North Landing River, and Pocaty River Watersheds TMDL, located in the Cities of Chesapeake and Virginia Beach, proposes phosphorus reductions for Pocaty River and Ashville Bridge Creek Watersheds and provides phosphorus wasteload allocations of 129.39 kg/yr and 34.46 kg/yr.
- The Back Bay, North Landing River, and Pocaty River Watersheds TMDL, located in the Cities of Chesapeake and Virginia Beach, proposes E. coli reductions for North Landing River and Pocaty River Watersheds and provides E. coli wasteload allocations of 6.25E+12 cfu/yr and 2.58E+12 cfu/yr.
- The Back Bay, North Landing River, and Pocaty River Watersheds TMDL, located in the Cities of Chesapeake and Virginia Beach, proposes Enterococci reductions for Beggars Bridge Creek, Ashville Bridge Creek and Muddy Creek, and upper and lower Hell Point Creek Watersheds and provides Enterococci wasteload allocations of 6.79E+11 cfu/yr, 7.95E+11 cfu/yr, and 2.04E+12 cfu/yr.

Chesapeake Bay-Small Coastal-Eastern Shore Basin (9VAC25-720-110 A):

6. "Bacteria TMDL Development in Red Bank Creek and Machipongo River, Virginia"

- The Red Bank Creek and Machipongo River Watersheds TMDL, located in Accomack and Northampton Counties, proposes E. coli reductions for the Red Bank Creek (riverine) Watershed and provides an E. coli wasteload allocation of 1.08E+8 cfu/yr.
- The Red Bank Creek and Machipongo River Watersheds TMDL, located in Accomack and Northampton Counties, proposes Enterococci reductions for the Red Bank Creek (estuarine) and Machipongo River (estuarine) and provides Enterococci wasteload allocations of 3.93E+6 cfu/yr and 9.03E+6 cfu/yr.
- The Red Bank Creek and Machipongo River Watersheds TMDL, located in Accomack and Northampton Counties, proposes fecal coliform reductions for the Red Bank Creek (shellfish) and Machipongo River (shellfish) and provides fecal

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coliform wasteload allocations of 5.10E+11 counts/yr and 2.04E+12 counts/yr.

York River Basin (9VAC25-720-120 A):

7. "E. coli TMDL Development for The Pamunkey River and Tributaries, VA"

- The Pamunkey River Watershed TMDL, located in Hanover, Louisa, King William, Caroline, Spotsylvania, and New Kent Counties, proposes bacteria reductions for the Northeast Creek, Upper Little River, Upper Pamunkey River/North Anna River, Middle Pamunkey River, Lower Pamunkey River, South Anna River (VAN-F01R-01), South Anna River (VAN-F02R-01), Taylors Creek (VAN-F03R-01), South Anna River (VAP-F04R-02), and South Anna River (VAP-F04R-01) Watersheds and provides E. coli wasteload allocations of 2.34E+12 cfu/yr, 5.61E+12 cfu/yr, 3.25E+13 cfu/yr, 2.36E+13 cfu/yr, 5.38E+13 cfu/yr, 4.92E+12 cfu/yr, 7.50E+12 cfu/yr, 3.66E+10 cfu/yr, 6.02E+12 cfu/yr, and 7.74E+12 cfu/yr.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports are available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx> for the EPA approved report, <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx> for the draft reports, and by contacting the DEQ representative listed below for any report. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4032, or email elizabeth.mckercher@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th

Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

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

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

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

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: 9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity.

Publication: 30:11 VA.R. 1467-1550 January 27, 2014.

Correction to Final Regulation:

Page 1473, column 1, 9VAC25-151-50, Table 50-2, SIC Code 2421 row, Activity Represented column, should read: "General Sawmills and ~~Planning~~ Planing Mills."

Page 1485, column 2, 9VAC25-151-70 Part I, Table 70-3, Monitoring Frequency column, both rows, should read: "~~1/year~~ 1/6 months"

Page 1500, column 2, 9VAC25-151-80, B 2 c (7), line two, should read: "under Part III B-4 3 c have occurred;"

Page 1504, column 2, 9VAC25-151-80 D 2 a (5), end of line three and beginning of line four should read: "or a VPDES permit"

VA.R. Doc. No. R13-3382; Filed September 15, 2014, 1:50 p.m.