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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair, **Gregory D. Habeeb**; **Ryan T. McDougle**; **Pamela S. Baskerville**; **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>).

March 2015 through March 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
32:1	August 19, 2015	September 7, 2015
32:2	September 2, 2015	September 21, 2015
32:3	September 16, 2015	October 5, 2015
32:4	September 30, 2015	October 19, 2015
32:5	October 14, 2015	November 2, 2015
32:6	October 28, 2015	November 16, 2015
32:7	November 11, 2015	November 30, 2015
32:8	November 24, 2015 (Tuesday)	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 (Monday)	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Initial Agency Notice

Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing.

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

Name of Petitioner: Elena Aponte-Bostwick.

Nature of Petitioner's Request: To accept applicants for licensure by endorsement who were licensed in Puerto Rico by an examination comparable to the NCLEX.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to amend 18VAC90-20-200 was posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. It has also been filed with the Register of Regulations for publication on March 23, 2015. Comment on the petition from interested parties is requested until April 22, 2015. Following receipt of all comments on the petition, the request will be considered by the Board of Nursing at its meeting on May 19, 2015, to decide whether to make any changes to the regulatory language. After that meeting, the board's decision will be published in the Virginia Register and posted on the Virginia Regulatory Town Hall.

Public Comment Deadline: April 22, 2015.

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

VA.R. Doc. No. R15-26; Filed February 24, 2015, 2:26 p.m.

BOARD OF VETERINARY MEDICINE

Agency Decision

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

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

Name of Petitioner: Mark Finkler for the Virginia Veterinary Medical Association.

Nature of Petitioner's Request: To define the term "veterinary specialist" and prohibit its use unless the veterinarian is certified by an American Veterinary Medical Association-recognized specialty organization or an organization recognized by the American Board of Veterinary Specialists or any other board-approved organization.

Agency's Decision: Request granted.

Statement of Reason for Decision: The Virginia Board of Veterinary Medicine accepted the petition for rulemaking with publication of a Notice of Intended Regulatory Action

(NOIRA) to amend 18VAC150-20-140 on unprofessional conduct relating to advertising or representing oneself as a specialist with the required credential.

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

VA.R. Doc. No. R15-16; Filed March 2, 2015, 12:23 p.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 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Proposed Regulation

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

Title of Regulation: 1VAC20-20. General Administration (amending 1VAC20-20-10, 1VAC20-20-30, 1VAC20-20-60).

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

Public Hearing Information:

June 23, 2015 - 2 p.m. - Washington Building, Room B-27, 1100 Bank Street, Richmond, VA 23219

Public Comment Deadline: May 15, 2015.

Agency Contact: Martha Brissette, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, or email martha.brissette@elections.virginia.gov.

Summary:

Chapter 542 of the 2013 Acts of Assembly restructured the State Board of Elections and established the Commissioner of Elections as agency head. The amendments update the regulation accordingly.

1VAC20-20-10. Definitions.

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

"Board" means the Virginia State Board of Elections.

"Secretary" means the Secretary of the State Board of Elections.

"Commissioner" means the Commissioner of Elections. Unless the context requires otherwise, all references to the secretary in forms, regulations, and guidance documents prepared before July 1, 2014, shall include the commissioner.

1VAC20-20-30. Organization of State Board of Elections; seal.

A. The board shall have a chairman and a vice-chairman of the board, in addition to the ex-officio secretary. The chairman shall preside at all meetings and perform the usual functions of a presiding officer and such other duties as are imposed by these regulations or from time to time by the

board. In the chairman's absence, the vice-chairman shall perform these functions and duties. Each member, ~~except the secretary,~~ shall receive a per diem and expenses for attendance. Expenses shall be reported on forms approved by the Department of Accounts. The secretary is authorized to sign the vouchers for the payment of such expenses.

~~B. The secretary shall be authorized and it shall be the secretary's duty to employ such assistants and to purchase such equipment and supplies as are necessary from time to time, subject to the provisions of the law creating the board and the provisions of the laws and rules relating to the budgetary and personnel systems. The secretary or secretary's designee is authorized to execute necessary vouchers for the payment of the salaries of such assistants and for equipment and supplies so secured.~~

~~C. B.~~ The secretary commissioner is authorized and directed to perform all duties of a routine and administrative character imposed upon the board by the law creating the same and other such duties delegated to the secretary commissioner by the board.

~~D. C.~~ The secretary commissioner is authorized to do all things necessary to the proper execution of the law creating and governing the board and in the performance of the duties imposed upon it insofar as the same are not from their nature such as can be performed only by the board in its corporate capacity.

~~E. D.~~ The secretary commissioner is authorized and directed to consult with and obtain the advice of the Attorney General, on behalf of and in the name of the board, whenever in the secretary's commissioner's judgment occasion arises.

~~F. E.~~ Routine and informal action of the board or of the secretary commissioner within the scope of the secretary's commissioner's authority may be evidenced merely by the signature of the secretary commissioner.

~~G. F.~~ Two members of the board shall constitute a quorum for the transaction of business at any duly constituted meeting.

~~H. G.~~ Notice of each meeting of the board shall be given to all board members either by the secretary or the member calling the meeting at least three business days prior to the meeting except in the case of an emergency as defined in § 2.2-3701 of the Code of Virginia. Notice shall be given to the public as required by § 2.2-3707 of the Code of Virginia. All meetings shall be conducted in accordance with the requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). All meetings

shall be open to the public unless the board goes into a closed meeting pursuant to § 2.2-3711 of the Code of Virginia.

¶ H. A record of formal official and definitive actions of the board shall be preserved in a record book which may be bound or loose leaf.

¶ I. The secretary shall keep the seal of the board and affix the seal to evidence formal action of the board.

1VAC20-20-60. Delegations to ~~Secretary of State Board Commissioner~~ of Elections.

A. In addition to the authority described in 1VAC20-20-30, the secretary commissioner has the delegations of authority to the secretary detailed in the board's ~~minutes of December 2, 2004, as amended September 14, 2010~~ Virginia State Board of Elections: Delegated Duties and Responsibilities, undated, and Addendum to Board Policy 2004-007a - Delegation of Board Authority, August 16, 2011. Board staff (i) may update that listing to correct citations and (ii) shall post the list to the Internet in order that additional delegations or other modifications may be proposed to the board by any interested person.

B. The secretary commissioner is authorized to prescribe the paper ballot reconciliation form under § 24.2-666 of the Code of Virginia and to develop, maintain, and prepare instructions for the operation of poll equipment before, during, and after the closing of the polls and in preparation of the statements of results.

C. The secretary commissioner shall monitor and control the quality and cost of the copies of Title 24.2 of the Code of Virginia and other election materials that the board provides to electoral boards for use at each precinct.

D. Subject to the board's policy oversight, the secretary commissioner has authority to conduct the board's administrative and programmatic operations and to discharge the board's duties consistent with specific delegations of authority.

E. The secretary commissioner is authorized to establish and maintain a central repository of forms and instructions approved for use in conducting elections. The forms and instructions shall be organized following a standard naming convention consisting of name taken from the first descriptive line, a statutory or other authority identifier, and revision date.

DOCUMENTS INCORPORATED BY REFERENCE (1VAC20-20)

[Security Requirements for Cryptographic Modules, FIPS PUB 140-2, issued May 25, 2001, including change notices through December 3, 2002, National Institute of Standards and Technology, U.S. Department of Commerce](#)

[Virginia State Plan - 2012, Help America Vote Act of 2002, adopted March 2012, Virginia State Board of Elections](#)

[Help America Vote Act of 2002 Performance Goals, Virginia State Board of Elections, June 19, 2006 \(Virginia State Board of Elections Policy 2006-004\)](#)

[State Board of Election Minutes of December 2, 2004, as amended September 14, 2010](#)

[Delegated Duties and Responsibilities, Virginia State Board of Elections, undated](#)

[Addendum to Board Policy 2004-007a, Delegation of Board Authority, Virginia State Board of Elections, August 16, 2011](#)

VA.R. Doc. No. R15-4077; Filed March 4, 2015, 9:54 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

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

Final Regulation

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-40).**

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

Effective Date: March 1, 2015.

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

Summary:

The amendments limit the use of fish pots by any individual who is an active hard crab pot or peeler pot fisherman, except under certain conditions, and set the time period for the fish pot prohibition as March 12 through 16.

4VAC20-270-40. Season limits.

A. In 2014 and 2015, the lawful seasons for the commercial harvest of crabs by crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be March 17 through September 15 in 2014 and May 1 through November 30 in 2015.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot in any tidal waters of

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Virginia from December 1, 2014, through March 16, 2015. It shall be unlawful for any person knowingly to place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot, in any tidal waters of Virginia from September 16, 2014, through April 30, 2015.

D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to lawful legally licensed eel pots as described in 4VAC20-500-50.

E. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in the areas described in subdivision D 1 of this section.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.

3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

VA.R. Doc. No. R15-4293; Filed February 27, 2015, 2:36 p.m.

Final Regulation

Title of Regulation: 4VAC20-610. **Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-30).**

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

Effective Date: March 1, 2015.

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

Summary:

The amendments set a limit of 125 agents that may participate annually in the blue crab fishery.

4VAC20-610-30. Commercial Fisherman Registration License; exceptions and requirements of authorized agents.

A. In accordance with § 28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their harvest, or give their harvest to another, in order that it may be sold, traded, or bartered. Only these licensees may sell their harvests from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling harvest are authorized for the following persons or firms only:

1. Persons taking menhaden under the authority of licenses issued pursuant to § 28.2-402 of the Code of Virginia.

2. Persons independently harvesting and selling, trading, or bartering no more than three gallons of minnows per day who are not part of, hired by, or engaged in a continuing business enterprise.

a. Only minnow pots, a cast net or a minnow seine less than 25 feet in length may be used by persons independently harvesting minnows.

b. All other marine species taken during the process of harvesting minnows shall be returned to the water immediately.

B. Requirements of authorized agents.

1. No person whose Commercial Fisherman Registration License, fishing gear license, or fishing permit is currently revoked or rescinded by the Marine Resources Commission pursuant to § 28.2-232 of the Code of Virginia is authorized to possess the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any other registered commercial fisherman in order to serve as an agent for fishing the commercial fisherman's gear or selling the harvest.

2. No registered commercial fisherman shall use more than one person as an agent at any time.

3. Any person serving as an agent shall possess the Commercial Fisherman Registration License and gear license of the commercial fisherman while fishing.

4. When transporting or selling a registered commercial fisherman's harvest, the agent shall possess either the Commercial Fisherman Registration License of that commercial fisherman or a bill of lading indicating that fisherman's name, address, Commercial Fisherman Registration License number, date and amount of product to be sold.

C. Requirements of authorized blue crab fishery agents.

1. Any person licensed to harvest blue crabs commercially shall not be eligible to also serve as an agent.

2. Any person serving as an agent to harvest blue crabs for another licensed fisherman shall be limited to the use of only one registered commercial fisherman's crab license;

however, an agent may fish multiple crab traps licensed and owned by the same person.

3. There shall be no more than one person, per vessel, serving as an agent for a commercial crab licensee.

4. Prior to using an agent in any crab fishery, the licensee shall submit a crab agent registration application to the commission. Crab agent registration applications shall be approved by the commissioner, or his designee, for a crab fishery licensee according to the following guidelines:

a. Only ~~168~~ 125 agents may participate annually in the ~~2014~~ crab fishery, as described in subdivision 4 b of this subsection, unless the commissioner, or his designee, approves a request for agent use because of a non-economic hardship circumstance and

b. ~~153 of the 168~~ 125 agents may be utilized by those crab fishery licensees who received approval for agent use in 2012 or who currently are licensed by a transferred crab fishery license from a licensee approved for agent use in 2012, except that should any of these licensees described in this subdivision fail to register for agent use by March 1, ~~2014~~, applications for agent use by other ~~2014~~ licensees shall be approved on a first-come, first-served basis, starting with those licensees who have registered prior to March 1, ~~2014~~.

D. Failure to abide by any of the provisions of this section, shall constitute a violation of this regulation.

E. In accordance with § 28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to § 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

2. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

F. Exceptions to the two-year delay may be granted by the commissioner if he finds any of the following:

1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely

application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.

2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.

3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.

Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at ~~their~~ its March, June, September, and December meetings.

Under no circumstances will an exception be granted solely on the basis of economic hardship.

VA.R. Doc. No. R15-4290; Filed February 27, 2015, 10:38 a.m.

Final Regulation

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40).**

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

Effective Date: March 1, 2015.

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

Summary

The amendment sets the commercial landing limit amount at 7,500 pounds from the second Wednesday in March through November 30, or until it has been projected and announced that 85% of the allowable landings have been taken.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D of this section:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.

2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.

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3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the second Wednesday in March through November 30, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.

3. Land in Virginia more than ~~12,500~~ 7,500 pounds of Summer Flounder during each consecutive 20-day period, with the first 20-day period beginning on the second Wednesday in March.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From December 1 through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of the combined total of the Virginia landing limit described in subdivision 3 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 20-day period, with the first 20-day period beginning on December 1.

3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 20-day period, with the first 20-day period beginning on December 1.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4VAC20-620-30 F.

E. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

F. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection I of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection I of this section.

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

H. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 9 p.m. to 7 a.m.

I. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

J. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

K. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

VA.R. Doc. No. R15-4291; Filed February 27, 2015, 11:04 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

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

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-351).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30, 12VAC30-80-180, 12VAC30-80-200).

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

Effective Date: April 22, 2015.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@dmas.virginia.gov.

Summary:

The amendments conform the regulation to Items 301 CCC, XXX, and JJJJ of Chapter 2 of the 2014 Acts of Assembly, Special Session I. The amendments (i) eliminate hospital inflation for FY 2015 and FY 2016 as applied to inpatient hospital operating rates, graduate medical education, and disproportionate share payments; (ii)

adjust pay rates for durable medical equipment items subject to the Medicare competitive bidding program; and (iii) eliminate inflation for outpatient rehabilitation agencies and home health agencies for FY 2015 and FY 2016.

12VAC30-70-351. Updating rates for inflation.

A. Each July, the Virginia moving average values as compiled and published by Global Insight (or its successor), under contract with the department shall be used to update the base year standardized operating costs per case, as determined in 12VAC30-70-361, and the base year standardized operating costs per day, as determined in 12VAC30-70-371, to the midpoint of the upcoming state fiscal year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by Global Insight (or its successor), in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year.

B. The inflation adjustment for hospital operating rates, disproportionate share hospitals (DSH) payments, and graduate medical education payments shall be ~~zero percent~~ **0.0%** for fiscal year (FY) 2010. The elimination of the inflation adjustments shall not be applicable to ~~re-basing~~ **re-basing** in FY 2011.

C. In FY 2011, hospital operating rates shall be rebased; however the 2008 base year costs shall only be increased 2.58% for inflation. For FY 2011 there shall be no inflation adjustment for graduate medical education (GME) or freestanding psychiatric facility rates. The inflation adjustment shall be eliminated for hospital operating rates, GME payments, and freestanding psychiatric facility rates for FY 2012. The inflation adjustment shall be 2.6% for inpatient hospitals, including hospital operating rates, GME payments, DSH payments, and freestanding psychiatric facility rates for FY 2013, and 0.0% for the same facilities for FY 2014, FY 2015, and FY 2016.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public). The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the

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emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD diagnosis codes and necessary supporting documentation. As used here, the term "ICD" is defined in 12VAC30-95-5.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD code designations, and the impact on recipients and providers. As used here, the term "ICD" is defined in 12VAC30-95-5.

2. Dentists' services.

3. Mental health services including: (i) community mental health services, (ii) services of a licensed clinical psychologist, or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

Definitions. The following words and terms when used in this ~~part~~ section shall have the following meanings unless the context clearly indicates otherwise:

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html>.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%. For dates of service on or after July 1, 2014, DME items subject to the Medicare competitive bidding program shall be reimbursed the lower of:

(a) The current DMERC rate minus 10% or

(b) The average of the Medicare competitive bid rates in Virginia markets.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically. The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services/devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the

compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital). The agency's rates for clinical laboratory services were set as of July 1, 2014, and are effective for services on or after that date.

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. ~~X-Ray~~ X-ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group

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organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. Effective January 3, 2012, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 181% of Medicare rates. The methodology for determining the Medicare equivalent of the average commercial rate is described in 12VAC30-80-300.

c. Supplemental payments shall be made quarterly no later than 90 days after the end of the quarter.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation for Type I physician services subject to the following reduction. Final payments shall be reduced on a prorated basis so that total payments for freestanding children's hospital physician services are \$400,000 less annually

than would be calculated based on the formula in the previous sentence. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 18 d of this subsection and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 18 b (1) of this subsection for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 18 b (2) of this subsection by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 18 b (3) of this subsection, Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

19. Personal assistance services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in

accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the DMAS website at <http://www.dmas.virginia.gov>.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12VAC30-80-180. Establishment of rate per visit for home health services.

A. Effective for dates of services on and after July 1, 1991, the Department of Medical Assistance Services (DMAS) shall reimburse home health agencies (HHAs) at a flat rate per visit for each type of service rendered by HHAs (i.e., nursing, physical therapy, occupational therapy, speech-language pathology services, and home health aide services.) In addition, supplies left in the home and extraordinary transportation costs will be paid at specific rates.

B. Effective for dates of services on and after July 1, 1993, DMAS shall establish a flat rate for each level of service for HHAs by peer group. There shall be three peer groups: (i) the Department of Health's HHAs, (ii) non-Department of Health HHAs whose operating office is located in the Virginia portion of the Washington DC-MD-VA metropolitan statistical area, and (iii) non-Department of Health HHAs whose operating office is located in the rest of Virginia. The use of the Health Care Financing Administration (HCFA) designation of urban metropolitan statistical areas (MSAs) shall be incorporated in determining the appropriate peer group for these classifications.

The Department of Health's agencies are being placed in a separate peer group due to their unique cost characteristics (only one consolidated cost report is filed for all Department of Health agencies).

C. Rates shall be calculated as follows:

1. Each home health agency shall be placed in its appropriate peer group.
2. Department of Health HHAs' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from its 1989 cost-settled Medicaid cost report. Non-Department of Health HHAs' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from the 1989 cost-settled Medicaid Cost Reports filed by freestanding HHAs. Costs shall be inflated to a common point in time (June 30, 1991) by using the percent of change in the moving average factor of the Data Resources Inc., (DRI), National Forecast Tables for the Home Health Agency Market Basket (as published quarterly).

3. To determine the flat rate per visit effective July 1, 1993, the following methodology shall be utilized:

- a. The peer group HHA's per visit rates shall be ranked and weighted by the number of Medicaid visits per discipline to determine a median rate per visit for each peer group at July 1, 1991.
- b. The HHA's peer group median rate per visit for each peer group at July 1, 1991, shall be the interim peer group rate for calculating the update through January 1, 1992. The interim peer group rate shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1992, and shall become the final interim peer group rate ~~which~~ that shall be updated by 50% of the forecasted inflation to the end of December 31, 1993, to establish the final peer group rates. The lower of the final peer group rates or the Medicare upper limit at January 1, 1993, will be effective for payments from July 1, 1993, through December 1993.
- c. Separate rates shall be provided for the initial assessment, follow-up, and comprehensive visits for skilled nursing and for the initial assessment and follow-up visits for physical therapy, occupational therapy, and speech therapy. The comprehensive rate shall be 200% of the follow-up rate, and the initial assessment rates shall be \$15 higher than the follow-up rates. The lower of the peer group median or Medicare upper limits shall be adjusted as appropriate to assure budget neutrality when the higher rates for the comprehensive and initial assessment visits are calculated.

4. The fee schedule shall be adjusted annually beginning July 1, 2010, based on the percent of change in the moving average of the National Forecast Tables for the Home Health Agency Market Basket published by Global Insight (or its successor) for the second quarter of the calendar year in which the fiscal year begins. The report shall be the latest published report prior to the fiscal year. The method to calculate the annual update shall be:

- a. All subsequent year peer group rates shall be calculated utilizing the previous final peer group rate established on July 1.
- b. The annual July 1 update shall be compared to the Medicare upper limit per visit in effect on each January 1, and the ~~HHAs~~ HHAs shall receive the lower of the annual update or the Medicare upper limit per visit as the final peer group rate.

D. Effective July 1, 2009, the previous inflation increase effective January 1, 2009, shall be reduced by 50%.

E. Effective July 1, 2010, through June 30, ~~2014~~ 2016, there shall be no inflation adjustment for home health agencies.

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12VAC30-80-200. Prospective reimbursement for rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

A. Rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

1. Effective for dates of service on and after July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities, excluding those operated by community services boards or state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus \$371,800.

2. Effective for dates of service on and after October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities, excluding those operated by state agencies shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus \$371,800.

B. Reimbursement for rehabilitation agencies subject to the new fee schedule methodology.

1. Payments for the fiscal year ending or in progress on June 30, 2009, shall be settled for private rehabilitation agencies based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of June 30, 2009.

2. Payments for the fiscal year ending or in progress on September 30, 2009, shall be settled for community services boards based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of September 30, 2009.

C. Beginning with state fiscal years beginning on or after July 1, 2010, rates shall be adjusted annually for inflation using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

D. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the nursing facility or any other available source, and provided further, that this subsection shall in no way diminish any obligation of the nursing facility to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Effective July 1, 2010, through June 30, ~~2014~~ 2016, there will be no inflation adjustment for outpatient rehabilitation facilities.

VA.R. Doc. No. R15-4193; Filed March 3, 2015, 1:45 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Final Regulation

Title of Regulation: **18VAC15-20. Virginia Asbestos Licensing Regulations (amending 18VAC15-20-52, 18VAC15-20-53).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Effective Date: May 1, 2015.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Summary:

The amendments increase fees of the Board for Asbestos, Lead, and Home Inspectors to ensure that revenues are sufficient, but not excessive, to cover ongoing operating expenses of the board.

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

18VAC15-20-52. Application fees.

Application fees are set out in this section.

Fee Type	Fee Amount	When Due
Application for worker, supervisor, inspector, management planner, project designer or project monitor license	\$25 <u>\$80</u>	With application
Application for asbestos analytical laboratory license	\$40 <u>\$120</u>	With application
Application for an asbestos contractor license	\$40 <u>\$110</u>	With application
Application for accredited asbestos training program approval	\$400 <u>\$500</u> per day of training	With application

18VAC15-20-53. Renewal and late renewal fees.

Renewal and late renewal fees are set out in this section.

Fee Type	Fee Amount	When Due
Renewal for worker, supervisor, inspector, management planner, project designer or project monitor license	\$25 <u>\$45</u>	With renewal application
Renewal for asbestos analytical laboratory license	\$40 <u>\$75</u>	With renewal application
Renewal for asbestos contractor's license	\$40 <u>\$70</u>	With renewal application
Renewal for accredited asbestos training program approval	\$50 <u>\$125</u>	With renewal application
Late renewal for worker, supervisor, inspector, management planner, project designer or project monitor license (includes a \$25 <u>\$35</u> late renewal fee in addition to the regular \$25 <u>\$45</u> renewal fee)	\$50 <u>\$80</u>	With renewal application
Late renewal for asbestos analytical laboratory license (includes a \$25 <u>\$35</u> late renewal fee in addition to the regular \$40 <u>\$75</u> renewal fee)	\$65 <u>\$110</u>	With renewal application
Late renewal for asbestos contractor's license (includes a \$25 <u>\$35</u> late renewal fee in addition to the regular \$40 <u>\$70</u> renewal fee)	\$65 <u>\$105</u>	With renewal application
Late renewal for accredited asbestos training program approval (includes a \$25 <u>\$35</u> late renewal fee in addition to the regular \$50 <u>\$125</u> renewal fee)	\$75 <u>\$160</u>	With renewal application

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

[FORMS (18VAC15-20)

~~Asbestos License Application Instructions, 33AINS (rev. 1/02).~~

~~Asbestos License Application, 33ALIC (rev. 1/02).~~

[Asbestos Worker License Application, A506-3301LIC-v3, \(eff. 5/15\)](#)

[Asbestos Supervisor License Application, A506-3302LIC-v3, \(eff. 5/15\)](#)

[Asbestos Inspector License Application, A506-3303LIC-v4, \(eff. 5/15\)](#)

[Asbestos Management Planner License Application, A506-3304LIC-v3, \(eff. 5/15\)](#)

[Asbestos Project Designer License Application, A506-3305LIC-v3, \(eff. 5/15\)](#)

[Asbestos Project Monitor License Application, A506-3309LIC-v4, \(eff. 5/15\)](#)

[Individual - Asbestos License Renewal Form, A506-33AREN-v2, \(eff. 5/15\)](#)

Experience Verification, 33AEXPED (rev. 1/05)

Education Verification, 33AEXPED (rev. 1/05)

Virginia Asbestos Licensing Consumer Information Sheet, 33ACIS (rev. 1/02)

Inspector/Project Designer Contractor Disclosure Form, 33ADIS (rev. 1/02)

~~Asbestos Contractor License Application, 33ACON (rev. 1/02).~~

~~Asbestos Analytical Laboratory License Application, 33ALAB (rev. 1/02).~~

~~Asbestos Training Program Review and Audit Application, 33ACRS (rev. 4/02); w/instructions, 33ACRSRQ (rev. 1/02).~~

[Asbestos Contractor License Application, A506-3306LIC-v3, \(eff. 5/15\)](#)

[Asbestos Analytical Laboratory License Application, A506-3333LIC-v5, \(eff. 5/15\)](#)

[Asbestos Training Program Review and Audit Application, A506-3331ACRS-v3, \(eff. 5/15\)](#)

Asbestos Training Notification, 33ATNO (eff. 12/06)

Asbestos Training Program Participant List, 33ATPL (eff. 12/06)]

VA.R. Doc. No. R12-3169; Filed March 4, 2015, 8:32 a.m.

Regulations

Final Regulation

Title of Regulation: 18VAC15-20. Virginia Asbestos Licensing Regulations (amending 18VAC15-20-70, 18VAC15-20-470, 18VAC15-20-520).

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Effective Date: May 1, 2015.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Summary:

The amendments (i) allow a licensee or an accredited asbestos training provider to renew a license or accredited asbestos training program up to 12 months after the expiration of the license or accreditation without reapplying as a new applicant, (ii) extend the time frame for accredited asbestos training providers to submit course participant lists to 10 business days, and (iii) no longer require two instructors for most initial accredited asbestos training programs.

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

18VAC15-20-70. Procedures for renewal.

A. The department shall mail a renewal notice to each licensee and to each approved accredited asbestos training program at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee or the approved accredited asbestos training program of the obligation to renew in a timely fashion.

B. Prior to the expiration date shown on the license or approval letter, each licensed asbestos contractor and licensed asbestos analytical laboratory desiring to renew the license shall return the renewal notice together with the appropriate fee specified in 18VAC15-20-53 to the department. Should the licensee fail to receive the renewal notice, a copy of the current license may be submitted with the required fee.

C. Prior to the expiration date shown on the individual's current license, the individual desiring to renew that license shall provide evidence of meeting the annual refresher training requirement for license renewal and the appropriate fee specified in 18VAC15-20-53. The board will accept any asbestos training programs that are approved by EPA/AHERA or the board. A copy of the training certificate documenting the successful completion of the refresher training for the license discipline being renewed and meeting the requirements outlined in this chapter shall accompany the renewal notice and fee.

D. Prior to the expiration date shown on the approval letter, each accredited asbestos training program desiring to renew

the approval shall return the renewal notice to the department together with the following:

1. Appropriate fee specified in 18VAC15-20-53.
2. Any changes made to the training program.
3. Dates on which the training material was last updated.
4. Statement indicating that the training program continues to meet the regulation requirements established in this chapter.

Should an approved accredited asbestos training program fail to receive the renewal notice, a letter indicating the desire to renew and the applicable fee may be submitted.

E. Project monitors who also hold a valid Virginia asbestos supervisor or project designer license may meet the renewal training requirements by completing the supervisor refresher or project designer refresher, whichever is applicable. Project monitors who hold only a project monitor license shall complete an accredited asbestos project monitor refresher training program to meet the renewal training requirements.

F. Annual refresher training certificates shall only be used once to renew an individual license.

G. Each license and each accredited asbestos training program approval that is not renewed within 30 days of the expiration date on the license or approval shall be subject to late renewal fees as established in 18VAC15-20-53.

H. Each license and each approved accredited asbestos training program not renewed within ~~six~~ 12 months after the expiration date shall not be renewed and the licensee or approved accredited asbestos training program shall apply for a new license or new approval.

18VAC15-20-470. Recordkeeping and provision of records to the board.

A. The training manager shall notify the board no less than 48 hours prior to the start date of any accredited asbestos training program.

B. The training manager shall provide an updated notification when an accredited asbestos training program will begin on a date other than the start date specified in the original notification as follows:

1. For accredited asbestos training programs beginning prior to the start date provided to the board, an updated notification must be received by the board at least 48 hours before the new start date.
2. For accredited asbestos training programs beginning after the start date provided to the board, an updated notification must be received by the board at least 48 hours before the start date provided to the board.

C. The training manager shall update the board of any change in location of an accredited asbestos training program at least 48 hours prior to the start date provided to the board.

D. The training manager shall update the board regarding any accredited asbestos training program cancellations or any

other change to the original notification at least 48 hours prior to the start date provided to the board. This requirement shall not apply to situations or circumstances beyond the control of the training provider.

E. Each notification, including updates, shall include the following:

1. Notification type (original, update, cancellation).
2. Training program name, Virginia accreditation number, address, and telephone number.
3. Course discipline, type (initial/refresher), and the language in which the instruction will be given.
4. Dates and times of training.
5. Training locations, telephone number, and address.
6. Principal instructor's name.
7. Training manager's name and signature.

F. For all accredited asbestos training programs approved by the board, the training provider shall keep a training program participant list of all of the individuals attending the accredited asbestos training program. The training program participant list shall contain the following minimum information:

1. Training program name, Virginia accreditation number, address, and telephone number.
2. Course discipline and type (initial/refresher).
3. Dates of training.
4. Location of training program presentation.
5. Each participant's name, address, social security number, course completion certificate number, and course test score.
6. Principal instructor's name.
7. Training manager's name and signature.

G. The training program participant list shall be completed by the training program principal instructor and training program participants daily.

H. The training program participant list shall be retained by the training provider for three years following the date of completion of the training program.

I. The training manager shall provide to the board the accredited asbestos training program participant list no later than ~~24 hours~~ 10 business days following the training program completion.

J. Notifications and training program participant lists shall be submitted electronically in the manner established by the board specifically to receive this documentation using a sample form designed by and available from the board. Any variation upon this procedure shall be approved by the board prior to submission.

K. The training provider shall retain all examinations completed by training program participants for a period of three years.

L. The department shall not recognize training certificates from approved training providers that fail to notify or fail to provide a training program participant list.

18VAC15-20-520. Number of instructors required to provide training.

A. The board strongly recommends a minimum of two instructors to teach an accredited asbestos initial worker training program.

~~B. At least two instructors shall be used for each supervisor, inspector, management planner, project designer and project monitor initial accredited asbestos training program.~~

~~C.~~ B. One instructor is adequate per accredited asbestos refresher training program.

~~D.~~ C. At least one instructor shall be in the classroom and available to the students at all times during the accredited asbestos training program.

V.A.R. Doc. No. R13-3645; Filed March 3, 2015, 3:36 p.m.

Final Regulation

Title of Regulation: **18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-167, 18VAC15-30-400).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Effective Date: May 1, 2015.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Summary:

The amendments (i) allow a licensee or an accredited lead training provider to renew a license or accreditation up to 12 months after the expiration of the license or accreditation without reapplying as a new applicant and (ii) require only one unique number for certificates of completion issued at the conclusion of training programs by accredited lead training providers.

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

18VAC15-30-167. Late renewal.

A. If the renewal fee is not received by the board within 30 days after the expiration date printed on the license or accredited lead training program approval, a late renewal fee shall be required in addition to the renewal fee.

B. Any licensee or accredited lead training provider who fails to renew his license or accredited lead training program approval within ~~six~~ 12 months after the expiration date on the license or approval shall not be permitted to renew and shall apply as a new applicant.

Regulations

18VAC15-30-400. Certificates of completion.

Accredited lead training programs shall issue unique course completion certificates to each individual who successfully completes the course requirements. The course completion certificate shall include:

1. A unique certificate number.
2. The name, ~~a unique identification number~~, and address of the individual.
3. The name of the particular course that the individual completed.
4. Dates of course completion/test passage.
5. Expiration date. Training certificates shall expire three years from the date of course completion. If the accredited lead training program offers a proficiency test, the training certificates shall expire five years from the date of course completion.
6. Name, address, and telephone number of the training provider.
7. Name and signature of the training manager and principal instructor.

VA.R. Doc. No. R13-3644; Filed March 3, 2015, 3:37 p.m.

Final Regulation

Title of Regulation: **18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-90).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Effective Date: May 1, 2015.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Summary:

The amendment removes the requirement that home inspectors whose certificates have been expired for more than two years retake a written competency examination when applying as a new applicant.

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.

18VAC15-40-90. Reinstatement.

A. If the requirements for renewal of a certificate, including receipt of the fee by the board, are not completed by the certificate holder within six months after the expiration date noted on the certificate, a reinstatement fee shall be required.

B. All applicants for reinstatement shall meet all requirements set forth in 18VAC15-40-30, 18VAC15-40-72 and 18VAC15-40-80.

C. A certificate may be reinstated for up to two years following the expiration date with payment of the reinstatement fee. After two years, the certificate shall not be reinstated under any circumstances and the applicant shall apply as a new applicant, ~~requiring the applicant to retake the examination.~~

VA.R. Doc. No. R13-3643; Filed March 3, 2015, 3:37 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 38 (2015)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Major Winter Storm

Importance of the Issue

On this date, February 16, 2015, I am declaring a state of emergency to exist for the Commonwealth of Virginia based on National Weather Service forecasts projecting major winter storms bringing the potential for significant snow across the Commonwealth.

The health and general welfare of the citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of these storms constitute a disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on this date, February 16, 2015, whereby I am proclaiming that a state of emergency exists, and I am directing that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of winter storms, to alleviate any conditions resulting from the storms, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-storm conditions in so far as possible. Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I am also directing that the Virginia National Guard and the Virginia Defense Force be called forth to state active duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security, may find necessary.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following protective and restoration measures:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, along with other appropriate state agency plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VERT coordinate state actions in support of affected localities, other mission assignments to agencies designated in the COVEOP, and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety and Homeland Security, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technologies Agency, and with the consultation of the Secretary of Public Safety and Homeland Security, making all systems assets available for use in providing adequate communications, intelligence, and warning capabilities for the incidents, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the winter storms as appropriate. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response, or recovery effort, pursuant to § 44-146.17(1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the VEOC, acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Also, in those localities that have declared a local emergency pursuant to § 44-146.21 of the Code of Virginia, if the local governing body determines that controlling movement of persons is deemed necessary for the preservation of life, public safety, or other emergency mitigation, response, or recovery effort, pursuant to § 44-146.17(1) of the Code of Virginia, I authorize the control of ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State Coordinator of Emergency Management and the VEOC, shall determine. Violations of any order to citizens to

evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies, livestock or poultry, feed or other critical supplies for livestock or poultry, heating oil, motor fuels, and propane, or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. Such exemptions shall not be valid on posted structures for restricted weight.

All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

Authorization of the State Coordinator of Emergency Management to grant limited exemption of hours of service by any carrier when transporting essential emergency relief supplies, passengers, property, livestock, poultry, equipment, food, feed for livestock or poultry, fuel, construction materials, and other critical supplies to or from any portion of the Commonwealth for purpose of providing direct relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19VAC30-20-40(B) of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety and Homeland Security in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement this order as set forth in § 2.2-104 of the Code of Virginia.

H. The authorization of a maximum of \$450,000 in state sum sufficient funds for state and local governments mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act. This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, funding is also authorized for the Department of Military Affairs for the state's portion of the eligible disaster related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

I. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

J. Designation of members and personnel of volunteer, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Community Emergency Response Teams (CERTs), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(A) and (F) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

K. The authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

L. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible during a time of disaster after issuance of a state of emergency. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials. I further request that all appropriate executive branch agencies exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to these storms.

M. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for these storms and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

a. Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

b. The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The following conditions apply to service by the Virginia Defense Force:

a. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

b. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

c. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia;

d. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the

VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective February 16, 2015, and shall remain in full force and effect until April 15, 2015, to deal with any winter storms or incidents during this period, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 24th day of February, 2015.

/s/ Terence R. McAuliffe
Governor

EXECUTIVE ORDER NUMBER 39 (2015)

Launching "Cyber Virginia" and the Virginia Cyber Security Commission

Importance of the Issue

The Commonwealth of Virginia is proud of its distinguished history and exemplary record of exceptional cyber security operations in support of state agencies and operations. As is reflected in the strong presence of state, federal, military, and private cyber security businesses, assets, and activities throughout the Commonwealth, Virginia stands poised to take advantage of its unique resources. The Commonwealth is resolute in its dedication to garnering the expertise of leaders in cyber security in order to mitigate risks and safeguard the highest level of security for government infrastructure networks, foster cyber security education and awareness, incorporate innovative and best practices to protect data statewide, bolster business investment with public private partnerships, and proactively enhance its national standing as one of the preeminent leaders in the cyber security arena.

Threats to critical systems present a growing and complex challenge. In order to guard against the risks and marshal appropriate resources to meet potential threats, it is important to incorporate optimal policies and develop enhanced standards to protect the Commonwealth's cyber security infrastructure from unforeseen incidents. While rapidly advancing technologies create substantial security risks, they also present significant opportunities for producing more efficient and protected proprietary networks, strengthening the Commonwealth's cyber security framework, and advancing vital prospects for economic development.

Virginia's cyber security businesses are at the forefront to prospectively benefit from federally appropriated funds that

are among the few expected to increase in future years. Virginia's cyber security firms are seeking to export their technologies, goods and services to global markets in the public and private sectors. Further, with military assets, related defense activities and, more generally, the critical need for secure business data, the Commonwealth must cultivate conditions to attract and retain as well as secure a competitive advantage for cyber security companies in the marketplace. Promotion of the cyber security industry will produce a synergy to ensure growth of related cyber operations businesses and facilities, sustain a wide variety of high-skilled jobs for Virginians, and strengthen a culture of excellent cyber hygiene that is critical for the Commonwealth.

Cyber security instruction, training, and programs will be requisite components to prepare those currently seeking new occupational options as well as the next generation for the rapidly developing cyber security workplace. Focusing on cutting edge education and training will be essential for Virginia's cyber security workforce and economic development as occupations in the cyber security industry are highly in demand and among the fastest growing in the economy. Virginia continues to lead the nation in the concentration of technology workers, fed by a rich network of nationally-recognized information technology and cyber advanced degree programs at our universities.

Composition of the Commission

The Commission will consist of the Secretaries of Technology, Commerce and Trade, Public Safety, Education, Health and Human Resources, and Veterans Affairs and Homeland Security, and eleven (11) citizen members whose background shall include relevant expertise to be appointed by the Governor and serve at his pleasure. The Governor shall designate a Chairman and Vice Chairman from among the appointed members. The Governor may appoint additional persons to the Commission at his discretion.

Establishment of the Virginia Cyber Security Commission

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Virginia Cyber Security Commission.

Responsibilities of the Commission

The Commission's responsibilities shall include the following:

1. Identify high risk cyber security issues facing the Commonwealth of Virginia.
2. Provide advice and recommendations related to securing Virginia's state networks, systems, and data, including

interoperability, standardized plans and procedures, and evolving threats and best practices to prevent the unauthorized access, theft, alteration, and destruction of the Commonwealth's data.

3. Provide suggestions for the addition of cyber security to Virginia's Emergency Management and Disaster Response capabilities, including testing cyber security incident response scenarios, recovery and restoration plans, and coordination with the federal government - in consultation with the Virginia Information Technologies Agency.

4. Offer suggestions for promoting awareness of cyber hygiene among the Commonwealth's citizens, businesses and government entities.

5. Present recommendations for cutting edge science, technology, engineering and math (STEM) educational and training programs for all ages, including K-12, community colleges, universities, in order to foster an improved cyber security workforce pipeline and create cyber security professionals with a wide range of expertise.

6. Offer strategies to advance private sector cyber security economic development opportunities, including innovative technologies, research and development, and start-up firms, and maximize public-private partnerships throughout the Commonwealth.

7. Provide suggestions for coordinating the review of and assessing opportunities for cyber security private sector growth as it relates to military facilities and defense activities in Virginia.

Commission Staffing and Funding

Necessary staff support for the Commission's work during its continued existence shall be furnished by the Office of the Secretary of Technology, and such other agencies and offices as designated by the Governor. An estimated 500 hours of staff time will be required to support the work of the Commission.

Necessary funding to support the Commission and its staff shall be provided from federal funds private funds, and state funds appropriated for the same purposes as the Commission, as authorized by § 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Commission are \$5000.00. Commission members shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties.

The Commission shall serve in an advisory role, in accordance with § 2.2-2100 of the Code of Virginia and shall meet upon the call of the chairman at least three times per year. In addition, the Commission shall issue an annual report and any other reports and recommendations as necessary or as requested by the Governor.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in force and effect for one year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 25th day of February, 2015.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY Local Steering Committee Meeting for a Water Quality Study (TMDL) of Long Meadow Run and Turley Creek

Committee meeting: A local steering committee meeting will be held Wednesday, March 25, 2015, at 3 p.m. at the Massanutten Regional Library's Downtown Branch at 174 South Main Street, Harrisonburg, VA 22801. This meeting will be open to the public and all are welcome. In the case of inclement weather, the meeting will be postponed until Thursday, March 26, 2015, at 3 p.m. For more information, please contact Tara Sieber at tara.sieber@deq.virginia.gov or telephone (540) 574-7870.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech's Biological Systems Engineering Department, will discuss population data for the development of a water quality study known as a total maximum daily load (TMDL) for Long Meadow Run and Turley Creek. This meeting is an opportunity for local residents to share information about the area and its local streams.

Meeting description: The local steering committee will meet to discuss the draft TMDL document, discuss current cost-share and best management practices installation in the watershed, and review next steps. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Description of study: Long Meadow Run and Turley Creek do not host a healthy and diverse population of aquatic life and subsequently were listed as impaired for the general benthic (aquatic life) water quality standard. This water quality study (TMDL) will review all data collected and determine the cause of the benthic impairment through a weight of evidence approach. Reductions and a TMDL for the cause of the impairment will be developed.

Stream	County	Impairment
Long Meadow Run	Rockingham County	Aquatic Life
Turley Creek	Rockingham County	Aquatic Life

How to participate: The meetings of the local steering committee are open to the public and all interested parties are welcome. Written comments are always accepted. For more information or to submit written comments, please contact Tara Sieber, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

Total Maximum Daily Load Implementation Plan for the Hardware River Watershed

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for the Hardware River watershed (North Fork Hardware and Hardware Rivers) in Albemarle and Fluvanna Counties. The North Fork Hardware River and the Hardware River were first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2006. The creeks have remained on the § 303(d) list for these impairments since then.

The impaired segment of the North Fork Hardware River extends 10.42 miles from the headwaters downstream to its confluence with the South Fork Hardware River. The impaired segment of Hardware River extends 23.03 miles from its confluence with the North Fork downstream to its confluence with the James River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. DEQ completed bacteria TMDLs for the Hardware River and the North Fork Hardware in July 2007. The TMDLs were approved by the Environmental Protection Agency on April 10, 2008. The TMDL report is available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

Two public meetings will be held at the northern and southern ends of the watershed to initiate the development of this TMDL implementation plan:

- Tuesday, March 31, 2015, at 6:30 p.m. at Victory Hall, 2nd Floor (401 Valley Street, Scottsville, VA)
- Thursday, April 9, 2015, at 6:30 p.m. at the North Garden Fire Hall (4907 Plank Road, North Garden, VA).

The public comment period for the March 31 meeting will end on April 30, 2015, and the comment period for the April 9 meeting will end on May 11, 2015. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA, 22801, telephone (540) 574-7850, or email nesha.mcrae@deq.virginia.gov.

BOARD OF VETERINARY MEDICINE

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Veterinary Medicine is conducting a periodic review and small business impact review of **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. The review of this regulation will be guided by the principles in Executive Order 17 (2014), available at <http://dpb.virginia.gov/regs/EO17.pdf>.

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 March 23, 2015, and ends April 22, 2015.

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 Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, FAX (804) 527-4434, or email elaine.yeatts@dhp.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 PUBLIC NOTICE

Proposed Consent Special Order for Chester Bowman

An enforcement action has been proposed for Chester Bowman for violations in Franklin County, Virginia. The special order by consent addresses and resolves violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from March 23, 2015, through April 22, 2015.

Proposed Enforcement Action for the Fairfax County Board of Supervisors

An enforcement action has been proposed for the Fairfax County Board of Supervisors for violations in Fairfax County. The order resolves violations of State Water Control Law stemming from sanitary sewer overflows from the Fairfax County Wastewater Collection System into Holmes Run and Hunting Creek in the Potomac River Basin. A description of the proposed action is available at the Department of Environmental Quality office named below or online at 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 March 24, 2015, through April 23, 2014.

Proposed Consent Special Order for Mt. Gilead Full Gospel International Ministries

An enforcement action has been proposed for Mt. Gilead Full Gospel International Ministries for alleged violations that occurred at the Mt. Gilead Youth Ministries Building complex located at 2501 Mt. Gilead Boulevard, Chesterfield, VA 23235. The State Water Control Board proposes to issue a consent special order to Mt. Gilead Full Gospel International Ministries 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 www.deq.virginia.gov. Cynthia Akers will accept comments by email at cynthia.akers@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 March 23, 2015, through April 22, 2015.

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

General Notices/Errata

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.