



# VIRGINIA

## REGISTER OF REGULATIONS

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Virginia Code Commission

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# VIRGINIA REGISTER INFORMATION PAGE

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**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.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## June 2015 through May 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 10, 2015 ( <b>Tuesday</b> )	November 30, 2015
32:8	November 24, 2015 ( <b>Tuesday</b> )	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 ( <b>Monday</b> )	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
32:15	March 2, 2016	March 21, 2016
32:16	March 16, 2016	April 4, 2016
32:17	March 30, 2016	April 18, 2016
32:18	April 13, 2016	May 2, 2016
32:19	April 27, 2016	May 16, 2016
32:20	May 11, 2016	May 30, 2016

\*Filing deadlines are Wednesdays unless otherwise specified.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending **18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic**. The purpose of the proposed action is to address the need for additional public protection in the administration of office-based anesthesia in response to a petition for rulemaking published in [31:6 V.A.R. 343 November 17, 2014](#). Specific amendments recommended by the petitioner will be considered, as well as comments received on the petition and on this Notice of Intended Regulatory Action.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Public Comment Deadline: July 1, 2015.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R15-01; Filed May 11, 2015, 2:04 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider adopting **18VAC85-170, Regulations Governing the Practice of Genetic Counselors**, in accordance with Chapters 10 and 266 of the 2014 Acts of Assembly. The purpose of the proposed action is to (i) ensure minimal competency for practice and continued competency for renewal of licensure and (ii) establish standards of conduct for safe practice.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957.18 of the Code of Virginia.

Public Comment Deadline: July 1, 2015.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R15-4172; Filed May 11, 2015, 2:04 p.m.

### BOARD OF PHARMACY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to establish standards for collection sites similar to those required by the federal Drug Enforcement Administration in order for the board to inspect for and enforce standards for collection of controlled substances. If requirements for collection and destruction are not followed and there is risk of commingling with existing stocks, there may be opportunity for diversion of donated drugs or adulteration of controlled substances. Designation of authorized collection sites will facilitate the disposal of unused prescription drugs, which in turn reduces the supply of such drugs for abuse and diversion. However, the collection must be handled in a manner that protects the drugs until destruction in compliance with local, state, and federal laws.

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

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

Public Comment Deadline: July 1, 2015.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

VA.R. Doc. No. R15-4325; Filed May 11, 2015, 2:06 p.m.

### BOARD OF COUNSELING

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider amending **18VAC115-20, Regulations Governing the Practice of Professional Counseling**. The purpose of the proposed action is to add a requirement for all counseling programs leading to a license as a professional counselor to be clinically focused and accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or an approved affiliate, such as the Council on Rehabilitation Education. This would be a phased-in requirement, allowing seven years from the effective date for students to complete their education in a non-CACREP program and for programs to achieve accreditation standards.

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

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

Public Comment Deadline: July 1, 2015.

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# Notices of Intended Regulatory Action

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Agency Contact: Catherine Chappell, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email [catherine.chappell@dhp.virginia.gov](mailto:catherine.chappell@dhp.virginia.gov).

V.A.R. Doc. No. R14-36; Filed May 11, 2015, 2:02 p.m.

## BOARD OF VETERINARY MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to eliminate a burdensome restriction on the preceptorships for veterinary students. Through preceptorships, veterinary students gain practical experience under the direct supervision of a licensed veterinarian. Currently, students are not allowed to engage in a preceptorship until their final year in veterinary college.

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

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

Public Comment Deadline: July 1, 2015.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

V.A.R. Doc. No. R14-14; Filed May 11, 2015, 2:08 p.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to increase the number of continuing education hours required for renewal of a license as a veterinary technician from six to eight hours per year.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3805.2 of the Code of Virginia.

Public Comment Deadline: July 1, 2015.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

V.A.R. Doc. No. R14-18; Filed May 11, 2015, 2:08 p.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to add a definition of

"specialist" to 18VAC150-20-10 and to expand the elements of unprofessional conduct to include identifying oneself as a specialist without possessing the proper credentials. The goal is to prevent misrepresentation to the public in the use of the term "specialist" or "specialty" for an individual licensee or in the name of an establishment.

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

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

Public Comment Deadline: July 1, 2015.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

V.A.R. Doc. No. R15-16; Filed May 11, 2015, 2:08 p.m.

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# REGULATIONS

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

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## 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.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

#### Proposed Regulation

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

**Title of Regulation:** 4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50, 4VAC15-20-65, 4VAC15-20-140).

**Statutory Authority:** § 29.1-103 of the Code of Virginia (4VAC15-20-65).

§ 29.1-501 of the Code of Virginia (4VAC15-20-50, 4VAC15-20-65, and 4VAC15-20-140).

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments (i) remove "domestica" from the scientific name of domestic swine and change "free roaming" to "for which no claim of ownership can be made" for consistency with the definition of "feral swine" in 4VAC15-20-160; (ii) remove the red fox from the list of domestic animals effective January 1, 2016, and allow individuals who already own pet foxes to keep them in captivity until the foxes die, provided the owners declare such possession to the department by January 1, 2016; (iii) replace the terms "bow and arrow" and "bow and arrow or crossbow" with "archery equipment" for all applicable licenses and permits; (iv) in the category of additional hunting privileges, create a separate license for bear hunting, with a fee of \$25 for residents and \$150 for nonresidents; (v) eliminate bear from the resident bear, deer, and turkey hunting license for licensees 16 years of age or older, from the resident junior bear, deer, and turkey hunting license for licensees younger than 16 years*

*of age, and from the nonresident bear, deer, and turkey hunting licenses; and (vi) in the definition of "species," replace "district" with "distinct" to correct a typographical error.*

**4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal," and "domestic animal."**

A. In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's 2014 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's 2014 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

- Domestic dog (*Canis familiaris*), including wolf hybrids.
- Domestic cat (*Felis catus*), including hybrids with wild felines.
- Domestic horse (*Equus caballus*), including hybrids with *Equus asinus*.
- Domestic ass, burro, and donkey (*Equus asinus*).
- Domestic cattle (*Bos taurus* and *Bos indicus*).
- Domestic sheep (*Ovis aries*) including hybrids with wild sheep.
- Domestic goat (*Capra hircus*).
- Domestic swine (*Sus ~~scrofa domestica~~ scrofa*), including pot-bellied pig excluding any swine that are ~~free roaming~~ or wild or for which no claim of ownership can be made.
- Llama (*Lama glama*).
- Alpaca (*Lama pacos*).
- Camels (*Camelus bactrianus* and *Camelus dromedarius*).
- Domesticated races of hamsters (*Mesocricetus* spp.).

# Regulations

Domesticated races of mink (*Mustela vison*) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

~~Domesticated races of red fox (*Vulpes*) where their coat color can be distinguished from wild red fox.~~

Domesticated races of guinea pigs (*Cavia porcellus*).

Domesticated races of gerbils (*Meriones unguiculatus*).

Domesticated races of chinchillas (*Chinchilla laniger*).

Domesticated races of rats (*Rattus norvegicus* and *Rattus rattus*).

Domesticated races of mice (*Mus musculus*).

Domesticated races of European rabbit (*Oryctolagus cuniculus*).

Domesticated races of chickens (*Gallus*).

Domesticated races of turkeys (*Meleagris gallopavo*).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (*Columba domestica* and *Columba livia*) and domesticated races of pigeons.

Domesticated races of guinea fowl (*Numida meleagris*).

Domesticated races of peafowl (*Pavo cristatus*).

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.

B. Exception for red foxes. Domesticated red foxes (*Vulpes vulpes*) having coat colors distinguishable from wild red foxes and possessed in captivity on July 1, 2015, may be maintained in captivity until the animals' deaths, but they may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes without a permit from the department must declare such possession in writing to the department by January 1, 2016. This written declaration must include the number of individual foxes in possession, date or dates acquired, and sex, estimated age, coloration, and a photograph of each fox. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years.

## **4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.**

In accordance with the authority of the board under subdivision 16 of § 29.1-103 of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
1-year Resident License to Hunt, for licensees 16 years of age or older	\$22.00
2-year Resident License to Hunt, for licensees 16 years of age or older	\$43.00
3-year Resident License to Hunt, for licensees 16 years of age or older	\$64.00
4-year Resident License to Hunt, for licensees 16 years of age or older	\$85.00
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$15.00
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$8.00
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	\$7.50
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with <del>bow and arrow</del> <u>archery equipment</u> during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with <del>bow and arrow or a crossbow</del> <u>archery equipment</u> during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Fish)	\$132.00
Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$255.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:	
through 44 years of age	\$260.00
45 through 50 years of age	\$210.00
51 through 55 years of age	\$160.00
56 through 60 years of age	\$110.00
61 through 64 years of age	\$60.00
65 years of age and over	\$20.00

# Regulations

Resident Hunting License for Partially Disabled Veterans	\$11.00	Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with <del>bow and arrow</del> <u>archery equipment</u> during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$30.00
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00	Nonresident Annual Hunting License for Partially Disabled Veterans	\$55.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt or Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	no fee	Nonresident Annual Hunting License for Totally and Permanently Disabled Veterans	\$27.50
<b>Virginia Resident Licenses for Additional Hunting Privileges</b>		Nonresident Lifetime License to Hunt	\$555.00
Type license or permit	Fee	<b>Virginia Nonresident Licenses for Additional Hunting Privileges</b>	
Resident <del>Bear, Deer, and Turkey</del> Hunting License, for licensees 16 years of age or older	\$22.00	Type license or permit	Fee
Resident Junior <del>Bear, Deer, and Turkey</del> Hunting License, for licensees under 16 years of age	\$7.50	Nonresident <del>Bear, Deer, and Turkey</del> Hunting License, for licensees:	
Resident Archery License to Hunt with <del>bow and arrow or crossbow</del> <u>archery equipment</u> during archery hunting season	\$17.00	16 years of age or older	\$85.00
<u>Resident Bear Hunting License</u>	<u>\$25.00</u>	12 through 15 years of age	\$15.00
Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00	under 12 years of age	\$12.00
Resident Bonus Deer Permit	\$17.00	<u>Nonresident Bear Hunting License</u>	<u>\$150.00</u>
Resident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	\$22.00	Nonresident Archery License to Hunt with <del>bow and arrow or crossbow</del> <u>archery equipment</u> during archery hunting season	\$30.00
		Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00
		Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00
		Nonresident Bonus Deer Permit	\$30.00
		Nonresident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	\$110.00
<b>Virginia Nonresident Licenses to Hunt</b>		<b>Miscellaneous Licenses or Permits to Hunt</b>	
Type license	Fee	Type license or permit	Fee
Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00	Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50
Nonresident Three-Day Trip License to Hunt	\$59.00	Waterfowl Hunting Floating Blind in Public Waters License	\$40.00
Nonresident Youth License to Hunt, for licensees:			
under 12 years of age	\$12.00		
12 through 15 years of age	\$15.00		

# Regulations

Foxhound Training Preserve License	\$17.00	Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00	Resident License to Fish in Designated Stocked Trout Waters	\$22.00
		Resident License to Freshwater and Saltwater Fish	\$39.00
<b>Virginia Resident and Nonresident Licenses to Trap</b>		Resident License to Freshwater Fish for Five Consecutive Days	\$13.00
Type license	Fee	Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00
1-year Resident License to Trap, for licensees 16 years of age or older	\$45.00	Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with <del>bow and arrow or crossbow</del> <u>archery equipment</u> during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Hunt)	\$132.00
2-year Resident License to Trap, for licensees 16 years of age or older	\$89.00		
3-year Resident License to Trap, for licensees 16 years of age or older	\$133.00		
4-year Resident License to Trap, for licensees 16 years of age or older	\$177.00		
County or City Resident License to Trap in County or City of Residence Only	\$20.00	Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
Resident Junior License to Trap, for licensees under 16 years of age	\$10.00	through 44 years of age	\$260.00
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00	45 through 50 years of age	\$210.00
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$20.00	51 through 55 years of age	\$160.00
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00	56 through 60 years of age	\$110.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00	61 through 64 years of age	\$60.00
Nonresident License to Trap	\$205.00	65 years of age and over	\$20.00
<b>Virginia Resident Licenses to Fish</b>		Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
Type license	Fee	through 44 years of age	\$260.00
1-year Resident License to Freshwater Fish	\$22.00	45 through 50 years of age	\$210.00
2-year Resident License to Freshwater Fish	\$43.00	51 through 55 years of age	\$160.00
3-year Resident License to Freshwater Fish	\$64.00	56 through 60 years of age	\$110.00
4-year Resident License to Freshwater Fish	\$85.00	61 through 64 years of age	\$60.00
County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00	65 years of age and over	\$20.00
		Resident Fishing License for Partially Disabled Veterans	\$11.00
		Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$15.00

Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	no fee
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Virginia Nonresident Licenses to Fish	
Type license	Fee
Nonresident License to Freshwater Fish	\$46.00
Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$46.00
Nonresident License to Freshwater and Saltwater Fish	\$70.00
Nonresident Fishing License for Partially Disabled Veterans	\$23.00
Nonresident Annual Fishing License for Totally and Permanently Disabled Veterans	\$11.50
Nonresident License to Freshwater Fish for One Day	\$7.00
Nonresident License to Freshwater Fish for Five Consecutive Days	\$20.00
Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$30.00
Nonresident Special Lifetime License to Freshwater Fish	\$555.00
Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$555.00

Miscellaneous Licenses or Permits to Fish	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	\$7.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00
Special Guest Fishing License	\$60.00

**4VAC15-20-140. Endangered species; definitions.**

For the purposes of §§ 29.1-564 through 29.1-570 of the Code of Virginia, 4VAC15-20-130, and this section:

1. "Endangered species" means any species which is in danger of extinction throughout all or a significant portion

of its range within the Commonwealth, other than a species of the class Insecta deemed to be a pest whose protection would present an overriding risk to the health or economic welfare of the Commonwealth.

2. "Fish or wildlife" means any member of the animal kingdom, vertebrate or invertebrate, without limitation, and includes any part, products, egg, or the dead body or parts of it.

3. "Harass," in the definition of "take," means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.

4. "Harm," in the definition of "take," means an act which actually kills or injures wildlife. Such act may include significant habitat modifications or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

5. "Person" means any individual, firm, corporation, association or partnership.

6. "Species" includes any subspecies of fish or wildlife and any ~~distinct~~ distinct population segment of any species or vertebrate fish or wildlife which interbreed when mature.

7. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, possess or collect, or to attempt to engage in any such conduct.

8. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the Commonwealth.

VA.R. Doc. No. R15-4397; Filed May 12, 2015, 10:26 p.m.

**Proposed Regulation**

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

**Title of Regulation:** **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-40).**

**Statutory Authority:** § 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park

# Regulations

Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments (i) allow anyone to legally trap feral hogs with written permission of the landowner, provided that any trapped hogs are not removed from the trap site alive and are killed immediately and (ii) require the reporting of any trapped or harvested feral hog to the Department of Game and Inland Fisheries.*

**4VAC15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.**

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia.

<b>AMPHIBIANS:</b>			
Order	Family	Genus/Species	Common Name
Anura	Bufonidae	Rhinella marina	Cane toad*
	Pipidae	Hymenochirus spp. Pseudohymenochirus merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	All species	All mole salamanders
<b>BIRDS:</b>			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan
<b>FISH:</b>			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Catostomus microps	Modoc sucker
		Catostomus santaanae	Santa Ana sucker
		Catostomus warnerensis	Warner sucker
		Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cobitidae	Misgurnus anguillicaudatus	Oriental weatherfish
	Cyprinidae	Aristichthys nobilis	Bighead carp*
		Chrosomus saylori	Laurel dace
		Ctenopharyngodon idella	Grass carp or white amur

		Cyprinella caerulea	Blue shiner
		Cyprinella formosa	Beautiful shiner
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodon piceus	Black carp*
		Notropis albizonatus	Palezone shiner
		Notropis cahabae	Cahaba shiner
		Notropis girardi	Arkansas River shiner
		Notropis mekistocholas	Cape Fear shiner
		Notropis simus pecosensis	Pecos bluntnose shiner
		Notropis topeka (= tristis)	Topeka shiner
		Phoxinus cumberlandensis	Blackside dace
		Rhinichthys osculus lethoporus	Independence Valley speckled dace
		Rhinichthys osculus nevadensis	Ash Meadows speckled dace
		Rhinichthys osculus oligoporus	Clover Valley speckled dace
		Rhinichthys osculus ssp.	Foskett speckled dace
		Rhinichthys osculus thermalis	Kendall Warm Springs dace
		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Cyprinodontiformes	Poeciliidae	Gambusia gaigei	Big Bend gambusia
		Gambusia georgei	San Marcos gambusia
		Gambusia heterochir	Clear Creek gambusia
		Gambusia nobilis	Pecos gambusia
		Peociliopsis occidentalis	Gila topminnow
Gasterosteiformes	Gasterosteidae	Gasterosteus aculeatus williamsoni	Unarmored threespine stickleback
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tube-nose goby
		Neogobius melanostomus	Round goby
Perciformes	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
	Elassomatidae	Elassoma alabamae	Spring pygmy sunfish
Percidae	Crystallaria cincotta	Diamond darter	

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		Etheostoma chermocki	Vermilion darter
		Etheostoma boschungii	Slackwater darter
		Etheostoma chienense	Relict darter
		Etheostoma etowahae	Etowah darter
		Etheostoma fonticola	Fountain darter
		Etheostoma moorei	Yellowcheek darter
		Etheostoma nianguae	Niangua darter
		Etheostoma nuchale	Watercress darter
		Etheostoma okaloosae	Okaloosa darter
		Etheostoma phytophilum	Rush darter
		Etheostoma rubrum	Bayou darter
		Etheostoma scotti	Cherokee darter
		Etheostoma sp.	Bluemask (= jewel) darter
		Etheostoma susanae	Cumberland darter
		Etheostoma wapiti	Boulder darter
		Percina antesella	Amber darter
		Percina aurolineata	Goldline darter
		Percina jenkinsi	Conasauga logperch
		Percina pantherina	Leopard darter
		Percina tanasi	Snail darter
Scorpaeniformes	Cottidae	Cottus sp.	Grotto sculpin
		Cottus paulus (= pygmaeus)	Pygmy sculpin
Siluriformes	Clariidae	All species	Air-breathing catfish
	Ictaluridae	Noturus baileyi	Smoky madtom
		Noturus crypticus	Chucky madtom
		Noturus placidus	Neosho madtom
		Noturus stanauli	Pygmy madtom
		Noturus trautmani	Scioto madtom
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
<b>MAMMALS:</b>			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs,* Wolves, Coyotes or Coyote hybrids, Jackals and Foxes

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	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except <i>Mustela putorius furo</i> )	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongoose*
	Hyaenidae	All Species	Hyenas and Aardwolves*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Leporidae	<i>Brachylagus idahoensis</i>	Pygmy rabbit
		<i>Lepus europeaeus</i>	European hare
		<i>Oryctolagus cuniculus</i>	European rabbit
		<i>Sylvilagus bachmani riparius</i>	Riparian brush rabbit
		<i>Sylvilagus palustris hefneri</i>	Lower Keys marsh rabbit
Rodentia		All species native to Africa	All species native to Africa
	Dipodidae	<i>Zapus hudsonius preblei</i>	Preble's meadow jumping mouse
	Muridae	<i>Microtus californicus scirpensis</i>	Amargosa vole
		<i>Microtus mexicanus hualpaiensis</i>	Hualapai Mexican vole
		<i>Microtus pennsylvanicus dukecampbelli</i>	Florida salt marsh vole
		<i>Neotoma floridana smalli</i>	Key Largo woodrat
		<i>Neotoma fuscipes riparia</i>	Riparian (= San Joaquin Valley) woodrat
		<i>Oryzomys palustris natator</i>	Rice rat
		<i>Peromyscus gossypinus allapaticola</i>	Key Largo cotton mouse
		<i>Peromyscus polionotus allophrys</i>	Choctawhatchee beach mouse
		<i>Peromyscus polionotus ammobates</i>	Alabama beach mouse
		<i>Peromyscus polionotus niveiventris</i>	Southeastern beach mouse
		<i>Peromyscus polionotus peninsularis</i>	St. Andrew beach mouse
		<i>Peromyscus polionotus phasma</i>	Anastasia Island beach mouse
		<i>Peromyscus polionotus trissyllepsis</i>	Perdido Key beach mouse

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	Heteromyidae	Reithrodontomys raviventris	Salt marsh harvest mouse
		Dipodomys heermanni morroensis	Morro Bay kangaroo rat
		Dipodomys ingens	Giant kangaroo rat
		Dipodomys merriami parvus	San Bernadino Merriam's kangaroo rat
		Dipodomys nitratoides exilis	Fresno kangaroo rat
		Dipodomys nitratoides nitratoides	Tipton kangaroo rat
		Dipodomys stephensi (including D. cascus)	Stephens' kangaroo rat
	Sciuridae	Perognathus longimembris pacificus	Pacific pocket mouse
		Cynomys spp.	Prairie dogs
		Spermophilus brunneus brunneus	Northern Idaho ground squirrel
		Tamiasciurus hudsonicus grahamensis	Mount Graham red squirrel
Soricomorpha	Soricidae	Sorex ornatus relictus	Buena Vista Lake ornate shrew
<b>MOLLUSKS:</b>			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena polymorpha	Zebra mussel
<b>REPTILES:</b>			
Order	Family	Genus/Species	Common Name
Crocodilia	Alligatoridae	All species	Alligators, caimans*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
Squamata	Colubridae	Boiga irregularis	Brown tree snake*
<b>CRUSTACEANS:</b>			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Cambarus aculabrum	Cave crayfish
		Cambarus zophonastes	Cave crayfish
		Orconectes rusticus	Rusty crayfish
		Orconectes shoupi	Nashville crayfish
		Pacifastacus fortis	Shasta crayfish
		Procambarus sp.	Marbled crayfish

	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A of this section, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (\*) in subsection A of this section, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A of this section that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

F. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidae, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

G. Exception for feral hogs. All trapped and harvested hogs must be reported to the department upon vehicle transport or processing of the carcass without unnecessary delay. Anyone may legally trap feral hogs with written permission of the

landowner, provided that any trapped hogs are not removed from the trap site alive and are killed immediately.

~~G.~~ H. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R15-4398; Filed May 12, 2015, 10:52 p.m.

**Proposed Regulation**

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

**Title of Regulation: 4VAC15-40. Game: In General (amending 4VAC15-40-20, 4VAC15-40-195, 4VAC15-40-220, 4VAC15-40-280; adding 4VAC15-40-22; repealing 4VAC15-40-21).**

Statutory Authority: § 29.1-501 of the Code of Virginia.

Public Hearing Information:

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 22, 2015.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The proposed amendments (i) define "bow and arrow," "crossbow," and "archery equipment," establish the minimum head width allowable to hunt bear, deer, elk, and turkeys, and incorporate the licensing of hunting with crossbows into overall archery hunting licensing; (ii) establish a special license to hunt bears for resident and nonresident hunters; (iii) require the daily checking of traps with certain exceptions; (iv) allow the use of remote trap checking systems in lieu of a physical trap check under specified conditions; (v) increase the maximum allowable snare height and require a relaxing lock, cable stop, and break-away device when the top of the snare loop is set above a certain height; (vi) establish that a hunting permit is needed on lands, public as well as private, that are managed by the Department of Game and Inland Fisheries through a lease agreement or memorandum of agreement where the department issues an annual hunting*

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# Regulations

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permit; and (vii) replace the term "stamp" with the more descriptive term "permit."

**~~4VAC15-40-20. Hunting with arrows to which any drug, chemical or toxic substance has been added or explosive head arrows prohibited~~ Archery hunting requirements.**

A. "Bow and arrow" means a weapon made of a strip of flexible material, which, when bent by drawing a string or cable connecting the two ends, uses the energy stored in the flexible material to propel an arrow.

B. "Crossbow" means a bow and arrow mounted horizontally on a stock having a trigger mechanism to release the string.

C. "Archery equipment" means a bow and arrow or a crossbow.

D. Arrows used for hunting bear, deer, elk, and turkey must have a minimum head width of 7/8 inch in a fixed or expanded position.

E. Except as otherwise provided by law or regulation, it shall be unlawful to use arrows to which any drug, chemical or toxic substance has been added or arrows with explosive heads at any ~~that~~ time for the purpose of hunting wild birds or wild animals.

**~~4VAC15-40-21. Special crossbow license; hunting with crossbows. (Repealed.)~~**

~~There shall be a license to hunt with a crossbow during the special archery seasons that shall be in addition to the license required to hunt small game. The fee for the special crossbow license shall be as specified in 4VAC15-20-65.~~

**4VAC15-40-22. Special license for hunting bear.**

There shall be a special license to hunt bears that shall be in addition to the state resident license to hunt or state nonresident license to hunt. The fee for the special bear license shall be as specified in 4VAC15-20-65.

**4VAC15-40-195. Visiting traps, generally; visiting completely submerged, body-gripping traps; use of remote trap check systems.**

A. Except as provided in subsections B and C of this section, it shall be unlawful to fail to visit all traps once each day and remove all animals caught.

B. Body-gripping traps that are completely submerged by water must be visited at least once every 72 hours.

C. Remote trap checking systems may be used in lieu of a physical trap visit when such systems (i) have a control unit that reports trap status to a centralized application database at least once every 24 hours; (ii) have notification alarms that report trap closures and system health issues within one hour of detection via email and text-based messaging systems; and (iii) have on-demand control unit testing capabilities for determining trap status, signal strength, and battery condition via remote system check-in. If the control unit reports a trap closure, the user is required to physically visit the trap within 24 hours of the time the trap was reported closed. If the

control unit fails to report its current status within a 24-hour check-in period or reports a system health issue, the user is required to physically check the trap within 24 hours of the last time an open trap signal was received.

**4VAC15-40-220. Use of deadfalls prohibited; restricted use of snares.**

It shall be unlawful to trap, or attempt to trap, on land any wild bird or wild animal with any deadfall or snare; provided, that snares with loops no more than 12 inches in diameter and with the ~~top~~ bottom of the snare loop set not to exceed 12 inches above ground level may be used with the written permission of the landowner. Snares with the top of the snare loop set higher than 12 inches above ground level must include a relaxing lock, a cable stop that prevents the snare loop from closing smaller than 2-1/2 inches in diameter, and a break-away device that has been tested to break or disassemble at no more than 285 pounds pull.

**4VAC15-40-280. Department-owned, controlled, or managed lands; annual stamp permit for hunting on private lands managed by the department.**

A. The open seasons for hunting and trapping, as well as hours, methods of taking, and bag limits for department-owned or ~~controlled~~ department-controlled lands, or lands managed by the department under cooperative agreement, shall conform to the regulations of the board unless excepted by posted rules established by the director or his designee. Such posted rules shall be displayed at each recognized entrance to the land where the posted rules are in effect.

B. Department-owned lands shall be open to the public for wildlife observation and for hunting, fishing, trapping, and boating (as prescribed by 4VAC15-320-100) under the regulations of the board. Other activities deemed appropriate by the director or his designee may be allowed by posted rules, by written authorization from the director or his designee, or by special permit.

C. No person shall hunt on private lands managed by the department through a lease agreement or other similar memorandum of agreement where the department issues an annual hunting stamp permit without having purchased a valid annual hunting stamp permit. The annual hunting stamp permit shall be in addition to the required licenses to hunt, and the cost of such stamp permit shall be the same as the cost of the annual state resident hunting license in § 29.1-303 of the Code of Virginia.

D. Activities that are not generally or specifically authorized in accordance with subsections A through C of this section are prohibited and shall constitute a violation of this regulation.

VA.R. Doc. No. R15-4399; Filed May 13, 2015.

**Proposed Regulation**

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

**Title of Regulation:** **4VAC15-50. Game: Bear (amending 4VAC15-50-12, 4VAC15-50-70, 4VAC15-50-81, 4VAC15-50-110, 4VAC15-50-120).**

**Statutory Authority:** § 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments (i) move the youth and apprentice hunter bear hunting day from the last Saturday in September to the second Saturday in October and add the Sunday following it, making it a youth and apprentice hunter bear hunting weekend; (ii) for the Saturday of the youth and apprentice weekend, allow the use of hounds anywhere they are allowed during the open (firearms) season and in the proposed southwest training counties, and list the areas where hunting with bear hounds during this day is prohibited; (iii) replace the term "bow and arrow" with the term "archery" or "archery equipment"; (iv) move the requirements for minimum arrow head width and distance a bow must be capable of shooting to 4VAC15-40-20; (v) remove the reference to season dates; (vi) provide exceptions for the use of firearms and bear hounds on the youth and apprentice bear hunting day; (vii) remove references to deer and turkey to accommodate the proposed establishment of a separate special license to hunt bears; (viii) clarify the areas dogs are not permitted during open (firearms) bear season; (ix) allow for a six-week bear hound training season in 11 counties; and (x) add one week of bear hound training season at the end of September in four counties.*

**4VAC15-50-12. Youth and apprentice hunter bear hunting ~~day~~ weekend.**

It shall be lawful for hunters 15 years of age and under and holders of a valid apprentice hunting license, when in compliance with all applicable laws and license requirements, to hunt bears on the ~~last~~ second Saturday in ~~September~~ October and the following calendar day when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a

hunting license. Adult hunters accompanying youth or apprentice bear hunters on this ~~day~~ weekend may not carry or discharge weapons. Bear bag limit, weight limits, and all other take restrictions specifically provided in the sections appearing in this chapter apply to this youth ~~day~~ weekend. Bear hunting with dogs is prohibited ~~except any place where there is a bear hound training season currently in progress as defined in 4VAC15-50-120 (Bear hound training season) and tracking in the counties of Accomack, Campbell (west of Norfolk Southern Railroad), Fairfax, Loudoun, Northampton, Pittsylvania (west of Norfolk Southern Railroad), Roanoke (south of Interstate 81), and in the city of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew Wildlife Management Areas. Tracking dogs as defined~~ described in § 29.1-516.1 of the Code of Virginia may be used.

**4VAC15-50-70. ~~Bow and arrow~~ Archery hunting.**

A. It shall be lawful to hunt bear during the special archery season with ~~bow and arrow~~ archery equipment from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. It shall be unlawful to carry firearms while hunting with ~~bow and arrow~~ archery equipment during the special archery seasons, except that hunters 15 years of age and under and apprentice hunters may be in possession of firearms while hunting on youth and apprentice hunter bear hunting weekend as authorized by 4VAC15-50-12 and except that a muzzleloading gun, as defined in 4VAC15-50-71, may be in the possession of a properly licensed muzzleloading gun hunter when and where the early special archery bear season overlaps the early special muzzleloading bear season.

~~C. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.~~

~~D. C.~~ It shall be unlawful to use dogs when hunting with ~~bow and arrow from the second Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive, except~~ archery equipment during the special archery season, except that hounds may be used by hunters participating in the youth and apprentice hunter bear hunting weekend in areas as defined in 4VAC15-50-12, and that tracking dogs as defined described in § 29.1-516.1 of the Code of Virginia may be used.

**4VAC15-50-81. Validating tags and checking bear by licensee or permittee.**

A. Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear, ~~deer, and turkey~~ or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear, ~~deer, and turkey~~ or

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special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a bear and validating (notching) a license tag or special permit, as provided ~~above~~ in subsection A of this section, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass. At such time, the person checking the carcass will be given a game check card. The successful hunter shall then immediately record the game check card number, in ink, on the line provided adjacent to the license tag that was validated (notched) in the field. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity (sex) of any bear killed unless and until the license tag or special permit is validated (notched) and checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as the sex of the animal remains identifiable and all the parts of the carcass are present when the bear is checked at an authorized bear checking station. Any bear found in the possession of any person without a validated (notched) license tag or documentation that the bear has been checked at an authorized bear checking station as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

#### **4VAC15-50-110. Use of dogs in hunting bear.**

A. It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and in the counties of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, and Nelson (west of Route 151); and within the boundaries of the national forests, except that tracking dogs as ~~defined~~ described in § 29.1-516.1 of the Code of Virginia may be used.

B. It shall be unlawful to use dogs for the hunting of bear during the first 14 days of the open season for hunting deer in the counties of Greene and Madison, except that tracking

dogs as ~~defined~~ described in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to use dogs for the hunting of bear during the open season prescribed in 4VAC15-50-11 in the counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast and Cripple Creek on the south); in the city of Lynchburg; and on Amelia, Chester F. Phelps, G. Richard Thompson, and Pettigrew ~~wildlife management areas~~ Wildlife Management Areas, except that tracking dogs as ~~defined~~ described in § 29.1-516.1 of the Code of Virginia may be used.

#### **4VAC15-50-120. Bear hound training season.**

A. It shall be lawful to chase black bear with dogs, without capturing or taking, from the second Saturday in August through the last Saturday in September, both dates inclusive, in all counties and cities or in the portions in which bear hunting is permitted except in the counties of Accomack, Amelia, Appomattox, Brunswick, Buckingham, Campbell, Caroline, ~~Carroll~~, Charles City, Charlotte, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, ~~Floyd~~, Fluvanna, ~~Franklin~~, Frederick, Gloucester, Goochland, ~~Grayson~~, Greenville, Halifax, Hanover, Henrico, ~~Henry~~, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, ~~Montgomery (south of Interstate 81)~~, New Kent, Northampton, Northumberland, Nottoway, Orange, ~~Patrick~~, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, ~~Pulaski (south of Interstate 81)~~, Richmond, Roanoke (south of Interstate 81), ~~Smyth (south of Interstate 81)~~, Southampton, Spotsylvania, Stafford, Surry, Sussex, ~~Washington (south of Interstate 81)~~, Westmoreland, ~~Wythe (south of Interstate 81)~~, and York, and in the cities of Hampton, Newport News and Norfolk.

B. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November and for 14 days following, both dates inclusive, in the counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Essex, Gloucester, Greenville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

C. It shall be lawful to chase black bears with dogs, without capturing or taking, in the counties of Brunswick, Greensville, Lunenburg, and Mecklenburg from the first Saturday in September through the ~~third~~ last Saturday in September, both dates inclusive.

D. It shall be unlawful to have in possession a firearm, bow, crossbow or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having a firearm, bow, crossbow or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R15-4400; Filed May 13, 2015, 1:19 a.m.

**Proposed Regulation**

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

**Title of Regulation:** **4VAC15-70. Game: Bobcat (amending 4VAC15-70-30).**

**Statutory Authority:** § 9.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments remove the season bag limit of 12 bobcats per year, taken by hunting and trapping combined.*

**4VAC15-70-30. Bag limit.**

The bag limit for hunting bobcat shall be two per hunting party, taken between noon of one day and noon the following day. ~~The season bag limit shall be 12 bobcats in the aggregate, taken by hunting and trapping combined.~~

VA.R. Doc. No. R15-4401; Filed May 13, 2015, 1:33 a.m.

**Proposed Regulation**

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

**Title of Regulation:** **4VAC15-90. Game: Deer (amending 4VAC15-90-23 through 4VAC15-90-89, 4VAC15-90-91, 4VAC15-90-231, 4VAC15-90-293).**

**Statutory Authority:** § 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments (i) expand the youth and apprentice hunter deer hunting day by one day, making it a youth and apprentice hunter deer hunting weekend, and establish the weekend bag limit for it; (ii) replace the term "bow and arrow" with the term "archery" or "archery equipment" and move the requirements for minimum arrow head width and distance a bow must be capable of shooting from this regulation to 4VAC15-40; (iii) adjust the numbers of days that deer of either sex may be taken during the muzzleloading gun and the general firearms deer hunting seasons in various locations statewide; (iv) expand the area where elk are protected from harvest from the designated three-county elk restoration area to all 31 counties west of the Blue Ridge Mountains; (v) in Rappahannock County prohibit the taking of a second or third antlered deer prior to taking at least one or two, respectively, antlerless deer; (vi) remove references to bear to accommodate the proposed creation of a special hunting license to hunt bears; (vii) remove language that could create a misimpression about whether cervids harvested from an area adjacent to a carcass-restriction zone may enter Virginia; and (viii) prohibit the possession and use of cervid excretions and bodily fluids for the purpose of taking, attempting to take, attracting, or scouting any wild animal.*

**4VAC15-90-23. Youth and apprentice hunter deer hunting day weekend.**

It shall be lawful for deer hunters 15 years of age and under and holders of an apprentice hunting license, when in compliance with all applicable laws and license requirements, to hunt deer on the last Saturday in September and the following calendar day when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Deer of either-sex may be taken on this special youth and apprentice deer hunting day weekend. Adult hunters accompanying youth or apprentice deer hunters on this day weekend may not carry or discharge weapons. Blaze orange is required for all persons hunting any species or any person accompanying a hunter on this day weekend unless otherwise exempted by state law. Deer hunting with dogs is prohibited, except that tracking dogs as ~~defined~~ described in § 29.1-516.1

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of the Code of Virginia may be used. Youth and apprentice deer hunters are limited on this weekend to one deer per hunter.

## **4VAC15-90-70. ~~Bow and arrow~~ Archery hunting.**

A. It shall be lawful to hunt deer during the early special archery season with ~~bow and arrow~~ archery equipment from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with ~~bow and arrow~~ archery equipment from the Sunday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), Patrick and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with ~~bow and arrow~~ archery equipment during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

~~E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.~~

~~F. E.~~ It shall be unlawful to use dogs when hunting with ~~bow and arrow~~ archery equipment during any special archery season, except that tracking dogs as defined described in § 29.1-516.1 of the Code of Virginia may be used.

~~G. For the purpose of the application of subsections A through I to this section, the phrase "bow and arrow" includes crossbows.~~

~~H. F.~~ It shall be lawful to hunt antlerless deer during the special urban archery season with ~~bow and arrow~~ archery equipment from the first Saturday in September through the

Friday prior to the first Saturday in October, both dates inclusive, and from the Sunday following the first Saturday in January through the last Sunday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

~~I. G.~~ It shall be lawful to hunt antlerless deer during the special antlerless archery season with ~~a bow and arrow~~ archery equipment from the Monday following the last Sunday in March through the last Sunday in April, both dates inclusive, in Arlington, Fairfax, Loudoun, and Prince William counties (including the cities and towns within).

## **4VAC15-90-80. Muzzleloading gun hunting.**

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 21 consecutive days immediately prior to and on the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), Patrick and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted below:

- 1. Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands (except on Merrimac Farm Wildlife Management Area) and Philpott Reservoir.

- 2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below:

- 1. Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Carroll, Frederick, Grayson, Montgomery, Roanoke, Shenandoah, and Warren counties.

2. Deer of either sex may be taken on the second Saturday and the last five days of the early muzzleloading season on private lands in Botetourt County.

- 3. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, ~~Smyth~~, Tazewell, ~~Washington~~, and Wise counties and on national forest lands in Alleghany, ~~Botetourt~~, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Page, Pulaski, Rockingham, Scott, Shenandoah, Warren, and on national forest and department-owned lands in Augusta, Bath, Botetourt, Carroll, Highland, and Roanoke, Rockbridge, Smyth, Washington, and Wythe counties and on Grayson Highlands State Park and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below:

- 1. Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Roanoke, Shenandoah, and Warren counties ~~and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.~~

- 2. Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Dickenson (north of Route 83), Highland, Lee, Russell, ~~Scott~~, ~~Smyth~~, Tazewell, ~~Washington~~, and Wise counties and on national forest lands in Amherst, Bedford, Botetourt, Frederick, Grayson, Nelson, Page, Rockingham, Scott, Shenandoah, and Warren counties, and on national forest and department-owned lands in Augusta ~~and~~ Botetourt, Rockbridge, Smyth, and Washington counties and on private lands west of Routes 613 and 731 in Rockingham County and Grayson Highlands State Park.

- 3. Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits

of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as ~~defined~~ described in § 29.1-516.1 of the Code of Virginia may be used.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

I. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

**4VAC15-90-85. Elk hunting.**

A. Closed season. There shall be a continuous closed season for elk (*Cervus elaphus*) hunting in ~~Buchanan, Dickenson, and Wise counties~~ all counties west of the Blue Ridge Mountains.

B. Open season. Except as otherwise provided by this chapter, it shall be lawful to hunt elk of either sex during (i) the general firearms deer seasons (as prescribed by 4VAC15-90-10 and 4VAC15-90-23), (ii) the special archery seasons (as prescribed by 4VAC15-90-70), and (iii) the special muzzleloading seasons (as prescribed by 4VAC15-90-80) with bag limits as prescribed in 4VAC15-90-90.

C. Validating tags and checking elk by licensee or permittee. Upon killing an elk, any licensed or permitted hunter shall validate a tag, bonus deer permit, or special permit and check the elk in accordance with 4VAC15-90-231. At the time of checking, the hunter must call the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

D. Checking elk by persons exempt from license requirements or holding a license authorization number. Upon killing an elk, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall check the elk in accordance with 4VAC15-90-241. At the time of checking, the hunter must call the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

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## **4VAC15-90-89. Earn a buck (EAB).**

For the purposes of this section, the term "license year" defines the period between July 1 and June 30 of the following year.

Arlington County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Arlington County prior to taking at least two antlerless deer in Arlington County, and it shall be unlawful to take a third antlered deer in Arlington County prior to taking at least three antlerless deer in Arlington County.

Bedford County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Bedford County prior to taking at least one antlerless deer on private lands in Bedford County, and it shall be unlawful to take a third antlered deer on private lands in Bedford County prior to taking at least two antlerless deer on private lands in Bedford County.

Clarke County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Clarke County prior to taking at least one antlerless deer on private lands in Clarke County.

Fairfax County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Fairfax County prior to taking at least two antlerless deer in Fairfax County, and it shall be unlawful to take a third antlered deer in Fairfax County prior to taking at least three antlerless deer in Fairfax County.

Frederick County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Frederick County prior to taking at least one antlerless deer on private lands in Frederick County.

Loudoun County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Loudoun County prior to taking at least two antlerless deer in Loudoun County, and it shall be unlawful to take a third antlered deer in Loudoun County prior to taking at least three antlerless deer in Loudoun County.

Prince William County except on Department of Defense lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least two antlerless deer in Prince William County (except on Department of Defense lands), and it shall be unlawful to take a third antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least three antlerless deer in Prince William County (except on Department of Defense lands).

Rappahannock County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Rappahannock County prior to taking

at least one antlerless deer in Rappahannock County, and it shall be unlawful to take a third antlered deer in Rappahannock County prior to taking at least two antlerless deer in Rappahannock County.

Roanoke County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Roanoke County prior to taking at least one antlerless deer on private lands in Roanoke County.

Warren County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Warren County prior to taking at least one antlerless deer on private lands in Warren County.

## **4VAC15-90-91. General firearms season either-sex deer hunting days.**

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: ~~the second, third, and fourth Saturdays and the last 27 days~~ full season.

Albemarle County: full season.

Alleghany County: the second Saturday and the last day.

-National forest lands: the last day.

Amelia County: the second and third Saturdays and the last 13 days.

-Amelia WMA: the second and third Saturdays and the last six days.

Amherst County (east of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): the second, third, and fourth Saturdays and the last 27 days.

Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

-National forest lands: the last day.

Appomattox County: the second and third Saturdays and the last ~~43~~ six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 27 days.

Arlington County: full season.

Augusta County: the second Saturday and the last six days.

-National forest and department-owned lands: the last day.

Bath County: the second Saturday and the last day.

-National forest and department-owned lands: the last day.

Bedford County: full season.

-National forest lands: the last day.

Bland County: the second Saturday and the last ~~two days~~ day.

-National forest lands: the second Saturday and the last day.

Botetourt County: full season.

-National forest and department-owned lands: the last day.

Brunswick County: the second and third Saturdays and the last ~~13~~ six days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last ~~13~~ six days.

-Horsepen Lake WMA: the second and third Saturdays and the last six days.

-Appomattox-Buckingham State Forest: the second and third Saturdays.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 27 days.

Campbell County: the second, third, and fourth Saturdays and the last 27 days.

Caroline County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 13 days.

-Mattaponi WMA: the second and third Saturdays and the last six days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

Charles City County: ~~full season~~ the second, third, and fourth Saturdays and the last 27 days.

-Chickahominy WMA: ~~the second Saturday after Thanksgiving~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last ~~13~~ six days.

Chesapeake (City of): ~~full season~~ the second and third Saturdays and the last 13 days.

Chesterfield County: the second and third Saturdays and the last 13 days.

Clarke County: full season.

Craig County: full season.

-National forest lands: the second Saturday and the last day.

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday and the last day.

Cumberland County: the second and third Saturdays and the last 13 days.

-Cumberland State Forest: the second and third Saturdays.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last ~~13~~ six days.

Essex County: the second, third, and fourth Saturdays and the last 27 days.

Fairfax County: full season (restricted to certain parcels of land by special permit).

Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last day.

-Chester F. Phelps WMA: the second Saturday and the last day.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last 13 days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Frederick County: full season.

-National forest lands: the last day.

Giles County: full season.

-National forest lands: the second Saturday and the last day.

Gloucester County: the second, third, and fourth Saturdays and the last 27 days.

Goochland County: the second, third, and fourth Saturdays and the last 27 days.

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Greene County: full season.

Greensville County: full season.

Halifax County: ~~full season~~ the second, third, and fourth Saturdays and the last 27 days.

Hanover County: full season.

Henrico County: full season.

Henry County: the second and third Saturdays and the last 13 days.

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-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

-Turkeycock Mountain WMA: the second Saturday and the last six days.

Highland County: the second Saturday and the last day.

-National forest and department-owned lands: the last day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 13 days.

King George County: ~~the second, third, and fourth Saturdays and the last 27 days~~ full season.

King William County: the second, and third, ~~and fourth~~ Saturdays and the last ~~27~~ 13 days.

Lancaster County: full season.

Lee County: the second Saturday and the last two days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second, third, and fourth Saturdays and the last 27 days.

Lunenburg County: the second and third Saturdays and the last ~~43~~ six days.

Madison County: full season.

-Rapidan WMA: the second, third, and fourth Saturdays and the last 27 days.

Mathews County: the second, third, and fourth Saturdays and last 27 days.

Mecklenburg County: the second and third Saturdays and the last ~~43~~ six days.

-Dick Cross WMA: the second and third Saturdays and the last six days.

Middlesex County: the second, third, and fourth Saturdays and last 27 days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last day.

Nelson County (east of Route 151): the second, third, and fourth Saturdays and the last 27 days.

-James River WMA: the second Saturday and the last six days.

Nelson County (west of Route 151): full season.

-National forest lands: the last day.

New Kent County: ~~full season~~ the second, third, and fourth Saturdays and the last 27 days.

Northampton County: ~~the second, third, and fourth Saturdays and the last 27 days~~ full season.

Northumberland County: full season.

Nottoway County: the second and third Saturdays and the last ~~43~~ six days.

Orange County: full season.

Page County: the second Saturday and the last two days.

-National forest lands: the last day.

Patrick County: the second and third Saturdays and the last 13 days.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

Pittsylvania County: the second, third, and fourth Saturdays and the last 27 days.

-White Oak Mountain WMA: the second Saturday and the last day.

Powhatan County: the second and third Saturdays and the last 13 days.

-Powhatan WMA: the second and third Saturdays and the last ~~six~~ 13 days.

Prince Edward County: the second and third Saturdays and the last ~~43~~ six days.

-Briery Creek WMA: the second and third Saturdays and the last six days.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 27 days.

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

-National forest lands: the second Saturday and the last day.

Rappahannock County: full season.

Richmond County: full season.

Roanoke County: full season.

-National forest and department-owned lands: the second Saturday and the last day.

Rockbridge County: the second Saturday and the last two days.

-National forest and department-owned lands: the last day.

Rockingham County: the second Saturday and the last six days.

-National forest lands and private lands west of Routes 613 and 731: the last day.

Russell County: the second Saturday and the last two days.

-Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Scott County: the second Saturday and the last six days.

-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: the last day.

Smyth County: the second Saturday and the last six days.

-National forest lands, Clinch Mountain WMA, and Hungry Mother State Park: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Southampton County: full season.

Spotsylvania County: the second, third, and fourth Saturdays and the last 27 days.

Stafford County: full season.

Suffolk (~~City of~~) (east of the Dismal Swamp Line): ~~full season~~ the second and third Saturdays and the last 13 days.

Suffolk (west of the Dismal Swamp Line): full season.

Surry County: full season.

-Carlisle Tract of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

Tazewell County: the second Saturday and the last two days.

-National forest lands and Clinch Mountain WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Virginia Beach (City of): ~~full season~~ the second and third Saturdays and the last 13 days.

Warren County: full season.

-National forest lands: the last day.

Washington County: the second Saturday and the last six days.

-National forest lands, Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Westmoreland County: full season.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

-National forest lands and Big Survey WMA: the second Saturday and the last day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

#### **4VAC15-90-231. Validating tags and checking deer by licensee or permittee.**

A. Any person killing a deer shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting ~~bear,~~ deer, and turkey, bonus deer permit, or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a deer tag from any special license for hunting ~~bear,~~ deer, and turkey, bonus deer permit, or special permit prior to the killing of a deer. A deer tag that is mistakenly validated (notched) prior to the killing of a deer must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a deer and validating (notching) a license tag, bonus deer permit or special permit, as provided ~~above in~~ subsection A of this section, the licensee or permittee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag, bonus deer permit or special permit to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in ~~4VAC15-90-22~~ 4VAC15-90-10 and 4VAC15-90-70) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass will be given a game check card furnished by the department or a confirmation number from the automated reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in

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possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

C. It shall be unlawful for any person to destroy the identity of the sex of any deer killed unless and until the license tag, bonus deer permit or special permit is validated (notched) and checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required ~~above in subsection A of this section~~, as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer found in the possession of any person without a validated (notched) license tag or documentation that the deer has been checked (via a big game check station or the automated harvest reporting system) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

D. Upon killing a deer within an area designated by the department for deer disease management and on days designated by the department, the licensee or permittee shall present the carcass, on the day of kill, at a location designated by the department for the purposes of disease surveillance or biological monitoring.

#### **4VAC15-90-293. Chronic Wasting Disease deer carcass movement—restrictions Unauthorized cervid parts, excretions, and carcass importation, movement, possession, and use.**

A. For the purposes of this section and in 4VAC15-40-285 and 4VAC15-90-294:

"Cervid" means any member of the deer family Cervidae, including but not limited to white-tailed deer, fallow deer, sika deer, elk, and reindeer.

B. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from an enclosure intended to confine deer or elk or from any area designated by the department as a carcass-restriction zone ~~in or adjacent to a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer~~, except that the following carcass parts may be imported and possessed:

1. Boned-out meat that is cut and wrapped;
2. Quarters or other portions of meat with no part of the spinal column or skull attached;
3. Hides or capes with no skull attached;
4. Clean (no meat or tissue attached) skulls or skull plates with or without antlers attached;

5. Antlers (with no meat or tissue attached);
6. Upper canine teeth (buglers, whistlers, or ivories); and
7. Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who killed or owned the animal.

C. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

D. No person shall transport any carcass or part of a carcass of any cervid out of any area designated by the department as a disease containment area, except that the carcass parts enumerated in subsection B of this section may be transported, and carcasses or parts may be transported directly to locations designated by the department, provided that such carcasses or parts are transported without unnecessary delay and secured within a vehicle or vehicles during transit. Provisions of this section shall not apply to employees of the department or another government agency working in an official disease investigation capacity.

E. No person shall for the purposes of taking or attempting to take, attracting, or scouting any wild animal in Virginia possess or use any substance or material that contains or purports to contain any excretion collected from a cervid, including feces, urine, blood, gland oil, or other bodily fluid.

VA.R. Doc. No. R15-4402; Filed May 13, 2015, 5:58 a.m.

### **Proposed Regulation**

<p><b>REGISTRAR'S NOTICE:</b> The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.</p>
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**Title of Regulation:** **4VAC15-105. Game: Fisher (adding 4VAC15-105-10).**

**Statutory Authority:** § 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park

Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The proposed chapter establishes a continuous closed hunting and trapping season for fishers.*

CHAPTER 105  
GAME: FISHER

**4VAC15-105-10. Closed season; generally.**

There shall be a continuous closed season for hunting and trapping fishers.

V.A.R. Doc. No. R15-4403; Filed May 13, 2015, 3:23 a.m.

**Proposed Regulation**

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

Title of Regulation: **4VAC15-240. Game: Turkey (amending 4VAC15-240-40, 4VAC15-240-51, 4VAC15-240-60, 4VAC15-240-81).**

Statutory Authority: § 29.1-501 of the Code of Virginia.

Public Hearing Information:

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: May 22, 2015.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The proposed amendments (i) provide for the issuance of permits to nongovernment organizations that aid sportsmen with impaired mobility to hold events on seven specified days of the spring hunting season in which such sportsmen may hunt from one-half hour before sunrise to sunset; (ii) expand the youth and apprentice hunter turkey hunting day in the spring season to a Saturday and Sunday, making it a youth and apprentice hunter turkey hunting weekend, with a bag limit of one turkey per youth or apprentice hunter for the weekend; (iii) replace the term "bow and arrow" with the term "archery" or "archery equipment," (iv) move the requirements for minimum arrow head width and distance a bow must be capable of shooting to 4VAC15-40; and (v) remove references to bear to accommodate the proposed establishment of a special hunting license to hunt bears.*

**4VAC15-240-40. Open season; spring season for bearded turkeys.**

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys from the second Saturday in

April and for 35 days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time during the first 23 days and from 1/2 hour before sunrise to sunset during the last 13 days of the spring season.

B. Turkey hunters 15 years of age and younger and holders of an apprentice hunting license may hunt on the first Saturday in April and the following calendar day from 1/2 hour before sunrise to sunset, when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or an adult who is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters or apprentice license holders on ~~this day~~ these days may assist with calling but they shall not carry or discharge weapons. Youth and apprentice turkey hunters are limited on this weekend to one turkey per hunter.

C. Upon receipt of an application from an officer or other designated official representative of any nonprofit organization that has support for sportsmen with impaired mobility as one of its mission statements, the director may issue a permit to an officer or representative of the organization that allows sportsmen with impaired mobility to hunt bearded wild turkeys from one-half hour before sunrise to sunset from the 10th through 16th days of the spring season. Such authorization shall be valid only when hunting during an authorized event. All participants shall be in compliance with all requirements of law and regulation that apply during the spring season, and bearded turkeys killed during these events shall count toward daily and annual bag limits.

~~C. D.~~ Bearded turkeys may be hunted by calling.

~~D. E.~~ It shall be unlawful to use dogs or organized drives for the purpose of hunting.

~~E. F.~~ It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

**4VAC15-240-51. Youth and apprentice hunter fall turkey hunting ~~day~~ weekend.**

In counties, cities, and areas with a fall turkey season, hunters 15 years of age and under and holders of an apprentice hunting license may hunt turkey on the third Saturday in October and the following calendar day when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters or apprentice license holders on ~~this day~~ these days may assist with calling turkey but they shall not carry or discharge weapons. Youth and apprentice turkey hunters are limited on this weekend to one turkey per hunter.

**4VAC15-240-60. ~~Bow and arrow~~ Archery hunting.**

A. Season. It shall be lawful to hunt turkey with ~~bow and arrow~~ archery equipment in those counties and areas open to

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fall turkey hunting from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with ~~bow and arrow~~ archery equipment shall be the same as permitted during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with ~~bow and arrow~~ archery equipment during the special archery season.

~~D. Requirements for bow and arrow. Arrows used for hunting turkey must have a minimum width head of 7/8 of an inch, and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.~~

~~E. D.~~ Use of dogs prohibited during ~~bow~~ archery season. It shall be unlawful to use dogs when hunting with ~~bow and arrow~~ archery equipment from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

#### **4VAC15-240-81. Validating tags and checking turkey by licensee.**

A. Any person killing a turkey shall, before removing the carcass from the place of kill, validate an appropriate tag on his special license for hunting ~~bear, deer, and turkey~~ by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a turkey tag from any special license for hunting ~~bear, deer, and turkey~~ prior to the killing of a turkey. A turkey tag that is mistakenly validated (notched) prior to the killing of a turkey must be immediately voided by the licensee by writing, in ink, the word "VOID" on the line provided on the tag.

B. Upon killing a turkey and validating (notching) a license tag, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or report his kill through the department's automated harvest reporting system. Turkeys killed during the January season (as prescribed in 4VAC15-240-10) and the spring turkey seasons (as prescribed in 4VAC15-240-40 and 4VAC15-240-60) must be reported through the department's automated harvest reporting system. The person reporting the carcass will be given a game check card furnished by the department or a confirmation number from the automated harvest reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the license tag that was validated (notched) in the field. If checked at a big game check station,

the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the turkey is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the turkey was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed unless and until the license tag is validated (notched) and reported to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed or by using the automated harvest reporting system as required by this section. Any turkey found in the possession of any person without a validated (notched) license tag or documentation that the turkey has been reported to an authorized checking station or to an appropriate representative of the department in the county or adjoining counties in which the turkey was killed or by using the automated harvest reporting system as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

VA.R. Doc. No. R15-4404; Filed May 13, 2015, 7:03 a.m.

### **Proposed Regulation**

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

**Title of Regulation:** **4VAC15-260. Game: Waterfowl and Waterfowl Blinds (amending 4VAC15-260-10).**

**Statutory Authority:** § 29.1-501 of the Code of Virginia.

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The proposed amendments require each side of a stationary waterfowl blind located in the public waters to be marked with 100 square inches of white, reflective*

material, at least three feet above the high water mark. However, this requirement is not in effect when the blind actually is being used for hunting.

**4VAC15-260-10. "Floating blind" and "stationary blind" defined; reflector requirement for stationary blinds in public waters.**

"Floating blind" means a floating device, whether in motion or anchored, that can be occupied by and conceal one or more hunters, uses a means of concealment other than the device's paint or coloration, and is used in the public waters for the purpose of hunting and shooting waterfowl.

"Stationary blind" means a structure erected at a fixed location either on the shores of the public waters or in the public waters for the purpose of hunting and shooting waterfowl. A stationary blind shall be (i) of such size and strength that it can be occupied by and conceal one or more hunters or (ii) large enough to accommodate and conceal a boat or skiff from which one or more hunters intend to hunt or shoot waterfowl.

Stationary blinds located in the public waters must be marked on each side with at least 100 square inches of clearly visible, white-colored reflective material attached at least three feet above the high water mark. The requirement for reflective material on stationary blinds is not in effect while the stationary blind is actually being used for hunting.

All such devices and structures shall come within the provisions of the laws for hunting waterfowl, which require that blinds be licensed.

V.A.R. Doc. No. R15-4405; Filed May 13, 2015, 7:28 a.m.

**Proposed Regulation**

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

**Title of Regulation:** 4VAC15-275. **Game:** Hunter Education (adding 4VAC15-275-10 through 4VAC15-275-110).

**Statutory Authority:** § 29.1-103 of the Code of Virginia (4VAC15-275-100).

§ 29.1-300.2 and 29.1-501 of the Code of Virginia (4VAC15-275-10 through 4VAC15-275-110).

**Public Hearing Information:**

June 2, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** May 22, 2015.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

The proposed regulation establishes the standards and practices for the Virginia Hunter Education program.

**CHAPTER 275**

**GAME: HUNTER EDUCATION**

**4VAC15-275-10. Application.**

This chapter applies to any person who has never obtained a license to hunt in any state or country or any person who is under the age of 16 years, unless such a person presents to the Department of Game and Inland Fisheries or one of its authorized license vendors a certificate of completion in hunter education issued or authorized by the director or his representative under the hunter education program or proof that he holds the equivalent certificate obtained from an authorized agency or association of another state or country.

**4VAC15-275-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly requires a different meaning:

"Accompanied and directly supervised" means, in the case of an apprentice hunter, that a licensed person over 18 years of age maintains a close visual and verbal contact with, provides adequate direction to, and can immediately assume control of the firearm from the apprentice hunter. In the case of a hunter age 12 years or under, the term means that the licensed adult is within sight of the person under the age of 12 years.

"Adult" means the parent or legal guardian of the person under age 12 years, or such person over the age of 18 years designated by the parent or legal guardian.

"Approved course provider" is any individual, business, or organization that makes available to the hunting public a hunter education course that is approved by the International Hunter Education Association – United States (IHEA-USA) and is accepted by the department. An approved course provider shall have executed and have on file a valid cooperative agreement with the department. The department will make information regarding such approved courses and providers readily available for public access.

"Board" means the Board of Game and Inland Fisheries.

"Department" means the Department of Game and Inland Fisheries.

"Hunter education course" means a course offered in the classroom, through the Internet, or through an electronic format that provides course content and test questions that at a minimum meet the International Hunter Education Association-USA Education Standards, May 2, 2014, set forth by the International Hunter Education Association-USA (IHEA-USA) and are accepted by the department. A hunter education course shall include no less than 50 test questions, which shall include at least eight test questions specific to Virginia hunting laws.

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"IHEA-USA" means the International Hunter Education Association-USA.

"Virginia Hunter Education Card" means a card authorized for issuance by the department to a person who has met the minimum standard of hunter education course competency. This card may be issued as an original or a replacement hunter education course card.

#### **4VAC15-275-30. Provisions for compliance and minimum standards for hunter education course competency.**

A. A person shall be considered in compliance with the requirements for hunter education if he meets one or more of the following provisions pursuant to § 29.1-300.2 of the Code of Virginia:

1. Completes and passes a hunter education course that is accepted by the department including a fully online course;
2. Is 16 years of age or older and has previously held a license to hunt in any state or country;
3. Is under the age of 12 years and is accompanied and directly supervised by an adult who holds a valid Virginia hunting license; or
4. Holds a Virginia apprentice hunting license and is accompanied and directly supervised by a licensed adult hunter.

B. The minimum standards for hunter education course competency required by the department are:

1. Successful completion of a classroom-based hunter education course or through another format as determined by the department with a passing score of at least 80% on a written test administered closed book at the conclusion of the course by the designated course instructor or other designated course assistant as determined appropriate by the department; and
2. Successful completion of an Internet hunter education course that is approved by the department with a passing score of at least 90% on an open-book test administered during the online course.

#### **4VAC15-275-40. Hunter education course provider requirements.**

A. To be an approved course provider, any individual, business, or organization that instructs or provides a hunter education course shall execute and have on file a cooperative agreement with the department. It shall be the responsibility of the state hunter education program manager or his designee to develop and execute such agreements. A list of approved course providers and hunter education courses shall be kept by the department and made available to the public. Such list does not constitute any endorsement of any course or course provider by the department or the board.

B. As of January 1, 2016, hunter education courses offered through the Internet and accepted by the department shall:

1. Meet the International Hunter Education Association-USA Education Standards, May 2, 2014, set by the IHEA-USA for course content; and

2. Be provided only by an approved course provider that has executed a valid cooperative agreement with the department. Such agreements may be amended at any time by the department and may be canceled with 30 days notice upon failure of the course provider to comply with the terms and conditions of the agreement or its amendments.

C. Any material or product to be used by an approved course provider that makes reference to the department must be approved by the department through the hunter education program manager or his designee before being published or distributed to the public.

D. Any fees charged by a course provider are set by the course provider, but must be clearly communicated to the student prior to the student taking the course. There will be no fees for Virginia hunter education courses provided by the department.

#### **4VAC15-275-50. Hunter education course availability.**

A. The department shall provide classroom-based hunter education courses across the Commonwealth on a schedule determined by the department.

B. The department shall coordinate with approved course providers of Internet-based courses so that courses developed and offered in accordance with this chapter are available.

#### **4VAC15-275-60. Hunter education course certificates.**

A. Upon successful completion of an online hunter education course, the approved course provider shall provide the student with a course certificate or wallet-size card. At a minimum, such certificate or card shall include the student's name and date of birth, the issuance date, the name of the course, and an indication of acceptance by the department. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved online course provider shall provide to the department a copy of the record of those students issued a course certificate or wallet-size card. Upon request by the student and subject to verification of successful course completion, it shall be the responsibility of each approved online course provider to issue a duplicate certificate or card.

B. Upon successful completion of the Virginia hunter education classroom-based course, the department shall issue a completion certificate or card, which shall include the person's name, date of birth, and the issuance date. Upon request by the person to whom the certificate or card was originally issued and subject to verification of successful completion, the department shall issue a duplicate certificate or card in accordance with its policy.

#### **4VAC15-275-70. Recordkeeping and student records.**

A. The department shall maintain a database of all students successfully completing the department's classroom-based or

online hunter education course. Such database shall include, but not be limited to, student name, address, date of birth, course or other compliance format approved by the department, and the specific name of the course.

B. Each approved course provider for hunter education courses offered over the Internet or through an electronic format shall maintain a database of all students successfully completing such course. The database shall include, but not be limited to, student name, address, date of birth, course completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide to the department a copy of the record of those students who successfully complete its course. Such record shall include the database information referenced in this section. It shall be the responsibility of each approved course provider to ensure that reasonable measures, such as the Payment Card Industry (PCI) data security measures, are taken to protect any acquired student data. Further, such data shall not be sold or otherwise used in any way except for the student's own completion of a hunter education course and issuance of course completion documents.

**4VAC15-275-80. Instructor certification.**

A. The department may designate as a hunter instructor any person found by it to be competent to give instruction in the courses required.

B. Volunteer instructors are designated to work on a voluntary basis and at the pleasure of the Department of Game and Inland Fisheries.

C. To be certified as a hunter education course instructor for the department's hunter education program, a person shall (i) have successfully completed a hunter education course and (ii) be certified as an instructor by the department or by a certification program accepted by the department.

D. Applicants for certified instructor shall submit an application to the department on a form and in a manner determined by the hunter education program manager. At a minimum, the application shall include:

1. The applicant's name;
2. The applicant's street address;
3. The applicant's telephone number;
4. The applicant's email address, if any;
5. Information describing the applicant's experience and training in hunter and hunting and proof of completion of a hunter education course that is accepted by the department; and
6. Any other information deemed necessary after review of the initial application.

E. Applicants may be required to submit written consent for a criminal history background check in a manner determined by the department or an interview in a manner determined by the department and in accordance with state policy.

**4VAC15-275-90. Virginia Hunter Education Card.**

A. The department may issue an optional long-lasting and durable Virginia Hunter Education Card to persons who can show that they have met the minimum standard of hunter education course competency pursuant to § 29.1-300.2 of the Code of Virginia.

B. Upon receipt by the applicant, the optional Virginia Hunter Education Card will serve in lieu of any other certificates or cards that have been issued to the bearer as a result of meeting the minimum standards for hunter education course competency. As such, the Virginia Hunter Education Card will not be transferable or revocable and will have no expiration date.

C. A person may apply for a replacement Virginia Hunter Education Card. A replacement card may be issued if (i) the original card is lost, stolen, or destroyed; (ii) misinformation is printed on the card; or (iii) if the bearer has legally changed his name. Supporting documentation may be required.

**4VAC15-275-100. Fees.**

A. Pursuant to § 29.1-300.3 of the Code of Virginia, no fee shall be charged for the instructor's service.

B. Fees charged by an approved online course provider for hunter education courses other than the department's course are set by the course provider, but must be clearly communicated to the student prior to the student taking the course.

C. The fee for issuance of an optional Virginia Hunter Education Card, which will serve in lieu of a previously obtained hunter education course certificate or card, or a replacement Virginia Hunter Education Card shall be \$10.

**4VAC15-275-110. Penalties for violation.**

Unless otherwise specified, any person who violates any of the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

**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 (4VAC15-275)

[Volunteer Application \(rev. 3/15\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-275)

[International Hunter Education Association-USA Education Standards, Recommendations Submitted by the Standards and Evaluation Committee, May 2, 2014, International Hunter Education Association-USA, <http://ihea-usa.org>](#)

VA.R. Doc. No. R15-4406; Filed May 13, 2015, 10:09 a.m.



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# Regulations

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

#### Final Regulation

Title of Regulation: **18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-52, 18VAC15-30-164, 18VAC15-30-166, 18VAC15-30-790, 18VAC15-30-810).**

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

Effective Date: August 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) clarify training requirements upon entry and renewal of an individual or training provider license, (ii) remove the requirement that the lead license expiration date corresponds with the lead training expiration date, and (iii) change the time frame that accredited lead training providers must certify continued compliance to 24 months.*

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

#### **18VAC15-30-52. Qualifications for licensure - individuals.**

A. General. Applicants shall meet all applicable entry requirements at the time application is made.

B. Name. The applicant shall disclose his full legal name.

C. Age. The applicant shall be at least 18 years old.

D. Address. The applicant shall disclose a physical address. A post office box is only acceptable when a physical address is also provided.

E. Training. The applicant shall provide documentation of having satisfactorily completed the board-approved initial training program and all subsequent board-approved refresher training programs as specified in subsection F of this section. Board-approved initial training programs shall be valid for 36 months after the last day of the month wherein completed. Board-approved refresher training programs shall be satisfactorily completed no later than 36 months after the last day of the month wherein the board-approved initial training program was completed and once each 36 months thereafter.

~~E.~~ F. Specific entry requirements.

1. Worker. Each applicant for a lead abatement worker licensure license shall provide evidence of successful completion of a board-approved ~~initial~~ lead abatement

worker ~~course~~ training in accordance with subsection E of this section.

2. Project designer.

a. Each applicant for a lead project designer ~~licensure license~~ shall provide evidence of successful completion of a board-approved ~~initial~~ lead project designer ~~course~~ and successful completion of a board-approved ~~initial lead abatement supervisor course~~ and one of the following: training and board-approved lead abatement supervisor training in accordance with subsection E of this section.

b. Each applicant for a lead project designer license shall also provide evidence of successful completion of one of the following:

~~a.~~ (1) A bachelor's degree in engineering, architecture, or a related profession, and one year experience in building construction and design or a related field; or

~~b.~~ (2) Four years of experience in building construction and design or a related field.

3. Supervisor.

a. Each applicant for a lead abatement supervisor ~~licensure license~~ shall provide evidence of:

(1) Successful completion of a board-approved ~~initial~~ lead abatement supervisor ~~course~~ training in accordance with subsection E of this section; and

(2) One year experience as a licensed lead abatement worker or two years experience in a related field (e.g., lead, asbestos or environmental remediation) or in the building trades.

b. Each applicant shall pass a board-approved licensing examination for supervisors within 36 months after completion of the board-approved lead abatement supervisor initial training course or the board-approved lead supervisor refresher course. Applicants who fail the examination three times must provide to the board evidence, after the date of their third examination failure, of having retaken and satisfactorily completed the initial training requirements and make new application to the board. The applicant is then eligible to sit for the examination an additional three times.

c. A licensed lead abatement supervisor may perform the duties of a licensed lead abatement worker.

4. Inspector.

a. Each applicant for a lead inspector ~~licensure license~~ shall provide evidence of successful completion of a board-approved ~~initial~~ lead inspector ~~course~~ training in accordance with subsection E of this section.

b. Each applicant shall pass a board-approved licensing examination for lead inspector within 36 months after completion of the board-approved lead inspector initial training course or the board-approved lead inspector refresher course. Applicants who fail the examination

three times must provide to the board evidence, after the date of their third examination failure, of having retaken and satisfactorily completed the initial training requirements and make new application to the board. The applicant is then eligible to sit for the examination an additional three times.

5. Risk assessor.

a. Each applicant for a lead risk assessor licensure license shall provide evidence of successful completion of a board-approved initial lead risk assessor training course and successful completion of a board-approved initial lead inspector training course that was at least three days in length and one of the following: in accordance with subsection E of this section.

b. Each applicant for a lead risk assessor license shall also provide evidence of successful completion of one of the following:

(1) Certification or licensure as an industrial hygienist, a professional engineer, a registered architect or licensure in a related engineering/health/environmental field;

(2) A bachelor's degree and one year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction);

(3) An associate's degree and two years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(4) A high school diploma or its equivalent, and at least three years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction).

~~b. c.~~ Each applicant shall pass a board-approved licensure examination for risk assessor within 36 months after completion of the board-approved lead risk assessor initial training course or the board-approved lead risk assessor refresher course. Applicants who fail the examination three times must provide to the board evidence, after the date of their third examination failure, of having retaken and satisfactorily completed the initial training requirements and make new application to the board. The applicant is then eligible to sit for the examination an additional three times.

~~F.~~ G. Training verification. Training requirements shall be verified by submittal to the board of the training certificate issued by the accredited lead training provider for that course.

~~G.~~ H. Education verification. Education requirements shall be verified by submittal to the board on the Education Verification Form sent directly from the school.

~~H.~~ I. Experience verification. Experience requirements shall be verified by resumes, letters of reference, or documentation of work experience.

~~I.~~ J. Conviction or guilt. The applicant shall disclose the following information:

1. A conviction in any jurisdiction of any felony.
2. A conviction in any jurisdiction of any misdemeanor.
3. Any disciplinary action taken in another jurisdiction in connection with the applicant's environmental remediation practice including, but not limited to, monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action.
4. Any current or previously held environmental remediation certifications, accreditations or licenses issued by Virginia or any other jurisdiction.

Subject to the provisions of § 54.1-204 of the Code of Virginia, the board may deny any application for licensure or accreditation as a lead training provider when any of the parties listed in this subsection have been convicted of any offense listed in this subsection or has been the subject of any disciplinary action listed in subdivision 3 of this subsection. Any plea of nolo contendere shall be considered a conviction for the purposes of this subsection. A certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order shall be admissible as prima facie evidence of such conviction or discipline.

~~J.~~ K. Standards of conduct and practice. Applicants shall be in compliance with the standards of conduct and practice set forth in Part VIII (18VAC15-30-510 et seq.) of this chapter at the time of application to the board, while the application is under review by the board, and at all times when the license is in effect.

~~K.~~ L. Standing. The applicant shall be in good standing in every jurisdiction where licensed and the applicant shall not have had a license that was suspended, revoked or surrendered in connection with any disciplinary action in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure or approval to any applicant based on disciplinary action by any jurisdiction.

Part V  
Renewal

**18VAC15-30-164. Renewal required.**

A. Interim licenses shall expire six months from the last day of the month during which the individual completed the board-approved initial or refresher accredited lead training program required by 18VAC15-30-52 regardless of the date on which the board received the application for initial licensure or the date the board issued the license.

B. Interim licenses shall not be renewed or extended.

C. Individual licenses shall expire 12 months from the last day of the month wherein ~~the individual completed the initial training program or refresher training program required by 18VAC15-30-52 regardless of the date on which the board received the application for individual licensure or the date the board issued the license. In no case shall an individual license expire later than the last day of the month which is 36~~

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~~months after the date the individual completed the initial training program or most recent refresher training program.~~

D. Contractor licenses shall expire 12 months from the last day of the month wherein issued.

E. Accredited lead training programs approval shall expire 24 months from the last day of the month in which the board granted approval.

## **18VAC15-30-166. Qualifications for renewal.**

### A. Individuals.

1. Licensees desiring to maintain an individual license shall satisfactorily complete the required board-approved refresher training program established by this chapter and assure that the board receives documentation of satisfactory completion no later than the last day of the month that is 36 months after the date of completion of the initial training program or refresher training program and not less often than once each course within 36 months after the date that the initial or most recent refresher training course was completed and at least once every 36 months thereafter. In the case of a proficiency-based course completion, refresher training is required every 60 months instead of 36 months.

2. Licensees are responsible for ensuring that the board receives proof of completion of the required board-approved training. 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 board-approved refresher training requirement for license renewal.

3. Refresher training shall be specific to the discipline of the license being renewed.

~~2. 4.~~ The board shall renew an individual license for an additional 12 months upon receipt of a renewal application and fee in compliance with 18VAC15-30-163 and 18VAC15-30-165, provided that the licensee has complied with ~~subdivision~~ subdivisions 1 through 3 of this subsection. ~~In no case shall an individual license expire later than the last day of the month that is 36 months, or in the case of proficiency based course 60 months, after the initial training program or most recent refresher training program was completed.~~

B. Contractors. The board shall renew a contractor license for an additional 12 months upon receipt of a renewal application and the renewal fee in compliance with 18VAC15-30-163 and 18VAC15-30-165. Return of the renewal application and renewal fee to the board shall constitute a certification that the licensee is in full compliance with the board's regulations.

### C. Accredited training programs.

1. Accredited lead training providers desiring to maintain approval of their accredited lead training program shall cause the board to receive the following no later than ~~48~~ 24

months after the date of initial approval and not less often than once each ~~48~~ 24 months thereafter:

a. The training provider's name, address, and telephone number.

b. A statement signed by the training program manager that certifies that:

(1) The course materials for each course meet the requirements of Part VII (18VAC15-30-440 et seq.) of this chapter.

(2) The training manager and principal instructors meet the qualifications listed in 18VAC15-30-340.

(3) The training program manager complies at all times with all requirements of this chapter.

(4) The quality control program meets the requirements noted in 18VAC15-30-410.

(5) The recordkeeping requirements of this chapter will be followed.

2. Return of the renewal application and renewal fee to the board shall constitute a certification that the accredited lead training provider is in full compliance with the board's regulations.

3. An audit by a board representative may be performed to verify the certified statements and the contents of the application before relicensure is granted.

4. Accredited lead training programs determined by the board to have met the renewal requirements shall be issued an approval for an additional 24 months.

## **18VAC15-30-790. Professional responsibility.**

A. The licensee or accredited lead training provider shall, upon request or demand, produce to the board, or any of its representatives, any plan, document, book, record or copy thereof in his possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board against a licensee or accredited lead training provider.

B. A licensee shall not use the design, plans, or work of another licensee with the same type of license without the original's knowledge and consent, and after consent, a thorough review to the extent that full responsibility shall be assumed by the user.

C. Accredited lead training providers shall admit board representatives for the purpose of conducting an on-site audit, or any other purpose necessary to evaluate compliance with this chapter and other applicable laws and regulations.

D. Each licensee shall keep his board-approved training and license current.

## **18VAC15-30-810. Grounds for denial of application, denial of renewal, or discipline.**

A. The board shall have the authority to fine any licensee or accredited lead training provider, training manager or principal instructor, and to deny renewal, to suspend, to

revoke or to deny application for any license or approval as an accredited lead training program, accredited lead training provider, training manager or principal instructor provided for under Chapter 5 of Title 54.1 of the Code of Virginia for:

1. Violating or inducing another person to violate any of the provisions of Chapter 1, 2, 3, or 5 of Title 54.1 of the Code of Virginia, or any of the provisions of this chapter.
2. Obtaining a license, approval as an accredited lead training program, approval as an accredited lead training provider or approval as a training manager or principal instructor through fraudulent means.
3. Altering, falsifying or issuing a fraudulent Virginia lead license or a training certificate issued by an accredited lead training provider.
4. Violating any provision of any federal or state regulation pertinent to lead-based paint activities.
5. Having been found guilty by the board, another regulatory authority, or by a court, of any misrepresentation in the course of performing his operating duties.
6. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of adjudication in any jurisdiction of the United States, of any felony or of any misdemeanor involving lying, cheating, or stealing, or of any violation while engaged in environmental remediation activity that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. A certified copy of the final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or discipline.
7. Failing to notify the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of any misdemeanor involving lying, cheating, or stealing or of any violation while engaged in environmental remediation activity that resulted in the significant harm or the imminent threat of significant harm to human health or the environment.
8. Negligence, or a continued pattern of incompetence, in the practice of the discipline in which a lead license is held.
9. Failing or neglecting to send any information or documentation that was requested by the board or its representatives.
10. Refusing to allow state or federal representatives access to any area of an abatement site for the purpose of lawful compliance inspections.
11. Any unlawful act or violation of any provision of Chapter 5 of Title 54.1 of the Code of Virginia or of the regulations of the board by any lead abatement supervisor

or lead abatement worker may be cause for disciplinary action against the lead abatement contractor for whom he works if it appears to the satisfaction of the board that the lead abatement contractor knew or should have known of the unlawful act or violation.

12. Failing to notify the board in writing within 30 days after any change in address or name.
13. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

14. Failing to keep board-approved training and license current.

B. Any individual or firm whose license, approval as an accredited lead training program, approval as an accredited lead training provider or approval as a training manager or principal instructor is revoked under this section shall not be eligible to reapply for a period of one year from the effective date of the final order of revocation. The individual or firm shall meet all education, experience, and training requirements, complete the application, and submit the required fee for consideration as a new applicant.

C. The board shall conduct disciplinary procedures in accordance with §§ 2.2-4019 and 2.2-4021 of the Administrative Process Act.

VA.R. Doc. No. R11-2634; Filed May 6, 2015, 9:23 a.m.

**Final Regulation**

Title of Regulation: **18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-162, 18VAC15-30-163).**

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

Effective Date: August 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 application and renewal fees paid by licensees, certificate holders, and registrants subject to the authority of the Board for Asbestos, Lead, and Home Inspectors.*

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

# Regulations

## 18VAC15-30-162. Application fees.

Application fees are as follows:

Fee Type	Fee Amount	When Due
Application for worker, supervisor, inspector, risk assessor or project designer license	<del>\$25</del> <u>\$80</u>	With application
Application for a lead contractor license	<del>\$40</del> <u>\$110</u>	With application
Application for accredited lead training program approval	<del>\$400</del> <u>\$500</u> per day of training	With application
Application for accredited lead refresher training program approval except for project designer refresher	<del>\$400</del> <u>\$500</u>	With application
Application for accredited lead project designer refresher training program approval	<del>\$200</del> <u>\$250</u>	With application

Late renewal for lead [ <del>contractor's</del> contractor ] license (includes a <del>\$25</del> <u>\$35</u> late renewal fee in addition to the regular <del>\$40</del> <u>\$70</u> renewal fee)	<del>\$65</del> <u>\$105</u>	With renewal application
Late renewal for accredited lead training program approval (includes a <del>\$25</del> <u>\$35</u> late renewal fee in addition to the regular <del>\$100</del> <u>\$125</u> renewal fee)	<del>\$125</del> <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 (18VAC15-30)

~~Lead Contractor License Application, 33LCON (rev. 10/03).~~

~~Lead License Application Requirements, 33LINS (rev. 10/03).~~

~~Lead License Application, 33LLIC (rev. 10/03).~~

~~Experience Verification Form, 33LEXP (rev. 12/04).~~

~~Education Verification Form, 33LED (rev. 10/03).~~

~~Lead Training Course Application Requirements, 33LCRSRQ (rev. 10/03).~~

~~Lead Training Course Application, 33LCRS (rev. 10/03).~~

~~Lead Training Notification, 33LTN (rev. 12/06).~~

~~Lead Training Program Participant List, 33LPL (rev. 12/06).~~

~~Inspector/Risk Assessor/Project Designer/Contractor Disclosure Form, 33LDIS (eff. 1/04).~~

~~Virginia Lead Consumer Information and Disclosure Sheet, 33LCIS (eff. 1/04).~~

[Lead Abatement Worker License Application, A506-3351LIC-v3 \(eff. 8/15\)](#)

[Lead Abatement Supervisor License Application, A506-3353LIC-v4 \(eff. 8/15\)](#)

[Lead Abatement Inspector License Application, A506-3355LIC-v3 \(eff. 8/15\)](#)

[Lead Abatement Risk Assessor License Application, A506-3356LIC-v5 \(eff. 8/15\)](#)

[Lead Abatement Project Designer License Application, A506-3357LIC-v3 \(eff. 8/15\)](#)

## 18VAC15-30-163. Renewal and late renewal fees.

Renewal and late renewal fees are as follows:

Fee Type	Fee Amount	When Due
Renewal for worker, supervisor, inspector, risk assessor or project designer license	<del>\$25</del> <u>\$45</u>	With renewal application
Renewal for lead [ <del>contractor's</del> contractor ] license	<del>\$40</del> <u>\$70</u>	With renewal application
Renewal for accredited asbestos training program approval	<del>\$100</del> <u>\$125</u>	With renewal application
Late renewal for worker, supervisor, inspector, risk assessor or project designer license (includes a <del>\$25</del> <u>\$35</u> late renewal fee in addition to the regular <del>\$25</del> <u>\$45</u> renewal fee)	<del>\$50</del> <u>\$80</u>	With renewal application

[Lead Abatement Contractor License Application, A506-3358LIC-v3 \(eff. 8/15\)](#)

[Contractor – Asbestos & Lead License Renewal Form, A506-33CONREN-v3 \(eff. 8/15\)](#)

[Individual – Lead License Renewal Form, A506-33LREN-v2 \(eff. 8/15\)](#)

[Lead - Education Verification Application, A506-33LED-v2 \(eff. 8/13\)](#)

[Lead - Experience Verification Application, A506-33LEXP-v2 \(eff. 8/13\)](#)

[Lead Training Course Application, 3331LCRS-v4 \(eff. 8/15\)](#)

[Inspector/Risk Assessor/Project Designer/Contractor Disclosure Form, A506-33LDIS-v2 \(eff. 8/13\)](#)

[Virginia Lead Licensing Consumer Information Sheet, A506-33LCIS-v2 \(eff. 8/13\)](#) ]

VA.R. Doc. No. R12-3181; Filed May 6, 2015, 9:22 a.m.

**Fast-Track Regulation**

**Title of Regulation:** 18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-163).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 1, 2015.

**Effective Date:** August 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@dpwr.virginia.gov.

**Basis:** Section 54.1-201 A 5 of the Code of Virginia states that the board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board."

Section 54.1-501 of the Code of Virginia provides the authority for the board to promulgate regulations for the licensure of lead professionals and firms, approval of accredited lead training programs, and approval of criteria for accredited lead training programs. The content of the regulations is pursuant to the board's discretion, but shall not be in conflict with the purposes of the statutory authority.

**Purpose:** An error was discovered in the renewal fee section of the Virginia Lead-Based Paint Activities Regulations (18VAC15-30) that inadvertently referred to the accredited "asbestos" training program approval instead of the accredited "lead" training program approval. The amendment corrects the error to avoid any possible confusion by lead training providers attempting to renew an accredited lead training

program approval, which is in the best interest of the public health, safety, and welfare.

**Rationale for Using Fast-Track Process:** The fast-track rulemaking process is being used to implement this amendment as soon as possible to avoid any possible confusion by lead training providers attempting to renew an accredited lead training program approval. This action is noncontroversial because no current procedures or processes will change. Lead training providers are currently renewing their approved lead training programs.

**Substance:** The proposed amendment to 18VAC15-30-163 corrects the terminology for the renewal of an accredited lead training program approval.

**Issues:** The primary advantage to the public, businesses, and the Commonwealth for implementing this change is to avoid any possible confusion by lead training providers attempting to renew an accredited lead training program approval. No disadvantages to either the public or the Commonwealth have been identified.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board for Asbestos, Lead, and Home Inspectors (Board) proposes to correct a language error in this regulation.

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

Estimated Economic Impact. The current regulation incorrectly lists renewal for accredited lead training program approval as renewal for accredited asbestos training program approval. The Board proposes to correct this mistake by replacing the word asbestos with the word lead. According to the Department of Professional and Occupational Regulation, lead training providers have been renewing their approved lead training programs. Nevertheless, the proposed language correction is potentially beneficial in that it will reduce the possibility of confusion among readers of the regulation.

Businesses and Entities Affected. The proposed amendment concerns the 72 accredited lead training programs and the 14 related training providers in the Commonwealth. All 14 training providers are small businesses.<sup>1</sup>

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

Projected Impact on Employment. The proposed amendments will not significantly affect employment.

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

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

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

**Real Estate Development Costs.** The proposed amendment is unlikely to significantly affect real estate development costs.

**Legal Mandate. General:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

<sup>1</sup> Data source: Department of Professional and Occupational Regulation

**Agency's Response to Economic Impact Analysis:** The agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

Summary:

*The amendment corrects terminology for the renewal of an accredited lead training program approval by changing the word "asbestos" to "lead."*

**18VAC15-30-163. Renewal and late renewal fees.**

Renewal and late renewal fees are as follows:

Fee Type	Fee Amount	When Due
Renewal for worker, supervisor, inspector, risk assessor or project designer license	\$25	With renewal application
Renewal for lead contractor's license	\$40	With renewal application
Renewal for accredited asbestos lead training program approval	\$100	With renewal application
Late renewal for worker, supervisor, inspector, risk assessor or project designer license (includes a \$25 late renewal fee in addition to the regular \$25 renewal fee)	\$50	With renewal application
Late renewal for lead contractor's license (includes a \$25 late renewal fee in addition to the regular \$40 renewal fee)	\$65	With renewal application
Late renewal for accredited lead training program approval (includes a \$25 late renewal fee in addition to the regular \$100 renewal fee)	\$125	With renewal application

VA.R. Doc. No. R15-4133; Filed May 5, 2015, 4:58 p.m.

**Final Regulation**

**Title of Regulation:** 18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-30).

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

**Effective Date:** August 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 (804) 350-5354, or email alhi@dpor.virginia.gov.

**Summary:**

*The amendments remove the requirement that training courses to meet the certified home inspector entry requirements be taken in a classroom setting. These amendments allow for distance learning options, including online courses, but limit the number of hours so that no more than half of the required instruction course hours may be taken through distance and online education technology.*

**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.

**18VAC15-40-30. Qualifications for certification.**

Every applicant for an individual home inspector certificate shall have the following qualifications:

1. The applicant shall be at least 18 years old.
2. The applicant shall meet the following educational and experience requirements:
  - a. High school diploma or equivalent; and
  - b. One of the following:
    - (1) Completed 35 contact hours of ~~classroom~~ instruction [ courses, of which no more than half of the required hours may be completed using distance or online education technology. ] and have completed a minimum of 100 home inspections;
    - (2) Completed 35 contact hours of ~~classroom~~ instruction [ courses, of which no more than half of the required hours may be completed using distance or online education technology. ] and have completed a minimum of 50 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection;
    - (3) Completed 70 contact hours of ~~classroom~~ instruction [ courses, of which no more than half of the required hours may be completed using distance or online education technology. ] and have completed a minimum of 50 home inspections; or
    - (4) Completed 70 contact hours of ~~classroom~~ instruction [ courses, of which no more than half of the required hours may be completed using distance or online education technology. ] and have completed a minimum of 25 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection.

Instruction courses shall cover the content areas of the board-approved examinations.

An applicant who cannot fulfill the ~~classroom~~ instruction [ course ] requirement as outlined in this subsection may provide documentation of a minimum of 10 years of experience as a home inspector with a minimum of 250 home inspections completed in substantial compliance with this chapter to satisfy this requirement. The documentation is subject to board review and approval.

3. The applicant shall have passed a written competency examination approved by the board.
4. The board may accept proof of membership in good standing, in a national or state professional home inspectors association approved by the board, as satisfaction of subdivisions 1, 2, and 3 of this section, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the board for all applicants.
5. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a home inspector in such a manner as to safeguard the interests of the public.
6. The applicant shall disclose whether a certificate or license as a home inspector from any jurisdiction where certified or licensed has ever been suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia. The board may deny certification to any applicant so disciplined after examining the totality of the circumstances.
7. The applicant shall disclose any conviction or finding of guilt, regardless of adjudication, in any jurisdiction of the United States of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Subject to the provisions of § 54.1-204 of the Code of Virginia, the board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of residential home inspections. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or guilt.
8. Procedures and appropriate conduct established by either the board or any testing service administering an examination approved by the board or both shall be followed by the applicant. Such procedures shall include any written instructions communicated prior to the

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examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

9. Applicants shall show evidence of having obtained general liability insurance with minimum limits of \$250,000.

VA.R. Doc. No. R13-2848; Filed May 5, 2015, 3:03 p.m.

## Final Regulation

**Title of Regulation:** **18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-50, 18VAC15-40-52).**

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

**Effective Date:** August 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 (804) 350-5354, or email alhi@dpor.virginia.gov.

### Summary:

*The amendments increase fees for obtaining and maintaining certification as a home inspector.*

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

### 18VAC15-40-50. Application fees.

The application fee for an initial home inspector certification shall be ~~\$25~~ \$80.

### 18VAC15-40-52. Renewal and reinstatement fees.

Renewal and reinstatement fees are as follows:

Fee type	Fee amount	When due
Renewal	<del>\$25</del> \$45	With renewal application
Late renewal	+ <del>\$25</del> \$45 (renewal) + <del>\$25</del> \$35 (late fee) = <del>\$50</del> \$80 total fee	With renewal application
Reinstatement	+ <del>\$75</del> \$80 (reinstatement) + <del>\$25</del> \$45 (renewal) = <del>\$100</del> \$125 total fee	With reinstatement 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 (18VAC15-40)

~~Home Inspector Association Membership Form, 3380-AMF (rev. 1/11)~~

~~Home Inspector Certificate Application Instructions, 3380-INS (rev 1/11)~~

~~Home Inspector Certificate Application, 3380-CERT (rev. 1/11)~~

~~Home Inspector Experience Verification Form, 3380-EXP (rev. 1/11)~~

[Home Inspector Association Membership Form, A506-3380AMF-v3 \(eff. 8/13\)](#)

[Home Inspector Certification Application Instructions, A506-3380INS-v2 \(eff. 8/15\)](#)

[Home Inspector Certification Application, A506-3380CERT-v3 \(eff. 8/15\)](#)

[Home Inspector Experience Verification Form, A506-3380EXP-v3 \(eff. 8/13\)](#) ]

VA.R. Doc. No. R12-3182; Filed May 5, 2015, 3:04 p.m.

## COMMON INTEREST COMMUNITY BOARD

### Final Regulation

**Titles of Regulations:** **18VAC48-20. Condominium Regulations (repealing 18VAC48-20-10 through 18VAC48-20-800).**

**18VAC48-30. Condominium Regulations (adding 18VAC48-30-10 through 18VAC48-30-690).**

**Statutory Authority:** § 54.1-2349 of the Code of Virginia.

**Effective Date:** August 1, 2015.

**Agency Contact:** Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

### Summary:

*The action repeals the existing chapter (18VAC48-20) and replaces it with a new chapter (18VAC48-30) to reflect statutory changes and current procedures. The new chapter (i) establishes the requirements and application procedures for registration of a condominium; (ii) establishes requirements for public offering statements; (iii) addresses conversion condominiums; (iv) establishes post-registration provisions, including procedures for the*

*termination of condominium registrations both administratively and by the declarant; and (v) outlines the board's authority and standards of conduct. The new chapter does not include provisions pertaining to time-share condominiums and horizontal property regimes.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

**CHAPTER 30**  
**CONDOMINIUM REGULATIONS**

**Part [ 1 ]**  
**General**

**18VAC48-30-10. Purpose.**

This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia) as the act pertains to the registration of condominiums.

**18VAC48-30-20. Definitions.**

A. Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

B. Section 55-79.41 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Common elements"

"Common expenses"

"Condominium"

"Condominium instruments"

"Condominium unit"

"Conversion condominium"

"Convertible land"

"Convertible space"

"Declarant"

"Dispose" or "disposition"

"Executive organ"

"Expandable condominium"

"Identifying number"

"Land"

"Leasehold condominium"

"Limited common element"

"Nonbinding reservation agreement"

"Offer"

"Person"

"Purchaser"

"Special declarant rights"

"Unit"

"Unit owner"

C. The following words, terms, and phrases [ 1 ] when used in this chapter [ 1 ] shall have the following meanings unless the context clearly indicates otherwise.

"Annual report" means a completed, board-prescribed form and required documentation submitted in compliance with § 55-79.93 of the Code of Virginia.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation in compliance with § 55-79.89 of the Code of Virginia.

"Class of physical assets" means two or more physical assets that are substantially alike in function, manufacture, date of construction or installation, and history of use and maintenance.

"Condominium Act" means Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.

"Department" means the Department of Professional and Occupational Regulation.

"Expected useful life" means the estimated number of years from the date on which such estimate is made until the date when, because of the effects of time, weather, stress, or wear, a physical asset will become incapable of performing its intended function and will have to be replaced.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia.

"Full and fair disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the condominium in order to protect the interests of purchasers.

"Limited common expense" means any common expense against one or more, but less than all, of the units.

"Major utility installation" means a utility installation or portion thereof that is a common element or serves more than one unit.

"Material change" means a change in any information or document disclosed in the application for registration, including the public offering statement or an attachment thereto, that renders inaccurate, incomplete, or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations or the nature of a unit or appurtenant limited common element or the amenities of the project available for the purchaser's use as described in the public offering statement.

"Offering" means the continuing act of the declarant in making condominium units owned by the declarant within a particular condominium available for acquisition by purchasers or, where appropriate, to the aggregate of the condominium units thus made available.

"Offering literature" means any written promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity mailed or delivered directly to a specific prospective purchaser, except that information printed in a publication shall not be deemed

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offering literature solely by virtue of the fact that the publication is mailed or delivered directly to a prospective purchaser.

"Personal communication" means a communication directed to a particular prospective purchaser that has not been and is not intended to be directed to any other prospective purchaser.

"Physical asset" means either a structural component or a major utility installation.

"Present condition" means condition as of the date of the inspection by means of which condition is determined.

"Registration file" means the application for registration, supporting materials, annual reports, and amendments that constitute all information submitted and reviewed pertaining to a particular condominium registration. A document that has not been accepted for filing by the board is not part of the registration file.

"Regular common expense" means a common expense apportioned among and assessed to all of the condominium units pursuant to subsection D of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provision.

"Replacement cost" means the expenditure that would be necessary to replace a physical asset with an identical or substantially equivalent physical asset as of the date on which replacement cost is determined and includes all costs of (i) removing the physical asset to be replaced, (ii) obtaining its replacement, and (iii) erecting or installing the replacement.

"Structural component" means a component constituting any portion of the structure of a unit or common element.

"Structural defect" shall have the meaning given in subsection B of § 55-79.79 of the Code of Virginia.

"Substituted public offering statement" means a document originally prepared in compliance with the laws of another jurisdiction and modified in accordance with the provisions of this chapter to fulfill the disclosure requirements established for public offering statements by subsection A of § 55-79.90 of the Code of Virginia and, if applicable, subsection A of § 55-79.94 of the Code of Virginia.

## **18VAC48-30-30. Explanation of terms.**

Each reference in this chapter to a "declarant," "purchaser," and "unit owner" or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to natural persons and organizations. The term "declarant" shall refer to any successors to the persons referred to in § 55-79.41 of the Code of Virginia who come to stand in the same relation to the condominium as their predecessors in that they assumed rights reserved for the benefit of a declarant that (i) offers to dispose of his interest in a condominium unit not previously disposed of, (ii) reserves or succeeds to any special declarant right, or (iii) applies for registration of the condominium.

## **18VAC48-30-40. Condominiums located outside of Virginia.**

A. In any case involving a condominium located outside of Virginia in which the laws or practices of the jurisdiction in which such condominium is located prevent compliance with a provision of this chapter, the board shall prescribe, by order, a substitute provision to be applicable in such case that is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words "declaration," "bylaws," "plats," and "plans," when used in this chapter with reference to a condominium located outside of Virginia, shall refer to documents, portions of documents, or combinations thereof, by whatever name denominated, that have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The words "recording" or "recordation," when used with reference to condominium instruments of a condominium located outside of Virginia, shall refer to a procedure that, in the jurisdiction in which such condominium is located, causes the condominium instruments to become legally effective.

D. This chapter shall apply to a contract for the disposition of a condominium unit located outside of Virginia only to the extent permissible under the provisions of subsection B of § 55-79.40 of the Code of Virginia.

## **18VAC48-30-50. Exemptions from registration.**

A. The exemption from registration of condominiums in which all units are restricted to nonresidential use provided in subsection B of § 55-79.87 of the Code of Virginia shall not be deemed to apply to any condominium as to which there is a substantial possibility that a unit therein other than a unit owned by the declarant or the unit owners' association will be used as permanent or temporary living quarters or as a site upon which vehicular or other portable living quarters will be placed and occupied. Residential use for the purposes of this chapter includes transient occupancy.

B. Nothing in this chapter shall apply in the case of a condominium exempted from registration by § 55-79.87 of the Code of Virginia or condominiums located outside of Virginia as provided in subsection B of § 55-79.40 of the Code of Virginia for which no contracts are to be signed in Virginia.

## **18VAC48-30-60. Preregistration offers prohibited.**

No condominium marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits, or encourages a prospective purchaser to execute a contract of sale of the condominium unit or lease of a leasehold condominium unit or perform some other act that would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

Part II  
Marketing

**18VAC48-30-70. Condominium marketing activities.**

Condominium marketing activities shall include every contact for the purpose of promoting disposition of a condominium unit. Such contacts may be personal, by telephone, by mail, [ by electronic means including, but not limited to, social media, ] or by advertisement. A promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity may be oral, written, or graphic.

**18VAC48-30-80. Offering literature.**

A. Offering literature mailed or delivered prior to the registration of the condominium that is the subject of the offering literature shall bear a conspicuous legend containing the substance of the following language:

"The condominium has not been registered by the Common Interest Community Board. A condominium unit may be reserved on a nonbinding reservation agreement, but no contract of sale or lease may be entered into prior to registration."

B. Offering literature or marketing activities violative of the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia) and subsection C of § 55-79.52 of the Code of Virginia is prohibited.

C. Offering literature shall indicate that the property being offered is under the condominium form of ownership. The requirement of this subsection is satisfied by including the full name of the condominium in all offering literature.

Part III  
Application for Registration

**18VAC48-30-90. Application procedures.**

A declarant seeking registration of a condominium pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia shall submit an application on the appropriate form provided by the board, along with the appropriate fee specified in 18VAC48-30-100.

By submitting the application to the board, the declarant certifies that the declarant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board do not indicate approval or acceptance of the application by the board.

The board may make further inquiries and investigations to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained in this section and on the application. Applications will not be considered complete until all required documents are received by the board.

Applications that are not approved within 12 months after receipt of the application in the board's office will be purged

and a new application and fee must be submitted in order to be reconsidered for registration.

**18VAC48-30-100. Fee requirements.**

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is timely. Checks or money orders shall be made payable to the Treasurer of Virginia.

1. Each application for registration of a condominium shall be accompanied by a fee in an amount equal to \$35 per unit, except that the fee shall not be less than \$1,750 or more than \$3,500.

2. Each phase filing application shall be accompanied by a fee in an amount equal to \$35 per unit, except that the fee for each phase filing shall not be less than \$875 or more than \$3,500.

**18VAC48-30-110. Review of application for registration.**

A. Upon receipt of an application for registration, the board shall issue the notice of filing required by subsection A of § 55-79.92 of the Code of Virginia.

B. Upon the review of the application for registration, if the requirements of §§ 55-79.89 and 55-79.91 of the Code of Virginia have not been met, the board shall notify the applicant as required by subsection C of § 55-79.92 of the Code of Virginia.

C. A request for an extension of the 60-day application review period described in § 55-79.92 of the Code of Virginia shall be in writing and shall be delivered to the board prior to the expiration of the period being extended. The request shall be for an extension of definite duration. The board may grant in writing a request for an extension of the application review period, and it may limit the extension to a period not longer than is reasonably necessary to permit correction of the application. An additional extension of the application review period may be obtained, subject to the conditions applicable to the initial request. A request for an extension of the application review period shall be deemed a consent to delay within the meaning of subsection A of § 55-79.92 of the Code of Virginia.

D. If the requirements for registration are not met within the application review period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting the registration as required by subsection C of § 55-79.92 of the Code of Virginia.

E. An applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia at any time between receipt of a notification pursuant to subsection B of this section and the effective date of the order of rejection entered pursuant to subsection D of this section. A request for such proceeding shall be deemed a consent to delay within the meaning of subsection A of § 55-79.92 of the Code of Virginia.

F. The board shall receive and act upon corrections to the application for registration at any time prior to the effective

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date of an order rejecting the registration. If the board determines after review of the corrections that the requirements for registration have not been met, the board may proceed with an informal conference in accordance with § 2.2-4019 of the Code of Virginia to allow reconsideration of whether the requirements for registration are met. If the board does not opt to proceed with an informal conference, the applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia to reconsider whether the requirements for registration are met. If the board does not proceed with an informal conference and no request for an informal conference is received from the applicant, an amended order of rejection stating the factual basis for the rejection shall be issued. A new 20-day period for the order of rejection to become effective shall commence.

G. At such time as the board affirmatively determines that the requirements of §§ 55-79.89 and 55-79.91 of the Code of Virginia have been met, the board shall enter an order registering the condominium and shall designate the form, content, and effective date of the public offering statement, substituted public offering statement, or prospectus to be used.

## **18VAC48-30-120. Prerequisites for registration.**

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55-79.91 of the Code of Virginia.

A. The declarant shall own or have the right to acquire an estate in the land constituting or to constitute the condominium that is of at least as great a degree and duration as the estate to be conveyed in the condominium units.

B. The condominium instruments must be adequate to bring a condominium into existence upon recordation except that the certification requirements of § 55-79.58 of the Code of Virginia need not be complied with as a prerequisite for registration. This subsection does not apply to condominium instruments that may be recorded after the condominium has been created.

C. The declarant shall have filed with the board reasonable evidence of its financial ability to complete all proposed improvements on the condominium. Such evidence may include (i) financial statements and a signed affidavit attesting that the declarant has sufficient funds to complete all proposed improvements on the condominium and that the funds will be used for completion of the proposed improvements or (ii) proof of a commitment of an institutional lender to advance construction funds to the declarant and, to the extent that any such commitments will not furnish all the necessary funds, other evidence, satisfactory to the board, of the availability to the declarant of necessary funds. A lender's commitment may be subject to such conditions, including registration of the condominium units and presale requirements, as are normal for loans of the

type and as to which nothing appears to indicate that the conditions will not be complied with or fulfilled.

1. In the case of a condominium located in Virginia, "proposed improvements" are improvements that are not yet begun or not yet complete and that the declarant is affirmatively and unconditionally obligated to complete under §§ 55-79.58 and 55-79.67 (a1) of the Code of Virginia and applicable provisions of the condominium instruments or that the declarant would be so obligated to complete if plats and plans filed with the board in accordance with 18VAC48-30-140 A were recorded.

2. In the case of a condominium located outside of Virginia, "proposed improvements" are improvements that are not yet begun or not yet complete and that the declarant represents, without condition or limitation, will be built or placed in the condominium.

D. The current and planned condominium marketing activities of the declarant shall comply with § 18.2-216 of the Code of Virginia, 18VAC48-30-80, and 18VAC48-30-660.

E. The declarant shall have filed with the board (i) a proposed public offering statement that complies with this chapter and subsection A of § 55-79.90 of the Code of Virginia and, if applicable, subsection A of § 55-79.94 of the Code of Virginia; (ii) a substituted public offering statement that complies with this chapter; or (iii) a prospectus that complies with this chapter.

F. Declarants may be organized as individuals or firms. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

## **18VAC48-30-130. Minimum requirements for registration.**

Applications for registration shall include the following:

1. The documents and information contained in § 55-79.89 of the Code of Virginia.

2. The application fee specified in 18VAC48-30-100.

3. The following documents shall be included as exhibits. All exhibits shall be labeled as indicated and submitted in hardcopy form and electronically in a format acceptable to the board.

a. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission or other entity formation documents.

b. Exhibit B: A copy of the title opinion, title policy, or a statement of the condition of the title to the condominium project including encumbrances as of a specified date

within 30 days of the date of application by a title company or licensed attorney who is not a salaried employee, officer, or director of the declarant or owner, in accordance with subdivision A 5 of § 55-79.89 of the Code of Virginia.

c. Exhibit C: A copy of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the unit and of the contracts and other agreements that a purchaser will be required to agree to or sign.

d. Exhibit D: A narrative description of the promotional plan for the disposition of the condominium units.

e. Exhibit E: A copy of documentation demonstrating the declarant's financial ability to complete the project in accordance with [ ~~18VAC48-30-140~~ 18VAC48-30-120 ].

f. Exhibit F: A copy of the proposed public offering statement that complies with subsection A of § 55-79.90 and subsection A of § 55-79.94 of the Code of Virginia, as applicable, and this chapter. A substitute public offering statement or a prospectus pursuant to 18VAC48-30-370 and 18VAC48-30-380 respectively may be submitted for a condominium formed in another jurisdiction.

g. Exhibit G: Copies of bonds required by §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia, as applicable.

h. Exhibit H: A list with the name of every officer of the declarant who is directly responsible for the project or person occupying a similar status within, or performing similar functions for, the declarant. The list must include each individual's address, principal occupation for the past five years, and extent and nature of the individual's interest in the condominium as of a specified date within 30 days of the filing of the application.

i. Exhibit I: Plats and plans of the condominium that (i) comply with the provisions of § 55-79.58 of the Code of Virginia and 18VAC48-30-140 other than the certification requirements and (ii) show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands. Hardcopy submittals of plats and plans must be no larger than 11 inches by 17 inches.

j. Exhibit J: Conversion condominiums must attach (i) a copy of the general notice provided to tenants of the condominium at the time of application pursuant to subsection B of § 55-79.94 of the Code of Virginia, (ii) a copy of the formal notice to be sent at the time of registration to the tenants, if any, of the building or buildings, and (iii) the certified statement required in accordance with subsection C of § 55-79.94 of the Code of Virginia.

## **18VAC48-30-140. Requirements for plats and plans.**

A. Except as provided in subsection C of this section, all plats and plans submitted with the application for registration shall comply with § 55-79.58 of the Code of Virginia but the certification need not be signed until recordation. The plats and plans filed with the application for registration shall be the same as the plats and plans the declarant intends to record. A material change to the plats and plans shall be submitted to the board in accordance with Part VI (18VAC48-30-460 et seq.) of this chapter. Once recorded, copies of plats and plans as recorded shall be filed with the board in accordance with Part VI of this chapter.

B. In the case of units that are substantially identical, the requirement to show the location and dimensions (within normal construction tolerances) of the boundaries of each unit pursuant to subsection B of § 55-79.58 of the Code of Virginia may be deemed satisfied by depiction of the location and dimensions of the vertical boundaries and horizontal boundaries, if any, of one such unit. The identifying numbers of all units represented by such depiction shall be indicated. Each structure within which any such units are located shall be depicted so as to indicate the exact location of each such unit within the structure.

C. In the case of a condominium located outside Virginia, certain materials may be filed with the application for registration in lieu of plats and plans complying with the provisions of § 55-79.58 of the Code of Virginia. Such materials shall contain, as a minimum, (i) a plat of survey depicting all existing improvements, and all improvements that the declarant represents, without condition or limitation, will be built or placed in the condominium; and (ii) legally sufficient descriptions of each unit. Any improvements whose completion is subject to conditions or limitations shall be appropriately labeled to indicate that such improvements may not be completed. Unit descriptions may be written or graphic, shall demarcate each unit vertically and, if appropriate, horizontally, and shall indicate each unit's location relative to established points or datum.

D. The plats and plans must bear the form of the certification statement required by subsections A and B § 55-79.58 of the Code of Virginia. However, as stated in subsection A of this section, the statement need not be executed prior to recordation. The certification statement may appear in a separate document that is recorded, or to be recorded.

## **18VAC48-30-150. Application for registration of expandable condominium.**

The declarant may include in the application for registration all units for which development rights have been reserved.

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Part IV  
Public Offering Statement

**18VAC48-30-160. Public offering statement requirements, generally.**

In addition to the provisions of § 55-79.90 of the Code of Virginia, the following will be considered, as applicable, during review of the public offering statement.

1. The public offering statement shall provide full and fair disclosure in accordance with 18VAC48-30-170.
2. The public offering statement shall pertain to a single offering and to the entire condominium in which the condominium units being offered are located.
3. The public offering statement shall be clear, organized, and legible.
4. Except for brief excerpts, the public offering statement may refer to, but should not incorporate verbatim, portions of the condominium instruments, the Condominium Act, or this chapter. This does not preclude compliance with 18VAC48-30-180.

**18VAC48-30-170. Full and fair disclosure.**

A. The provisions of § 55-79.90 and subsection A of § 55-79.94 of the Code of Virginia and this chapter shall be strictly construed to promote full and fair disclosure in the public offering statement. In addition, the following will be considered, as applicable, during review to assure full and fair disclosure:

1. The information shall be presented in a manner that is clear and understandable to a reasonably informed consumer, while maintaining consistency with the requirements of this chapter and the Condominium Act.
2. In addition to specific information required by this chapter and the Condominium Act, the public offering statement shall disclose any other information necessary for full and fair disclosure.
3. No information shall be incorporated by reference to an outside source that is not reasonably available to a prospective purchaser.
4. If required information is not known or not reasonably available, such fact shall be stated and explained in the public offering statement.

B. The board has the sole discretion to require additional information or amendment of existing information as it finds necessary to ensure full and fair disclosure.

**18VAC48-30-180. Contents of public offering statement.**

A. A cover, if used, must be blank or bear identification information only.

B. The first page of the public offering statement shall be substantially as follows:

**PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S PROTECTION**

**PUBLIC OFFERING STATEMENT**

NAME OF

CONDOMINIUM:

\_\_\_\_\_

LOCATION OF

CONDOMINIUM:

\_\_\_\_\_

NAME OF

DECLARANT:

\_\_\_\_\_

ADDRESS OF

DECLARANT:

\_\_\_\_\_

EFFECTIVE DATE OF

PUBLIC OFFERING

STATEMENT:

\_\_\_\_\_

REVISED:

\_\_\_\_\_

**THE PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S OWN PROTECTION. Living in a common interest community carries with it certain rights, responsibilities, and benefits, including certain financial obligations, rights, and restrictions concerning the use and maintenance of units and common elements, and [ ~~decisionmaking~~ decision-making ] authority vested in the unit owners' association. The purchaser will be bound by the provisions of the condominium instruments and should review the Public Offering Statement, the condominium instruments, and other exhibits carefully prior to purchase.**

This Public Offering Statement presents information regarding condominium units being offered for sale by the declarant. Virginia law requires that a Public Offering Statement be given to every Purchaser in order to provide full and fair disclosure of the significant features of the condominium units being offered. The Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the declarant to the Virginia Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement to ensure that it contains required disclosures, but the Board does not guarantee the accuracy or completeness of the Public Offering Statement. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the latter will control.

Under Virginia law a purchaser of a condominium unit is afforded a [ ~~10-day~~ 5-day ] period during which the purchaser may cancel the purchase contract of sale and obtain a full refund of any sums deposited in connection with the purchase contract. The [ ~~10-day~~ 5-day ] period begins on the purchase

contract date or the date of delivery of a Public Offering Statement, whichever is later. The purchaser may, if practicable, inspect the condominium unit and the common elements and obtain professional advice. If the purchaser elects to cancel, the purchaser must deliver notice of cancellation to the declarant pursuant to § 55-79.88 of the Code of Virginia.

Allegations of violation of any law or regulation contained in the Condominium Act or the Condominium Regulations should be reported to the Virginia Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233.

C. A summary of important considerations shall immediately follow the first page for the purpose of reinforcing the disclosure of significant information. The summary shall be titled as such and shall be introduced by the following statement:

"Following are important matters to be considered in acquiring a condominium unit. They are highlights only. The Public Offering Statement should be examined in its entirety to obtain detailed information."

Appropriate modifications shall be made to reflect facts and circumstances that may vary. The summary shall consist of, but not be limited to, the following, as applicable:

1. A statement on the governance of the condominium wherein unit owners are allocated votes for certain decisions of the association. In addition, the statement shall include that all unit owners will be bound by the decisions made by the association, even if the individual unit owner disagrees.
2. A statement concerning the decision-making authority of the executive organ of the unit owners' association.
3. A statement regarding the payment of expenses of the association on the basis of a periodic budget, to include a disclosure of any provision for reserves, including a statement if there are no reserves.
4. A statement detailing the requirement for each unit owner to pay a periodic assessment and the inability to reduce the amount of an assessment by refraining from the use of the common elements.
5. A statement of the unit owner's responsibility to pay additional assessments, if any.
6. A statement regarding the consequences for failure to pay an assessment when due. The statement shall include reference to the enforcement mechanisms available to the association, including obtaining a lien against the condominium unit, pursuing civil action against the unit owner, and certain other penalties.
7. A statement that the declarant must pay assessments on unsold condominium units.

8. A statement indicating whether the declarant, its predecessors, or principal officer have undergone a debtor's relief proceeding.

9. A statement that the declarant will retain control of the unit owners' association for an initial period.

10. A statement indicating whether a managing agent will perform the routine operations of the unit owners' association. The statement shall include whether the managing agent is related to the declarant, director, or officer of the unit owners' association.

11. A statement indicating whether the declarant may lease unsold condominium units and a statement indicating whether the right of a unit owner to lease that owner's unit to another is subject to restrictions.

12. A statement indicating whether the declarant may expand or contract the condominium or convert convertible land or space without the consent of any unit owner.

13. A statement indicating whether the right of the unit owner to resell the owner's condominium unit is subject to restrictions.

14. A statement indicating whether the units are restricted to residential use and whether the units may be utilized for commercial, retail, or professional use. The statement shall provide detail if units have different voting rights. Further, the statement shall also detail whether the allocation of rights and responsibilities among commercial, retail, professional, or residential use units are the same.

15. A statement indicating whether approval of the declarant or unit owners' association is necessary in order for a unit owner to alter the structure of the unit or modify the exterior of the unit.

16. A statement regarding the obligation of the unit owners' association to obtain certain insurance benefiting the unit owner, along with the necessity for a unit owner to obtain other insurance.

17. A statement regarding the unit owner's obligation to pay real estate taxes.

18. A statement regarding any limits the declarant asserts on the association or the unit owner's right to bring legal action against the declarant. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

19. A statement that the association or unit owners are members of another association or obligated to perform duties or pay fees or charges to that association or entity.

20. A statement indicating whether the condominium is subject to development as a time-share.

21. A statement affirming that marketing and sale of condominium units will be conducted in accordance with the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia) and the Condominium Act (Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia).

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D. The content after the summary of important considerations shall include the narrative sections in 18VAC48-30-190 through 18VAC48-30-360. Supplementary sections may be included as necessary.

E. Clear and legible copies of the following documents shall be attached as exhibits to the public offering statement:

1. The declaration;
2. The bylaws;
3. The projected budget;
4. Rules and regulations of the unit owners' association, if available;
5. Master association documents, if applicable;
6. Any management contract, along with the license number of the common interest community manager, if applicable;
7. Depiction of unit layouts;
8. Any lease of recreational areas;
9. Any contract or agreement affecting the use, maintenance, or access of all or any portion of the condominium, the nature, duration, or expense of which has a material impact on the operation and administration of the condominium;
10. Warranty information, if applicable; and
11. Other documents obligating the association or unit owner to perform duties or obligations or pay charges or fees.

F. Other information and documentation may be included as necessary to ensure full and fair disclosure. The board may also require additional information as necessary to ensure full and fair disclosure.

## **18VAC48-30-190. Narrative sections; condominium concept.**

The public offering statement shall contain a section captioned "The Condominium Concept." The section shall consist of a brief discussion of the condominium form of ownership. The section shall discuss the distinction among units, common elements and limited common elements, if any, and shall explain ownership of an undivided interest in the common elements. Attention shall be directed to any features of ownership of the condominium units being offered that are different from typical condominium unit ownership.

## **18VAC48-30-200. Narrative sections; creation of condominium.**

The public offering statement shall contain a section captioned "Creation of the Condominium." The section shall briefly explain the manner in which the condominium was or will be created, the locality wherein the condominium instruments will be or have been recorded, and each of the condominium instruments, their functions, and the procedure for their amendment. The section shall indicate where each of the condominium instruments or copies thereof may be

found. In the case of a condominium located in Virginia or in a jurisdiction having a law similar to § 55-79.96 of the Code of Virginia, the section shall indicate that the purchaser will receive copies of the recorded declaration and bylaws, including amendments, as appropriate, within the time provided in the applicable statute.

## **18VAC48-30-210. Narrative sections; description of condominium.**

A. The public offering statement shall contain a section captioned "Description of the Condominium." The description shall include statements of (i) the land area of the condominium to include either the square footage or the acreage, (ii) the number of units in the condominium, (iii) the number of units in the offering, (iv) the number of units in the condominium planned to be rented, and (v) the percentage of units the declarant intends to sell to persons who do not intend to occupy the units as their primary residence.

B. If the condominium is contractable, expandable, or includes convertible land or space, the section shall contain a brief description of each such feature, including the land area to include either the square footage or acreage, and the maximum number of units or maximum number of units per acre that may be added, withdrawn, or converted, as applicable, together with a statement of the declarant's plans for the implementation of each such feature. In the case of a contractable or expandable condominium, the section shall contain the substance of the following statement:

"At the declarant's option, the construction and development of the condominium may be abandoned or altered prior to completion, and land or buildings originally intended for condominium development may be put to other uses or sold."

In the case of a condominium including convertible land, the section shall contain the substance of the following statements:

"Until such time as the declarant converts the convertible land into units or limited common elements, the declarant is required by the Virginia Condominium Act to pay for the upkeep of the convertible land. Once the convertible land has been converted, maintenance and other financial responsibilities associated with the land so designated become the responsibility of the unit owners and, therefore, may be reflected in the periodic assessment for the condominium."

If the common expense assessments are expected to increase should convertible land be converted, this section shall also disclose an estimate of the approximate percentage by which such assessments are expected to increase as a result of such conversion.

C. The section shall state whether the units are restricted solely to residential use and shall identify where use and occupancy restrictions are found in the condominium instruments. If nonresidential use is permitted, the section

shall identify the types of units and proportion of each, if known or reasonably anticipated.

D. The section shall state whether the project, as of the effective date of the public offering statement, is intended to comply with the underwriting guidelines of the secondary mortgage market agencies, including but not limited to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Virginia Housing Development Authority.

**18VAC48-30-220. Narrative section; individual units.**

The public offering statement shall contain a section captioned "Individual Units." The section shall contain a general description of the various types of units being offered to include the square footage, or number of bedrooms, or both, together with the dates on which substantial completion of unfinished units is anticipated. The section shall state any restrictions regarding changes unit owners may make to the structure or exterior of the units, regardless of whether the exterior is a portion of the common elements.

**18VAC48-30-230. Narrative sections; common elements.**

A. The public offering statement shall contain a section captioned "Common Elements." The section shall contain a general description of the common elements.

B. For any common elements that are not completed or not expected to be substantially complete when the units are complete, a statement of the anticipated completion dates of unfinished common elements shall be included.

C. In the case of a [ ~~condominium~~ condominium ] located in Virginia, if common elements are not expected to be substantially complete when the units are completed, the section shall state the nature, source, and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur upon recordation of the condominium instruments pursuant to §§ 55-79.58 A and 55-79.67 (a1) of the Code of Virginia and applicable provisions of the condominium instruments. In addition the section shall state that pursuant to § 55-79.58:1 of the Code of Virginia, the declarant has filed with the board a bond to insure completion of improvements to the common elements that the declarant is obligated as stated in the declaration.

D. In the case of a condominium located outside of Virginia, a description of the nature, source, and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur under the law of the jurisdiction in which the condominium is located shall be included.

E. The section shall describe any limited common elements that are assigned or that may be assigned and shall indicate the reservation of exclusive use. In the case of limited common elements that may be assigned, the section shall state the manner of such assignment or reassignment.

F. The section shall indicate the availability of vehicular parking spaces including the number of spaces available per unit and restrictions on or charges for the use of spaces.

**18VAC48-30-240. Narrative sections; maintenance, repair, and replacement responsibilities.**

The public offering statement shall contain a section captioned "Maintenance, Repair, and Replacement Responsibilities." The section shall describe the basic allocation of maintenance, repair, and replacement responsibilities between the unit owner and the association as well as any unusual items to be maintained by the unit owner. The section shall refer to the location of the maintenance, repair, and replacement responsibility requirements in the condominium instruments.

**18VAC48-30-250. Narrative sections; declarant.**

A. The public offering statement shall contain a section captioned "The Declarant." The section shall contain a brief history of the declarant with emphasis on its experience in condominium development.

B. The following information shall be stated with regard to persons immediately responsible for the development of the condominium: (i) name, (ii) length of time associated with the declarant, (iii) role in the development of the condominium, and (iv) experience in real estate development. If different from the persons immediately responsible for the development of the condominium, the principal officers of the declarant shall also be identified.

C. The section shall describe the type of legal entity of the declarant and explain if any other entities have any obligation to satisfy the financial obligations of the declarant.

D. If the declarant or its parent or predecessor organization has, during the preceding 10 years, been adjudicated [ a as ] bankrupt or has undergone any proceeding for the relief of debtors, such fact or facts shall be stated. If any of the persons identified pursuant to subsection B of this section has, during the preceding three years, been adjudicated a bankrupt or undergone any proceeding for the relief of debtors, such fact or facts shall be stated.

E. The section shall indicate any final action taken against the declarant, its principals, or the condominium by an administrative agency, civil court, or criminal court where the action reflected adversely upon the performance of the declarant as a developer of real estate projects. The section shall also indicate any current or past proceedings brought against the declarant by any condominium unit owners' association or by its executive organ or any managing agent on behalf of such association or that has been certified as a class action on behalf of some or all of the unit owners. For the purposes of the previous sentence with respect to past proceedings, if the ultimate disposition of those proceedings was one that reflected adversely upon the performance of the declarant, that disposition shall be disclosed. If the ultimate disposition was resolved favorably towards the declarant, its

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principals, or the condominium, the final action does not need to be disclosed. The board has the sole discretion to require additional disclosure of any proceedings where it finds such disclosure necessary to assure full and fair disclosure.

## **18VAC48-30-260. Narrative sections; terms of the offering.**

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a condominium unit and present information regarding the settlement of purchase contracts as provided in subsections B through H of this section.

B. The section shall indicate the offering prices for condominium units or a price range for condominium units, if either is established.

C. The section shall set forth the significant terms of any financing offered by or through the declarant to purchasers. Such discussion shall include the substance of the following statement:

"Financing is subject to additional terms and conditions stated in the loan commitment or instruments."

D. The section shall discuss in detail any costs collected by or paid to the declarant, association, or master association that are not normal for residential real estate transactions including, without limitation, any contribution to the initial or working capital of the unit owners' association, including any master association, to be paid by a purchaser.

E. The section shall discuss any penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase contract that are not normal for residential real estate transactions. Penalties or forfeitures to be discussed include, without limitation, the declarant's right to retain sums deposited in connection with a purchase contract in the event of a refusal by a lending institution to provide financing to a purchaser who has made proper application for same.

F. The section shall discuss the right of the declarant to cancel a purchase contract upon failure of the declarant to obtain purchase contracts on a given number or percentage of condominium units being offered or upon failure of the declarant to meet other conditions precedent to obtaining necessary financing.

G. The section shall discuss the process for cancellation of a purchase contract by a purchaser in accordance with subdivision 2 of § 55-79.88 of the Code of Virginia. The section shall include a statement as to whether deposits will be held in an escrow fund or if a bond or letter of credit will be filed with the board in lieu of escrowing deposits, all in accordance with § 55-79.95 of the Code of Virginia.

H. The section shall set forth any restrictions in the purchase contract that limit the unit owner's right to bring legal action against the declarant or the association. The section shall set forth the paragraph or section and page number of the purchase contract where such provision is located. Nothing in

this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

## **18VAC48-30-270. Narrative sections; encumbrances.**

A. The public offering statement shall contain a section captioned "Encumbrances" that shall include the significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium other than those contained in the condominium instruments and disclosed elsewhere in the public offering statement, as provided in subsections B through J of this section.

B. Except to the extent that such encumbrances are required to be satisfied or released by subsection A of § 55-79.46 of the Code of Virginia, or a similar law, the section shall describe every mortgage, deed of trust, other perfected lien, or choate mechanics or materialmen's lien affecting all or any portion of the condominium other than those placed on condominium units by their purchasers or owners. Such description shall (i) identify the lender secured or the lienholder, (ii) state the nature and original amount of the obligation secured, (iii) identify the party having primary responsibility for performance of the obligation secured, and (iv) indicate the practical effect upon unit owners of failure of the party to perform the obligation.

C. Normal easements for utilities, municipal rights-of-way, and emergency access shall be described only as such, without reference to ownership, location, or other details.

D. Easements reserved to the declarant to facilitate conversion, expansion, or sales shall be briefly described.

E. Easements reserved to the declarant or to the unit owners' association or to either entity's representatives or agents for access to units shall be briefly described. In the event that access to a unit may be had without notice to the unit owner, such fact shall be stated.

F. Easements across the condominium reserved to the owners or occupants of land located in the vicinity of the condominium, or across adjacent land benefitting the condominium including, without limitation, easements for the use of recreational areas shall be briefly described.

G. Covenants, servitudes, or other devices that create an actual restriction on the right of any unit owner to use and enjoy the unit or any portion of the common elements other than limited common elements shall be briefly described.

H. Any matter of title that is not otherwise required to be disclosed by the provisions of this section and that has or may have a substantial adverse impact upon unit owners' interests in the condominium shall be described. Under normal circumstances, normal and customary utility easements, easements for encroachments, and easements running in favor of unit owners for ingress and egress across the common elements shall be deemed not to have a substantial adverse impact upon unit owners' interest in the condominium.

I. The section need not include any information required to be disclosed by 18VAC48-30-210 C, 18VAC48-30-220, or 18VAC48-30-280.

J. In addition to the description of easements required in this section, pertinent easements that can be located shall be shown on the condominium plats and plans.

**18VAC48-30-280. Narrative sections; restrictions on transfer.**

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain any rights of first refusal, preemptive rights, limitations on leasing, or other restraints on free alienability created by the condominium instruments or the rules and regulations of the unit owners' association that affect the unit owners' right to resell, lease, or otherwise transfer an interest in the condominium unit.

**18VAC48-30-290. Narrative sections; unit owners' association.**

A. The public offering statement shall contain a section captioned "Unit Owners' Association." The section shall discuss the manner in which the condominium is governed and administered and shall include the information required by subsections B through K of this section.

B. The section shall summarize the functions of the unit owners' association.

C. The section shall describe the organizational structure of the unit owners' association. Such description shall indicate (i) the existence of or provision for an executive organ, officers, and managing agent, if any; (ii) the relationships between such persons or bodies; (iii) the manner of election or appointment of such persons or bodies; and (iv) the assignment or delegation of responsibility for the performance of the functions of the unit owners' association.

D. The section shall describe the method of allocating votes among the unit owners.

E. The section shall describe any retention by the declarant of control over the unit owners' association, including the time period of declarant control. The section shall state that the association shall register with the Common Interest Community Board upon transition of declarant control by filing the required annual report in accordance with § 55-79.93:1 of the Code of Virginia.

F. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the declarant or a member of the executive organ or an officer of the unit owners' association. The duration of any management agreement shall be stated.

G. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance, or access of all or

any part of the condominium shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

H. Rules and regulations of the unit owners' association and the authority to promulgate rules and regulations shall be discussed. Particular provisions of the rules and regulations need not be discussed except as required by other provisions of this chapter. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

I. Any standing committees established or to be established to perform functions of the unit owners' association shall be discussed. Such committees include, without limitation, architectural control committees and committees having the authority to interpret condominium instruments, rules, and regulations or other operative provisions.

J. Unless required to be disclosed by 18VAC48-30-270 E, any power of the declarant or of the unit owners' association or its representatives or agents to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated (i) a unit may be entered without notice to the unit owner, (ii) the declarant or the unit owners' association or its representatives or agents are empowered to take actions or perform work in a unit without the consent of the unit owner, and (iii) the unit owner may be required to bear the costs of actions so taken or work so performed.

K. The section shall state whether the condominium is part of a master or other association and briefly describe such relationship and the responsibilities of and obligations to the master association, including any charges for which the unit owner or the unit owners' association may be responsible. The disclosures required by this subsection may be contained in this narrative section or another narrative section. The section shall also describe any other obligation of the association or unit owners arising out of any agreements, easements, deed restrictions, or proffers, including the obligation to pay fees or other charges.

**18VAC48-30-300. Narrative sections; display of flag.**

The public offering statement shall include a section captioned "Display of Flag." This section shall describe any restrictions, limitations, or prohibitions on the right of a unit owner to display the flag of the United States in accordance with § 55-79.75:2 of the Code of Virginia.

**18VAC48-30-310. Narrative sections; surrounding area.**

The public offering statement shall contain a section captioned "Surrounding Area." The section shall briefly describe the zoning of the immediate neighborhood of the condominium and the current uses.

**18VAC48-30-320. Narrative sections; financial matters.**

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a condominium unit,

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excluding certain taxes, in the manner provided in subsections B through I of this section.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair, and replacement of various portions of the condominium: (i) common expenses apportioned among and assessed to all of the condominium units pursuant to subsection C of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provision; (ii) common expenses, if any, apportioned among and assessed to less than all of the condominium units pursuant to subsections A and B of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provisions; and (iii) costs borne directly by individual unit owners. The section need not discuss taxes assessed against individual condominium units and payable directly by the unit owners.

C. A budget shall show projected common expenses for the first year of the condominium's operation or, if different, the latest year for which a budget is available. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention to such exhibit. The section shall describe the manner in which the projected budget is established. If the condominium is phased, the budget shall project future years until all phases are projected to be developed and all common elements that must be built have been completed. The budget shall include an initial working capital budget showing sources and uses of initial working capital and a reserve table showing amounts to be collected to fund those reserves. The budget shall show regular individual assessments by unit type. The budget shall note that the figures are not guaranteed and may vary.

D. The section shall describe the manner in which regular common expenses are apportioned among and assessed to the condominium units. The section shall include the substance of the following statement, if applicable:

"A unit owner cannot obtain a reduction of the regular common expenses assessed against the unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures in accordance with § 55-79.83:1 of the Code of Virginia and for contingencies, if any. If there are no reserves, the section shall so state.

F. The section shall describe provisions for additional assessments to be levied in accordance with subsection E of § 55-79.83 of the Code of Virginia in the event that budgeted assessments provide insufficient funds for operation of the unit owners' association. The section shall also describe the provisions for an assessment against an individual unit owner.

G. The section shall discuss any common expenses actually planned to be specially assessed pursuant to subsections A and B of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provisions.

H. The section shall indicate any fee, rent, or other charge to be payable by unit owners other than through common expense assessments to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the condominium. As an exception to the provisions of this subsection, the section need not discuss any fees provided for in subsection H of § 55-79.84 and § 55-79.85 of the Code of Virginia, or similar laws or condominium instrument provisions or any costs for certificates for resale.

I. The section shall discuss the effect of failure of a unit owner to pay the assessments levied against the condominium unit. Such discussion shall indicate provisions for charges or other remedies that may be imposed to be applied in the case of overdue assessments and for acceleration of unpaid assessments. The section shall indicate the existence of a lien for unpaid assessments and where applicable the bond or letter of credit conditioned on the payment of assessments filed with the board in accordance with § 55-79.84:1 of the Code of Virginia. The section shall include, to the extent applicable, the substance of the following statement:

"The unit owners' association may obtain payment of overdue assessments by bringing legal action against the unit owner or by foreclosure of the lien resulting in a forced sale of the condominium unit."

## **18VAC48-30-330. Narrative sections; insurance.**

A. The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance on the condominium to be maintained by the unit owners' association. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owners; (ii) property damage coverage will not insure improvements to a unit that increase its value beyond the limits of coverage provided in the unit owners' association's policy, and (iii) liability coverage will not insure against liability arising from an accident or injury occurring within a unit or as a result of the act or negligence of a unit owner. The section shall include a statement whether the unit owner is obligated to obtain coverage for any or all of the coverages described. The section shall also include a statement that the unit owner should consult with an insurance professional to determine the appropriate coverage.

B. The section shall indicate any conditions imposed by the condominium instruments or the rules and regulations to which insurance obtained directly by unit owners will be subject. Such indication may be made by reference to pertinent provisions of the condominium instruments or the rules and regulations.

C. The section shall explain that the association is the only party that can make a claim under the master policy and is the sole decision-maker as to whether to make a claim, including

a statement as to the circumstances under which a unit owner could be responsible for payment of the deductible.

D. The section shall state that the unit owners' association is required to obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy in accordance with subsection B of § 55-79.81 of the Code of Virginia.

**18VAC48-30-340. Narrative sections; taxes.**

A. The public offering statement shall contain a section captioned "Taxes." The section shall describe all existing or [ ~~proposed~~ pending ] taxes to be levied against condominium units individually including, without limitation, real property taxes, sewer connection charges, and other special assessments.

B. With respect to real property taxes, the section shall state the current tax rate or provide information for obtaining the current tax rate. The section shall also state a procedure or formula by means of which the taxes may be estimated.

C. With respect to other taxes, the section shall describe each tax in sufficient detail as to indicate the time at which the tax will be levied and the actual or estimated amount to be levied, or a procedure or formula by means of which the taxes may be estimated.

**18VAC48-30-350. Narrative sections; governmental reviews.**

The public offering statement shall contain a section captioned "Governmental Reviews." The section shall discuss governmental reviews applicable to the condominium property and the status of any governmental approvals required for the development of the condominium. In addition, the section shall discuss approval of the zoning application and site plan and issuance of building permits by appropriate governmental authorities. The section shall state the current zoning classification for the condominium property. The section shall also include a statement regarding any zoning, subdivision, or land use obligations or proffers that would be imposed on the unit owner or the association, but need not disclose any zoning, subdivision, or land use obligations or proffers that do not impose any obligation on the association.

**18VAC48-30-360. Narrative sections; warranties.**

The public offering statement shall contain a section captioned "Warranties." The section shall describe any warranties provided by or through the declarant on the units or the common elements and a summary of the process for commencement of an action for breach of warranty in accordance with subsection C of § 55-79.79 of the Code of Virginia. The section shall describe the structural defect warranty required by and described in subsection B of § 55-79.79 of the Code of Virginia. The section shall also include the substance of the following statement:

"Nothing contained in the warranty provided by the declarant shall limit the protection afforded by the statutory warranty."

**18VAC48-30-370. Documents from other jurisdictions.**

A. A substituted public offering statement shall only be permitted for a condominium located outside of Virginia.

B. The substituted public offering statement shall be prepared by deleting from the original disclosure document (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the condominium; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgement of receipt, or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information that is untrue, inaccurate, or misleading with respect to marketing, offers, or disposition of condominium units in Virginia.

C. The substituted public offering statement shall incorporate all information not otherwise included that is necessary to effect fully and accurately the disclosures required by subsection A of § 55-79.90 of the Code of Virginia and, if applicable, subsection A of § 55-79.94 of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature that is different from the definitions provided in § 55-79.41 of the Code of Virginia.

D. The substituted public offering statement shall include as the first item of the summary of important considerations a statement that includes the following information: (i) the designation by which the original disclosure document is identified in the original jurisdiction, (ii) the governmental agency of such other jurisdiction where the original disclosure document is or will be filed, and (iii) the jurisdiction of such filing.

E. The provisions of subdivision 2 of § 55-79.88, § 55-79.90, and subsection A of § 55-79.94 of the Code of Virginia and 18VAC48-30-160, 18VAC48-30-170, and 18VAC48-30-180 shall apply to substituted public offering statements in the same manner and to the same extent that they apply to public offering statements.

**18VAC48-30-380. Condominium securities.**

A prospectus filed in compliance with the securities laws of a state or federal agency used in lieu of a public offering statement shall contain or have attached thereto copies of documents, other than the projected budget required to be attached to a public offering statement by subsection E of 18VAC48-30-180. Such prospectus shall be deemed to satisfy all of the disclosure requirements of subsections C and D of 18VAC48-30-180 and 18VAC48-30-190 through 18VAC48-30-360. In the case of a conversion condominium, the prospectus shall have attached thereto, in suitable form, the information required by 18VAC48-30-420, subsections C and D of 18VAC48-30-430, and 18VAC48-30-440 to be disclosed in public offering statements for conversion condominiums. The provisions of subdivision 2 of § 55-79.88

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of the Code of Virginia shall apply to the delivery of the prospectus in the same manner and to the same extent that they apply to the delivery of a public offering statement.

## **18VAC48-30-390. Board oversight of public offering statement.**

The board at any time may require a declarant to alter or amend the public offering statement to assure full and fair disclosure to prospective purchasers and to ensure compliance with the Condominium Act and this chapter.

In accordance with subsection B of § 55-79.90 of the Code of Virginia, the board does not approve or recommend the condominium or disposition thereof. The board's issuance of an effective date for a public offering statement shall not be construed to (i) constitute approval of the condominium, (ii) represent that the board asserts that either all facts or material changes or both concerning the condominium have been fully or adequately disclosed, or (iii) indicate that the board has made judgment on the value or merits of the condominium.

### Part V

#### Conversion Condominiums

## **18VAC48-30-400. Public offering statement for conversion condominium; general instructions.**

The public offering statement for a conversion condominium shall conform in all respects to the requirements of 18VAC48-30-160 through 18VAC48-30-380. In addition, the public offering statement for a conversion condominium shall (i) contain special disclosures in the narrative sections captioned "Description of the Condominium," "Terms of the Offering," and "Financial Matters"; and (ii) incorporate narrative sections captioned "Present Condition of the Condominium" and "Replacement Requirements." Provisions for such additional disclosure are set forth in 18VAC48-30-410 through 18VAC48-30-440.

## **18VAC48-30-410. Description of conversion condominium.**

In addition to the information required by 18VAC48-30-210, the section captioned "Description of the Condominium" shall indicate that the condominium is a conversion condominium. The term conversion condominium shall be defined and the particular circumstances that bring the condominium within the definition shall be stated. The nature and inception date of prior occupancy of the property being converted shall be stated.

## **18VAC48-30-420. Financial matters, conversion condominium.**

A. The provisions for capital reserves described in the section captioned "Financial Matters" shall conform with 18VAC48-30-320 and shall be supplemented by the information set forth in subsections B and C of this section.

B. The section shall state the aggregate replacement cost of all physical assets whose replacement costs will constitute regular common expenses and whose expected useful lives are 10 years or less. For the purposes of this subsection, an

expected useful life that is stated as being within a range of years pursuant to subsection E of 18VAC48-30-440 shall be deemed to be 10 years or less, if the lower limit of such range is 10 years or less. The total common expense assessments per unit that would be necessary in order to accumulate an amount of capital reserves equal to such aggregate replacement cost shall be stated.

C. The section shall state the amount of capital reserves that will be accumulated by the unit owners' association during the period of declarant control together with any provisions of the condominium instruments specifying the rate at which reserves are to be accumulated thereafter. If any part of the capital reserves will or may be obtained other than through regular common expense and limited common expense assessments, such fact shall be stated.

D. The actual expenditures made over a three-year period on operation, maintenance, repair, or other upkeep of the property prior to its conversion to condominium shall be set forth in tabular form as an exhibit immediately preceding or following the budget attached to the public offering statement pursuant to subsection C of 18VAC48-30-320, and shall be presented in a manner that is not misleading. Distinction shall be made between expenditures that would have constituted regular common expenses and limited common expenses, and expenditures that would have been borne by unit owners individually if the property had been converted to a condominium prior to the commencement of the three-year period. To the extent that it is impossible or impracticable to so distinguish the expenditures it shall be assumed that they would have constituted regular common expenses or limited common expenses.

Both types of expenditures shall be cumulatively broken down on a per unit basis in the same proportion that common expenses are or will actually be assessed against the condominium units. The three-year period to which this subsection refers shall be the most recent three-year period prior to application for registration during which the property was occupied and for which expenditure information is available. The expenditure information shall indicate the years for which expenditures are stated. If any portion of the property being converted to condominium was not occupied for the full three-year period, expenditure information shall be set forth only for the entire time period that portion of the property was occupied. The "Financial Matters" section shall direct the purchaser's attention to the expenditure information.

## **18VAC48-30-430. Present condition of conversion condominium.**

A. The section captioned "Present Condition of the Condominium" shall contain a statement of the approximate dates of original construction or installation of all physical assets in the condominium. A single construction or installation date may be stated for all of the physical assets (i) in the condominium, (ii) within a distinctly identifiable portion of the condominium, or (iii) within a distinctly

identifiable category of physical assets. A statement made pursuant to the preceding sentence shall include a separate reference to the construction or installation date of any physical asset within a stated group of physical assets that was constructed or installed significantly earlier than the construction or installation date indicated for the group generally. No statement shall be made that a physical asset or portion thereof has been repaired, altered, improved, or replaced subsequent to its construction or installation unless the approximate date, nature, and extent of such repair, alteration, improvement, or replacement is also stated.

B. Subject to the exceptions provided in subsections D, E, and F of this section, the section captioned "Present Condition of the Condominium" shall contain a description of the present condition of all physical assets within the condominium. The description of present condition shall disclose all structural defects and incapacities of major utility installations to perform their intended functions as would be observable, detectable, or deducible by means of standard inspection and investigative techniques employed by architects or professional engineers, as the case may be.

C. The section shall indicate the dates of inspection by means of which the described present condition was determined; provided, however, that such inspections shall have been conducted not more than one year prior to the date of filing the application for registration. The section shall identify the party or parties by whom present condition was ascertained and shall indicate the relationship of such party or parties to the declarant.

D. A single statement of the present condition of a class of physical assets shall suffice to disclose the present condition of each physical asset within the class; provided, however, that, unless subsection F of this section applies, such statement shall include a separate reference to the present condition of any physical asset within the class that is significantly different from the present condition indicated for the class generally.

E. The description of present condition may include a statement that all structural components in the condominium or in a distinctly identifiable portion thereof are in sound condition except those for which structural defects are noted.

F. In a case in which there are numerous physical assets within a class of physical assets and inspection of each such physical asset is impracticable, the description of present condition of all the physical assets within the class may be based upon an inspection of a number of them selected at random, provided that the number selected is large enough to yield a reasonably reliable sample and that the total number of physical assets within the class and the number selected are disclosed.

G. The section shall include statements disclosing any environmental issues pertaining to the building and the surrounding area, to include but not be limited to:

1. The presence of any asbestos-containing material following an inspection of each building completed prior to July 1, 1978, as well as whether any response actions have been or will need to be taken as required by § 55-79.94 A 5 of the Code of Virginia;

2. Any known information on lead-based paint and lead-based paint hazards in each building constructed prior to 1978 pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992 - Title X [(42 USC § 4851 et seq.)]; and

3. Any obligations related to the declarant's participation in voluntary or nonvoluntary remediation activities.

### **18VAC48-30-440. Replacement requirements in conversion condominium.**

A. Subject to the exceptions provided in subsections B and H of this section, the section captioned "Replacement Requirements" shall state the expected useful lives of all physical assets in the condominium. The section shall state that expected useful lives run from the date of the inspection by means of which the expected useful lives were determined. Such inspection date shall be stated.

B. A single statement of the expected useful life of a class of physical assets shall suffice to disclose the expected useful life of each physical asset within the class; provided, however, that such statement shall include a separate reference to the expected useful life of any physical asset within such class that is significantly shorter than the expected useful life indicated for the class generally.

C. An expected useful life may be qualified. A qualified expected useful life is an expected useful life expressly conditioned upon a given use or level of maintenance or other factor affecting longevity. No use, level of maintenance, or other factor affecting longevity shall be stated as a qualification unless such use, level of maintenance, or factor affecting longevity is normal or reasonably anticipated for the physical asset involved. If appropriate, an expected useful life may be stated as being indefinite, subject to the stated qualification that the physical asset involved must be properly used and maintained. An expected useful life may be stated as being within a range of years, provided that the range is not so broad as to render the statement meaningless. In no event shall the number of years constituting the lower limit of such range be less than two-thirds of the number of years constituting the upper limit.

D. Subject to the exceptions provided in subsections E and H of this section, the section captioned "Replacement Requirements" shall state the replacement costs of all physical assets in the condominium including those whose expected useful lives are stated as being indefinite.

E. A statement of the replacement cost of a representative member of a class of physical assets shall suffice to disclose the replacement cost of each physical asset within the class; provided, however, that such statement shall include a

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separate reference to the replacement cost of any physical asset within the class that is significantly greater than the replacement cost indicated for the representative member of the class.

F. Distinction shall be made between replacement costs that will be common expenses and replacement costs that will be borne by unit owners individually. The latter type of replacement costs shall be broken down on a per unit basis. The purchaser's attention shall be directed to the "Financial Matters" section for an indication of the amount of the former type of replacement costs.

G. In any case in which the replacement cost of a physical asset may vary depending upon the circumstances surrounding its replacement, the stated replacement cost shall reflect the circumstances under which replacement will most probably be undertaken.

H. A single expected useful life and an aggregate replacement cost may be stated for all of the structural components of a building or structure that have both (i) the same expected useful lives and (ii) replacement costs that will constitute regular common expenses. A statement made pursuant to the preceding sentence shall be accompanied by statements of the expected useful lives and replacement costs, stated on a per unit basis, of all of the structural components of the building or structure whose expected useful lives differ from the general expected useful life or whose replacement costs will be borne by unit owners individually.

## **18VAC48-30-450. Notice to tenants.**

No notice to terminate tenancy of a unit provided for by subsection B of § 55-79.94 of the Code of Virginia shall be given prior to the registration of the condominium including such unit as to which the tenancy is to be terminated.

### Part VI

#### Post-Registration Provisions

## **18VAC48-30-460. Minimum post-registration reporting requirements.**

A. Subsequent to the issuance of a registration for a condominium by the board, the declarant of a condominium shall:

1. File an annual report in accordance with § 55-79.93 of the Code of Virginia and this chapter.
2. File a copy of the formal notice to the tenants of a conversion condominium upon delivery or no later than 15 days after delivery to such tenants in accordance with subsection B of § 55-79.94.
3. Upon the occurrence of a material or nonmaterial change, file an amended public offering statement or substituted public offering statement in accordance with the provisions of 18VAC48-30-480 or 18VAC48-30-490, as applicable.

4. Notify the board of a change in the bond or letter of credit, as applicable, required by §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia.

5. File a complete application for registration of unregistered additional units upon the expansion of the condominium or the formation of units out of additional land. Notwithstanding the preceding, nonresidential units created out of convertible space need not be registered. Documents on file with the board and not changed with the creation of additional units need not be refiled provided that the application indicates that such documents are unchanged.

6. Notify the board of transition of control of the unit owners' association.

7. Notify the board upon the transfer of special declarant rights to a successor declarant.

8. Submit appropriate documentation to the board once the registration is eligible for termination.

9. Submit to the board any other document or information that may include information or documents that have been amended or may not have existed previously that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

10. Submit to the board any document or information to make the registration file accurate and complete.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require a declarant to provide information or documents, or amendments thereof, to assure full and fair disclosure to prospective purchasers and to ensure compliance with the Condominium Act and this chapter.

## **18VAC48-30-470. Amendment of public offering statement.**

Any amendment of the public offering statement or substituted public offering statement shall comply with this chapter.

## **18VAC48-30-480. Nonmaterial changes to the public offering statement.**

A. Changes to the public offering statement that are not material shall be filed with the board but shall not be deemed an amendment of the public offering statement for the purposes of this chapter and shall not give rise to a renewed right of [ ~~rescission~~ rescission ] in any purchase. Nonmaterial changes to the public offering statement include, but may not be limited to, the following:

1. Correction of spelling, grammar, omission, or other similar errors not affecting the substance of the public offering statement;
2. Changes in presentation or format;
3. Substitution of an executed, filed, or recorded copy of a document for the otherwise substantially identical

unexecuted, unfiled, or unrecorded copy of the document that was previously submitted;

4. Inclusion of updated information such as identification or description of the current officers and directors of the declarant;

5. Disclosure of completion of improvements for improvements that were previously proposed or not complete;

6. Changes in real estate tax assessment or rate or modifications related to those changes;

7. Changes in utility charges or rates or modifications related to those changes;

8. Adoption of a new budget that does not result in a significant change in the common expense assessment or significantly impact the rights or obligations of the prospective purchasers;

9. Modifications related to changes in insurance company or financial institution, policy, or amount for bonds or letters of credit required pursuant to §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia;

10. Changes in management agent or common interest community manager; and

11. Any change that is the result of orderly development of the condominium in accordance with the condominium instruments as described in the public offering statement.

B. Nonmaterial changes to the public offering statement shall be submitted with the effective date of the changes detailed. All changes shall be clearly represented in the documentation presented. The additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted, and any documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and [ ~~striketroughs~~ strike-throughs ] for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided. In addition, the declarant shall include a statement with the submission of the declarant's plans, if any, to deliver the public offering statement to purchasers pursuant to subdivision 2 of § 55-79.88 of the Code of Virginia.

C. The board has the sole discretion for determining whether a change is nonmaterial. The declarant will be notified in writing within 15 days of receipt by the board if the submitted changes are determined to be material. Should a change be submitted as nonmaterial but determined to be a material change during review, the requirements contained in 18VAC48-30-470 and 18VAC48-30-490 shall be applicable.

## **18VAC48-30-490. Filing of amended public offering statement.**

A. The declarant shall promptly file with the board for review a copy of the amended public offering statement or substituted public offering statement together with a copy of a summary of proposed amendments that shall be distributed to purchasers during the board review period. The summary of proposed amendments shall enumerate the amendments to the public offering statement submitted for board review and include a statement that the amendments to the public offering statement have been filed with the board but have not yet been accepted. The form of the submission is at the discretion of the declarant provided, however, that (i) all amendments are clearly represented in the documentation presented, (ii) the additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted, and (iii) any documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strike-throughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided.

B. The amended public offering statement submitted to the board for review shall include the effective date of the amendments.

C. The board shall issue a notice of filing within five business days following receipt of the amended public offering statement.

D. Within 30 days of the issuance of the notice of filing required by subsection C of this section, the board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines that the amended public offering statement complies with this chapter, it shall notify the declarant in writing and confirm the new effective date of the public offering statement.

E. If the board's review determines that the amended public offering statement does not comply with this chapter, it shall immediately notify the declarant in writing that the review has determined the amended public offering statement is not in compliance and shall specify the particulars of such noncompliance. The declarant shall then have 20 days in which to correct the particulars of noncompliance identified by the board. The declarant may, prior to the completion of the 20-day correction period, request an extension in writing of the 20-day correction period. Upon expiration of the 20-day correction period, if requested corrections have not been made or a request for extension properly received, the board may issue a temporary cease and desist order in accordance with § 55-79.100 (b) of the Code of Virginia to require the cessation of sales until such time as affirmative action as directed by the board is taken. Use of the noncompliant public offering statement may result in further action by the board

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pursuant to §§ 55-79.100, 55-79.101, and 55-79.103 of the Code of Virginia.

F. Notwithstanding an extension of the 30-day period for review agreed to in writing by the board and declarant, if the board does not perform the required review of the public offering statement in accordance with subsection D of this section, the amendment shall be deemed to comply with 18VAC48-30-160 through 18VAC48-30-380, and the new effective date shall be the effective date of the amendment provided pursuant to subsection B of this section.

G. In each case in which an amended document is filed pursuant to this section and the manner of its amendment is not apparent on the face of the document, the declarant shall provide an indication of the manner and extent of amendment.

## **18VAC48-30-500. Current public offering statement.**

A. Upon issuance of an effective date by the board, any purchasers who received a public offering statement and summary of proposed amendments during the board review period pursuant to subsection A of 18VAC48-30-490 shall be provided with the public offering statement as accepted by the board. A public offering statement remains current until such time as the occurrence of a material change requires amendment of the public offering statement pursuant to this chapter and a new effective date is issued by the board.

B. Upon issuance of an effective date by the board, a public offering statement remains current until such time as a new effective date is established pursuant to this chapter.

C. Notwithstanding the board's authority to issue a cease and desist order pursuant to § 55-79.100 of the Code of Virginia, the filing of an amended public offering statement shall not require the declarant to cease sales provided that the declarant provides to purchasers the summary of proposed amendments pursuant to subsection A of 18VAC48-30-490 pending the issuance of a new effective date by the board.

## **18VAC48-30-510. Public offering statement not current; notification of purchasers.**

A. A purchaser who has been delivered a public offering statement that is not current due to a material change and was not provided with the summary of proposed amendments containing the proposed changes to the amended public offering statement pursuant to subsection A of 18VAC48-30-490 pending the issuance of a new effective date by the board shall be notified of such fact by the declarant.

B. A purchaser who has been delivered a public offering statement and summary of proposed amendments pursuant to subsection A of 18VAC48-30-490, but the amended public offering statement is determined to be noncompliant in accordance with subsection E of 18VAC48-30-490 shall be notified of such fact by the declarant.

1. The notification shall indicate that any contract for disposition of a condominium unit may be cancelled by the

purchaser pursuant to subdivision 2 of § 55-79.88 of the Code of Virginia.

2. The declarant shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

## **18VAC48-30-520. Provisions applicable to substituted public offering statement and prospectus.**

A. The provisions of 18VAC48-30-470 through 18VAC48-30-510 shall apply to a substituted public offering statement in the same manner and to the same extent that they apply to public offering statements.

B. The provisions of 18VAC48-30-470 through 18VAC48-30-510 shall apply to a prospectus only to the extent that amendment of the information or documents attached to the prospectus pursuant to 18VAC48-30-380 is required or permitted. The body of the prospectus shall be amended only as provided in applicable securities law. The declarant shall immediately file with the board any amendments to the body of the prospectus and, upon receipt thereof, the board shall notify the declarant in writing and confirm the new effective date for use of the prospectus. A prospectus is current so long as it is effective under applicable securities law and the information and attached documents are current under the provisions of 18VAC48-30-490. The declarant shall immediately notify the board if the prospectus ceases being effective. If no prospectus is effective and the declarant proposes to continue offering condominium units, the declarant shall file a public offering statement with the board pursuant to 18VAC48-30-490.

C. The provisions of 18VAC48-30-510 shall apply to a prospectus in the same manner and to the same extent that they apply to a public offering statement.

D. In an annual report involving a prospectus, the declarant shall comply with all of the provisions of 18VAC48-30-540 applicable to public offering statements and, in addition, shall certify that an effective prospectus is available for delivery to purchasers and shall indicate the declarant's plans or expectations regarding the continuing effectiveness of the prospectus.

## **18VAC48-30-530. Filing of phase amendment application.**

A. A phase amendment application shall be filed when adding land to or converting land in the condominium, provided that no such application need be filed for units previously registered. Such phase amendment application shall be accompanied by the fee provided for in 18VAC48-30-100 and shall be subject to all of the provisions of 18VAC48-30-90 through 18VAC48-30-150. Documents on file with the board that have not changed in connection with the additional units need not be refiled, provided that the phase amendment application indicates that such documents are unchanged.

B. The application shall include a new or amended bond or letter of credit required pursuant to § 55-79.84:1 of the Code of Virginia for the additional units.

C. The board shall review the phase amendment application and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines the phase amendment application complies with this chapter, it shall issue an amended order of registration for the condominium and shall provide that any previous orders and designations of the form, content, and effective date of the public offering statement, substituted public offering statement, or prospectus to be used are superseded. If the board's review determines that the phase amendment application is not complete, the board shall correspond with the declarant to specify the particulars that must be completed to obtain compliance with this chapter.

**18VAC48-30-540. Annual report by declarant.**

A. A declarant shall file an annual report [ on a form provided by the board ] to update the material contained in the registration file at least 30 days prior to the anniversary date of the order registering the condominium. Prior to filing the annual report required by § 55-79.93 of the Code of Virginia, the declarant shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the declarant shall so certify in the annual report. If such public offering statement is not current, the declarant shall amend the public offering statement, and the annual report shall, in that event, include a filing in accordance with 18VAC48-30-490.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the declarant;
2. Current contact information for the declarant's attorney, if applicable;
3. Date of the public offering statement currently being delivered to purchasers;
4. Date the condominium instruments were recorded and locality wherein recorded;
5. Number of phases registered with the board, if applicable;
6. Number of phases recorded, if applicable;
7. Number of units recorded;
8. Number of units conveyed;
9. Status of completion of all common elements within the condominium;
10. Status of declarant control;
11. Whether the declarant is current in the payment of assessments; and
12. Current evidence from the surety or financial institution of any bond or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to

§§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia. Such verification shall provide the following:

- a. Principal of bond or letter of credit;
- b. Beneficiary of bond or letter of credit;
- c. Name of the surety or financial institution that issued the bond or letter of credit;
- d. Bond or letter of credit number as assigned by the issuer;
- e. The dollar amount; and
- f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

**18VAC48-30-550. Board review of annual report.**

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to § 55-79.100, 55-79.101, or 55-79.103 of the Code of Virginia for failing to file an annual report as required by § 55-79.93 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with § 55-79.93 of the Code of Virginia.

**18VAC48-30-560. Transition of control of unit owners' association.**

Upon transition of control of the association to the unit owners following the period of declarant control, the declarant shall, in addition to the requirements contained in subsection G of § 55-79.74 of the Code of Virginia, notify the board in writing of the date of such transition and provide the name and contact information for members of the board of directors of the unit owners' association or the association's common interest community manager.

**18VAC48-30-570. Return of assessment bond or letter of credit to declarant.**

A. The declarant of a condominium required to post a bond or letter of credit pursuant to § 55-79.84:1 of the Code of Virginia shall maintain such bond or letter of credit for all units registered with the board until the declarant owns less than 10% of the units in the condominium and is current in the payment of assessments. For condominiums containing less than 10 units, the bond or letter of credit shall be maintained until the declarant owns only one unit.

B. The declarant shall submit a written request to the board for the return of the bond or letter of credit. The written request shall attest that the declarant (i) owns less than 10% of the units or for condominiums containing less than 10 units, that the declarant owns only one unit and (ii) is current

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in the payment of assessments. The written request shall provide contact information for the unit owners' association.

C. Upon receipt of the written request from the declarant, the board shall send a request to the unit owners' association to confirm the information supplied by the declarant. The person certifying the information on behalf of the unit owners' association must not be affiliated with the declarant. The managing agent may confirm the information supplied by the declarant.

D. The board shall return the bond or letter of credit to the declarant if (i) the unit owners' association confirms that the declarant is current in the payment of assessments and owns less than 10% of the units in the condominium or (ii) no response is received from the unit owners' association within 90 days. The 90-day time frame in clause (ii) of this subsection may be extended at the discretion of the board.

E. If the unit owners' association attests the declarant is not current in the payment of assessments, the board shall retain the bond or letter of credit until evidence is received satisfactory to the board that the declarant is current in the payment of assessments.

F. The board may ask for additional information from the unit owners' association or the declarant as needed to confirm compliance with § 55-79.84:1 of the Code of Virginia.

## **18VAC48-30-580. Return of completion bond or letter of credit to declarant.**

A bond on file with the board pursuant to § 55-79.58:1 of the Code of Virginia may be returned to the declarant upon written request. Such request shall include a copy of the recorded plat or plan showing completion or documentation acceptable to the board that the improvements to the common elements for which the bond was submitted is completed to the extent of the declarant's obligation.

## **18VAC48-30-590. Return of bond or letter of credit upon termination of registration.**

Upon issuance of an order of termination of the condominium registration pursuant to 18VAC48-30-610 and if the bond or letter of credit on file with the board has not been returned to the declarant or the declarant's agent previously, it will be considered for return in accordance with 18VAC48-30-570 or 18VAC48-30-580.

## **18VAC48-30-600. Maintenance of bond or letter of credit.**

A. The declarant shall report the extension, cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia within five days of the change.

B. The board at any time may request verification from the declarant of the status of a bond or letter of credit on file with the board. Such verification shall comply with the provisions of subdivision B 12 of 18VAC48-30-540.

C. Failure to report a change in the bond or letter of credit in accordance with this section shall result in further action by the board pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.

## **18VAC48-30-610. Termination of condominium registration.**

A. The condominium registration shall be terminated upon receipt of documentation of one of the following:

1. In accordance with § 55-79.93 of the Code of Virginia, an annual report filed pursuant to 18VAC48-30-540 indicates that all units in the condominium have been disposed of and all periods for conversion or expansion have expired.

2. Written notification is received from the declarant attesting that all units have been disposed of and that all periods for conversion or expansion have expired and all common elements have been completed.

3. Written notification is received from the declarant requesting termination pursuant to § 55-79.72:1 of the Code of Virginia. Should the declarant later choose to offer condominium units in a condominium for which the registration has been terminated in accordance with this subsection, prior to offering a condominium unit, the declarant must submit a new application for registration of the condominium, meet all requirements in effect at the time of application, and be issued an order of registration for the condominium by the board.

B. Upon receipt and review of documentation pursuant to subsection A of this section, the board shall issue an order of termination for the condominium registration. The board may request additional information as necessary during the review of the submitted documentation to ensure that the condominium registration is eligible for termination.

C. The board shall send a copy of the order of termination for the condominium registration to the association.

## **18VAC48-30-620. Administrative termination of condominium registration.**

In accordance with subsection B of § 55-79.93:2 of the Code of Virginia, the board may administratively terminate the registration of a condominium. Prior to the administrative termination of the registration, the board shall send written notice of its intent to terminate the registration to all known parties associated with the condominium, including, but not limited to, the registered agent, officer or officers of the unit owners' association, declarant's and association's attorneys, and principal or principals of the declarant. Such written notice shall be given to the parties by mail or otherwise if acknowledged by them in writing.

The board shall issue an order of termination for the condominium registration if (i) a response is not received within 30 days after sending the written notice or (ii) the response received does not indicate termination of the registration is inappropriate in accordance with Chapter 4.2

(§ 55-79.39 et seq.) of Title 55 of the Code of Virginia and this chapter.

Nothing contained in this section shall prevent the board from taking further action as allowed by law including issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

**18VAC48-30-630. Notification of successor declarant and transfer of special declarant rights.**

A. In the event the special declarant rights of a condominium are transferred to a successor in accordance with § 55-79.74:3 of the Code of Virginia, the successor declarant shall notify the board within 30 days. Before units may be offered for sale, the successor declarant shall submit the following to the board:

1. Completed application for the successor declarant;
2. Copy of the recorded document evidencing the transfer;
3. Copies of all condominium instruments that were amended to reflect the successor or transfer of special declarant rights;
4. A public offering statement amended in accordance with this chapter;
5. All bonds or letters of credit required pursuant to §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia; and
6. Other documents that may be required to ensure compliance with Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia and this chapter.

B. Documents on file with the board that have not changed in connection with the transfer need not be refiled, provided that the application for successor declarant indicates that such documents are unchanged.

**18VAC48-30-640. Reporting of other changes to the condominium project.**

Any other change made or known by the declarant that may affect the accuracy or completeness of the condominium registration file shall be promptly reported to the board. Such change may include but is not limited to the name of the declarant, name of the condominium project, or any other changes in information submitted in accordance with § 55-79.89 of the Code of Virginia. The board may request additional information as necessary to ensure compliance with Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia and this chapter.

**Part VII**

**Board Authority and Standards of Conduct**

**18VAC48-30-650. Grounds for disciplinary action.**

The board may revoke a registration [ upon a finding ] that [ the registration ] is not in compliance with, or [ ~~of a person who has been found to have~~ the declarant has ] violated, any provision of the regulations of the board or

Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia. Additional action may include issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

**18VAC48-30-660. Registration of condominium required.**

No declarant or individual or entity acting on behalf of the declarant shall offer a condominium unit prior to the registration of the condominium including such unit.

**18VAC48-30-670. Condominium advertising standards.**

A. No promise, assertion, representation, or statement of fact or opinion in connection with a condominium marketing activity shall be made that is false, inaccurate, or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances, or features of the condominium or a condominium unit.

B. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity shall indicate that an improvement will be built or placed on the condominium unless the improvement is a proposed improvement within the meaning of subsection C of 18VAC48-30-120.

C. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity and relating to a condominium unit not registered shall, by its express terms, induce, solicit, or encourage a prospective purchaser to leave Virginia for the purpose of executing a contract for sale or lease of the condominium unit or performing some other act that would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

**18VAC48-30-680. Response to inquiry and provision of records.**

A. The declarant must respond within 15 days to a request by the board or any of its agents regarding any complaint filed with the department. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

B. Unless otherwise specified by the board, the declarant shall produce to the board or any of its agents within 15 days of the request any document, book, or record concerning any transaction in which the declarant was involved, or for which the declarant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

C. A declarant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

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D. With the exception of the requirements of subsections A and B of this section, a declarant must respond to an inquiry by the board or its agent within 21 days.

## **18VAC48-30-690. Prohibited acts.**

The following acts are prohibited and any violation may result in action by the board, including but not limited to issuance of a temporary cease and desist order in accordance with § 55-79.100 (b) of the Code of Virginia:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board, Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, or Chapter 4.1 (§ 55-79.1 et seq.) or Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.
2. Obtaining or attempting to obtain a registration by false or fraudulent representation, or maintaining a registration by false or fraudulent representation.
3. Failing to comply with 18VAC48-30-80 in offering literature.
4. Failing to alter or amend the public offering statement as directed in accordance with 18VAC48-30-390 or 18VAC48-30-490.
5. Providing information to purchasers in a manner that willfully and intentionally fails to promote full and fair disclosure.
6. Failing to provide information or documents, or amendments thereof, in accordance with subsection B of 18VAC48-30-460.
7. Failing to comply with the post-registration requirements of [ 18VAC48-30-460, ] 18VAC48-30-470, 18VAC48-30-480, 18VAC48-30-490, [ 18VAC48-30-500, 18VAC48-30-510, ] 18VAC48-30-520, 18VAC48-30-530, and 18VAC48-30-540.
8. Failing to give notice to a purchaser in accordance with [ ~~18VAC48-30-560~~ 18VAC48-30-510 ].
9. Failing to give notice to the board of transition of control of unit owners' association in accordance with 18VAC48-30-560.
10. Failing to transition control of the unit owners' association in accordance with § 55-79.74 of the Code of Virginia.
11. Failing to turn over books and records in accordance with subsection H of § 55-79.74 of the Code of Virginia.
12. Providing false information or misrepresenting an affiliation with an association in seeking return of a bond or letter of credit in accordance with 18VAC48-30-570 or 18VAC48-30-580.
13. Filing false or misleading information in the course of terminating a registration in accordance with 18VAC48-30-610 or 18VAC48-30-620.

14. Failing to comply with 18VAC48-30-630 and 18VAC48-30-640.

15. Failing to comply with the advertising standards contained in 18VAC48-30-670.

**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 (18VAC48-30)

[ ~~Condominium Registration Application, A492-0517REG-v1 (eff. 9/13)~~

~~Declarant Annual Report - Condominium, A492-0517ANRPT v1 (eff. 9/13)~~

[Condominium Registration Application, A492-0517REG-v2 \(rev. 8/15\)](#)

[Declarant Annual Report - Condominium, A492-0517ANRPT-v2 \(rev 1/14\)](#)

[Condominium Bond/Letter of Credit Verification Form, A492-0517BNDLOC-v1, \(rev. 9/13\)](#)

[Exhibit H - Bond to Insure Payment of Assessments, A492-0517BOND-v2 \(rev. 11/14/13\)](#)

[Condominium Registration Application - Exhibit H, Sample Form, A492-0517LOC-v2 \]](#)

VA.R. Doc. No. R12-2805; Filed May 5, 2015, 9:00 a.m.

## **Proposed Regulation**

**Titles of Regulations:** **18VAC48-40. Time-Share Regulations (repealing 18VAC48-40-10 through 18VAC48-40-110).**

**18VAC48-45. Time-Share Regulations (adding 18VAC48-45-10 through 18VAC48-45-770).**

**Statutory Authority:** § 54.1-2349 Code of Virginia.

### **Public Hearing Information:**

June 11, 2015 - 11 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive Suite 200, Training Room 2, Richmond, Virginia 23233

**Public Comment Deadline:** July 31, 2015.

**Agency Contact:** Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

**Basis:** Section 55-396 A of the Code of Virginia states that the Common Interest Community Board may adopt, amend, and repeal rules and regulations and issue orders consistent

with and in furtherance of the objectives of Chapter 21 (§ 55-360 et seq.) of Title 55 of the Code of Virginia.

**Purpose:** Minor changes have been made to the Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia) by the General Assembly nearly every year since the last extensive review of the regulations. In addition, substantive changes were made to the Time-Share Act by the General Assembly in 2012. The board conducted a general review of the regulations to ensure that the regulations complement the Time-Share Act, provide minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department of Professional and Occupational Regulation, all to better protect the health, safety, and welfare of citizens of the Commonwealth. Proposed amendments to implement Chapter 751 of the 2012 Acts of Assembly establish requirements and procedures for the registration of time-share resellers pursuant to § 55-394.3 of the Code of Virginia.

The regulation was developed by a committee of board members, consumer representatives, and members of the public with expertise in various areas related to time-share projects, including a time-share association member, time-share developer attorney, time-share developers, consumers, an attorney representing national time-share developers and an owners association, and a representative from the exchange program segment of the time-share industry. The committee members ensured that the regulations complement the Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia), provide minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department of Professional and Occupational Regulation.

**Substance:** Proposed amendments clarify the regulations, ensure consistency with current practices and legal requirements, and ensure full and accurate disclosure to potential and actual purchasers of time-share interests and units. As a result of this thorough review, sections specifically pertaining to time-share project registration, alternative purchase registration, exchange program registration, and time-share reseller registration are added, as well as a new section outlining the board's authority and stating standards of conduct.

**Issues:** The primary advantage of these proposed regulations to the public is that the amendments clarify the regulations, ensure consistency with current practices and legal requirements, and ensure full and accurate disclosure to potential and actual purchasers of time-share interests and units.

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance that Virginia places on ensuring that potential and actual purchasers of time-share interests and units have been provided with full and accurate disclosure of their most

significant purchase. No disadvantages to the Commonwealth could be identified.

## Department of Planning and Budget's Economic Impact Analysis:

**Summary of the Proposed Amendments to Regulation.** As part of a required periodic review, the Common Interest Community Board (Board) proposes to repeal its time-share regulations (18VAC48-40) and replace them with a new chapter of regulations (18VAC48-45) that are, with a few exceptions, substantively the same but that include many clarifying changes.

**Result of Analysis.** Benefits likely outweigh costs for most proposed regulatory changes. There is insufficient information to ascertain whether benefits will outweigh costs for two proposed regulatory changes.

**Estimated Economic Impact.** Prompted by both periodic review requirements in the Administrative Process Act (APA) and legislative changes made by the General Assembly to the Time-Share Act in 2012, the Board now proposes to repeal current time-share regulations and promulgate replacement regulations. These replacement regulations contain numerous changes that clarify current Board authority to, for instance, discipline regulated entities. Most differences between current and proposed regulations fall under this category. No affected entity is likely to incur additional costs on account of these changes but will very likely benefit from regulations that provide greater specificity for the rules that must be followed.

The Board also proposes two new substantive requirements in these proposed regulations. Pursuant to a 2012 legislative change, the Board proposes to require entities that resell time-shares for time-share owners more than 12 times a year to register with the Board. Resellers affected by this change will pay an initial registration fee of \$250 and a yearly renewal fee of \$250. Resellers who fail to renew within 30 days of their renewal date, but who do renew within six months of their renewal date will have to pay an additional \$100 reinstatement fee in addition to the \$250 renewal fee. As set out in the 2012 legislation, these regulations will contain a list of exemptions to this requirement. Entities that resell fewer than 12 time-share properties per year, entities that acquire more than 12 time-shares in a year but resell them to a single purchaser in a single transaction, entities that are already registered to sell time-shares, entities that provide closing services in connection with the transfer of resold time-shares, and entities that strictly provide advertising services are exempt from resellers registration requirements.

Board staff reports that it is likely most entities that resell time-shares in the Commonwealth will be exempt from reseller registration. Nonetheless, until this provision is implemented and any positive effects accrued can be categorized and weighed against the implicit and explicit costs for resellers who will newly have to register, there will be insufficient information to judge whether benefits will outweigh costs.

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The Board also proposes to add registration requirements for alternative purchases offered by time-share sellers. Such registration has been required in § 55-362 of the Code of Virginia since 1994 but this requirement has not been reflected in time-share regulations. The Board now proposes to correct this oversight. Entities that offer alternative purchases (furniture, home accessories, reduced cost vacations at other time-shares other than the one being viewed, etc.) that cost more than \$100 will have to register with the Board. The registration fee for alternative purchases is \$100 and that fee covers all alternative purchases offered by a seller. Sellers will also have to compile an alternative purchase annual report that includes all required disclosure information and will also have to pay an annual fee of \$100 to the Board for reviewing that annual report. Affected entities will incur the explicit costs that include the required fee as well as bookkeeping/copying/mailing costs for compiling required information, both initially and for annual reports, and will also incur implicit costs for time spent on registration activities. There is insufficient information to ascertain whether the benefits of requiring this registration will outweigh the costs.

**Businesses and Entities Affected.** The Department of Professional and Occupational Regulation (DPOR) reports that there are 100 time-share projects and 20 exchange programs registered with the Board. DPOR further reports that the Board anticipates registering approximately 100 alternative purchases and 75 time-share resellers. All Board registrants will be affected by these proposed regulations.

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

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

**Effects on the Use and Value of Private Property.** Reseller fees may result in a very small marginal decrease in the value of properties being resold.

**Small Businesses: Costs and Other Effects.** Affected small businesses will incur additional costs for both fees owed to the Board and for additional bookkeeping/copying/mailing costs to comply with new, or newly enforced, registration requirements in these proposed regulations.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There are likely no regulatory alternatives that would both enforce legislative mandates and lower costs for regulated entities.

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14

(2010). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to Economic Impact Analysis:** The agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

**Summary:**

*As a result of periodic review and legislative changes, this regulatory action proposes to repeal current regulations and promulgate replacement regulations. The proposed replacement regulations (i) address the board's authority, including the discipline of regulated entities; (ii) add provisions pertaining to time-share project registration, alternative purchase registration, exchange program registration, and time-share reseller registration; (iii) establish standards of conduct; (iv) require entities that resell time-shares for the time-share owners more than 12 times a year to register with the board and pay registration and renewal fees; (v) require the registration of alternative purchases (e.g., furniture, home accessories, reduced cost vacations at time-shares other than the one being viewed) that cost more than \$100 and payment of registration fees for such purchases, and provide a list of exemptions from the registration requirement.*

**CHAPTER 45**

**TIME-SHARE REGULATIONS**

**Part 1**

**General**

**18VAC48-45-10. Purpose.**

This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by the Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia) as the act pertains to the registration of time-share programs, time-share

projects, alternative purchases, exchange companies, and time-share resellers.

**18VAC48-45-20. Definitions.**

A. Section 55-362 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

<u>"Affiliate"</u>	<u>"Offering" or "offer"</u>
<u>"Alternative purchase"</u>	<u>"Person"</u>
<u>"Association"</u>	<u>"Project"</u>
<u>"Board"</u>	<u>"Public offering statement"</u>
<u>"Board of directors"</u>	<u>"Purchaser"</u>
<u>"Common elements"</u>	<u>"Resale purchase contract"</u>
<u>"Contact information"</u>	<u>"Resale time-share"</u>
<u>"Contract" or "purchase contract"</u>	<u>"Resale service"</u>
<u>"Conversion time-share project"</u>	<u>"Resale transfer contract"</u>
<u>"Default"</u>	<u>"Reseller"</u>
<u>"Developer"</u>	<u>"Reverter deed"</u>
<u>"Developer control period"</u>	<u>"Situs"</u>
<u>"Development right"</u>	<u>"Time-share"</u>
<u>"Dispose" or "disposition"</u>	<u>"Time-share estate"</u>
<u>"Exchange company"</u>	<u>"Time-share expense"</u>
<u>"Exchange program"</u>	<u>"Time-share instrument"</u>
<u>"Guest"</u>	<u>"Time-share owner" or "owner"</u>
<u>"Incidental benefit"</u>	<u>"Time-share program" or "program"</u>
<u>"Lead dealer"</u>	<u>"Time-share project"</u>
<u>"Managing agent"</u>	<u>"Time-share unit" or "unit"</u>
<u>"Managing entity"</u>	<u>"Time-share use"</u>
<u>"Material change"</u>	<u>"Transfer"</u>

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

"Alternative disclosure statement" means a disclosure statement for an out-of-state time-share program or time-share project that is properly registered in the situs.

"Annual report" means a completed, board-prescribed form and required documentation submitted in compliance with § 55-394.1 of the Code of Virginia.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation in compliance with the Virginia Real Estate Time-Share Act and this chapter.

"Department" means the Department of Professional and Occupational Regulation.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia.

"Full and accurate disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the time-share in order to protect the interests of purchasers.

"Registration file" means the application for registration, supporting materials, annual reports, and amendments that constitute all information submitted and reviewed pertaining to a particular time-share program, time-share project, alternative purchase, exchange company, or time-share reseller registration. A document that has not been accepted for filing by the board is not part of the registration file.

"Virginia Real Estate Time-Share Act" means Chapter 21 (§ 55-360 et seq.) of Title 55 of the Code of Virginia.

**18VAC48-45-30. Explanation of terms.**

Each reference in this chapter to a "developer," "purchaser," and "time-share owner" or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to natural persons and organizations. The term "developer" shall refer to any successors to the persons referred to in § 55-362 of the Code of Virginia who come to stand in the same relation to the time-share as their predecessors in that they assumed rights reserved for the benefit of a developer that (i) offers to dispose of its interest in a time-share not previously disposed of or (ii) applies for registration of the time-share program.

**18VAC48-45-40. Time-share projects located outside of Virginia.**

A. In any case involving a time-share project located outside of Virginia in which the laws or practices of the jurisdiction in which such time-share project is located prevent compliance with a provision of this chapter, the board shall prescribe by order a substitute provision to be applicable in such case that is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words "time-share instrument" and "public offering statement," when used in this chapter with reference to a time-share located outside of Virginia, mean documents, portions of documents, or combinations thereof, by whatever name denominated, that have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The word "recording" or "recordation" when used with reference to time-share instruments of a time-share located outside of Virginia means a procedure that, in the jurisdiction in which such time-share is located, causes the time-share instruments to become legally effective.

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D. This chapter shall apply to a contract for the disposition of a time-share located outside of Virginia only to the extent permissible under the provisions of subsection C of § 55-361.1 of the Code of Virginia.

E. The time-share shall be properly registered in the state or other jurisdiction where the project is located.

## Part II

### General Application Requirements

#### **18VAC48-45-50. Application procedures.**

A developer seeking registration of a time-share project or an alternative purchase, an exchange company seeking registration of an exchange program, or a reseller seeking registration in order to offer or provide resale services, all in accordance with the Virginia Real Estate Time-Share Act, shall submit an application on the appropriate form provided by the board, along with the appropriate fee specified in 18VAC48-45-70.

By submitting the application to the board, the applicant certifies that the applicant has read and understands the applicable statutes and this chapter.

The receipt of an application and the deposit of fees by the board do not indicate approval or acceptance of the application by the board.

The board may make further inquiries and investigations to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be considered complete until all required documents are received by the board.

Applications that are not complete within 12 months after receipt of the application in the board's office will be purged, and a new application and fee must be submitted in order to be reconsidered for registration.

#### **18VAC48-45-60. Review of application for registration, generally.**

A. Upon the review of the application for registration, if the requirements of this chapter have not been met, the board shall notify the applicant.

B. The board may refuse initial registration due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant.

C. At such time as the board affirmatively determines that the requirements of this chapter have been met, the board shall issue the applicable registration.

D. Notwithstanding the provisions of 18VAC48-45-130 for a time-share project registration, applicants who do not meet the requirements of this chapter may be approved following consideration by the board in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

#### **18VAC48-45-70. Fees.**

A. All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is timely. Checks or money orders shall be made payable to the Treasurer of Virginia.

B. Fees are as follows:

<u>Time-share project registration application</u>	<u>\$1,500</u>
<u>Time-share project phase filing</u>	<u>\$250</u>
<u>Time-share project registration annual report</u>	<u>\$500</u>
<u>Alternative purchase registration application</u>	<u>\$100</u>
<u>Alternative purchase registration annual report</u>	<u>\$100</u>
<u>Exchange program registration application</u>	<u>\$1,000</u>
<u>Exchange program registration annual report</u>	<u>\$250</u>
<u>Time-share reseller registration application</u>	<u>\$250</u>
<u>Time-share reseller registration renewal</u>	<u>\$250</u>
<u>Time-share reseller registration reinstatement (includes a \$100 reinstatement fee in addition to the \$250 renewal fee)</u>	<u>\$350</u>

## Part III

### Marketing and Advertising

#### **18VAC48-45-80. Time-share marketing activities.**

A. Time-share marketing activities shall include every contact by or on behalf of the developer for the purpose of promoting disposition of a time-share or alternative purchase. Such contacts may be personal, by telephone, by mail, by electronic means including social media, or by advertisement. A promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity may be oral, written, electronic, or graphic.

B. No time-share marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits, or encourages a prospective purchaser to (i) execute a contract of sale of the time-share or alternative purchase or (ii) perform some other act that would create or purport to create a legal or equitable interest in the time-share until the board has issued an order of registration.

#### **18VAC48-45-90. Offering of gifts or prizes.**

A. Any offering that includes a gift or prize shall include the disclosures contained in § 55-374.1 of the Code of Virginia. Such disclosures shall be made with the same prominence as the offer.

B. The board may at any time require a developer to alter or amend any offering that includes a gift or prize in order to ensure compliance with this section.

#### Part IV

#### Application for Time-Share Project Registration

#### **18VAC48-45-100. Registration of time-share project and program.**

In accordance with § 55-390 of the Code of Virginia, a developer offering or disposing of an interest in a time-share program must register the time-share project and its program with the board. For the purposes of this chapter as it relates to registration, the registration of a time-share project shall include the simultaneous registration of the time-share program.

#### **18VAC48-45-110. Prerequisites for registration of a time-share project.**

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55-391.1 of the Code of Virginia.

1. The developer shall own or have the right to acquire an estate in the land constituting or to constitute the time-share project that is of at least as great a degree and duration as the estate to be conveyed in the time-shares.
2. The time-share instrument must be adequate to bring a time-share project into existence upon recordation. This subdivision does not apply to a time-share instrument that may be recorded after the time-share project has been created.
3. The time-share instrument must include a statement detailing that the developer reserves or does not reserve the right to add or delete any alternative purchase.
4. The current and planned time-share advertising activities of the developer shall comply with § 18.2-216 of the Code of Virginia and this chapter.
5. If the developer is a firm, it shall be organized as a business entity under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

#### **18VAC48-45-120. Review of application for registration of a time-share project.**

A. Upon receipt of an application for registration of a time-share project, the board shall issue the notice of filing required by subsection A of § 55-393.1 of the Code of Virginia.

B. Upon the review of the application for registration, if the requirements of § 55-391.1 of the Code of Virginia and this chapter have not been met, the board shall notify the applicant

as required by subsection C of § 55-393.1 of the Code of Virginia.

C. If the requirements for registration are not met within the application review period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting the registration as required by subsection C of § 55-393.1 of the Code of Virginia. The order rejecting the registration shall become effective 20 days after issuance.

D. An applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia at any time between receipt of a notification pursuant to subsection B of this section and the effective date of the order of rejection entered pursuant to subsection C of this section. A request for such proceeding shall be deemed a consent to delay within the meaning of subsection A of § 55-393.1 of the Code of Virginia.

E. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting the registration. If the board determines after review of the corrections that the requirements for registration have not been met, the board may proceed with an informal conference in accordance with § 2.2-4019 of the Code of Virginia in order to allow reconsideration of whether the requirements for registration are met. If the board does not opt to proceed with an informal conference, the applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia in order to reconsider whether the requirements for registration are met. If the board does not proceed with an informal conference and no request for an informal conference is received from the applicant, an amended order of rejection stating the factual basis for the rejection shall be issued. A new 20-day period for the order of rejection to become effective shall commence.

F. At such time as the board affirmatively determines that the requirements of § 55-391.1 of the Code of Virginia have been met, the board shall enter an order registering the time-share and shall designate the form, content, and effective date of the public offering statement.

#### **18VAC48-45-130. Minimum application requirements for registration of a time-share project.**

A. The documents and information contained in §§ 55-367, 55-368, 55-369, 55-371, 55-374, and 55-391.1 of the Code of Virginia, as applicable, shall be included in the application for registration of a time-share project.

B. The application for registration of a time-share project shall include the fee specified in 18VAC48-45-70.

C. The following documents shall be included in the application for registration of a time-share project as exhibits. All exhibits shall be labeled as indicated and submitted in a format acceptable to the board.

1. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia

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issued by the Virginia State Corporation Commission, or any other entity formation documents, together with any trade or fictitious name certificate.

2. Exhibit B: A certificate of recordation or other acceptable documents from the city or county where the time-share is located.

3. Exhibit C: A copy of the title opinion, the title policy, or a statement of the condition of the title to the time-share project including encumbrances as of a specified date within 30 days of the date of application by a title company or licensed attorney who is not a salaried employee, officer, or director of the developer or owner, in accordance with subdivision A 5 of § 55-391.1 of the Code of Virginia. If the developer is not the record owner of the land, a copy of any contract the developer has executed to purchase the land, any option the developer holds for the purchase of the land, or any lease under which the developer holds the land.

4. Exhibit D: Proof that the applicant or developer owns or has the right to acquire an estate in the land constituting or to constitute the time-share project, which is of at least as great a degree and duration as the estate to be conveyed in the time-share.

5. Exhibit E: A statement of the zoning, subdivision, or land use obligations or proffers and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status, any existing tax, and existing or proposed special taxes or assessments that affect the time-share.

6. Exhibit F: A copy of the time-share instrument, including all applicable amendments and exhibits, that will be delivered to a purchaser to evidence the purchaser's interest in the time-share and of the contracts and other agreements that a purchaser will be required to agree to or sign.

7. Exhibit G: A narrative description of the promotional plan for the disposition of the time-shares.

8. Exhibit H: A copy of the proposed public offering statement that complies with § 55-374 of the Code of Virginia and this chapter. Pursuant to subsection G of § 55-374, a similar disclosure statement required by other situs laws governing time-sharing may be submitted for a time-share located outside of the Commonwealth.

9. Exhibit I: A copy of the buyer's acknowledgment. Pursuant to § 55-376.5 of the Code of Virginia, the purchaser shall be given this document prior to signing a purchase contract, and the document shall contain the information required by subsection B of § 55-376.5.

10. Exhibit J: Copies of bonds or letters of credit issued by a financial institution, if any, required by subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia, as applicable.

11. Exhibit K: A copy of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance, management, or access of all or any part of the time-share project.

12. Exhibit L: A list with the names of every officer of the developer or persons occupying a similar status within or performing similar functions for the developer. The list must include each individual's address valid for receipt of service, principal occupation for the past five years, and title.

13. Exhibit M: A statement whether any of the individuals or entities named in Exhibit L are or have been involved as defendants in any indictment, conviction, judgment, decree, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity.

14. Exhibit N: A statement whether, during the preceding five years, any of the individuals or entities named in Exhibit L have been adjudicated bankrupt or have undergone any proceeding for the relief of debtors.

15. Exhibit O: If the developer has reserved the right to add to or delete from the time-share program any incidental benefit or alternative purchase, a description of the incidental benefit or alternative purchase shall be provided pursuant to subdivision A 13 of § 55-391.1 of the Code of Virginia.

16. Exhibit P: Conversion time-share projects must attach a copy of the notice required by subsection D of § 55-374 of the Code of Virginia and a certified statement that such notice shall be mailed or delivered to each of the tenants in the building or buildings for which the registration is sought at the time of the registration of the conversion project.

## Part V

### Public Offering Statement

#### **18VAC48-45-140. Public offering statement requirements, generally.**

In addition to the provisions of § 55-374 of the Code of Virginia, the following will be considered, as applicable, during review of the public offering statement:

1. The public offering statement shall provide full and accurate disclosure in accordance with 18VAC48-45-150.

2. The public offering statement shall pertain to the time-share project in which the time-shares being offered are located.

3. The public offering statement shall be clear, organized, and legible.

4. Except for brief excerpts, the public offering statement may refer to, but should not incorporate verbatim, portions of the time-share instruments, the Virginia Real Estate Time-Share Act, or this chapter. This does not preclude compliance with 18VAC48-45-170.

**18VAC48-45-150. Full and accurate disclosure.**

A. The provisions of § 55-374 of the Code of Virginia and this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement. In addition, the following will be considered, as applicable, during review to assure full and accurate disclosure:

1. The information shall be presented in a manner that is clear and understandable to a reasonably informed consumer, while maintaining consistency with the requirements of this chapter and the Virginia Real Estate Time-Share Act.
2. No information shall be incorporated by reference to an outside source that is not reasonably available to a prospective purchaser.
3. If required information is not known or not reasonably available, such fact shall be stated and explained in the public offering statement.

B. The board has the sole discretion to require additional information or amendment of existing information as it finds necessary to ensure full and accurate disclosure.

**18VAC48-45-160. Contents of public offering statement.**

A. A cover, if used, must be blank or bear identification information only.

B. The developer may include as part of the public offering statement a receipt page printed in such a way that the developer may obtain verification that a prospective purchaser has received the public offering statement. The receipt page shall include the effective date of the public offering statement as well as a place for the date of delivery and signature lines for the prospective purchaser. The authorized receipt page in proper form, duly executed, shall be evidence that the public offering statement was delivered.

C. The first page of the public offering statement shall be substantially as follows.

**PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S PROTECTION**

**PUBLIC OFFERING STATEMENT**

NAME OF TIME-SHARE PROJECT: \_\_\_\_\_

LOCATION OF TIME-SHARE PROJECT: \_\_\_\_\_

NAME OF DEVELOPER: \_\_\_\_\_

ADDRESS OF DEVELOPER: \_\_\_\_\_

EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: \_\_\_\_\_

REVISED: \_\_\_\_\_

**THE PURCHASER OF A TIME-SHARE MAY CANCEL THE CONTRACT UNTIL MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE EXECUTION OF SUCH CONTRACT. THE PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S OWN PROTECTION.**

**Purchasing a time-share carries with it certain rights, responsibilities, and benefits, including certain financial obligations, rights, and restrictions concerning the use and maintenance of units and common elements. The purchaser will be bound by the provisions of the time-share instruments and should review the Public Offering Statement, the time-share instruments, and other exhibits carefully prior to purchase.**

This Public Offering Statement presents information regarding time-share(s) being offered for sale by the developer. The Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia) requires that a Public Offering Statement be given to every Purchaser in order to provide full and accurate disclosure of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered. The Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the developer to the Virginia Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement but does not guarantee the accuracy or completeness of the Public Offering Statement. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the material shall control.

If the Purchaser elects to cancel the contract within the seven-day cancellation period, all payments made in connection with the purchase contract shall be refunded to the Purchaser within 45 days. If the Purchaser elects to cancel the contract, the Purchaser shall do so either by (i) hand-delivering the notice to the developer at its principal office or at the project or (ii) mailing the notice by certified United States mail, return receipt requested, to the developer or its agent designated in the contract.

Allegations of violation of any law or regulation contained in the Virginia Real Estate Time-Share Act or the Time-Share Regulations (18VAC48-45) should be reported to the

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Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233.

D. A summary of important considerations shall immediately follow the first page for the purpose of reinforcing the disclosure of significant information. The summary shall be titled as such and shall be introduced by the following statement: "The following are important matters to be considered in acquiring a time-share. They are highlights only. The Public Offering Statement should be examined in its entirety to obtain detailed information." Appropriate modifications shall be made to reflect facts and circumstances that may vary. The summary shall consist of, but not be limited to, the following, as applicable:

1. A brief description of the time-share project and the time-share program.
2. A statement regarding all incidental benefits or alternative purchases that may be offered by the developer.
3. A brief description of all amenities located within or outside of the time-share project available to purchasers.
4. A statement describing any exchange program that may be offered to the purchaser.
5. A statement regarding the payment of principal and interest due under any deferred purchase agreement for the purchase of the time-share, maintenance fees or assessments, special assessments, user fees, insurance premiums, and real estate taxes. A time-share owner cannot reduce the amount of any owner obligation for any reason, including the refraining from using the time-share, a developer amenity, or any common element.
6. A statement regarding the consequences for failure to pay maintenance fees or any special assessment when due. The statement may reference the enforcement mechanisms available to the developer, and if applicable the time-share association, by describing (i) any declaration of an owner being an "Owner Not in Good Standing"; (ii) any civil action taken for the collection of a debt; (iii), pursuing foreclosure or obtaining a lien against the time-share unit; and (iv) denial of access to the time-share project and participation in the time-share program.
7. A statement indicating whether the developer or managing agent has indictments, convictions, judgments, decrees, or order of any court or administrative agency for matters related to fraud or consumer protection violations that may be required to be disclosed by subdivisions A 1 c and A 1 d of § 55-374 of the Code of Virginia.
8. A statement indicating the period of time the developer will retain control of the association for time-share estate projects.
9. A statement disclosing any management agreement with a managing agent to perform certain duties for the time-share project.
10. A statement indicating whether the developer may expand the time-share project.

11. A statement indicating whether the right of the time-share owner to resell or transfer the time-share is subject to restrictions.

12. A statement indicating the time-share units are restricted to lodging only.

13. A statement indicating that the time-share owner may not alter the interior or exterior of the time-share unit.

14. A statement regarding the obligation of the developer or association to obtain certain insurance benefiting the time-share owner.

15. A statement regarding a time-share estate and time-share owner's obligation to pay real estate taxes.

16. A statement regarding whether or not the developer reserves the right to add or delete any alternative purchase.

E. The content after the summary of important considerations shall include the narrative sections in 18VAC48-45-170 through 18VAC48-45-310. Supplementary sections may be included as necessary.

F. Clear and legible copies of the following documents shall be attached as exhibits to the public offering statement:

1. Project time-share instrument;
2. Association articles of incorporation;
3. Bylaws;
4. Association annual report or projected budget for time-share estate programs;
5. Rules and regulations of the time-share owners' association, if available;
6. Any management contract, if applicable;
7. Exchange company disclosure document and narrative statement required pursuant to subsection B of § 55-374 of the Code of Virginia, if applicable; and
8. Other documents obligating the association or time-share owner to perform duties or obligations or pay charges or fees, if applicable.

G. The developer may include the public offering statement required for any alternative purchase pursuant to subsection H of § 55-374 of the Code of Virginia as offered by the developer in conjunction with the time-share being registered.

H. Other information and documentation may be included as necessary to ensure full and accurate disclosure. The board may also require additional information as necessary to ensure full and accurate disclosure.

## **18VAC48-45-170. Narrative sections; time-share concept.**

The public offering statement shall contain a section captioned "The Time-Share Concept." The section shall consist of a brief discussion of the form of time-share ownership being offered.

## **18VAC48-45-180. Narrative sections; creation of time-share project.**

The public offering statement shall contain a section captioned "Creation of the Time-Share Project." The section shall briefly explain the manner in which the time-share project was or will be created, the locality wherein the time-share instrument will be or has been recorded, and the procedure for its amendment.

## **18VAC48-45-190. Narrative sections; description of time-share project.**

A. The public offering statement shall contain a section captioned "Description of the Time-Share Project." The section shall provide a general description of the time-share project registered with the board and the units and common elements promised available to purchasers. This section shall also provide the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

B. The section shall state whether the developer has reserved the right to add and delete from the time-share program a time-share project or any incidental benefit or alternative purchase.

C. The section shall refer the purchaser to the reverter deed for an explanation if the developer utilized the possibility of a reverter.

D. The section shall indicate all provisions that have been made for public utilities in the time-share project, including but not limited to water, electricity, telephone, and sewerage facilities.

## **18VAC48-45-200. Narrative sections; individual time-shares.**

A. The public offering statement shall contain a section captioned "Individual Time-Shares." The section shall indicate (i) the form of time-share ownership being offered; (ii) the types, duration, and number of units and time-shares in the project registered with the board; (iii) identification of units that are subject to the time-share program; and (iv) the estimated number of units that may become subject to the time-share program.

B. This section shall explain the extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being offered for sale. The section shall contain a statement of the developer's obligation to complete any promised time-share unit or common element being offered for sale comprising the time-share project that have not begun or begun but not yet completed.

C. The section shall explain the extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

## **18VAC48-45-210. Narrative sections; developer.**

The public offering statement shall contain a section captioned "The Developer." The section shall disclose the following information concerning the developer:

1. The name and principal address of the developer.
2. The name, principal occupation, and address of every director, partner, limited liability company manager, or trustee of the developer.
3. The name and address of each person owning or controlling an interest of at least 20% in the time-share project.
4. The particulars of any indictment, conviction, judgment, decree, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity.
5. The nature of each unsatisfied judgment, if any, against the developer or the managing entity; the status of each pending suit involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof, is a defending party; and the status of each pending suit, if any, of significance to any time-share project registered with the board.

6. The name and address of the developer's agent for service of any notice permitted by this chapter.

7. The section shall describe the type of legal entity of the developer and explain if other entities have any obligation to satisfy the financial obligations of the developer.

8. For a time-share use program, a statement as to whether a developer's net worth is more than or less than \$250,000. If the developer's net worth is less than \$250,000, a current audited balance sheet shall be provided with the public offering statement. If the developer's net worth exceeds \$250,000, a statement by the developer that its equity in the time-share program exceeds \$250,000.

## **18VAC48-45-220. Narrative sections; terms of offering.**

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a time-share and present information regarding the settlement of purchase contracts as provided in subsections B through H of this section.

B. The section shall indicate any initial or special fees due from the purchaser at settlement including a description of the purpose of such fees.

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C. The section shall set forth a general description of any financing offered by or available through the developer to purchasers.

D. The section shall describe (i) services that the developer provides or expense it pays and that it expects may become at any subsequent time a time-share expense of the owners and (ii) the projected time-share expense liability attributable to each of those services or expenses for each time-share.

E. The section shall discuss all penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase contract.

F. The section shall discuss the process for cancellation of a purchase contract by a purchaser in accordance with § 55-376 of the Code of Virginia. The section shall include a statement that the purchaser has a nonwaivable right of cancellation and refer such purchaser to that portion of the contract in which the right of cancellation may be found.

G. The section shall describe the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

H. The section shall set forth all restrictions in the purchase contract that limit the time-share owner's right to bring legal action against the developer or the association. The section shall set forth the paragraph or section and page number of the purchase contract where such provision is located. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

## **18VAC48-45-230. Narrative sections; encumbrances.**

The public offering statement shall contain a section captioned "Encumbrances" that shall describe all liens, defects, or encumbrances affecting the time-share project and in particular the time-share offered to the purchaser.

## **18VAC48-45-240. Narrative sections; exchange program.**

If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall contain a section captioned "Exchange Program" that shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory; and
2. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer and whether there is a fee associated with membership or participation in the exchange program.

## **18VAC48-45-250. Narrative sections; financial matters.**

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a time-share.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair, and replacement of various portions of the time-share

as follows: (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55-369 of the Code of Virginia; and (iii) all other costs that may be borne directly by individual time-share owners.

C. A budget shall show projected common expenses in each of the categories in subsection B of this section for the first year of the time-share's operation or, if different, the latest year for which a budget is available. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention to such exhibit. The section shall describe the manner in which the projected budget is established. If the time-share is phased, the budget shall project future years until all phases are projected to be developed and all common elements that must be built have been completed. The budget shall include an initial working capital budget showing sources and uses of initial working capital and a reserve table showing amounts to be collected to fund those reserves. The budget shall show regular individual assessments by unit type. The budget shall note that the figures are not guaranteed and may vary.

D. The section shall describe the manner in which (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55-369 of the Code of Virginia; and (iii) all other costs that may be borne directly by individual time-share owners are apportioned among and assessed to the time-share units. The section shall include the substance of the following statement, if applicable: "A time-share owner cannot obtain a reduction of the (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55-369 of the Code of Virginia; and (iii) any other costs that may be borne directly by individual time-share owners assessed against the unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures, if any. If there are no reserves, the section shall so state.

F. The section shall discuss any (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55-369 of the Code of Virginia; and (iii) all other costs that may be borne directly by individual time-share owners, actually planned to be specially assessed.

G. The section shall indicate any fee, rental, or other charge to be payable by unit owners other than through assessments and maintenance fees to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the time-share project.

H. The section shall discuss the effect of failure of a time-share owner to pay the assessments and maintenance fees levied against the time-share unit. Such discussion shall indicate provisions for charges or other remedies that may be imposed to be applied in the case of unpaid and past due assessments and for acceleration of unpaid assessments.

**18VAC48-45-260. Narrative sections; restrictions on transfer.**

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain limitations on leasing or other restraints on free alienability created by the time-share instruments or the rules and regulations of the time-share owners' association that affect the time-share owners' right to resell, lease or otherwise transfer an interest in the time-share.

**18VAC48-45-270. Narrative sections; time-share owners' association.**

A. For time-share estate projects the public offering statement shall contain a section captioned "Time-Share Owners' Association." The section shall discuss the arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units and shall include the information required by subdivisions 1 through 15 of this subsection. The section shall describe or discuss the following:

1. The creation of the association.
2. The payment of costs and expenses of operating the time-share estate program and owning and maintaining the time-share units.
3. Employment and termination of employment of the managing agent for the time-share estate project.
4. Termination of leases and contracts for goods and services for the time-share estate project that were entered into during the developer control period.
5. Preparation and dissemination of the annual report required by § 55-370.1 of the Code of Virginia to the time-share estate owners.
6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners.
7. Collection of regular assessments, fees or dues, and special assessments from time-share estate owners to defray all time-share expenses.
8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of the time-share project by time-share estate owners, their guests and other users. The cost for such insurance shall be a time-share expense.
9. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation.
10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or time-share project for failure to comply with provisions of the time-

share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures a time-share estate owner must be given reasonable notice and reasonable opportunity to be heard and explain the charges against him in person or in writing to the board of directors of the association before a decision to impose discipline is rendered.

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share estate program and the time-share project.

12. Developer control period, during which time period the developer, or a managing agent selected by the developer, shall manage and control the time-share estate project and the common elements and units, including decisions about the financial operation of the association.

13. The managing agent, if any, shall be identified, and the section shall indicate any relationship between the managing agent and the developer. The duration of any management agreement shall be stated.

14. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the time-share project shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

15. Rules and regulations of the time-share estate association shall be discussed. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

B. For time-share use projects, if an association is formed for management and operation of the time-share use program and for the maintenance, repair, and furnishing of time-share use units comprising the time-share, the public offering statement shall contain a section captioned "Time-Share Owners' Association." This section shall contain the information required by subdivisions A 1 through 15 of this section as applicable to the association for the time-share use project.

**18VAC48-45-280. Narrative sections; managing entity.**

The public offering statement shall include a section captioned "Managing Entity." This section shall provide the name and address of the managing entity for the project. The section shall also provide a description of the facilities, if any, provided by the developer to the association in a time-share estate project for the management of the project.

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## **18VAC48-45-290. Narrative sections; conversion time-share projects.**

A. The public offering statement of a conversion time-share project shall contain a section captioned "Conversion Time-Share Projects." The section shall include the following:

1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project.

2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of the building or buildings within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the period during which such building or buildings were occupied.

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect.

4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

B. In lieu of a narrative section pursuant to this section, the requirements of this section may be satisfied in the form of an exhibit to the public offering statement.

## **18VAC48-45-300. Narrative sections; insurance.**

The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance coverage provided by the developer or the association for the benefit of time-share owners not otherwise described in the public offering statement. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owner; and (ii) liability coverage will not insure against liability arising from an accident or injury occurring within a unit or as a result of the act or negligence of a time-share owner. The section shall include a statement whether the time-share owner is obligated to obtain coverage for any or all of the coverages described. The section shall include a statement indicating that the time-share owner should consult with an insurance professional to determine appropriate coverage.

## **18VAC48-45-310. Narrative sections; alternative purchase.**

The public offering statement shall contain a section entitled "Alternative Purchases." The section shall state whether or not the developer has reserved the right to add to or delete from the time-share program any incidental benefit or alternative purchase. The section shall state that such alternative purchase has been or will be registered with the board. If the developer chooses to include the public offering statement for the alternative purchase, the section shall reference the appropriate exhibit wherein the alternative purchase public offering statement may be located.

## **18VAC48-45-320. Documents from other jurisdictions.**

A. A substituted public offering statement shall only be permitted for a time-share program for which some portion of the time-share project associated with the program is located outside of Virginia.

B. The substituted public offering statement shall be prepared by deleting from the original disclosure document the following: (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the time-share project and its time-share program; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgment of receipt or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information that is untrue, inaccurate, or misleading with respect to marketing, offers, or disposition of time-shares in Virginia.

C. The substituted public offering statement shall incorporate all information not otherwise included that is necessary to effect fully and accurately the disclosures required by § 55-374 of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature that is different from the definitions provided in § 55-362 of the Code of Virginia.

D. The substituted public offering statement shall include as the first item of the summary of important considerations a statement that includes the following information: (i) the designation by which the original disclosure document is identified in the original jurisdiction; (ii) the governmental agency of such other jurisdiction where the original disclosure document is or will be filed; and (iii) the jurisdiction of such filing.

E. The provisions of §§ 55-374 and 55-376 of the Code of Virginia and 18VAC48-45-150, 18VAC48-45-160, and 18VAC48-45-170 shall apply to substituted public offering statements in the same manner and to the same extent that they apply to public offering statements.

F. In the case of a time-share project located outside of the Commonwealth, pursuant to subsection G of § 55-374 of the

Code of Virginia, disclosure statements required by other situs laws governing time-sharing that are equivalent to the requirements of this chapter may be accepted as alternative disclosure statements.

## Part VI

### Time-Share Project Post-Registration Provisions

#### **18VAC48-45-330. Minimum post-registration reporting requirements for a time-share project.**

A. Subsequent to the issuance of a registration for a time-share by the board, the developer of a time-share shall do the following:

1. File an annual report in accordance with § 55-394.1 of the Code of Virginia and this chapter.
2. Upon the occurrence of a material change, file an amended public offering statement in accordance with the provisions of subsection E of § 55-374 and subsection C of § 55-394.1 of the Code of Virginia and this chapter. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.
3. Upon the occurrence of any material change in the information contained in the registration file, the developer shall immediately report such material changes to the board in accordance with the provisions of subsection B of § 55-391.1 of the Code of Virginia.
4. Notify the board of a change in the bond or letter of credit, as applicable, required by subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia.
5. File a completed application for registration of an unregistered phase or phases upon the expansion of the time-share, along with the appropriate fee specified in 18VAC48-45-70.
6. Notify the board of transition of control from the developer to the time-share estate owners' association (time-share estate projects only).
7. Submit appropriate documentation to the board once the registration is eligible for termination.
8. Submit to the board any other document or information, which may include information or documents that have been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.
9. Submit to the board any document or information to make the registration file accurate and complete.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require a developer to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

#### **18VAC48-45-340. Amendment of public offering statement.**

Any amendment of the public offering statement or substituted public offering statement shall comply with this chapter.

#### **18VAC48-45-350. Nonmaterial changes to the public offering statement.**

Changes to the public offering statement that are not material are not required to be filed with the board, shall not be deemed an amendment of the public offering statement for the purposes of this chapter, and shall not give rise to a renewed right of rescission in any purchase. Nonmaterial changes to the public offering statement include, but may not be limited to, the following:

1. Correction of spelling, grammar, omission, or other similar errors not affecting the substance of the public offering statement;
2. Changes in presentation or format;
3. Substitution of an executed, filed, or recorded copy of a document for the otherwise substantially identical unexecuted, unfiled, or unrecorded copy of the document that was previously submitted;
4. Inclusion of updated information such as identification or description of the current officers and directors of the developer;
5. Disclosure of completion of improvements for improvements that were previously proposed or not complete;
6. Changes in real estate tax assessment or rate or modifications related to those changes;
7. Changes in utility charges or rates or modifications related to those changes;
8. Addition or deletion of incidental benefits or alternative purchases provided the developer reserved in the time-share instrument the right to add or delete incidental benefits or alternative purchases.
9. Adoption of a new budget that does not result in a significant change in fees or assessments or significantly impact the rights or obligations of the prospective purchasers;
10. Modifications related to changes in insurance company or financial institution, policy, or amount for bonds or letters of credit required pursuant to §§ 55-375 and 55-386 of the Code of Virginia;
11. Changes in personnel of the managing agent; and
12. Any change that is the result of orderly development of the time-share in accordance with the time-share instruments as described in the public offering statement.

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## **18VAC48-45-360. Filing of amended public offering statement.**

A. The developer shall promptly file with the board for review a copy of the amended public offering statement together with a copy of a summary of proposed amendments that shall be distributed to purchasers during the board review period. The summary of proposed amendments shall enumerate the amendments to the public offering statement submitted for board review and include a statement that the amendments to the public offering statement have been filed with the board but have not yet been accepted. The form of the submission is at the discretion of the developer provided that (i) all amendments are clearly represented in the documentation presented; (ii) the additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted; and (iii) documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strikethroughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided.

B. The amended public offering statement submitted to the board for review shall include the effective date of the amendments.

C. Within 30 days of receipt of the amended public offering statement, the board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines that the amended public offering statement complies with this chapter, it shall notify the developer in writing and confirm the new effective date of the public offering statement.

D. If the board's review determines that the amended public offering statement does not comply with this chapter, it shall immediately notify the developer in writing that the review has determined the amended public offering statement is not in compliance and shall specify the particulars of such noncompliance. The developer shall then have 20 days in which to correct the particulars of noncompliance identified by the board. The developer may, prior to the completion of the 20-day correction period, request an extension in writing of the 20-day correction period. Upon expiration of the 20-day correction period, if requested corrections have not been made or a request for extension properly received, the board may issue a temporary cease and desist order in accordance with subdivision D 2 of § 55-396 of the Code of Virginia to require the cessation of sales until such time as affirmative action as directed by the board is taken. Use of the noncompliant public offering statement may result in further action by the board pursuant to §§ 55-396, 55-399.1, and 55-400 of the Code of Virginia.

E. Notwithstanding an extension of the 30-day period for review agreed to in writing by the board and developer, if the board does not perform the required review of the public offering statement in accordance with subsection C of this section, the amendment shall be deemed to comply with 18VAC48-45-150 through 18VAC48-45-310, and the new effective date shall be the effective date of the amendment provided pursuant to subsection B of this section.

F. In each case in which an amended document is filed pursuant to this section and the manner of its amendment is not apparent on the face of the document, the developer shall provide an indication of the manner and extent of amendment.

## **18VAC48-45-370. Current public offering statement.**

A. Upon issuance of an effective date by the board, all purchasers who received a public offering statement and summary of proposed amendments during the board review period pursuant to subsection A of 18VAC48-45-360 shall be provided with the public offering statement as accepted by the board. A public offering statement remains current until such time as the occurrence of a material change requires amendment of the public offering statement pursuant to this chapter and a new effective date is issued by the board.

B. Upon issuance of an effective date by the board, a public offering statement remains current until such time as a new effective date is established pursuant to this chapter.

C. Notwithstanding the board's authority to issue a cease and desist order pursuant to § 55-396 of the Code of Virginia, the filing of an amended public offering statement shall not require the developer to cease sales provided that the developer provides to purchasers the summary of proposed amendments pursuant to subsection A of 18VAC48-45-360 pending the issuance of a new effective date by the board.

## **18VAC48-45-380. Public offering statement not current; notification of purchasers.**

A. A purchaser who has been delivered a public offering statement that is not current due to a material change and was not provided with the summary of proposed amendments containing the proposed changes to the amended public offering statement pursuant to subsection A of 18VAC48-45-360 pending the issuance of a new effective date by the board shall be notified of such fact by the developer.

B. A purchaser who has been delivered a public offering statement and summary of proposed amendments pursuant to subsection A of 18VAC48-45-360, but the amended public offering statement is determined to be noncompliant in accordance with subsection D of 18VAC48-45-360 shall be notified of such fact by the developer.

1. The notification shall indicate that any contract for disposition of a time-share may be canceled by the purchaser pursuant to subsection C of § 55-376 of the Code of Virginia.

2. The developer shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

**18VAC48-45-390. Filing of phase amendment application.**

A. A phase amendment application for a time-share project shall be filed when adding a phase or phases to the time-share project. Such phase amendment application shall be accompanied by the fee provided for in 18VAC48-45-70 and shall be subject to all of the provisions of 18VAC48-45-50 and 18VAC48-45-110 through 18VAC48-45-130. Documents on file with the board that have not changed in connection with the additional phase or phases need not be refiled, provided that the phase amendment application indicates that such documents are unchanged.

B. The application shall include a bond or letter of credit required pursuant to subsection B of § 55-386 of the Code of Virginia if any of the time-share units and common elements contained in the submitted additional phase or phases have not been completed.

C. The board shall review the phase amendment application and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines the phase amendment application complies with this chapter, it shall issue an amended order of registration for the time-share project and shall provide that previous orders and designations of the form, content, and effective date of the public offering statement are superseded. If the board's review determines that the phase amendment application is not complete, the board shall correspond with the developer to specify the particulars that must be completed to obtain compliance with this chapter.

**18VAC48-45-400. Annual report for a time-share project registration required by developer.**

A. A developer shall file an annual report for a time-share project registration on a form provided by the board to update the material contained in the registration file by June 30 of each year the registration is effective and shall be accompanied by the fee specified in 18VAC48-45-70. Prior to filing the annual report required by § 55-394.1 of the Code of Virginia, the developer shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the developer shall so certify in the annual report. If such public offering statement is not current, the developer shall amend the public offering statement and the annual report shall, in that event, include a filing in accordance with 18VAC48-45-360.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the developer;
2. Information concerning the current status of the time-share project;
3. Information concerning the current status of the time-share program, including (i) the type of time-shares being

offered and sold; (ii) the total number of time-share interests available in the program; (iii) the total number of time-share interests sold; and (iv) information regarding any incomplete units and common elements;

4. If the project is a time-share estate project and the developer control period has not yet expired, a copy of the annual report that was prepared and distributed by the developer to the time-share owners required by § 55-370.1 of the Code of Virginia must accompany the annual report;

5. Date of the public offering statement currently being delivered to purchasers; and

6. Current evidence from the surety or financial institution of bonds or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia. Such verification shall provide the following:

- a. Principal of bond or letter of credit;
- b. Beneficiary of bond or letter of credit;
- c. Name of the surety or financial institution that issued the bond or letter of credit;
- d. Bond or letter of credit number as assigned by the issuer;
- e. The dollar amount; and
- f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

**18VAC48-45-410. Board review of annual report for a time-share project registration.**

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55-396, 55-399.1, and 55-400 of the Code of Virginia for failing to file an annual report as required by § 55-394.1 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with § 55-394.1 of the Code of Virginia.

**18VAC48-45-420. Return of bond or letter of credit to ensure completion of promised units and common elements to developer.**

A bond or letter of credit on file with the board pursuant to subsection B of § 55-386 of the Code of Virginia may be returned to the developer upon written request. Such request shall include a statement from the developer that indicates the units and common elements for which the bond or letter of credit was submitted have been completed. If the submitted statement is not sufficient to confirm completion, the board may request additional documentation.

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## **18VAC48-45-430. Return of bond or letter of credit upon termination of time-share project registration.**

Upon issuance of an order of termination of the time-share project registration pursuant to 18VAC48-45-450, the bond or letter of credit on file with the board for the purpose of protecting all deposits escrowed pursuant to subsection C of § 55-375 will be returned to the developer.

## **18VAC48-45-440. Maintenance of bond or letter of credit.**

A. The developer shall report the extension, cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with subsection C of § 55-375 and subsection B of § 55-386 of the Code of Virginia within five days of the change.

B. The board at any time may request verification from the developer of the status of a bond or letter of credit on file with the board. Such verification shall comply with the provisions of subdivision B 6 of 18VAC48-45-400.

C. Failure to report a change in the bond or letter of credit in accordance with this section shall result in further action by the board pursuant to the Virginia Real Estate Time-Share Act.

## **18VAC48-45-450. Termination of time-share project registration.**

A. The time-share project registration shall be terminated upon receipt of documentation of one of the following:

1. In accordance with subsection A of § 55-394.2 of the Code of Virginia, an annual report for a time-share estate program filed pursuant to § 55-394.1 of the Code of Virginia indicates that the developer has transferred title to the time-share owners' association and that no further development rights exist.

2. In accordance with subsection B of § 55-394.2 of the Code of Virginia, written notification is received from the developer attesting that no further development of the project is anticipated and that the developer has ceased sales of time-shares at the project.

B. Upon receipt and review of documentation pursuant to subsection A of this section, the board shall issue an order of termination for the time-share registration. The board may request additional information as necessary during the review of the submitted documentation to ensure that the time-share registration is eligible for termination.

## **18VAC48-45-460. Administrative termination of time-share project registration.**

A. In accordance with subsection C of § 55-394.2 of the Code of Virginia, the board may administratively terminate the registration of a time-share project. Prior to the administrative termination of the registration, the board shall send written notice of its intent to terminate the registration to all known parties associated with the time-share project, including, but not limited to, the registered agent, developer's attorney, and principals of the developer. Such written notice

shall be given to the parties by mail or otherwise if acknowledged by them in writing.

B. The board shall issue an order of termination for the time-share registration if (i) a response is not received within 30 days after sending the written notice, or (ii) the response received does not indicate termination of the registration is inappropriate in accordance with the Virginia Real Estate Time-Share Act and this chapter.

C. Nothing contained in this section shall prevent the board from taking further action as allowed by law including issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

## **18VAC48-45-470. Reporting of other changes to the time-share project.**

Any other change made or known by the developer that may affect the accuracy or completeness of the time-share registration file shall be reported promptly to the board. Such change may include but is not limited to the name of the developer, name of the time-share project, or any other changes in information submitted in accordance with § 55-391.1 of the Code of Virginia. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

## Part VII

### Alternative Purchase Registration

## **18VAC48-45-480. Registration of alternative purchase required.**

As required by § 55-362 of the Code of Virginia, a time-share developer shall register as an alternative purchase anything valued in excess of \$100 that is offered to a potential purchaser during the developer's sales presentation and purchased by such potential purchaser for more than \$100, even though the purchaser did not purchase a time-share. An alternative purchase is not a time-share.

## **18VAC48-45-490. Minimum requirements for registration of an alternative purchase.**

An application for registration of an alternative purchase shall include the following:

1. An application submitted in accordance with 18VAC48-45-50.

2. Current contact information for the developer.

3. The name of the time-share project or projects affiliated with the registered alternative purchase.

4. Public offering statement, or public offering statements, if applicable, submitted in accordance with 18VAC48-45-500. This may be accomplished through a single public offering statement that includes all types of alternative purchases offered by the developer, or a separate public

offering statement for each type of alternative purchase offered by the developer.

5. The escrow bond or letter of credit submitted in compliance with subsection C of § 55-375 of the Code of Virginia, if applicable.

### **18VAC48-45-500. Public offering statement for an alternative purchase.**

The developer shall file with the board a public offering statement that will be distributed to each prospective purchaser about the alternative purchase. The public offering statement shall fully and accurately disclose the material characteristics of such alternative purchase as required by subsection H of § 55-374 of the Code of Virginia. The material characteristics of such alternative purchase may vary based on time of year and availability of offerings and may include, but are not limited to, vacation packages, meals, ancillary benefits or options, excursions, and retail products.

The public offering statement for an alternative purchase need not contain any information about the time-share project, time-share program, or the time-shares offered by the developer initially offered to such purchaser by the developer. The public offering statement for an alternative purchase is not required to have exhibits.

### **18VAC48-45-510. Review of application for registration of an alternative purchase.**

At such time as the board affirmatively determines that the requirements of this chapter have been met, the board shall register the alternative purchase and shall designate the form, content, and effective date of the public offering statement to be used. The registration period of the alternative purchase shall expire the last day of the month one year from the date of issuance.

### **18VAC48-45-520. Minimum alternative purchase post-registration reporting requirements.**

A. Subsequent to the issuance of a registration for an alternative purchase by the board, the developer offering the alternative purchase shall do the following:

1. File the annual report required pursuant to 18VAC48-45-540.
2. Upon the occurrence of a material change to the public offering statement, the developer of a registered alternative purchase shall file an amended public offering statement. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.
3. Upon the occurrence of any material change in the information contained in the registration file, the developer of a registered alternative purchase shall immediately report such material changes to the board.
4. Submit appropriate documentation to the board once the registration is eligible for termination.
5. Submit to the board any other document or information, which may include information or documents that have

been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

6. Submit to the board any document or information to make the registration file accurate and complete and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

7. Submit to the board the escrow bond or letter of credit for any deposits for the alternative purchase that are held in escrow pursuant to § 55-375 of the Code of Virginia. If the bond or letter of credit for protecting all alternative purchase deposits escrowed is the same as the bond or letter of credit for the time-share project registration, the applicant shall so state.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require the developer of a registered alternative purchase to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

### **18VAC48-45-530. Filing of amended public offering statement for alternative purchase.**

A. The developer shall promptly file with the board for review a copy of the amended public offering statement. The form of the submission is at the discretion of the developer, provided that (i) all amendments are clearly represented in the documentation presented; (ii) the additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted; and (iii) documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strike-throughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided.

B. The amended public offering statement submitted to the board for review shall include the effective date of the amendments.

C. Within 30 days of receipt, the board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines that the amended public offering statement complies with this chapter, it shall notify the developer in writing and confirm the new effective date of the public offering statement.

D. If the board's review determines that the amended public offering statement does not comply with this chapter, the board shall immediately notify the developer in writing that the review has determined the amended public offering statement is not in compliance and shall specify the

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particulars of such noncompliance. The developer shall then have 20 days in which to correct the particulars of noncompliance identified by the board. The developer may, prior to the completion of the 20-day correction period, request an extension in writing of the 20-day correction period. Upon expiration of the 20-day correction period, if requested corrections have not been made or a request for extension properly received, the board may issue a temporary cease and desist order in accordance with subsection B of § 55-396 of the Code of Virginia to require the cessation of sales until such time as affirmative action as directed by the board is taken. Use of the noncompliant public offering statement may result in further action by the board pursuant to §§ 55-396, 55-399.1, and 55-400 of the Code of Virginia.

E. Notwithstanding an extension of the 30-day period for review agreed to in writing by the board and developer, if the board does not perform the required review of the public offering statement in accordance with subsection C of this section, the amendment shall be deemed to comply with 18VAC48-45-490, and the new effective date shall be the effective date of the amendment provided pursuant to subsection B of this section.

F. In each case in which an amended document is filed pursuant to this section and the manner of its amendment is not apparent on the face of the document, the developer shall provide an indication of the manner and extent of amendment.

## **18VAC48-45-540. Annual report required for alternative purchase registration.**

A. Prior to the expiration of the registration, the developer shall file an annual report in a form approved by the board for the registered alternative purchase affiliated with such time-share project registration. Such alternative purchase annual report shall be accompanied by the fee specified in 18VAC48-45-70.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the developer.
2. The name of the time-share project or projects affiliated with the registered alternative purchase.
3. Information concerning the current status of the alternative purchase.
4. Current evidence from the surety or financial institution of any bonds or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to subsection C of § 55-375 of the Code of Virginia. Such verification shall provide the following:
  - a. Principal of bond or letter of credit;
  - b. Beneficiary of bond or letter of credit;
  - c. Name of the surety or financial institution that issued the bond or letter of credit;

d. Bond or letter of credit number as assigned by the issuer;

e. The dollar amount; and

f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

5. The date of the public offering statement currently being delivered to purchasers.

## **18VAC48-45-550. Board review of annual report for an alternative purchase registration.**

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55-396 and 55-399.1 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be accepted and the alternative purchase registration shall be continued to run concurrent with the time-share project registration with which it is affiliated.

D. Once the annual report has been accepted by the board, the registration shall be extended for an additional one-year period from the date of expiration of the registration. If the developer fails to complete the annual report filing within one year after the date of expiration, the registration shall not be extended and the developer must apply as a new applicant.

## **18VAC48-45-560. Termination of registration for an alternative purchase.**

A. The alternative purchase registration shall be terminated upon receipt of written notification from the developer attesting that the developer has ceased sales and requests termination of the alternative purchase. Should the developer later choose to offer alternative purchases for which the registration has been terminated in accordance with this subsection, prior to offering an alternative purchase, the developer must submit a new application for registration of the alternative purchase, meet all requirements in effect at the time of application, and obtain an alternative purchase registration from the board.

B. Upon receipt and review of the notification pursuant to subsection A of this section, the board shall terminate the alternative purchase registration. The board may request additional information as necessary during the review of the submitted notification to ensure that the alternative purchase registration is eligible for termination.

C. If all affiliated time-share project registrations are terminated pursuant to 18VAC48-45-450 or 18VAC48-45-460, such terminations shall result in the automatic termination of the affiliated alternative purchase registration.

D. An alternative purchase registration shall be automatically terminated for failure to file an acceptable annual report within one year after the expiration of the registration.

**18VAC48-45-570. Reporting of other changes to the alternative purchase.**

Any other change made or known by the developer that may affect the accuracy or completeness of the alternative purchase registration file shall be promptly reported to the board. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

**Part VIII**

**Exchange Program Registration**

**18VAC48-45-580. Registration of exchange program required.**

As required by § 55-374.2 of the Code of Virginia, an exchange company that offers an exchange program in the Commonwealth shall register the exchange program with the board.

**18VAC48-45-590. Minimum requirements for registration of an exchange program.**

An application for registration of an exchange program shall include the following:

1. An application submitted in accordance with 18VAC48-45-50;
2. Current contact information for the exchange company;
3. A disclosure document that complies with § 55-374.2 of the Code of Virginia; and
4. A report independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants. The report shall provide the following for the preceding calendar year:
  - a. The number of owners enrolled in the exchange program. Such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;
  - b. The number of time-share properties, accommodations or facilities eligible to participate in the exchange program;
  - c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;
  - d. The number of time-shares for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time-share

during the year in exchange for a time-share in any future year; and

e. The number of exchanges confirmed by the exchange company during the year.

**18VAC48-45-600. Minimum exchange program post-registration reporting requirements.**

A. Subsequent to the issuance of a registration for an exchange program by the board, the exchange company shall:

1. File an annual report in accordance with subsection E of § 55-374.2 of the Code of Virginia and this chapter.
2. Upon the occurrence of a material change to the disclosure document, the exchange company shall file an amended disclosure document in accordance with the provisions of § 55-374.2 of the Code of Virginia and this chapter. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.
3. Upon the occurrence of any material change in the information contained in the registration file, the exchange company shall immediately report such material changes to the board.
4. Submit appropriate documentation to the board once the registration is eligible for termination.
5. Submit to the board any other document or information, which may include information or documents that have been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.
6. Submit to the board any document or information to make the registration file accurate and complete to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require an exchange company to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

**18VAC48-45-610. Annual report required for an exchange program registration.**

A. An exchange company shall file an annual report to update the material contained in the exchange program registration file by July 1 of each year the registration is effective and shall be accompanied by the fee specified in 18VAC48-45-70.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the exchange company;
2. Information concerning the current status of the exchange program;

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3. A report that contains the information in subdivision 4 of 18VAC48-45-590 and submitted in compliance with subdivision A 17 of § 55-374.2 of the Code of Virginia.

## **18VAC48-45-620. Board review of annual report for exchange program registration.**

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55-396, 55-399.1, and 55-400 of the Code of Virginia for failing to file an annual report as required by subsection E of § 55-374.2 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with subsection E of § 55-374.2 of the Code of Virginia.

## **18VAC48-45-630. Termination of an exchange program registration.**

A. The exchange program registration shall be terminated upon receipt of written notification from the exchange company indicating that the exchange program is no longer being offered in the Commonwealth. Should the exchange company later choose to offer the exchange program for which the registration has been terminated in accordance with this subsection, prior to offering the exchange program, the exchange company must submit a new application for registration of the exchange program, meet all requirements in effect at the time of application, and be issued an order of registration for the exchange program by the board.

B. Upon receipt and review of the notification pursuant to subsection A of this section, the board shall issue an order of termination for the exchange program registration. The board may request additional information as necessary during the review of the submitted notification to ensure that the exchange program registration is eligible for termination.

## **18VAC48-45-640. Reporting of other changes to an exchange program.**

Any other change made or known by the exchange company that may affect the accuracy or completeness of the exchange program registration file shall be promptly reported to the board. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

### Part IX

#### Time-Share Reseller Registration

## **18VAC48-45-650. Registration of time-share reseller required.**

In accordance with § 55-394.3 of the Code of Virginia, a reseller shall not offer or provide any resale service without

holding a current time-share reseller registration issued by the board.

## **18VAC48-45-660. Exemptions from time-share reseller registration.**

Time-share reseller registration shall not apply to the following:

1. A person that solely or with affiliates engages in a resale service with respect to an aggregate of no more than 12 resale time-shares per calendar year;

2. A person that owns or acquires more than 12 resale time-shares and subsequently transfers all such resale time-shares to a single purchaser in a single transaction;

3. The owner, owner's agents, and employees of a regularly published newspaper, magazine, or other periodical publication of general circulation; broadcast station; website; or billboard, to the extent their activities are limited to solicitation and publication of advertisements and the transmission of responses to the persons who place the advertisements. Any person that would otherwise be exempt from this chapter pursuant to this section shall not be exempt if the person (i) solicits the placement of the advertisement by representing that the advertisement will generate cash, a certain price, or a similar type of representation for the time-share owner's resale time-share, (ii) makes a recommendation as to the sales price for which to advertise the resale time-share, (iii) makes representations to the person placing the advertisement regarding the success rate for selling resale time-shares advertised with such person, or (iv) makes misrepresentations as described in this chapter;

4. Sale by a developer or a party acting on its behalf of a resale time-share under a current registration of the time-share program in which the resale time-share is included;

5. Sale by an association, managing entity, or a party acting on its behalf of a resale time-share owned by the association provided the sale is in compliance with subsection C of § 55-380.1; or

6. Attorneys, title agents, title companies, or escrow companies providing closing services in connection with the transfer of a resale time-share.

## **18VAC48-45-670. Requirements for registration as a time-share reseller.**

A. Individuals or firms that provide any time-share resale services shall submit an application on a form prescribed by the board and shall meet the requirements of this section, including:

1. The information contained in § 55-394.3 of the Code of Virginia.

2. The application fee specified in 18VAC48-45-70.

3. All contact information applicable to the time-share reseller and the lead dealer.

B. Any individual or firm offering resale services as defined in § 55-362 of the Code of Virginia shall be registered with the board. All names under which the time-share reseller conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

C. The applicant for a time-share reseller registration shall disclose the firm's mailing address and the firm's physical address. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for a time-share reseller registration shall disclose the following information about the firm, the lead dealer, and any of the principals of the firm, if applicable:

1. All felony convictions.
2. All misdemeanor convictions in any jurisdiction that occurred within three years before the date of application.
3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant shall obtain and maintain a bond or letter of credit pursuant to § 55-375 of the Code of Virginia, for the purpose of protecting deposits and refundable moneys received by a time-share reseller from clients in the Commonwealth of Virginia in connection with the purchase, acquisition, or sale of a time-share.

F. The applicant for time-share reseller registration shall be in compliance with the standards of conduct set forth in Part X (18VAC48-45-720 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the registration is in effect.

G. The applicant for time-share reseller registration, the lead dealer, and all principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered, and the board, in its discretion, may deny registration to, any applicant who has been subject to, or whose lead dealer or principals have been subject to, any form of adverse disciplinary action, including but not limited to, reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any

other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining registration in Virginia.

H. The applicant for time-share reseller registration shall provide all relevant information about the firm, the lead dealer, and of the principals of the firm for the seven years prior to application on outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies and specifically shall provide all relevant financial information related to providing resale services as defined in § 55-362 of the Code of Virginia.

I. The application for time-share reseller registration shall include the exhibits required pursuant to 18VAC48-45-680.

**18VAC48-45-680. Exhibits required for registration as a time-share reseller.**

A. The following documents shall be included as exhibits to the application for registration. All exhibits shall be labeled as indicated and submitted in a format acceptable to the board.

1. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission, or any other entity formation documents, together with any trade or fictitious name certificate.
2. Exhibit B: A copy of the resale purchase contract.
3. Exhibit C: A copy of the resale transfer contract.
4. Exhibit D: A copy of disclosures required by § 55-380.1 of the Code of Virginia.
5. Exhibit E: A narrative description of the marketing or advertising plan.
6. Exhibit F: A bond or letter of credit in accordance with subsection E of 18VAC48-45-670.

B. The board has the sole discretion to require additional information or amendment of existing information as the board finds necessary to ensure full and accurate disclosure and compliance with the provisions of § 55-380.1 of the Code of Virginia and to ensure compliance with the provisions of § 55-394.3 of the Code of Virginia.

**18VAC48-45-690. Renewal and reinstatement of a time-share reseller registration.**

A. A time-share reseller registration issued under this chapter shall expire one year from the last day of the month in which it was issued. The fee specified in 18VAC48-45-70 shall be required for renewal.

B. Prior to the expiration date shown on the registration, a registration shall be renewed upon payment of the fees specified in 18VAC48-45-70 and submittal of proof of a current bond or letter of credit required in accordance with subsection E of 18VAC48-45-670.

C. The board will send a renewal notice to the regulant at the last known address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the

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regulant fails to receive the renewal notice, a copy of the registration may be submitted with the required fees as an application for renewal. By submitting a renewal fee, the regulant is certifying continued compliance with this chapter, as applicable, and certifying that all documents required for registration pursuant to 18VAC48-45-680 on file with the board reflect the most current version used by the reseller.

D. If the requirements for renewal of a registration as specified in this chapter are not completed more than 30 days and within six months after the registration expiration date, the reinstatement fee specified in 18VAC48-50-70 shall be required.

E. A registration may be reinstated for up to six months following the expiration date. After six months, the registration may not be reinstated under any circumstances and the firm or individual must meet all current entry requirements and apply as a new applicant.

F. The board may deny renewal or reinstatement of registration for the same reasons as it may refuse initial registration or discipline a registrant.

G. The date the renewal application and fee are received in the office of the board shall determine whether a registration shall be renewed without reinstatement, or shall be subject to reinstatement application procedures.

H. A registration that is reinstated shall be regarded as having been continuously registered without interruption. Therefore, the registration holder shall remain under the disciplinary authority of the board during the entire period and shall be accountable for its activities during the period. Nothing in this chapter shall divest the board of its authority to discipline a registration holder for a violation of the law or regulation during the period of time for which the regulant was registered.

I. Applicants for renewal shall continue to meet all of the qualifications for registration set forth in 18VAC48-45-680.

## **18VAC48-45-700. Maintenance of time-share reseller registration.**

Any material changes made or known by the time-share reseller that may affect the accuracy or completeness of the time-share reseller registration file shall be promptly reported to the board. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

## **18VAC48-45-710. Recordkeeping for a time-share reseller registration.**

A time-share reseller registered by the board shall comply with the recordkeeping provisions of § 55-394.4 of the Code of Virginia.

## Part X

### Board Authority and Standards of Conduct

#### **18VAC48-45-720. Grounds for disciplinary action.**

The board may revoke a registration that is not in compliance with any provision of the regulations of the board or the Virginia Real Estate Time-Share Act. Additional action may include issuance of a temporary cease and desist order, issuance of a cease and desist order, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

#### **18VAC48-45-730. Registration required.**

A. No developer or agent of a developer shall offer a time-share prior to the registration of the time-share program and time-share project.

B. No developer or agent of a developer shall offer an alternative purchase prior to the registration of the alternative purchase by the developer.

C. No exchange company or agent of an exchange company shall offer an exchange program prior to the registration of the exchange program by the exchange company.

D. No time-share reseller or agent of a time-share reseller shall offer any resale services prior to the registration of the time-share reseller.

#### **18VAC48-45-740. Time-share advertising standards.**

A. No promise, assertion, representation, or statement of fact or opinion in connection with a time-share marketing activity shall be made that is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances, or features of a time-share program or a time-share project.

B. No promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity shall indicate that a unit or common element will be built or placed on the time-share unless proposed within the meaning of subsection A of 18VAC48-45-200.

C. No promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity and relating to a time-share project not registered shall, by its express terms, induce, solicit, or encourage a contract for sale or performing some other act that would create or purport to create a legal or equitable interest in the time-share, other than a security interest in or a nonbinding reservation of the time-share, when to do so would circumvent the provisions of the Virginia Real Estate Time-Share Act.

#### **18VAC48-45-750. Board oversight of public offering statement and exchange program disclosure document.**

A. The board at any time may require a developer to alter or amend the public offering statement for a time-share or an alternative purchase or an exchange program disclosure document to assure full and accurate disclosure to prospective

purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

B. The board does not approve or recommend the time-share, alternative purchase, or exchange program, or disposition thereof. The board's issuance of an effective date for a public offering statement or acceptance of an exchange program disclosure document shall not be construed to (i) constitute approval of the time-share, alternative purchase, or exchange program; (ii) represent that the board asserts that either all facts or material changes or both concerning the time-share, alternative purchase, or exchange program have been fully and accurately disclosed; or (iii) indicate that the board has made judgment on the value or merits of the time-share, alternative purchase, or exchange program.

**18VAC48-45-760. Response to inquiry and provision of records.**

A. The developer, exchange company, or reseller must respond within 15 days to a request by the board or any of its agents regarding any complaint filed with the department. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

B. Unless otherwise specified by the board, the developer, exchange company, or reseller shall produce to the board or any of its agents within 15 days of the request any document, book, or record concerning any transaction in which the developer, exchange company, or reseller was involved, or for which the developer, exchange company, or reseller is required to maintain records, for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

C. A developer, exchange company, or reseller shall not provide a false, misleading, or incomplete response to the board or any agent of the board seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a developer, exchange company, or reseller must respond to an inquiry by the board or its agent within 21 days.

**18VAC48-45-770. Prohibited acts.**

The following acts are prohibited and any violation may result in action by the board, including but not limited to issuance of a temporary cease and desist order in accordance with subdivision D 2 of § 55-396 of the Code of Virginia:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any regulation of the board or the Virginia Real Estate Time-Share Act or engaging in any act enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.
2. Obtaining or attempting to obtain a registration by false or fraudulent representation, or maintaining, renewing, or

reinstating a registration by false or fraudulent representation.

3. Failing to alter or amend the public offering statement or disclosure document as required in accordance with the provisions of this chapter.

4. Providing information to purchasers in a manner that willfully and intentionally fails to promote full and accurate disclosure.

5. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

6. Failing to provide information or documents, or amendments thereof, in accordance with this chapter.

7. Failing to comply with the post-registration requirements of this chapter.

8. Filing false or misleading information in the course of terminating a registration in accordance with 18VAC48-45-460, 18VAC48-45-540, or 18VAC48-45-610.

9. Failing to comply with the advertising standards contained in Part III (18VAC48-45-50 et seq.) of this chapter.

10. Failing to notify the board of the cancellation, amendment, expiration, termination, or any other change that affects the validity of a bond or letter of credit required pursuant to subsection E of 18VAC48-45-670.

11. Allowing a registration issued by the board to be used by another.

12. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-45-130, 18VAC48-45-210, and 18VAC48-45-670.

13. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-45-670.

14. Failing to report a change as required by 18VAC48-45-470.

15. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

16. Misrepresenting or misusing the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.

17. Engaging in dishonest or fraudulent conduct in providing resale services, including but not limited to the following:

- a. The intentional and unjustified failure to comply with the terms of the resale purchase contract or resale transfer contract.
- b. Engaging in dishonest or fraudulent conduct in providing resale services.
- c. Failing to comply with the recordkeeping requirements of § 55-394.4 of the Code of Virginia.

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d. Failing to disclose information in writing concerning the marketing, sale, or transfer of resale time-shares required by this chapter prior to accepting any consideration or with the expectation of receiving consideration from any time-share owner, seller, or buyer.

e. Making false or misleading statements concerning offers to buy or rent; the value, pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in time-share resale activities.

f. Misrepresenting the likelihood of selling a resale time-share interest.

g. Misrepresenting the method by or source from which the reseller or lead dealer obtained the contact information of any time-share owner.

h. Misrepresenting price or value increases or decreases, assessments, special assessments, maintenance fees, or taxes or guaranteeing sales or rentals in order to obtain money or property.

i. Making false or misleading statements concerning the identity of the reseller or any of its affiliates or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services, fees, or commissions, availability of refunds, length of time in business, or endorsements by or affiliations with developers, management companies, or any other third party.

j. Misrepresenting whether or not the reseller or its affiliates, employees, or agents hold, in any state or jurisdiction, a current real estate sales or broker's license or other government-required license.

k. Misrepresenting how funds will be utilized in any time-share resale activity conducted by the reseller.

l. Misrepresenting that the reseller or its affiliates, employees, or agents have specialized education, professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.

m. Making false or misleading statements concerning the conditions under which a time-share owner, seller, or buyer may exchange or occupy the resale time-share interest.

n. Representing that any gift, prize, membership, or other benefit or service will be provided to any time-share owner, seller, or buyer without providing such gift, prize, membership, or other benefit or service in the manner represented.

o. Misrepresenting the nature of any resale time-share interest or the related time-share plan.

p. Misrepresenting the amount of the proceeds, or failing to pay the proceeds, of any rental or sale of a resale time-share interest as offered by a potential renter or buyer to

the time-share owner who made such resale time-share interest available for rental or sale through the reseller.

q. Failing to transfer any resale time-share interests as represented and required by this chapter or to provide written evidence to the time-share owner of the recording or transfer of such time-share owner's resale time-share interest as required by this chapter.

r. Failing to pay any annual assessments, special assessments, personal property or real estate taxes, or other fees relating to an owner's resale time-share interest as represented or required by this chapter.

**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 (18VAC48-45)

[Time-Share Amendment Application, A492-0515AMEND-v1 \(eff. 9/13\)](#)

[Time-Share Annual Report, A492-0515ANRPT-v2 \(eff. 5/14\)](#)

[Time-Share Building Status Form, A492-0515BLDST-v1 \(eff. 9/13\)](#)

[Time-Share Bond/Letter of Credit Verificaiton Form, A492-0515BOND-v1 \(eff. 9/13\)](#)

[Time-Share Registration Application, A492-0515REG-v1 \(eff. 9/13\)](#)

[Time-Share Exchange Company Annual Report, A492-0516ANRPT-v1 \(eff. 9/13\)](#)

[Time-Share Exchange Company Registration Application, A492-0516REG-v1 \(eff. 9/13\)](#)

VA.R. Doc. No. R13-3613; Filed May 6, 2015, 11:06 a.m.

## BOARD FOR CONTRACTORS

### Final Regulation

**REGISTRAR'S NOTICE:** The Board for Contractors is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Contractors will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation: 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-140, 18VAC50-22-170).**

**Statutory Authority:** §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

**Effective Date:** August 1, 2015.

**Agency Contact:** Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

**Summary:**

*The amendments reduce renewal and reinstatement fees received on or before August 31, 2017, for contractor licenses.*

**18VAC50-22-140. Renewal fees.**

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C <del>Reinstatement</del> <u>renewal</u>	with renewal application	\$195
Class B <del>Reinstatement</del> <u>renewal</u>	with renewal application	\$225
Class A <del>Reinstatement</del> <u>renewal</u>	with renewal application	\$240

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

For renewal fees received on or before August 31, 2017, the fees shall be \$100 for a Class C renewal, \$125 for a Class B renewal, and \$150 for a Class A renewal.

**18VAC50-22-170. Reinstatement fees.**

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C <del>Reinstatement</del> <u>reinstatement</u>	with reinstatement application	\$405*
Class B <del>Reinstatement</del> <u>reinstatement</u>	with reinstatement application	\$460*
Class A <del>Reinstatement</del> <u>reinstatement</u>	with reinstatement application	\$490*

\*Includes renewal fee listed in 18VAC50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once one year from the expiration date of the license has passed.

For reinstatement fees received on or before August 31, 2017, the fees shall be \$200 for Class C reinstatement, \$250 for Class B reinstatement, and \$300 for Class A reinstatement. These fees include the renewal fee listed in 18VAC50-22-140.

VA.R. Doc. No. R15-4368; Filed May 5, 2015, 8:26 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board for Contractors is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Contractors will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-120, 18VAC50-30-130).**

**Statutory Authority:** §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

**Effective Date:** August 1, 2015.

**Agency Contact:** Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

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# Regulations

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## Summary:

*The amendments reduce renewal and reinstatement fees received on or before August 31, 2017, for individual licenses and certifications.*

### **18VAC50-30-120. Renewal.**

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal.

C. Certified elevator mechanics and certified accessibility mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code pertaining to elevators, escalators, and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	\$90
Liquefied petroleum gas fitter license	\$90
Natural gas fitter provider license	\$90
Backflow prevention device worker certification	\$90
Elevator mechanic certification	\$90
Certified accessibility mechanic	\$90
Water well systems provider certification	\$90

All fees are nonrefundable and shall not be prorated.

For renewal fees received on or before August 31, 2017, the fee shall be \$60.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

### **18VAC50-30-130. Reinstatement.**

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	\$140*
Liquefied petroleum gas fitter license	\$140*
Natural gas fitter provider license	\$140*
Backflow prevention device worker certification	\$140*
Elevator mechanic certification	\$140*
Certified accessibility mechanic	\$140*
Water well systems provider certification	\$140*

\*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

For reinstatement fees received on or before August 31, 2017, the fee shall be \$100. This fee includes the renewal fee listed in 18VAC50-30-120.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, or water well systems providers, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

VA.R. Doc. No. R15-4369; Filed May 5, 2015, 8:27 a.m.

## BOARD OF MEDICINE

### Fast-Track Regulation

**Title of Regulation:** 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-90).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 1, 2015.

**Effective Date:** July 16, 2015.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

**Purpose:** The purpose of the amended regulation is to provide appropriate access to treatment for persons suffering from obesity and its accompanying health risks. A physician assistant under the supervision of a physician or a nurse practitioner who has a collaborative arrangement with a patient care team physician should be able to perform the physical examination, order the tests, and follow a patient for whom weight loss drugs are being prescribed. Currently, regulations specify those functions may only be performed by the physician. The goal of the amended regulation is to clarify that the protocol or standard of care set forth in 18VAC85-20-90 is essential for appropriate treatment with weight loss drugs, but that a nurse practitioner or physician assistant may be authorized by a practice agreement with a collaborating or supervising physician to treat such a patient. 18VAC85-20-90 was originally adopted in response to serious complications from the overprescribing of weight loss drugs and the failure of some physician practices to properly screen and follow patients. While the Board of Medicine believes care of those patients, including prescribing, is within the scope of practice of nurse practitioners and physician assistants, the protocol or standard of care must be applied to their practice as well as the physicians with whom they have a practice agreement to protect the health and safety of patients.

**Rational for Using Fast-Track Process:** Since this action does not expand the scope of practice of nurse practitioners or physician assistants, it will not be controversial. The amendment clarifies the standard of care for all types of practitioners who are treating and prescribing for weight loss.

**Substance:** Subsection C is added to 18VAC85-20-90 to provide that, "If specifically authorized in his practice agreement with a supervising or collaborating physician, a physician assistant or nurse practitioner may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity, as specified in subsection B of this section."

**Issues:** The primary advantage to the public is expanded access to weight loss treatment that includes prescribing of controlled substances by physician assistants and nurse practitioners. By tying such practice to the standard of care set forth in regulations for the physician with whom the physician assistant practices or with whom the nurse practitioner has a collaborative agreement, patients are protected against some of the potentially serious risks associated with such drugs. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

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# Regulations

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## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to specify that nurse practitioners (NPs) and physician assistants (PAs) are allowed to treat obesity, including prescribing appropriate Schedule III through VI drugs, so long as they are supervised by, or collaborating with, a physician and so long as such treatment is specifically authorized in the NP's or PA's practice agreement.

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

Estimated Economic Impact. Current Board regulation requires that individuals seeking treatment for obesity must see a physician even though treating patients with obesity and prescribing Schedule III and IV drugs for weight loss are within the scope of practice for NPs (and are with the competency of PAs). In order to allow both NPs and PAs to treat obesity, inclusive of prescribing drugs that they are competent to prescribe, the Board now proposes to amend this regulation to allow this. Under the proposed regulation, both PNs and PAs will be allowed to treat obesity, including prescribing appropriate Schedule III through VI drugs, so long as they are supervised by, or collaborating with, a physician and so long as such treatment is specifically authorized in the NP's or PA's practice agreement.

This change will likely benefit PAs and NPs as it will allow them to treat all conditions that they are competent to treat. This change will also likely benefit physicians who employ PAs and NPs as it will allow them to delegate treatment of obesity patients so that they can better budget their time and help more patients. Obesity patients will benefit, also, because they are likely to find it easier to get appointments and treatment from an expanded pool of professionals who are authorized to treat them.

Businesses and Entities Affected. Because the Board does not license physicians by specialty, Board staff does not have an estimate of how many individuals this regulatory change will affect. Generally, it will affect all PAs and NPs who work with doctors that offer obesity treatment.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulation will increase the number of individuals who are authorized to treat obesity and so will increase employment geared toward this treatment.

Effects on the Use and Value of Private Property. If this proposed regulation increases the number of patients that can be seen for obesity treatment, the value of supervising physician's practices may increase.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of the proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of the proposed regulation.

Real Estate Development Costs. This proposed regulation is unlikely to affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC85-20 relating to prescribing for weight loss by nurse practitioners and physician assistants.

Summary:

*The proposed amendment specifies that nurse practitioners and physician assistants are allowed to perform the physical examinations, review tests, and prescribe appropriate Schedules III through VI drugs in the treatment of obesity, so long as they are supervised by or collaborating with a physician and such treatment is specifically authorized in the nurse practitioner's or physician assistant's practice agreement.*

**18VAC85-20-90. Pharmacotherapy for weight loss.**

A. A practitioner shall not prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. A practitioner shall not prescribe controlled substances, Schedules III through VI, for the purpose of weight reduction or control in the treatment of obesity, unless the following conditions are met:

1. An appropriate history and physical examination, are performed and recorded at the time of initiation of pharmacotherapy for obesity by the prescribing physician, and the physician reviews the results of laboratory work, as indicated, including testing for thyroid function;
2. If the drug to be prescribed could adversely affect cardiac function, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity;
3. A diet and exercise program for weight loss is prescribed and recorded;
4. The patient is seen within the first 30 days following initiation of pharmacotherapy for weight loss by the prescribing physician or a licensed practitioner with prescriptive authority working under the supervision of the prescribing physician, at which time a recording shall be made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy;
5. The treating physician shall direct the follow-up care, including the intervals for patient visits and the continuation of or any subsequent changes in pharmacotherapy. Continuation of prescribing for treatment of obesity shall occur only if the patient has continued progress toward achieving or maintaining a target weight; and has no significant adverse effects from the prescribed program.

C. If specifically authorized in his practice agreement with a supervising or collaborating physician, a physician assistant or nurse practitioner may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity, as specified in subsection B of this section.

VA.R. Doc. No. R14-20; Filed May 11, 2015, 3:43 p.m.

**BOARD OF NURSING****Fast-Track Regulation**

**Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-221).**

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

**Public Hearing Information: No public hearings are scheduled.**

**Public Comment Deadline: July 1, 2015.**

**Effective Date: July 16, 2015.**

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

**Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, which includes promulgation of regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) that are reasonable and necessary to administer effectively the regulatory system.**

**Purpose: In April 2014, a petition for rulemaking was received requesting that the Board of Nursing consider amending 18VAC90-20-221 B, which lists 12 organizations or entities that may recognize or approve continuing competency hours. Encouraging nurses who work for a government agency to take advantage of learning opportunities that relate to the practice of nursing within the context of their work at the agency may improve their effectiveness in protecting the health and safety of citizens of the Commonwealth.**

**Rationale for Using Fast-Track Process: The action is in response to a petition for rulemaking; there were no comments on the petition. The rulemaking is less restrictive and noncontroversial and should be promulgated using the fast-track rulemaking process.**

**Substance: The amendment to 18VAC90-20-221 B adds "a state or federal government agency" to the list of entities and organizations that may recognize or approve courses, seminars, conferences, or workshops relating to nursing practice for continuing education credits.**

**Issues: The primary advantage of the amendment is more options and opportunities for nurses to obtain the hours of continuing competency activities necessary for renewal. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.**

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to add "a state or federal government agency" to the list of entities and organizations that may recognize or approve courses, seminars, conferences or workshops relating to nursing practice for continuing education credits.

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# Regulations

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

Estimated Economic Impact. In order to renew an active nursing license, a licensee must complete at least one of the following learning activities or courses:

1. Current specialty certification by a national certifying organization, as defined in 18VAC90-20-10;
2. Completion of a minimum of three credit hours of post-licensure academic education relevant to nursing practice, offered by a regionally accredited college or university;
3. A board-approved refresher course in nursing;
4. Completion of nursing-related, evidence-based practice project or research study;
5. Completion of publication as the author or co-author during a renewal cycle;
6. Teaching or developing a nursing-related course resulting in no less than three semester hours of college credit, a 15-week course, or specialty certification;
7. Teaching or developing nursing-related continuing education courses for up to 30 contact hours;
8. Fifteen contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing and 640 hours of active practice as a nurse; or
9. Thirty contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing.

Under the current regulations, to meet requirements of subdivision 8 or 9 above, workshops, seminars, conferences, or courses shall be offered by a provider recognized or approved by one of the following:

1. American Nurses Credentialing Center (ANCC)/American Nurses Association (ANA);
2. National Council of State Boards of Nursing (NCSBN);
3. Area Health Education Centers (AHEC) in any state in which the AHEC is a member of the National AHEC Organization;
4. Any state nurses association;
5. National League for Nursing (NLN);
6. National Association for Practical Nurse Education and Service (NAPNES);
7. National Federation of Licensed Practical Nurses (NFLPN);
8. A licensed health care facility, agency, or hospital;
9. A health care provider association;
10. Regionally or nationally accredited colleges or universities;
11. The American Heart Association, the American Health and Safety Institute, or the American Red Cross for courses in advanced resuscitation; or

12. Virginia Board of Nursing or any state board of nursing.

The Board proposes to add "a state or federal government agency" to this list of entities and organizations that may recognize or approve courses, seminars, conferences or workshops relating to nursing practice for continuing education credits. Of those licensed nurses who are employed by government, many are associated with hospitals or academic institutions that are already listed as approved providers/endorsers of continuing education. Thus the proposed amendment will not likely have a large impact, but will be positive in that it may provide licensed nurses some additional qualified options for continuing education.

Businesses and Entities Affected. The Healthcare Workforce Data Center at the Virginia Department of Health Professions reports that the number of registered nurses who listed a government entity as their primary employer in 2013 was: 7656 in state/local government; 1527 in the U.S. military; 1339 in the Veterans Administration; and 571 in other U.S. government agencies. The training at the places of employment for most of these nurses likely already qualifies for continuing education; there may be some though that do not currently qualify and would thus be affected by the proposed amendment.

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

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

Effects on the Use and Value of Private Property. The proposal to add "a state or federal government agency" to the list of entities and organizations that may recognize or approve courses, seminars, conferences or workshops relating to nursing practice for continuing education credits may newly allow a small number of courses, seminars, conferences or workshops offered by private entities to qualify for nursing continuing education credit. The impact will not likely be large.

Small Businesses: Costs and Other Effects. The proposed amendment is unlikely to significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment is unlikely to produce a significant adverse impact for small businesses.

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

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the

proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

Agency Response to the Department of Planning and Budget's economic impact analysis: The board concurs with the analysis of the Department of Planning and Budget.

Summary:

*The amendment adds "state or federal government agencies" to the list of entities and organizations that may recognize or approve courses, seminars, conferences, or workshops relating to nursing practice for continuing education credits.*

**18VAC90-20-221. Continued competency requirements for renewal of an active license.**

A. In order to renew an active nursing license, a licensee shall complete at least one of the following learning activities or courses:

1. Current specialty certification by a national certifying organization, as defined in 18VAC90-20-10;

2. Completion of a minimum of three credit hours of post-licensure academic education relevant to nursing practice, offered by a regionally accredited college or university;
3. A board-approved refresher course in nursing;
4. Completion of nursing-related, evidence-based practice project or research study;
5. Completion of publication as the author or co-author during a renewal cycle;
6. Teaching or developing a nursing-related course resulting in no less than three semester hours of college credit, a 15-week course, or specialty certification;
7. Teaching or developing nursing-related continuing education courses for up to 30 contact hours;
8. Fifteen contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing and 640 hours of active practice as a nurse; or
9. Thirty contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing.

B. To meet requirements of subdivision A 8 or A 9 of this section, workshops, seminars, conferences, or courses shall be offered by a provider recognized or approved by one of the following:

1. American Nurses Credentialing Center (ANCC)/American Nurses Association (ANA);
2. National Council of State Boards of Nursing (NCSBN);
3. Area Health Education Centers (AHEC) in any state in which the AHEC is a member of the National AHEC Organization;
4. Any state nurses association;
5. National League for Nursing (NLN);
6. National Association for Practical Nurse Education and Service (NAPNES);
7. National Federation of Licensed Practical Nurses (NFLPN);
8. A licensed health care facility, agency, or hospital;
9. A health care provider association;
10. Regionally or nationally accredited colleges or universities;
11. A state or federal government agency;
12. The American Heart Association, the American Health and Safety Institute, or the American Red Cross for courses in advanced resuscitation; or
- ~~12.~~ 13. Virginia Board of Nursing or any state board of nursing.

C. Dual licensed persons.

1. Those persons dually licensed by this board as a registered nurse and a licensed practical nurse shall only meet one of the continued competency requirements as set forth in subsection A of this section.

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2. Registered nurses who also hold an active license as a nurse practitioner shall only meet the requirements of 18VAC90-30-105 and, for those with prescriptive authority, 18VAC90-40-55.

D. A licensee is exempt from the continued competency requirement for the first renewal following initial licensure by examination or endorsement.

E. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee 60 days prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

F. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

G. Continued competency activities or courses required by board order in a disciplinary proceeding shall not be counted as meeting the requirements for licensure renewal.

VA.R. Doc. No. R14-28; Filed May 11, 2015, 3:42 p.m.

## Fast-Track Regulation

**Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-225, 18VAC90-20-230).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 1, 2015.

**Effective Date:** July 16, 2015.

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

**Basis:** Section 54.1-2400 of the Code of Virginia states that the general powers and duties of health regulatory boards includes establishing the qualifications for registration, certification, licensure, or the issuance of a multistate licensure privilege, that are necessary to ensure competence and integrity and engage in the regulated profession; promulgating regulations that are reasonable and necessary to administer effectively the regulatory system; and issuing inactive licenses or certificates and promulgating regulations to carry out such purpose. The regulations include, but are not limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

**Purpose:** In 2010, the board issued a Notice of Intended Regulatory Action (NOIRA) to initiate rulemaking to address continuing competency for nurses who renew their active licenses biennially. When final regulations were promulgated, the board realized that the requirements for continuing education hours for persons who had allowed their nursing

licenses to lapse or had taken inactive status were less than those for a nurse who was renewing an active license. Since the sections on inactive licensure and reinstatement had not been identified in the NOIRA or in the proposed regulations, the board decided to address them in a later action. The final regulations for continuing competency for renewal of licensure became effective August 1, 2013. On August 9, 2013, a petition for rulemaking was received requesting that the board consider amending the sections on reactivation and reinstatement because requirements in those sections should not be weaker than those for renewal of an active license. Currently, if a license has been inactive or lapsed for more than two years, the nurse can reactivate or reinstate by evidence of completion of 15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or by passage of National Council Licensing Examination during the period in which the license lapsed. Conversely, a nurse with an active license but less than 640 hours of active practice must have 30 hours of continuing education for a biennial renewal. The board concurred with the petitioner and voted to initiate rulemaking because current regulations may not adequately ensure the current competency of an applicant seeking reactivation or reinstatement if he has not been actively practicing outside of Virginia. To protect the health and safety of patients, the board must require some evidence that the nurse is competent to resume active practice.

**Rationale for Using Fast-Track Process:** Comments received on the petition for rulemaking and the Notice of Intended Regulatory Action were supportive of the amendments the board has proposed. Therefore, the board is confident that the rulemaking is noncontroversial and should be promulgated as a fast-track regulatory action.

**Substance:** For consistency with the current requirements for renewal of an active license, the amendments require a nurse seeking reactivation or reinstatement to provide evidence of completion at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding application for reactivation.

**Issues:** The primary advantage of the amendment is better assurance that nurses returning to active practice have minimal competency to provide services to patients in Virginia. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board of Nursing (the Board) proposes to establish requirements for evidence of continuing competency for inactive or lapsed nursing licenses that are consistent with those for renewal of an active license.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs.

Estimated Economic Impact. In 2013, new requirements for continuing competency for nurses who renew their active licenses biennially became effective. However, the 2013 regulatory language inadvertently did not apply to licenses that are inactive and lapsed. Thus, since then the requirements for continuing education hours for persons who had allowed their nursing license to lapse or had taken inactive status have been less than those for nurses who were renewing an active license. The Board now proposes to establish requirements for evidence of continuing competency for inactive or lapsed nursing licenses that are consistent with those for renewal of an active license.

Currently, 15 hours of continuing education is required for reactivation of an inactive or lapsed license. The proposed change will allow many different kinds of educational experiences to count toward fulfilling continuing competency requirement. Amongst the learning activities that will count are:

- Having a current specialty certification from a Board recognized national certification organization,
- Completing a three credit hour college course that is relevant to the practice of nursing,
- Completing a Board certified refresher course in nursing,
- Completing a nursing-related, evidence-based practice project or research study,
- Authoring or co-authoring an article that is published during a renewal cycle,
- Teaching a three credit hour college course that is relevant to the practice of nursing,
- Teaching nursing-related continuing education courses for up to 30 contact hours,
- Working at least 640 hours as a nurse during the renewal cycle and completing 15 contact hours of workshops, seminars, conferences or courses relevant to the practice of nursing, or
- Completing 30 contact hours of workshops, seminars, conferences or courses relevant to the practice of nursing.

The main cost of the proposed change is the difference in the cost of completing one of the nine options above and the cost of currently required 15 hours of continuing education. According to the Board, there are a myriad of resources and providers available for meeting continuing competency requirements at a very reasonable cost. For example, the National Council of State Boards of Nursing offers courses online, such as a course on Medication Errors; Detention and Prevention at a cost of \$30 for 6.9 contact hours. The Board staff also reports that entities such as hospitals are required to offer continuing education opportunities to their nursing staff as a part of hospital licensure requirements and that various nurses associations offer online educational opportunities that would meet the requirements of these regulations at a cost of approximately \$5 to \$6 per hour. Some individuals who teach nursing related college or continuing education courses can

meet their continuing competency requirements with activities for which they actually earn money. In addition to the explicit costs of the educational opportunity chosen, affected individuals will also incur implicit opportunity costs for time spent meeting the proposed requirements. On the other hand, the proposed changes will afford the opportunity to demonstrate continuing competency through many additional options. These additional options will provide more flexibility to the nurses to fulfill the regulatory requirements and may provide some cost savings. Also, to the extent that the required continuing education improves the quality of nursing in the Commonwealth, both nurses and their patients will benefit.

Businesses and Entities Affected. In fiscal year 2013, there were 438 registered nurse reinstatements, 22 registered nurse reactivations, and 12 licensed practical nurse reinstatements. However, if a nurse has actively practiced in another state and is returning to Virginia to reinstate his license, he may not be required to acquire the additional 15 hours. Thus, the Board staff does not know how many of reinstatements or reactivations would meet the proposed requirements by having active practice in another state.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. The proposed requirements for continuing education for inactive or lapsed licenses will likely marginally increase the cost of licensure. This may marginally decrease the number of individuals who choose to work in professional fields that are regulated by the Board.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses that employ nursing staff may see their costs slightly increase if they have to raise nurses' salaries to offset some or all of the costs of newly required continuing education for reactivated or lapsed licenses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternate methods to implement the proposed regulatory changes that would both achieve the Board's goals and be less costly.

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

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

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- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

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

Summary:

*The amendments require a nurse seeking reactivation or reinstatement of a license to complete at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding application for reactivation or reinstatement.*

**18VAC90-20-225. Inactive licensure.**

A. A registered nurse or licensed practical nurse who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to practice nursing in Virginia or practice on a multistate licensure privilege but may use the title "registered nurse" or "licensed practical nurse."

B. Reactivation of an inactive license.

1. A nurse whose license is inactive may reactivate within one renewal period by payment of the difference between the inactive renewal and the active renewal fee.

2. A nurse whose license has been inactive for more than one renewal period may reactivate by:

- a. Submitting an application;
- b. Paying the difference between the inactive renewal and the active renewal fee; and
- c. Providing evidence of completion of ~~15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or of passage of the National Council Licensing Examination~~ at least one of the learning activities or courses specified in 18VAC90-20-221 during the period in which the license has been inactive the two years immediately preceding application for reactivation.

3. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was inactive.

4. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

5. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-3007 of the Code of Virginia or any provision of this chapter.

**18VAC90-20-230. Reinstatement of lapsed licenses or license suspended or revoked.**

A. A nurse whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. A nurse whose license has lapsed for more than one renewal period shall:

1. File a reinstatement application and pay the reinstatement fee; and
2. Provide evidence of completing ~~15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or of passage of National Council Licensing Examination~~ at least one of the learning activities or courses specified in 18VAC90-20-221 during the period in which the license has been lapsed the two years immediately preceding application for reinstatement.

C. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was lapsed.

D. A nurse whose license has been suspended or revoked by the board may apply for reinstatement by filing a reinstatement application, fulfilling requirements for continuing competency as required in subsection B of this section, and paying the fee for reinstatement after suspension or revocation. A nurse whose license has been revoked may not apply for reinstatement sooner than three years from entry of the order of revocation.

E. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

VA.R. Doc. No. R14-01; Filed May 11, 2015, 3:44 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-90).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 1, 2015.

**Effective Date:** July 16, 2015.

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

**Basis:** Section 54.1-2400 provides the Board of Nursing and the Board of Medicine the authority to promulgate regulations to administer the regulatory system, and § 54.1-2957 provides that the boards shall jointly prescribe the regulations governing the licensure of nurse practitioners and patient care teams.

**Purpose:** The listing of the American Association of Critical-Care Nurses Certification Corporation (AACN) is justified because AACN is recognized as a national certifying body that offers professional certification by examination. Its certification is already acceptable to the boards in assuring the minimal competency of a nurse practitioner applicant, and therefore, the amendment is consistent with the boards' mission of protecting the health and safety of patients in the Commonwealth.

**Rationale for Using Fast-Track Process:** The fast-track rulemaking action is appropriate because the boards have already accepted AACN as a "national certifying body" under subsection B of 18VAC90-30-90, which authorizes the boards to accept professional certification from other national certifying bodies that meet certain criteria. The amendment to have AACN specifically included in the listing in subsection A is a formality.

**Substance:** The amendment adds AACN to the list of the bodies that offer professional certification by examination as a qualification for licensure as a nurse practitioner.

**Issues:** There are no specific advantages to the public. While AACN certification is already acceptable for licensure, the amendment will be clarifying to potential applicants who may look at the listing in the regulation for information about approved certifying bodies. There are no disadvantages to the public. The only advantage to the agency is clarity for those seeking information about acceptable certifying bodies. There are no disadvantages to the agency or Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

**Summary of the Proposed Amendments to Regulation.** In response to a 2014 petition for rulemaking, the Boards of Nursing and Medicine (Boards) propose to add the American Association of Critical-Care Nurses Certification Corporation (AACN) to the list of approved entities offering professional certification for nurse practitioners.

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

**Estimated Economic Impact.** The Boards have already accepted AACN as a professional certifying body under subsection B of 18VAC90-30-90, which authorizes the Boards to accept professional certification from other national certifying bodies that meet certain criteria. The proposed amendment to the regulation will thus have no impact beyond improving clarity for nurse practitioners and other members of the public. Since there is no cost associated with adding AACN to the list and it provides some modest benefit, it produces a net benefit.

**Businesses and Entities Affected.** The proposed amendment pertains to the American Association of Critical-Care Nurses Certification Corporation and potentially individuals seeking nurse practitioner professional certification.

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

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

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

**Small Businesses: Costs and Other Effects.** The proposed amendment is unlikely to significantly affect costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendment is unlikely to produce a significant adverse impact for small businesses.

**Real Estate Development Costs.** The proposed amendment is unlikely to significantly affect real estate development costs.

**Legal Mandate. General:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact

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analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

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

Summary:

*The amendment adds the American Association of Critical-Care Nurses Certification Corporation to the list of bodies offering professional certification acceptable for licensure as a nurse practitioner.*

**18VAC90-30-90. Certifying agencies.**

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

1. American College of Nurse Midwives Certification Council;
2. American Nurses' Credentialing Center;

3. Council on Certification of Nurse Anesthetists;
4. Pediatric Nursing Certification Board;
5. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties; ~~and~~
6. American Academy of Nurse Practitioners; and
7. American Association of Critical-Care Nurses Certification Corporation.

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

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

VA.R. Doc. No. R14-35; Filed May 11, 2015, 3:46 p.m.

## **BOARD OF LONG-TERM CARE ADMINISTRATORS**

### **Fast-Track Regulation**

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-230).**

**18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-130).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 1, 2015.

Effective Date: July 16, 2015.

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

Basis: 18VAC95-20 and 18VAC95-30 are promulgated by the Board of Long-Term Care Administrators under the general authority of § 54.1-2400 of the Code of Virginia, which includes the responsibility to promulgate regulations that are reasonable and necessary for the administration of a regulatory program.

Purpose: The purpose of the amended regulation is protection of the health and safety of the elderly and often vulnerable population of residents and patients in assisted living facilities and nursing homes. Applicants are usually honest in their responses to questions about the status of licensure in other states and malpractice history. A report from the U.S. Department of Health and Human Services Data Bank ensures that Virginia will not license a person who has had disciplinary action based on unprofessional conduct or a

criminal conviction that would provide grounds for denial of licensure and avoids exposing Virginians to practice by a person who could present a risk to the public.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is being used because the amendment is essential for public protection and therefore will not be controversial.

Substance: The amendments require applicants for licensure to provide a current report from the U.S. Department of Health and Human Services Data Bank.

Issues: The advantage to the public is greater assurance that persons licensed as assisted living administrators and nursing home administrators have no history of convictions of unprofessional conduct that could present a risk of harm. There are no disadvantages to the public. The advantage to the board is the availability of a third-party confirmation of the possible disciplinary history of applicants. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Long-Term Care Administrators (Board) proposes to require applicants for licensure to provide a current report from the U.S. Department of Health and Human Services National Practitioners Data Bank (NPDB).

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

Estimated Economic Impact. Current regulation requires applicants for licensure to attest on their applications that they have not been subject to any disciplinary actions while licensed in another state and also requires that they disclose any history of malpractice claims. The Board now proposes to also require applicants to provide a current report from the NPDB along with their applications. This report will allow Board staff to verify that the applicants have not been subject to any disciplinary action based on unprofessional conduct and that they do not have any criminal convictions that would be grounds to deny licensure.

Board staff reports that applicants will pay for the NPDB report, which currently costs \$8, but also report that the cost of this report will be reduced to \$5 on October 1, 2014. Since it is highly unlikely that this regulatory change will be effective before that date, applicants are likely to only incur costs equal to the \$5 report fee plus any nominal mailing costs if they mail their application materials to the Board (rather than submitting them online). These costs are likely outweighed by the benefits that will accrue to residents of long-term care facilities who will be better protected from being subject to the care of licensed long-term care administrators who would have been disqualified from licensure if the Board had full information on them.

Businesses and Entities Affected. All applicants for licensure as long-term care administrators will likely be affected by this

regulatory change. Board staff reports that they received 430 applications for licensure in the year period ending on June 30, 2014.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulation is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulation is unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of the proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of the proposed regulation.

Real Estate Development Costs. This proposed regulation is unlikely to affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

Agency's Response to Economic Impact Analysis: The Board of Long-Term Care Administrators concurs with the analysis of the Department of Planning and Budget.

Summary:

*The amendments require applicants for licensure to provide a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.*

**18VAC95-20-230. Application package.**

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as a nursing home administrator or registration as a preceptor shall submit:

1. A completed application as provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant;
3. The applicable fee; ~~and~~
4. An attestation that he has read and understands and will remain current with the applicable Virginia laws and regulations relating to the administration of nursing homes; and

5. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

C. With the exception of school transcripts, examination scores, the NPDB report, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.

**18VAC95-30-130. Application package.**

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as an assisted living facility administrator or registration as a preceptor shall submit:

1. A completed application as provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant;
3. The applicable fee; ~~and~~
4. An attestation that he has read and understands and will remain current with the applicable Virginia laws and the regulations relating to assisted living facilities; and

5. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

C. With the exception of school transcripts, examination scores, the NPDB report, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.

VA.R. Doc. No. R15-4080; Filed May 11, 2015, 3:43 p.m.

## BOARD OF PHARMACY

### Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-190).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 1, 2015.

Effective Date: July 16, 2015.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system and establish renewal schedules.

The specific authority to control prescription drugs in the Commonwealth is found in Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The purpose of the regulatory action to amend 18VAC110-20-20 is to facilitate the work of the board in renewing the permits of nonresident pharmacies. A prerequisite for renewing a nonresident pharmacy is submission of a copy of a current inspection report from the state in which the pharmacy is located or from a duly authorized agency. Therefore, the renewal process for nonresident pharmacies is a labor-intensive, hands-on task. By tying the renewal to the date of initial registration rather than a set date on the calendar, the task can be spread throughout the year and handled more expeditiously by staff of the board. If there are any issues with the inspection report, staff will have more time to work with the nonresident pharmacies to resolve and meet the statutory requirements. Therefore, the change will facilitate renewals and avoid possible delays that could impact pharmacies that dispense prescriptions to patients in Virginia.

The purpose of the regulatory action in 18VAC110-20-190 is to protect the security of the drugs in the prescription department. If a pharmacist, pharmacy technician, or pharmacy intern has had his license or registration suspended or revoked, he represents a risk to the dispensing work of the prescription department. There is opportunity for diversion or adulteration that could threaten the health and safety of a community. Therefore, the amendment would prohibit the pharmacist-in-charge (PIC) or pharmacist on duty from permitting such a person to have access to the prescription department or controlled substances.

**Rationale for Using Fast-Track Process:** The amendments are very straightforward and proposed to address specific problems recently encountered by the board. The board does not expect the rulemaking to be controversial so it adopted the proposed changes by a fast-track rulemaking action.

**Substance:** An amendment to 18VAC110-20-20 on fees will change the renewal date for nonresident pharmacy from "no later than April 30" to no later than "the date of initial registration."

An amendment to 18VAC110-20-190 on prescription departments will add a rule that a PIC or pharmacist on duty shall not permit access to the prescription department or controlled substances by a pharmacist, pharmacy intern, or pharmacy technician whose license or registration is currently suspended or revoked.

**Issues:** The primary advantage to the public is facilitation of renewal of nonresident pharmacy permits to avoid disruptions in dispensing of prescriptions for patients in Virginia. There is an advantage to the public if persons whose license or registration has been suspended or revoked are prohibited from access to controlled substances and the prescription department to avoid a risk of diversion or adulteration of drugs. There are no disadvantages to the public.

The advantage to the agency is the ability to space out renewal of nonresident pharmacy permits, which are time-consuming and labor-intensive. There are no disadvantages to the agency or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to: 1) change the annual permit renewal date for nonresident pharmacies from April 30th of each year to the date of the initial registration, and 2) clarify that pharmacists-in-charge and pharmacists on duty are prohibited from allowing access to the prescription department by a pharmacist, pharmacy intern, or pharmacy technician whose license or registration is currently suspended or revoked.

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

Estimated Economic Impact. A prerequisite for renewing a nonresident pharmacy permit is submission of a copy of a

current inspection report from the state in which the pharmacy is located or from a duly authorized agency. Reviewing these out-of-state inspection reports is time consuming for Board staff. Under the current April 30th due date requirement, the Board labor for this task is concentrated around this one time a year. By tying the renewal to the anniversary date of initial registration rather than one date for all nonresident pharmacies, the task can be spread throughout the year and handled more expeditiously by Board staff. If there are any issues with the inspection report, staff will have more time to work with the nonresident pharmacies to resolve and meet the statutory requirements. Therefore, the change will facilitate renewals and avoid possible delays which could impact pharmacies that dispense prescriptions to patients in Virginia.

According to the Department of Health Professions, once this proposed amendment is promulgated, the next permit renewal due date will be the anniversary of initial registration after the next April 30th. This will benefit nonresident pharmacies by giving them a fraction of a second year for their one-year permit fee during this time of transition. For example, if a nonresident pharmacy permit currently is due to be renewed on April 30, 2015, but its date of initial registration was January 30th, the next renewal for that pharmacy would be January 30, 2016. The pharmacy would therefore have an additional nine months on its permit.

If we assume that the initial registration dates for the nonresident pharmacies are approximately randomly distributed throughout the year, then on average nonresident pharmacies will receive an extra six months of permit time without paying extra. The annual renewal fee for nonresident pharmacies is \$270. So the value of six months extra time will be half of that, i.e. \$135. So the proposed change of annual permit renewal date for nonresident pharmacies will on average produce a one-time benefit worth approximately \$135 for each nonresident pharmacy.

In April of 2014, the Board revoked the license of a pharmacist who was found to be in violation of numerous laws and regulations. Subsequently he was continued to be allowed in the prescription department, which the Board believes created a potential danger to public health and safety. Specifying in these regulations that pharmacists, pharmacy interns, and pharmacy technicians whose license or registration has been suspended or revoked are prohibited from accessing the prescription department may reduce the likelihood that pharmacists-in-charge and pharmacists on duty allow such access.

Businesses and Entities Affected. The proposed amendments particularly affect the 505 nonresident pharmacies permitted to do business in the Commonwealth.<sup>1</sup>

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

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

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Effects on the Use and Value of Private Property. The proposal to change the annual permit renewal date for nonresident pharmacies from April 30th of each year to the date of the initial registration will on average save each nonresident pharmacy \$135.

Small Businesses: Costs and Other Effects. The proposal to change the annual permit renewal date for nonresident pharmacies from April 30th of each year to the date of the initial registration will on average save each small nonresident pharmacy \$135.

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

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

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for

publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

<sup>1</sup> Data source: Department of Health Professions

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

Summary:

*The amendments (i) prohibit a pharmacist-in-charge or a pharmacist on duty from allowing access to the prescription department or controlled substances by a pharmacist, pharmacy intern, or pharmacy technician whose license or registration is currently suspended or revoked and (ii) change the renewal schedule for a nonresident pharmacy permit to annually at the date of initial registration.*

**18VAC110-20-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations	\$90
10. Innovative program approval.	\$250

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

11. Approval of a pharmacy technician training program	\$150
12. Approval of a continuing education program	\$100

13. Approval of a repackaging training program	\$50
D. Annual renewal fees.	
1. Pharmacist active license – due no later than December 31	\$90
2. Pharmacist inactive license – due no later than December 31	\$45
3. Pharmacy technician registration – due no later than December 31	\$25
4. Pharmacy permit – due no later than April 30	\$270
5. Physician permit to practice pharmacy – due no later than February 28	\$270
6. Medical equipment supplier permit – due no later than February 28	\$180
7. Humane society permit – due no later than February 28	\$20
8. Nonresident pharmacy – due no later than <del>April 30</del> <u>the date of initial registration</u>	\$270
9. Controlled substances registrations – due no later than February 28	\$90
10. Innovative program continued approval based on board order not to exceed \$200 per approval period.	
11. Approval of a pharmacy technician training program	\$75 every two years
12. Approval of a repackaging training program	\$30 every two years

7. Humane society permit	\$5
8. Nonresident pharmacy	\$90
9. Controlled substances registrations	\$30
10. Approval of a pharmacy technician training program	\$15
11. Approval of a repackaging training program	\$10

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	\$210
2. Pharmacist license after revocation or suspension	\$500
3. Pharmacy technician registration	\$35
4. Pharmacy technician registration after revocation or suspension	\$125

5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Pharmacy permit	\$240
b. Physician permit to practice pharmacy	\$240
c. Medical equipment supplier permit	\$210
d. Humane society permit	\$30
e. Nonresident pharmacy	\$115
f. Controlled substances registration	\$180
g. Approval of a pharmacy technician training program	\$75
h. Approval of a repackaging training program	\$50

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$30
2. Pharmacist inactive license	\$15
3. Pharmacy technician registration	\$10
4. Pharmacy permit	\$90
5. Physician permit to practice pharmacy	\$90
6. Medical equipment supplier permit	\$60

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G. Application for change or inspection fees for facilities or other entities.

- |  |       |
|--|-------|
| 1. Change of pharmacist-in-charge                                      | \$50  |
| 2. Change of ownership for any facility                                | \$50  |
| 3. Inspection for remodeling or change of location for any facility    | \$150 |
| 4. Reinspection of any facility  | \$150 |
| 5. Board-required inspection for a robotic pharmacy system             | \$150 |
| 6. Board-required inspection of an innovative program location         | \$150 |
| 7. Change of pharmacist responsible for an approved innovative program | \$25  |

H. Miscellaneous fees.

- |                               |      |
|-------------------------------|------|
| 1. Duplicate wall certificate | \$25 |
| 2. Returned check             | \$35 |

## **18VAC110-20-190. Prescription department enclosures; access to prescription department.**

A. The prescription department of each pharmacy shall be provided with enclosures subject to the following conditions:

1. The enclosure shall be constructed in such a manner that it protects the prescription drugs from unauthorized entry and from pilferage at all times whether or not a pharmacist is on duty.
2. The enclosure shall be locked and alarmed at all times when a pharmacist is not on duty.
3. The enclosure shall be capable of being locked in a secure manner at any time the pharmacist on duty is not present in the prescription department.

B. The keys or other means of entry into a locked prescription department and the alarm access code shall be restricted to pharmacists practicing at the pharmacy and authorized by the PIC with the following exceptions:

1. The PIC or a pharmacist on duty, for emergency access, may place a key or other means of unlocking the prescription department and the alarm access code in a sealed envelope or other container with the pharmacist's signature across the seal in a safe or vault or other secured place within the pharmacy. This means of emergency access shall only be used to allow entrance to the prescription department by other pharmacists, or by a pharmacy technician in accordance with subsection D of this section. In lieu of the pharmacist's signature across a seal, the executive director for the board may approve other methods of securing the emergency access to the prescription department.
2. Pharmacy interns, pharmacy technicians, and other persons authorized by the PIC or pharmacist on duty may

possess a key or other means of entry into a locked prescription department only when a pharmacist is on duty. Such key or other means of entry shall not allow entry when a pharmacist is not on duty.

C. The prescription department is restricted to pharmacists who are practicing at the pharmacy. Pharmacy interns, pharmacy technicians, and other persons designated by the pharmacist on duty may be allowed access by the pharmacist but only when the pharmacist is on duty. Each pharmacist while on duty shall be responsible for the security of the pharmacy, including provisions for effective control against theft or diversion of prescription drugs and devices.

D. A PIC or pharmacist on duty shall not permit access to the prescription department or controlled substances by a pharmacist, pharmacy intern, or pharmacy technician whose license or registration is currently suspended or revoked.

~~D.~~ E. Upon a request by a patient to obtain an already-dispensed prescription, a pharmacy technician may enter the pharmacy for the sole purpose of retrieving filled prescriptions that have already been reviewed and certified for accuracy by a pharmacist and deemed ready for delivery to the patient if:

1. There is an unforeseen, unplanned absence of a pharmacist scheduled to work during regular prescription department hours;
2. Alternate pharmacist coverage cannot immediately be obtained;
3. The technician is accompanied by a member of the pharmacy's management or administration; and
4. All requirements of subsection ~~E~~ F of this section are met.

~~E.~~ F. Requirements for entry into the prescription department in the absence of a pharmacist.

1. The requirements for prescriptions awaiting delivery in subsection A of 18VAC110-20-200 are followed.
2. Prior to entry into the prescription department, the pharmacy technician shall obtain verbal permission from the PIC or another pharmacist regularly employed by that pharmacy to obtain and use the emergency key or other access and alarm access code and enter the pharmacy.
3. A record shall be made by the pharmacy technician of the entry to include the date and time of entry; the name and signature of the pharmacy technician; the name, title, and signature of the person accompanying the pharmacy technician; the pharmacist's name granting permission to enter and telephone number where the pharmacist was reached; the name of the patient initially requesting needed medication and the nature of the emergency; a listing of all prescriptions retrieved during that entry; and the time of exit and re-securing of the prescription department.
4. The pharmacy technician shall reseal the key and alarm access code after the pharmacy is re-secured, and the PIC

shall have the alarm access code changed within 48 hours of such an entry and shall document that this has been accomplished on the record of entry.

5. All records related to entry by a pharmacy technician shall be maintained for a period of one year on premises.

V.A.R. Doc. No. R15-4074; Filed May 11, 2015, 3:39 p.m.

### Fast-Track Regulation

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-500).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 1, 2015.

**Effective Date:** July 16, 2015.

**Agency Contact:** Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including promulgation of regulations that are reasonable and necessary to administer effectively the regulatory system.

The specific authority to control prescription drugs in the Commonwealth is found in Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

**Purpose:** The purpose of the regulatory action is to facilitate the work of emergency medical services (EMS) providers while protecting the integrity and security of drugs administered to patients. Amended regulations will expedite the process of dispensing and exchanging drug kits essential to the work of EMS providers, which will result in less disruption for health care providers at the hospital who are focused on patient care and less down time at the hospital for EMS providers who need to be available to answer emergency calls in the community.

While the board has worked on expediting and facilitating the drug kit process, it has also focused on more specificity about records and security. All schedules of drugs are available to EMS providers in accordance with the protocol of their medical directors. Hence, there is opportunity for diversion or adulteration that could threaten the health and safety of a community. Regulations relating to drugs dispensed to an EMS agency are promulgated by the board, rather than by the Department of Health, which oversees EMS agencies. Therefore, it is important for the board to adopt rules that are consistent and clear for the wide variety of EMS providers across the state.

**Rationale for Using Fast-Track Process:** The amendments have been developed in consultation with EMS providers and

hospital pharmacists who are involved with EMS agencies. Drafts were circulated and discussed over a series of meetings, so the board believes consensus has been achieved and the proposed rules will not be controversial. Therefore, the board has adopted the proposed changes by a fast-track rulemaking action.

**Substance:** The amendments to 18VAC110-20-500 regarding drugs carried by emergency medical service agencies:

1. Clarify that the kits carried by EMS agencies usually include "devices" in addition to "drugs."
2. Specify how a kit is to be sealed by the hospital pharmacy to ensure detection if the seal is broken. Many kits now utilize a mechanism for sealing that can only be resealed or relocked by the pharmacy once the kit is opened.
3. Clarify that the written protocol for administration of drugs or devices, which has been signed by the medication director for EMS, has to be maintained by the pharmacy participating in a kit exchange.
4. Allow the reconciliation of the record of drugs administered with the contents of an opened kit to be performed by a pharmacy technician or nurse in lieu of the pharmacist.
5. Clarify what records have to be maintained for one year, and specify the content of the record for filling and verifying the kit and for exchange of the kit.
6. Set out the requirement for destruction of partially used drugs and for which two persons are allowed to witness the destruction.
7. Add "irrigation solutions" to intravenous solutions as controlled substances that may be stored separately from the kit.
8. Clarify that any drug or device that shows evidence of tampering or damage must be removed from the kit and replaced.
9. Allow the hospital pharmacy to authorize the exchange of the kit in the emergency department of the hospital. If the kit contains Schedules II-V drugs, the exchange has to be handled by a licensed nurse, prescriber, or pharmacist.
10. Allow a one-to-one exchange of Schedule VI drugs or devices provided the agency or the jurisdiction has obtained a controlled substance registration to authorize possession of the drugs not dispensed by a pharmacy. Schedule II-V drugs must be kept separate and sealed and are not eligible for a one-to-one exchange. This new provision was made in response to requests from EMS agencies that are allowed by board interpretation to perform a one-to-one exchange of Schedule VI drugs or devices.

**Issues:** The primary advantage to the public is the focus on patient care in hospitals and the availability of emergency services by removing any unnecessary barriers and expediting

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the dispensing and exchanging of drug kits for EMS agencies. There are no disadvantages.

While there are no direct advantages or disadvantages to the agency or the Commonwealth, more specific rules for drug kits will facilitate compliance and consistency, which is advantageous to the Department of Health and the board in their oversight responsibilities.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to update its regulations to reflect some of the current procedures followed in practice.

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

Estimated Economic Impact. The Board proposes to update its regulations to reflect some of the current procedures followed in practice. The proposed changes include 1) allowing Emergency Medical Services (EMS) providers to exchange Schedule VI drugs or devices one-for-one from the drug stock in the emergency department or from an automated drug dispensing device rather than replacing the entire kit from the pharmacy, and 2) providing more specificity about the records for the kit containing drugs and about which practitioners may reconcile contents of the kit or witness destruction of drugs.

According to the Department of Health Professions, all of the proposed changes are already followed in practice. Thus, no significant economic effect is expected other than the benefits garnered from improving the clarity of the regulation.

Businesses and Entities Affected. The proposed amendments primarily apply to EMS agencies and hospital pharmacies. In May of 2014, there were 673 licensed EMS agencies in Virginia.

Localities Particularly Affected. The regulations apply throughout the Commonwealth.

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. The proposed amendments are not anticipated to have costs and other affects on businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are not anticipated to have costs and other affects on small businesses.

Real Estate Development Costs. No significant impact on real estate development costs is expected.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the

Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

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

## Summary:

*The amendments (i) authorize a one-to-one exchange of Schedule VI drugs or devices to permit emergency services providers to replace those drugs or devices directly from drug stock in the emergency department or from an automated drug dispensing device; (ii) specify the content of the records for the kit containing drugs and devices; (iii) specify which practitioners may reconcile contents of the kit to the administration record or may witness destruction of drugs; and (iv) authorize the pharmacist-in-charge of a hospital pharmacy to allow the exchange of the kit in the emergency department.*

Part I  
General Provisions

**18VAC110-20-10. Definitions.**

In addition to words and terms defined in §§ 54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education.

"Acquisition" of an existing entity permitted, registered or licensed by the board means (i) the purchase or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor or change in partnership composition; (iii) the acquiring of 50% or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; or (iv) the merger of a corporation owning the entity, or of the parent corporation of a wholly owned subsidiary owning the entity, with another business or corporation.

"Actively reports" means reporting all dispensing errors and analyses of such errors to a patient safety organization as soon as practical or at least within 30 days of identifying the error.

"Alternate delivery site" means a location authorized in 18VAC110-20-275 to receive dispensed prescriptions on behalf of and for further delivery or administration to a patient.

"Analysis" means a review of the findings collected and documented on each dispensing error, assessment of the cause and any factors contributing to the dispensing error, and any recommendation for remedial action to improve pharmacy systems and workflow processes to prevent or reduce future errors.

"Beyond-use date" means the date beyond which the integrity of a compounded, repackaged, or dispensed drug can no longer be assured and as such is deemed to be adulterated or misbranded as defined in §§ 54.1-3461 and 54.1-3462 of the Code of Virginia.

"Board" means the Virginia Board of Pharmacy.

"CE" means continuing education as required for renewal of licensure by the Board of Pharmacy.

"CEU" means a continuing education unit awarded for credit as the equivalent of 10 contact hours.

"Chart order" means a lawful order for a drug or device entered on the chart or in a medical record of a patient by a prescriber or his designated agent.

"Compliance packaging" means packaging for dispensed drugs ~~which~~ that is comprised of a series of containers for

solid oral dosage forms and ~~which is~~ designed to assist the user in administering or self-administering the drugs in accordance with directions for use.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Correctional facility" means any prison, penitentiary, penal facility, jail, detention unit, or other facility in which persons are incarcerated by government officials.

"DEA" means the United States Drug Enforcement Administration.

"Dispensing error" means one or more of the following discovered after the final verification by the pharmacist, regardless of whether the patient received the drug:

1. Variation from the prescriber's prescription drug order, including but not limited to:
  - a. Incorrect drug;
  - b. Incorrect drug strength;
  - c. Incorrect dosage form;
  - d. Incorrect patient; or
  - e. Inadequate or incorrect packaging, labeling, or directions.
2. Failure to exercise professional judgment in identifying and managing:
  - a. Known therapeutic duplication;
  - b. Known drug-disease contraindications;
  - c. Known drug-drug interactions;
  - d. Incorrect drug dosage or duration of drug treatment;
  - e. Known drug-allergy interactions;
  - f. A clinically significant, avoidable delay in therapy; or
  - g. Any other significant, actual, or potential problem with a patient's drug therapy.
3. Delivery of a drug to the incorrect patient.
4. Variation in bulk repackaging or filling of automated devices, including but not limited to:
  - a. Incorrect drug;
  - b. Incorrect drug strength;
  - c. Incorrect dosage form; or
  - d. Inadequate or incorrect packaging or labeling.

"Drug donation site" means a permitted pharmacy that specifically registers with the board for the purpose of receiving or redispensing eligible donated prescription drugs pursuant to § 54.1-3411.1 of the Code of Virginia.

"Electronic prescription" means a written prescription that is generated on an electronic application in accordance with 21 CFR Part 1300 and is transmitted to a pharmacy as an electronic data file.

"EMS" means emergency medical services.

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"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"Facsimile (FAX) prescription" means a written prescription or order which is transmitted by an electronic device over telephone lines which sends the exact image to the receiver (pharmacy) in a hard copy form.

"FDA" means the United States Food and Drug Administration.

"Floor stock" means a supply of drugs that have been distributed for the purpose of general administration by a prescriber or other authorized person pursuant to a valid order of a prescriber.

"Foreign school of pharmacy" means a school outside the United States and its territories offering a course of study in basic sciences, pharmacology, and pharmacy of at least four years in duration resulting in a degree that qualifies a person to practice pharmacy in that country.

"Forgery" means a prescription that was falsely created, falsely signed, or altered.

"FPGEC certificate" means the certificate given by the Foreign Pharmacy Equivalency Committee of NABP that certifies that the holder of such certificate has passed the Foreign Pharmacy Equivalency Examination and a credential review of foreign training to establish educational equivalency to board approved schools of pharmacy, and has passed approved examinations establishing proficiency in English.

"Generic drug name" means the nonproprietary name listed in the United States Pharmacopeia-National Formulary (USP-NF) or in the ~~USAN~~ United States Adopted Names (USAN) and the USP Dictionary of Drug Names.

"Hospital" or "nursing home" means those facilities as defined in Title 32.1 of the Code of Virginia or as defined in regulations by the Virginia Department of Health.

"Inactive license" means a license ~~which that~~ is registered with the Commonwealth but does not entitle the licensee to practice, the holder of which is not required to submit documentation of CE necessary to hold an active license.

"Long-term care facility" means a nursing home, retirement care, mental care, or other facility or institution ~~which that~~ provides extended health care to resident patients.

"NABP" means the National Association of Boards of Pharmacy.

"Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmacy and is available as needed.

"On-hold prescription" means a valid prescription that is received and maintained at the pharmacy for initial dispensing on a future date.

"Patient safety organization" means an organization that has as its primary mission continuous quality improvement under the Patient Safety and Quality Improvement Act of 2005 (Pub. L. 109-41) and is credentialed by the Agency for Healthcare Research and Quality.

"Permitted physician" means a physician who is licensed pursuant to § 54.1-3304 of the Code of Virginia to dispense drugs to persons to whom or for whom pharmacy services are not reasonably available.

"Perpetual inventory" means an ongoing system for recording quantities of drugs received, dispensed, or otherwise distributed by a pharmacy.

"Personal supervision" means the pharmacist must be physically present and render direct, personal control over the entire service being rendered or act being performed. Neither prior nor future instructions shall be sufficient nor, shall supervision rendered by telephone, written instructions, or by any mechanical or electronic methods be sufficient.

"Pharmacy closing" means that the permitted pharmacy ceases pharmacy services or fails to provide for continuity of pharmacy services or lawful access to patient prescription records or other required patient records for the purpose of continued pharmacy services to patients.

"Pharmacy technician trainee" means a person who is currently enrolled in an approved pharmacy technician training program and is performing duties restricted to pharmacy technicians for the purpose of obtaining practical experience in accordance with § 54.1-3321 D of the Code of Virginia.

"PIC" means the pharmacist-in-charge of a permitted pharmacy.

"Practice location" means any location in which a prescriber evaluates or treats a patient.

"Prescription department" means any contiguous or noncontiguous areas used for the compounding, dispensing and storage of all Schedule II through VI drugs and devices and any Schedule I investigational drugs.

"PTCB" means the Pharmacy Technician Certification Board, co-founded by the American Pharmaceutical Association and the American Society of Health System Pharmacists, as the national organization for voluntary examination and certification of pharmacy technicians.

"Quality assurance plan" means a plan approved by the board for ongoing monitoring, measuring, evaluating, and, if necessary, improving the performance of a pharmacy function or system.

"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace

quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

"Repackaged drug" means any drug removed from the manufacturer's original package and placed in different packaging.

"Robotic pharmacy system" means a mechanical system controlled by a computer that performs operations or activities relative to the storage, packaging, labeling, dispensing, or distribution of medications, and collects, controls, and maintains all transaction information.

"Safety closure container" means a container ~~which that~~ meets the requirements of the federal Poison Prevention Packaging Act of 1970 (15 USC §§ 1471-1476), that is, in testing such containers, that 85% of a test group of 200 children of ages 41-52 months are unable to open the container in a five-minute period and that 80% fail in another five minutes after a demonstration of how to open it and that 90% of a test group of 100 adults must be able to open and close the container.

"Satellite pharmacy" means a pharmacy ~~which that~~ is noncontiguous to the centrally permitted pharmacy of a hospital but at the location designated on the pharmacy permit.

"Special packaging" means packaging that is designed or constructed to be significantly difficult for children ~~under~~ younger than five years of age to open to obtain a toxic or harmful amount of the drug contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging ~~which that~~ all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

"Special use permit" means a permit issued to conduct a pharmacy of a special scope of service that varies in any way from the provisions of any board regulation.

"Storage temperature" means those specific directions stated in some monographs with respect to the temperatures at which pharmaceutical articles shall be stored, where it is considered that storage at a lower or higher temperature may produce undesirable results. The conditions are defined by the following terms:

1. "Cold" means any temperature not exceeding 8°C (46°F). A refrigerator is a cold place in which temperature is maintained thermostatically between 2° and 8°C (36° and 46°F). A freezer is a cold place in which the temperature is maintained thermostatically between -20° and -10°C (-4° and 14°F).
2. "Room temperature" means the temperature prevailing in a working area.
3. "Controlled room temperature" means a temperature maintained thermostatically that encompasses the usual and customary working environment of 20° to 25°C (68°

to 77°F); that results in a mean kinetic temperature calculated to be not more than 25°C; and that allows for excursions between 15° and 30°C (59° and 86°F) that are experienced in pharmacies, hospitals, and warehouses.

4. "Warm" means any temperature between 30° and 40°C (86° and 104°F).

5. "Excessive heat" means any temperature above 40°C (104°F).

6. "Protection from freezing" means where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to the destructive alteration of its characteristics, the container label bears an appropriate instruction to protect the product from freezing.

7. "Cool" means any temperature between 8° and 15°C (46° and 59°F).

"Terminally ill" means a patient with a terminal condition as defined in § 54.1-2982 of the Code of Virginia.

"Unit dose container" means a container that is a single-unit container, as defined in United States Pharmacopeia-National Formulary, for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

"Unit dose package" means a container that contains a particular dose ordered for a patient.

"Unit dose system" means a system in which multiple drugs in unit dose packaging are dispensed in a single container, such as a medication drawer or bin, labeled only with patient name and location. Directions for administration are not provided by the pharmacy on the drug packaging or container but are obtained by the person administering directly from a prescriber's order or medication administration record.

"USP-NF" means the United States Pharmacopeia-National Formulary.

"Well-closed container" means a container that protects the contents from extraneous solids and from loss of the drug under the ordinary or customary conditions of handling, shipment, storage, and distribution.

**18VAC110-20-500. Licensed emergency medical services (EMS) agencies program.**

A. The pharmacy may prepare a ~~drug~~ kit for a licensed ~~emergency medical services~~ EMS agency provided:

1. The PIC of the hospital pharmacy shall be responsible for all prescription drugs and Schedule VI controlled devices contained in this ~~drug~~ kit. A pharmacist shall check each ~~drug~~ kit after filling ~~the kit~~, and initial the filling record certifying the accuracy and integrity of the contents of the kit.
2. The ~~drug~~ kit is sealed, secured, and stored in such a manner that it will deter theft or loss of drugs and devices and aid in detection of such theft or loss.

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a. The hospital pharmacy shall have a method of sealing the kits such that once the seal is broken, it cannot be reasonably resealed without the breach being detected.

b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication or resealing. The pharmacy shall maintain a record of the seal identifiers when placed on a kit and maintain the record for a period of one year.

c. In lieu of a seal, a kit with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy may be used.

3. Drugs and devices may be administered by an emergency medical technician EMS provider upon an oral or written order or standing protocol of an authorized medical practitioner in accordance with § 54.1-3408 of the Code of Virginia. Oral orders shall be reduced to writing by the technician EMS provider and shall be signed by a medical practitioner. Written standing protocols shall be signed by the operational medical director for the emergency medical services EMS agency. A current copy of the signed standing protocol shall be maintained by the pharmacy participating in the kit exchange. The emergency medical technician EMS provider shall make a record of all drugs and devices administered to a patient.

4. When the drug kit has been opened, the kit shall be returned to the pharmacy and exchanged for an unopened kit. The record of the drugs administered shall accompany the opened kit when exchanged. An accurate record shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year. A pharmacist, pharmacy technician, or nurse shall reconcile the Schedule II, III, IV, or V drugs in the kit at the time the opened kit is returned. A record of the reconciliation, to include any noted discrepancies, shall be maintained by the pharmacy for a period of two years from the time of exchange. The theft or any other unusual loss of any Schedule II, III, IV, or V controlled substance shall be reported in accordance with § 54.1-3404 of the Code of Virginia.

5. Accurate records of the following shall be maintained by the pharmacy on the exchange of the drug kit for a period of one year:

a. The record of filling and verifying the kit to include the drug contents of the kit, the initials of the pharmacist verifying the contents, the date of verification, a record of an identifier if a seal is used, and the assigned expiration date for the kit, which shall be no later than the expiration date associated with the first drug or device scheduled to expire.

b. The record of the exchange of the kit to include the date of exchange and the name of EMS agency and EMS provider receiving the kit.

6. Destruction of partially used Schedules II, III, IV, and V drugs shall be accomplished by two persons, one of whom

shall be the EMS provider and the other shall be a pharmacist, nurse, prescriber, pharmacy technician, or a second EMS provider. Documentation shall be maintained in the pharmacy for a period of two years from the date of destruction.

~~5.~~ 7. The record of the drugs and devices administered shall be maintained as a part of the pharmacy records pursuant to state and federal regulations for a period of not less than two years.

~~6.~~ 8. Intravenous and irrigation solutions provided by a hospital pharmacy to an emergency medical services agency may be stored separately outside the drug kit.

9. Any drug or device showing evidence of damage or tampering shall be immediately removed from the kit and replaced.

10. In lieu of exchange by the hospital pharmacy, the PIC of the hospital pharmacy may authorize the exchange of the kit by the emergency department. Exchange of the kit in the emergency department shall only be performed by a pharmacist, nurse, or prescriber if the kit contents include Schedule II, III, IV, or V drugs.

B. A licensed EMS agency may obtain a controlled substances registration pursuant to § 54.1-3423 D of the Code of Virginia for the purpose of performing a one-to-one exchange of Schedule VI drugs or devices.

1. The controlled substances registration may be issued to a single agency or to multiple agencies within a single jurisdiction.

2. The controlled substances registration issued solely for this intended purpose does not authorize the storage of drugs within the agency facility.

3. Pursuant to § 54.1-3434.02 of the Code of Virginia, the EMS provider may directly obtain Schedule VI drugs and devices from an automated drug dispensing device.

4. If such drugs or devices are obtained from a nurse, pharmacist, or prescriber, it shall be in accordance with the procedures established by the pharmacist-in-charge, which shall include a requirement to record the date of exchange, name of licensed person providing drug or device, name of the EMS agency and provider receiving the drug or device, and assigned expiration date. Such record shall be maintained by the pharmacy for one year from the date of exchange.

5. If an EMS agency is performing a one-to-one exchange of Schedule VI drugs or devices, Schedule II, III, IV, or V drugs shall remain in a separate, sealed container and shall only be exchanged in accordance with provisions of subsection A of this section.

VA.R. Doc. No. R15-3870; Filed May 11, 2015, 3:38 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-590).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 1, 2015.

**Effective Date:** July 16, 2015.

**Agency Contact:** Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. The specific authority to control prescription drugs is found in Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

**Purpose:** The goal of the amended regulation is a less burdensome requirement for drugs in correctional facilities that will facilitate more efficient medical care for the patients who are inmates in those facilities. In modifying 18VAC110-20-590, the board adopted a requirement for floor stock of controlled substances that have little or no potential for abuse or diversion. Therefore, the proposed change will accommodate better patient care without jeopardizing public health and safety.

**Rationale for Using Fast-Track Process:** The board has opted to use the fast-track rulemaking process because the amended regulation (i) is less restrictive, (ii) was supported unanimously and without discussion by board members, and (iii) will not be controversial.

**Substance:** The substantive change to existing regulation is an allowance for a correctional facility to be able to maintain a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline to be accessed only by those persons licensed to administer drugs and administered only by such persons pursuant to a valid prescription or lawful order of a prescriber. Such stock must be limited to a listing to be determined by the provider pharmacist in consultation with the medical and nursing staff of the institution.

**Issues:** The primary advantage of the regulatory action is cost and time savings to correctional facilities and provider pharmacies as they strive to meet the medical needs of inmates in the system. The purpose for the requirement can be accomplished with a less burdensome and costly regulation that ensures public protection. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to allow correctional facilities to maintain a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline to be accessed and administered by authorized persons.

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

Estimated Economic Impact. The Board proposes to allow correctional facilities to maintain a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline to be accessed and administered by authorized persons. Currently, correctional facilities can maintain these drugs only in a stat-drug box.

This change is in response to a request from the Department of Corrections (DOC). According to DOC staff, the fiscal benefit of being able to stock these drugs is not significant. However, the Board expects more efficient medical care of the patients who are inmates in those facilities. In addition, the Board believes these substances have little or no potential for abuse or diversion. Therefore, the proposed change is expected to accommodate better patient care without jeopardizing public health and safety.

Businesses and Entities Affected. The proposed change will primarily affect correctional facilities with clinics in Virginia. According to DOC, approximately 50 prisons, correctional units, and community correctional centers may be affected. In addition, there are 64 local jails, 4 juvenile correctional centers, and 24 juvenile detention homes that may be affected.

Localities Particularly Affected. The regulation applies throughout the Commonwealth.

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

Effects on the Use and Value of Private Property. The proposed change is unlikely to affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed change is unlikely to affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed change is unlikely to adversely affect small businesses.

Real Estate Development Costs. The proposed change is unlikely to affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the

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proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

Agency's Response to Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20, Regulations Governing the Practice of Pharmacy.

Summary:

*The proposed amendments allow a correctional facility to maintain a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline to be accessed only by those persons licensed to administer drugs and to be administered only by such persons pursuant to a valid prescription or lawful order of a prescriber. The floor stock must be limited to a listing to be determined by the provider pharmacist in consultation with the medical and nursing staff of the institution.*

**18VAC110-20-590. Drugs in correctional facilities.**

A. All prescription drugs at any correctional facility shall be ~~obtained only on an individual prescription basis from a pharmacy and~~ subject to the following conditions:

1. Notwithstanding the allowances in subsections B, C, and D of this section, prescription drugs shall be obtained only on an individual prescription basis.

2. All prepared drugs shall be maintained in a suitable locked storage area with only the person responsible for administering the drugs having access.

~~2.~~ 3. Complete and accurate records shall be maintained of all drugs received, administered and discontinued. The administration record shall show the:

- a. Patient name;
- b. Drug name and strength;
- c. Number of dosage units received;
- d. Prescriber's name; and
- e. Date, time and signature of the person administering the individual dose of drug.

~~3.~~ 4. All unused or discontinued drugs shall be sealed and the amount in the container at the time of the sealing shall be recorded on the drug administration record. Such drugs shall be returned to the provider pharmacy or to a secondary pharmacy along with the drug administration record, a copy of the drug administration record, or other form showing substantially the same information, within 30 days of discontinuance.

a. The provider or secondary pharmacy shall conduct random audits of returned drug administration records for accountability.

b. The drug administration records shall be filed in chronological order by the provider or secondary pharmacy and maintained for a period of one year or, at the option of the facility, the records may be returned by the pharmacy to the facility.

c. Drugs may be returned to pharmacy stock in compliance with the provisions of 18VAC110-20-400.

d. Other drugs shall be disposed of or destroyed by the provider pharmacy in accordance with local, state, and federal regulations.

~~4.~~ 5. Alternatively, drugs for destruction may be forwarded by a pharmacist directly from the correctional facility to a returns company after performing the audit required by subdivision ~~3~~ 4 a of this subsection and ensuring the proper maintenance of the administration records.

B. Emergency and stat-drug box. An emergency box and a stat-drug box may be prepared for a correctional facility served by the pharmacy pursuant to 18VAC110-20-540 and 18VAC110-20-550 provided that the facility employs one or more full-time physicians, registered nurses, licensed practical nurses, or physician assistants.

C. ~~Prescription~~ A correctional facility may maintain a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline to be accessed only by those persons licensed to administer drugs and shall be administered only by such persons pursuant to a valid prescription or lawful order of a

prescriber. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the medical and nursing staff of the institution.

D. Except for drugs in an emergency box, stat-drug box, or a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline, prescription drugs, including but not limited to vaccines, may be floor-stocked only at a medical clinic or surgery center that is part of a correctional facility and that is staffed by one or more prescribers during the hours of operation, provided the clinic first obtains a controlled substances registration and complies with the requirements of 18VAC110-20-690, 18VAC110-20-700, 18VAC110-20-710, and 18VAC110-20-720.

VA.R. Doc. No. R15-4005; Filed May 11, 2015, 3:40 p.m.

**Final Regulation**

**Titles of Regulations: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

**18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousemen (amending 18VAC110-50-20).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: July 16, 2015.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

*The amendments impose an administrative fee of \$10 for providing duplicate licenses, including permits and registrations, and a fee of \$25 for verification of licensure, including permits and registrations.*

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

**18VAC110-20-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270

6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations	\$90
10. Innovative program approval.	\$250

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

11. Approval of a pharmacy technician training program	\$150
12. Approval of a continuing education program	\$100
13. Approval of a repackaging training program	\$50

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	\$90
2. Pharmacist inactive license – due no later than December 31	\$45
3. Pharmacy technician registration – due no later than December 31	\$25
4. Pharmacy permit – due no later than April 30	\$270
5. Physician permit to practice pharmacy – due no later than February 28	\$270
6. Medical equipment supplier permit – due no later than February 28	\$180
7. Humane society permit – due no later than February 28	\$20
8. Nonresident pharmacy – due no later than April 30	\$270
9. Controlled substances registrations – due no later than February 28	\$90
10. Innovative program continued approval based on board order not to exceed \$200 per approval period.	
11. Approval of a pharmacy technician training program	\$75 every two years
12. Approval of a repackaging training program	\$30 every two years

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E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	\$30
2. Pharmacist inactive license	\$15
3. Pharmacy technician registration	\$10
4. Pharmacy permit	\$90
5. Physician permit to practice pharmacy	\$90
6. Medical equipment supplier permit	\$60
7. Humane society permit	\$5
8. Nonresident pharmacy	\$90
9. Controlled substances registrations	\$30
10. Approval of a pharmacy technician training program	\$15
11. Approval of a repackaging training program	\$10

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	\$210
2. Pharmacist license after revocation or suspension	\$500
3. Pharmacy technician registration	\$35
4. Pharmacy technician registration after revocation or suspension	\$125

5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Pharmacy permit	\$240
b. Physician permit to practice pharmacy	\$240
c. Medical equipment supplier permit	\$210
d. Humane society permit	\$30
e. Nonresident pharmacy	\$115
f. Controlled substances registration	\$180
g. Approval of a pharmacy technician training program	\$75
h. Approval of a repackaging training program	\$50

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	\$50
2. Change of ownership for any facility	\$50
3. Inspection for remodeling or change of location for any facility	\$150
4. Reinspection of any facility	\$150
5. Board-required inspection for a robotic pharmacy system	\$150
6. Board-required inspection of an innovative program location	\$150
7. Change of pharmacist responsible for an approved innovative program	\$25

H. Miscellaneous fees.

1. Duplicate wall certificate	\$25
2. Returned check	\$35
<u>3. Duplicate license or registration</u>	<u>\$10</u>
<u>4. Verification of licensure or registration</u>	<u>\$25</u>

## **18VAC110-50-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	\$90
2. Restricted manufacturer permit	\$60
3. Wholesale distributor license	\$90
4. Warehouser permit	\$90
5. Nonresident wholesale distributor	\$90
6. Controlled substances registration	\$30

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	\$240
b. Restricted manufacturer permit	\$210
c. Wholesale distributor license	\$240
d. Warehouser permit	\$240

e. Nonresident wholesale distributor \$240

f. Controlled substances registration \$180

F. Application for change or inspection fees.

1. Reinspection fee \$150

2. Inspection fee for change of location, structural changes, or security system changes \$150

3. Change of ownership fee \$50

4. Change of responsible party \$50

G. The fee for a returned check shall be \$35.

~~H. For the annual renewal due on February 28, 2010, the following fees shall be imposed for a license or permit:~~

~~1. Nonrestricted manufacturer permit \$210~~

~~2. Restricted manufacturer permit \$140~~

~~3. Wholesale distributor license \$210~~

~~4. Warehouser permit \$210~~

~~5. Nonresident wholesale distributor \$210~~

H. The fee for verification of license or permit shall be \$25.

VA.R. Doc. No. R11-2783; Filed May 11, 2015, 2:07 p.m.

## BOARD OF PSYCHOLOGY

### Fast-Track Regulation

**Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-42, 18VAC125-20-121).**

**Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia (18VAC125-20-42).**

§§ 54.1-2400 and 54.1-3606.1 of the Code of Virginia (18VAC125-20-121).

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** July 1, 2015.

**Effective Date:** July 16, 2015.

**Agency Contact:** Jaime Hoyle, Acting Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

Statutory provisions requiring licensure and continuing education for renewal of licensure in psychology are found in §§ 54.1-3606 and 54.1-3606.1 of the Code of Virginia.

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**Purpose:** The purpose of the amendments is to clarify the intent of a requirement of 1.5 hours in ethics for continuing education and to accept the Certificate of Professional Qualification in Psychology (CPQ) credential as evidence of qualification for licensure by endorsement. The CPQ is a credential issued by the Association of State and Provincial Psychology Boards, which ensures that a licensee has met educational, examination, and experience requirements for licensure so states can readily license applicants who are minimally competent to provide safe and effective services. Clarification of the requirement for continuing education in ethics will assist licensees in remaining current with laws and regulations, including the standards of practice. Adherence to the standards of practice in the profession assures that a licensee will not face disciplinary action and protects the health, safety, and welfare of his clients.

**Rationale for Using Fast-Track Process:** The board has received several requests to explain the ethics requirement in continuing education, so the amendment will be acceptable to those seeking clarification. Additionally, the acceptance of CPQ for licensure by endorsement has been board policy for a number of years, so the addition in regulation is recognition of current practice. Therefore, the board does not expect any of the changes to be controversial or consequential.

**Substance:** The amendments (i) specify that the board may accept the CPQ as evidence of education, examination, and supervised training for licensure by endorsement; (ii) clarify the intent of the requirement of 1.5 hours per year in ethics to include courses in laws and regulations governing the profession and in the standards of practice set out in regulation; and (iii) allow two hours of continuing education for membership on a state licensing board in psychology.

**Issues:** The primary advantage of the amendments for the public is clarification of current rules and practices. There are no disadvantages to the public.

There are no advantages or disadvantages to the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board of Psychology (Board) proposes to amend its Regulations Governing the Practice of Psychology to 1) allow a Certificate of Professional Qualification in Psychology as evidence of education, examination and supervised training for licensure by endorsement, 2) clarify that continuing education requirements in ethics, laws and standards of practice refer to standards of practice in regulation and 3) allow two hours of continuing education for membership on a state Board of Psychology.

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

Estimated Economic Impact. Current regulations have a list of further documentation, one of which must be provided to

the Board when applying for licensure by endorsement. Applicants may currently provide: 1) a current listing in the National Register of Health Service Psychologists, 2) current diplomate status in good standing with the American Board of Professional Psychology in a category comparable to the one in which licensure is being sought, 3) documentation of 10 years of active licensure comparable to the one in which licensure is being sought or 4) documentation of less than 10 years of active licensure with further documentation of education, experience and examination completion that is substantially equivalent to Virginia's and verification of active practice in 24 of the 60 months immediately preceding application. The Board proposes to add a Certificate of Professional Qualification in Psychology (CPQ) to the list of further documentation. This change may make it somewhat easier for individuals who already have qualifications gained in another state to be licensed as Psychologists in Virginia. Since applicants will still have all options currently available for further documentation, no one is likely to be made worse off on account of this change.

Current regulations require that Board licensees complete 14 hours of continuing education each year; a minimum of 1.5 of these hours have to be for courses that cover "ethics, standards of practice or laws governing the profession of psychology." Some licensees, however, have been confused about what standards of practice this requirement refers to. The Board now proposes to clarify that the standards of practice that are included in this requirement are in the Board regulation specifically in 18VAC125-20-150. No entity is likely to incur costs on account of this change. To the extent that it makes the regulation less confusing, affected licensees will benefit.

In addition to clarifying ethics and law requirements for continuing education, the Board newly proposes to allow Board members to use the work that they do for the Board as two of their 14 hours of yearly continuing education credit. This change will make it slightly easier for the seven members of the Board to meet their continuing education requirements. No entity is likely to incur costs on account of this change.

Businesses and Entities Affected. Board staff reports that the Board currently licenses 35 applied psychologists, 2,853 clinical psychologists and 93 school psychologists. All of these entities, as well as any individuals who apply for licensure by endorsement in the future, will be affected by these regulatory changes.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. Allowing one more category of further documentation for individuals seeking licensure by endorsement may make it slightly easier to be licensed by endorsement. This may slightly increase the number of psychologists practicing in the Commonwealth.

Effects on the Use and Value of Private Property. By making it slightly easier to be licensed by endorsement, the time and cost to become licensed in Virginia may decrease for some individuals. This may allow them to start seeing patients sooner and increase the total lifetime revenue that can be obtained under their license; thus making the license more valuable.

Small Businesses: Costs and Other Effects. No small businesses will incur costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses will incur costs on account of this regulatory action.

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

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is

submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

*The amendments (i) specify that an applicant for licensure by endorsement may submit a Certificate of Professional Qualification in Psychology issued by the Association of State and Provincial Psychology Boards as evidence of education, examination, and supervised training; (ii) clarify that the requirement of 1.5 hours per year in ethics includes courses in laws and regulations governing the profession and courses in the standards of practice set out in 18VAC125-20-150; and (iii) authorize the Board of Psychology to approve up to two hours of continuing education for membership on a state licensing board in psychology.*

**18VAC125-20-42. Prerequisites for licensure by endorsement.**

Every applicant for licensure by endorsement shall submit:

1. A completed application;
2. The application processing fee prescribed by the board;
3. An attestation of having read and agreed to comply with the current Standards of Practice and laws governing the practice of psychology in Virginia;
4. Verification of all other health and mental health professional licenses or certificates ever held in any jurisdiction. In order to qualify for endorsement, the applicant shall not have surrendered a license or certificate while under investigation and shall have no unresolved action against a license or certificate;
5. A current report from the National Practitioner Data Bank; and
6. Further documentation of one of the following:
  - a. A current listing in the National Register of Health Service Psychologists;
  - b. Current diplomate status in good standing with the American Board of Professional Psychology in a category comparable to the one in which licensure is sought;
  - c. A Certificate of Professional Qualification in Psychology (CPO) issued by the Association of State and Provincial Psychology Boards;
  - d. Ten years of active licensure in a category comparable to the one in which licensure is sought, with an appropriate degree as required in this chapter documented by an official transcript; or

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~~d.~~ e. If less than 10 years of active licensure, documentation of current psychologist licensure in good standing obtained by standards substantially equivalent to the education, experience and examination requirements set forth in this chapter for the category in which licensure is sought as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency or a copy of the regulations in effect at the time of initial licensure and the following:

- (1) Documentation of post-licensure active practice for at least 24 of the last 60 months immediately preceding licensure application;
- (2) Verification of a passing score on the Examination for Professional Practice of Psychology as established in Virginia for the year of that administration; and
- (3) Official transcripts documenting the graduate work completed and the degree awarded in the category in which licensure is sought.

## **18VAC125-20-121. Continuing education course requirements for renewal of an active license.**

A. Licensees shall be required to have completed a minimum of 14 hours of board-approved continuing education courses each year for annual licensure renewal. A minimum of 1.5 of these hours shall be in courses that emphasize the ethics, ~~standards of practice or laws, and regulations~~ governing the profession of psychology, including the standards of practice set out in 18VAC125-20-150.

B. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the practice of psychology and is provided by a board-approved provider that meets the criteria specified in 18VAC125-20-122.

1. At least six of the required hours shall be earned in face-to-face or real-time interactive educational experiences. Real-time interactive shall include a course in which the learner has the opportunity to interact with the presenter and participants during the time of the presentation.
2. The board may approve up to four hours per renewal cycle for specific educational experiences to include:
  - a. Preparation for and presentation of a continuing education program, seminar, workshop or course offered by an approved provider and directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the presentation is given, and may not be credited toward the face-to-face requirement.
  - b. Publication of an article or book in a recognized publication directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the writing is published, and may not be credited toward the face-to-face requirement.

3. The board may approve up to two hours per renewal cycle for membership on a state licensing board in psychology.

C. Courses must be directly related to the scope of practice in the category of licensure held. Continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

VA.R. Doc. No. R15-3966; Filed May 11, 2015, 3:37 p.m.

## **REAL ESTATE APPRAISER BOARD**

### **Final Regulation**

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-90, 18VAC130-20-130, 18VAC130-20-240).**

Statutory Authority: §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

Effective Date: August 1, 2015.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov).

Summary:

*The amendments increase fees for (i) obtaining and maintaining licensure, registration, or certification as a real estate appraiser, appraiser trainee, appraisal business, and appraisal instructor and (ii) approval of a real estate appraisal course.*

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.

### **18VAC130-20-90. Application and registration fees.**

There will be no pro rata refund of these fees to licensees who resign or upgrade to a higher license or to licensees whose licenses are revoked or surrendered for other causes. All application fees for licenses and registrations are nonrefundable.

1. Application fees for registrations, certificates and licenses are as follows:

Registration of business entity	\$100 <del>\$160</del>
Certified General Real Estate Appraiser	\$150 [ <del>\$284</del> \$290 ]
Temporary Certified General Real Estate Appraiser	\$45 <del>\$75</del>
Certified Residential Real Estate Appraiser	\$150 [ <del>\$284</del> \$290 ]
Temporary Certified Residential Real Estate Appraiser	\$45 <del>\$75</del>
Licensed Residential Real Estate Appraiser	\$150 [ <del>\$284</del> \$290 ]
Temporary Licensed Residential Real Estate Appraiser	\$45 <del>\$75</del>
Appraiser Trainee	\$105 [ <del>\$146</del> \$155 ]
Upgrade of license	\$65 <del>\$130</del>
Instructor Certification	\$135 <del>\$150</del>

Application fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a \$30 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

2. Examination fees. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

3. An \$80 National Registry fee assessment for all permanent license applicants is to be assessed of each applicant in accordance with § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 USC §§ 3331-3351). This fee may be adjusted and charged to the applicant in accordance with the Act. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

**18VAC130-20-130. Fees for renewal and reinstatement.**

A. All fees are nonrefundable.

B. National Registry fee assessment. In accordance with the requirements of § 1109 of the Financial Institutions Reform,

Recovery, and Enforcement Act of 1989, \$80 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. The registry fee may be adjusted in accordance with the Act and charged to the licensee.

Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a \$30 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

C. Renewal fees are as follows:

Certified general real estate appraiser	\$150 [ <del>\$196</del> \$205 ]
Certified residential real estate appraiser	\$150 [ <del>\$196</del> \$205 ]
Licensed residential real estate appraiser	\$150 [ <del>\$196</del> \$205 ]
Appraiser trainee	\$70 [ <del>\$116</del> \$125 ]
Registered business entity	\$60 <del>\$120</del>
Certified instructor	\$125 <del>\$150</del>

D. Reinstatement fees are as follows:

Certified general real estate appraiser	\$210 [ <del>\$376</del> \$385 ]
Certified residential real estate appraiser	\$210 [ <del>\$376</del> \$385 ]
Licensed residential real estate appraiser	\$210 [ <del>\$376</del> \$385 ]
Appraiser trainee	\$130 [ <del>\$244</del> \$250 ]
Registered business entity	\$100 <del>\$280</del>
Certified instructor	\$230 <del>\$300</del>

**18VAC130-20-240. Course approval fees.**

Course Approval Fee     \$135 ~~\$150~~

**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.

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[ FORMS (18VAC130-20)

~~Real Estate Appraiser Board Appraiser License Application, A461-4001LIC-v2 (rev. 1/15)~~

~~Real Estate Appraiser Board Experience Log, A461-40EXP-v1 (rev. 7/13)~~

~~Real Estate Appraiser Board Appraiser Trainee License Application, A461-4004TRLIC-v2 (rev. 1/15)~~

~~Real Estate Appraiser Board Trainee Supervisor Verification Form, A461-40TRSUP-v2 (rev. 1/15)~~~~Real Estate Appraiser Board Business Registration Application, A461-4008BUS-v1 (rev. 7/13)~~

~~Real Estate Appraiser Board Pre-License Education Course Application, A461-4006RENCRS-v1 (rev. 7/13)~~

~~Real Estate Appraiser Board Instructor Certification Application, A461-4002INSTR-v1 (rev. 7/13)~~

~~Real Estate Appraiser Board Pre-License Education Course Renewal Application, A461-4006RENCRS-v1 (rev. 7/13)~~

~~Real Estate Appraiser Board Activate License Application, A461-4001AT-v1 (rev. 7/13)~~

~~Real Estate Appraiser Board Temporary Appraiser License Application, A461-4005TLIC-v1 (rev. 7/13)~~

[Appraiser License Application, A461-4001LIC-v4 \(rev. 8/15\)](#)

[Experience Log, A461-40EXP-v1 \(rev. 7/13\)](#)

[Appraiser Trainee License Application, A461-4004TRLIC-v4 \(rev. 8/15\)](#)

[Trainee Supervisor Verification Form, A461-40TRSUP-v2 \(rev. 1/15\)](#)

[Business Registration Application, A461-4008BUS-v2 \(rev. 8/15\)](#)

[Pre-License Education Course Application, A461-4006CRS-v2 \(rev. 8/15\)](#)

[Pre-License Education Course Renewal Application, A461-4006RENCRS-v2 \(rev. 8/15\)](#)

[Instructor Certification Application, A461-4002INSTR-v2 \(rev. 8/15\)](#)

[Activate License Application, A461-4001AT-v1 \(rev. 7/13\)](#)

[Temporary Appraiser License Application, A461-4005TLIC-v2 \(rev. 8/15\)](#) ]

VA.R. Doc. No. R12-3187; Filed May 5, 2015, 2:36 p.m.

## Final Regulation

**EDITOR'S NOTE:** 18VAC130-20-60 is removed from this final action because the proposed change to that section was resolved by another regulatory action that was published in 31:3 VA.R. 176-177 October 6, 2014, and effective January 1, 2015.

**Title of Regulation:** 18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10, 18VAC130-20-20, 18VAC130-20-30, 18VAC130-20-

120, 18VAC130-20-160, 18VAC130-20-180, 18VAC130-20-190).

**Statutory Authority:** §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

**Effective Date:** August 1, 2015.

**Agency Contact:** Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov).

### Summary:

*The amendments make clarifying changes, ensure consistency with state and federal law, and ensure compliance with current industry standards by (i) clarifying the assessment value limitations for each category of certification or licensure, (ii) requiring real estate appraisal business entities register with the board and designate a board contact person, (iii) requiring an applicant be at least 18 years of age, (iv) allowing a licensing hearing to be held before the board, (v) specifying that experience in real estate appraisal cited when applying for licensure must be accrued within five years of licensure application and include use of the income approach, (vi) adding a list of prohibited acts for certified real estate appraiser instructors, (vii) extending the license reinstatement period to one year after the license expiration date, and (viii) updating citations. In addition, the amendments require appraisers to meet the requirements of the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I

General

### 18VAC130-20-10. Definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC § 3301 et seq.), as amended.

"Appraiser" means one who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

"Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise or provide a review appraisal of nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to \$250,000, whichever is the lesser.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, on-line learning, correspondence courses, etc.).

"Experience" as used in this chapter includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. "Fee/staff appraiser experience" means experience acquired as either a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 1 and 2.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional

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Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 6.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports after January 30, 1989, recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 3.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the cosigner subcategory of fee/staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes, but is not necessarily limited to, the following:

- Absorption Study
- Ad Valorem Tax Study
- Annexation Study
- Assemblage Study
- Assessment Study
- Condominium Conversion Study
- Cost-Benefit Study
- Cross Impact Study
- Depreciation/Cost Study

- Distressed Property Study
- Economic Base Analysis
- Economic Impact Study
- Economic Structure Analysis
- Eminent Domain Study
- Feasibility Study
- Highest and Best Use Study
- Impact Zone Study
- Investment Analysis Study
- Investment Strategy Study
- Land Development Study
- Land Suitability Study
- Land Use Study
- Location Analysis Study
- Market Analysis Study
- Market Strategy Study
- Market Turning Point Analysis
- Marketability Study
- Portfolio Study
- Rehabilitation Study
- Remodeling Study
- Rental Market Study
- Right of Way Study
- Site Analysis Study
- Utilization Study
- Urban Renewal Study
- Zoning Study

To qualify for real estate consulting experience, an individual must have prepared written reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 4 and 5. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements specified in this chapter. Inactive licenses do not meet the requirements set forth in § 54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice is less than \$1 million. Licensed residential real estate appraisers may also appraise or provide a review appraisal of noncomplex, nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to \$250,000, whichever is the lesser.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate

appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in § 54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association or other business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

"Reinstatement" means having a license or registration restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or registration for another period of time.

"Sole proprietor" means any individual, but not a corporation, partnership or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent" is any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser or certified residential real estate appraiser who supervises any unlicensed person acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction which may require the services of a certified or

licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means the 2014-2015 edition of those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate or opinion of the value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

Part II  
Entry

**18VAC130-20-20. Requirement for registration.**

A All business entity seeking to provide entities, both domestic (in-state) and foreign (out-of-state), providing appraisal services shall register with the board by completing an application furnished by the board describing the location, nature, and operation of its practice their practices, and the name and address of the registered agent, an associate, or a partner of the business entity. Along with a completed application form, domestic corporations and limited liability companies shall provide a copy of the Certificate of Incorporation certificate as issued by the State Corporation Commission; foreign (out-of-state) corporations and limited liability companies shall provide a copy of the Certificate of Authority certificate from the State Corporation Commission; partnerships shall provide a copy of the certified Partnership Certificate; and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted. Every business entity providing appraisal services shall provide the name and license number of a board licensee who shall serve as the contact person for the board.

**18VAC130-20-30. General qualifications for licensure.**

Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential real estate appraiser license shall meet the following qualifications:

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1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of Professional and Occupational Regulation or its agent prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Professional and Occupational Regulation or its agent.

3. The applicant shall sign, as part of the application, a statement verifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

4. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification that was suspended, revoked or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision, by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction.

6. The applicant shall be at least 18 years old.

7. The applicant shall have successfully completed 150 hours for the licensed residential classification, 200 hours for the certified residential classification, and 300 hours for the certified general classification of approved real estate appraisal courses, including the 15-Hour National Uniform Standards of Professional Appraisal Practice course, from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The required core curriculum for the certified general or certified residential real estate appraiser is a bachelor's degree or higher from an accredited college or university. The required core curriculum for the licensed residential real estate appraiser is an associate's degree or higher from an accredited college, junior college, community college, or university. In lieu of the required degree, the licensed residential real estate appraiser applicant must complete 30 semester hours of college-level education from an

accredited college, junior college, community college, or university. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser. The classroom hours required for the certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser.

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

8. The applicant shall, as part of the application for licensure, verify his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In addition, all experience must be acquired within the five-year period immediately preceding the date application is made and be supported by adequate written reports or file memoranda [ , which ~~that~~ ] shall be made available to the board upon request.

a. Applicants for a licensed residential real estate appraiser license shall have a minimum of 2,000 hours appraisal experience, in no fewer than 12 months. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

b. Applicants for a certified residential real estate appraiser license shall have a minimum of 2,500 hours of appraisal experience obtained during no fewer than 24 months. Hours may be treated as cumulative in order to achieve the necessary 2,500 hours of appraisal experience.

c. Applicants for a certified general real estate appraiser license shall have a minimum of 3,000 hours of appraisal experience obtained during no fewer than 30 months. Hours may be treated as cumulative in order to achieve the necessary 3,000 hours of appraisal experience. At least 50% of the appraisal experience required (1,500 hours) must be in nonresidential appraisal assignments and include assignments that demonstrate the use and understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties that do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser that include the use of the income approach. The applicant must have substantially contributed to the development of the income approach in such reports and shall provide evidence or verification of such contribution.

9. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination developed or endorsed by the Appraiser Qualifications Board and provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

10. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 5 of this section may be approved for licensure following consideration of their application by the board.

[ **18VAC130-20-120. Procedures for renewal.**

A. The board will mail a renewal application form to the licensee and certificate holder at the last known home address and to the registered firm or at the last known business address. This form shall outline the procedures for renewal. Failure to receive the renewal application form shall not relieve the licensee, certificate holder or the registrant of the obligation to renew.

B. Prior to the expiration date shown on the license or registration, each licensee, certificate holder or registrant desiring to renew the license or registration shall return to the board the completed renewal application form and the appropriate renewal and registry fees as outlined in 18VAC130-20-130.

C. The date on which the renewal application form and the appropriate fees are received by the Department of Professional and Occupational Regulation or its agent will determine whether the licensee, certificate holder or registrant is eligible for renewal. If either the renewal application form or renewal fee, including the registry fee, is not received by the Department of Professional and Occupational Regulation or its agent within 30 days of the expiration date, the licensee, certificate holder or registrant must reinstate his license by meeting all requirements listed in 18VAC130-20-110 and pay a reinstatement fee as specified in 18VAC130-20-130. ~~Three months~~ One year after the expiration date on the license, certificate or registration, reinstatement is no longer possible. To resume practice, the former licensee, certificate holder, or registrant shall reapply for licensure as a new applicant, meeting current education, examination and experience requirements. ]

Part IV  
Standards

**18VAC130-20-160. Grounds for disciplinary action.**

The board has the power to fine any licensee, registrant or certificate holder, to place any licensee, registrant or certificate holder on probation, and to suspend or revoke any license, registration or certification issued under the provisions of Chapter 20.1 of Title 54.1 of the Code of Virginia and the regulations of the board, in accordance with §§ 54.1-201(7), 54.1-202 and the provisions of the Administrative Process Act, Chapter ~~4-1-1~~ 40 (§ 2.2-4000 et

seq.) of Title ~~9~~ 2.2 of the Code of Virginia, when any licensee, registrant or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapter 20.1 of Title 54.1 of the Code of Virginia, any relevant provision of the Uniform Standards of Professional Appraisal Practice as developed by the Appraisal Standards Board of the Appraisal Foundation, or any regulation of the board. An appraiser trainee shall be subject to disciplinary action for his actions even if acting under the supervision of a supervising appraiser.

**18VAC130-20-180. Standards of professional practice.**

A. The provisions of subsections C through ~~J~~ L of this section shall not apply to local, state and federal employees performing in their official capacity.

B. Maintenance of licenses. The board shall not be responsible for the failure of a licensee, registrant, or certificate holder to receive notices, communications and correspondence.

1. Change of address.

a. All licensed real estate appraisers, appraiser trainees, and certified instructors shall at all times keep the board informed in writing of their current home address and shall report any change of address to the board within 30 days of such change.

b. Registered real estate appraisal business entities shall at all times keep the board informed in writing of their current business address and shall report any change of address to the board within 30 days of such change.

2. Change of name.

a. All real estate appraisers, appraiser trainees, and certified instructors shall promptly notify the board in writing and provide appropriate written legal verification of any change of name.

b. Registered real estate appraisal business entities shall promptly notify the board of any change of name or change of business structure in writing. In addition to written notification, corporations shall provide a copy of the Certificate of Amendment from the State Corporation Commission, partnerships shall provide a copy of a certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

3. Upon the change of name or address of the registered agent, associate, or partner, or sole proprietor designated by a real estate appraisal business entity, the business entity shall notify the board in writing of the change within 30 days of such event.

4. No license, certification or registration issued by the board shall be assigned or otherwise transferred.

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5. All licensees, certificate holders and registrants shall operate under the name in which the license or registration is issued.

6. All certificates of licensure, registration or certification in any form are the property of the Real Estate Appraiser Board. Upon death of a licensee, dissolution or restructure of a registered business entity, or change of a licensee's, registrant's, or certificate holder's name or address, such licenses, registrations, or certificates must be returned with proper instructions and supplemental material to the board within 30 days of such event.

7. All appraiser licenses issued by the board shall be visibly displayed.

## C. Use of signature and electronic transmission of report.

1. The signing of an appraisal report or the transmittal of a report electronically shall indicate that the licensee has exercised complete direction and control over the appraisal. Therefore, no licensee shall sign or electronically transmit an appraisal which has been prepared by an unlicensed person unless such work was performed under the direction and supervision of the licensee in accordance with § 54.1-2011 C of the Code of Virginia.

2. All original appraisal reports shall be signed by the licensed appraiser. For narrative and letter appraisals, the signature and final value conclusion shall appear on the letter of transmittal and certification page. For form appraisals, the signature shall appear on the page designated for the appraiser's signature and final estimate of value. All temporary licensed real estate appraisers shall sign and affix their temporary license to the appraisal report or letter for which they obtained the license to authenticate such report or letter. Appraisal reports may be transmitted electronically. Reports prepared without the use of a seal shall contain the license number of the appraiser.

a. An appraiser may provide market analysis studies or consulting reports, which do not constitute appraisals of market value, provided such reports, studies, or evaluations shall contain a conspicuous statement that such reports, studies, or ~~valuations~~ evaluations are not an appraisal as defined in § 54.1-2009 of the Code of Virginia.

b. Application of the seal and signature or electronic transmission of the report indicates acceptance of responsibility for work shown thereon.

c. The seal shall conform in detail and size to the design illustrated below:



\*The number on the seal shall be the 10-digit number or the last 6 digits, or the last significant digits on the license issued by the board.

D. Development of appraisal. In developing a real property appraisal, all licensees shall comply with the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation. If the required definition of value uses the word "market," licensees must use the definition of market value set forth in USPAP "DEFINITIONS."

E. Appraisal report requirements. In reporting a real property appraisal, a licensee shall meet the requirements of the Uniform Standards of Professional Appraisal Practice [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation.

F. Reviewing an appraisal. In performing a review appraisal, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation. The reviewer's signature and seal shall appear on the certification page of the report.

G. Mass appraisals. In developing and reporting a mass appraisal for ad valorem tax purposes, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation.

## H. Recordkeeping requirements.

1. A licensee shall abide by the Record Keeping Rule as stated in the Uniform Standards of Professional Appraisal Practice [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation.

2. A licensee or registrant of the Real Estate Appraiser Board shall, upon request or demand, promptly produce to the board or any of its agents within 10 working days of the request, any document, book, record, work file or electronic record in a licensee's possession concerning any appraisal which the licensee performed, or for which the licensee is required to maintain records for inspection by the board or its agents. The board or any of its agents may

extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

~~2.~~ 3. Upon the completion of an assignment, a licensee or registrant shall return to the rightful owner, upon demand, any document or instrument which the licensee possesses.

~~3.~~ 4. The appraiser trainee shall be entitled to obtain copies of appraisal reports he prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five years or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

I. Disclosure requirements. A licensee appraising property in which he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, has any interest shall disclose, in writing, to any client such interest in the property and his status as a real estate appraiser licensed in the Commonwealth of Virginia. As used in the context of this chapter, "any interest" includes but is not limited to an ownership interest in the property to be appraised or in an adjacent property or involvement in the transaction, such as deciding whether to extend credit to be secured by such property.

J. Competency. A licensee shall abide by the Competency Rule as stated in the Uniform Standards of Professional Appraisal Practice [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation.

K. Scope of work. A licensee shall abide by the Scope of Work Rule as stated in the Uniform Standards of Professional Appraisal Practice [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation.

L. Jurisdictional exception. A licensee shall abide by the Jurisdictional Exception Rule as stated in the Uniform Standards of Professional Appraisal Practice [ as defined in this chapter or ] in the [ prior ] edition in effect at the time of the reports' preparation.

~~K. Unworthiness~~ M. Prohibited acts.

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.

2. A licensee may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful

authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such guilt.

3. A licensee shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. A licensee may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.

5. A licensee shall inform the board in writing within 30 days of the suspension, revocation or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification which has been the subject of discipline in any jurisdiction.

6. A licensee shall perform all appraisals in accordance with Virginia Fair Housing Law, § 36-96.1 et seq. of the Code of Virginia.

7. A licensee shall respond to an inquiry by the board or its agents, other than requested under ~~18VAC130-20-180~~ subdivision H + 2 of this section, within 21 days.

8. A licensee shall not provide false, misleading or incomplete information in the investigation of a complaint filed with the board.

**18VAC130-20-190. Standards of conduct for certified appraiser education instructors.**

A. Instructors shall develop a record for each student which shall include the student's name and address, the course name, the course hours and dates given, and the date the course was passed. This record shall be retained by the course provider.

B. The instructor shall not solicit information from any person for the purpose of discovering past licensing examination questions or questions which may be used in future licensing examinations.

C. The instructor shall not distribute to any person copies of license examination questions, or otherwise communicate to any person license examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.

D. The instructor shall not, through an agent or otherwise, advertise its services in a fraudulent, deceptive or misrepresentative manner.

E. Instructors shall not take any appraiser licensing examination for any purpose other than to obtain a license as a real estate appraiser.

F. Prohibited acts.

1. The instructor shall act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser in such a manner

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as to safeguard the interests of the public and shall not engage in improper, fraudulent, or dishonest conduct.

2. The instructor may not have been convicted, found guilty, or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such guilt.

3. The instructor shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. The instructor may not have had a license or certification as a real estate appraiser that has been (i) suspended, revoked, or surrendered in connection with a disciplinary action or (ii) the subject of discipline in any jurisdiction.

5. The instructor shall inform the board in writing within 30 days of the suspension, revocation, or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification that has been the subject of discipline in any jurisdiction.

6. The instructor, who is also a licensed appraiser, shall perform all appraisals in accordance with Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia).

7. The instructor shall respond to an inquiry by the board or its agents within 21 days.

8. The instructor shall not provide false, misleading, or incomplete information in the investigation of a complaint filed with the board.

[ DOCUMENTS INCORPORATED BY REFERENCE (18VAC130-20)

~~Uniform Standards of Professional Appraisal Practice, 2008-2009 Edition, Appraisal Standards Board, Appraisal Foundation~~

[Uniform Standards of Professional Appraisal Practice, 2014-2015 Edition, Appraisal Standards Board, Appraisal Foundation](#) ]

VA.R. Doc. No. R12-3192; Filed May 5, 2015, 3:54 p.m.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

### Proposed Regulation

Title of Regulation: **18VAC155-20. Waste Management Facility Operators Regulations (amending 18VAC155-20-10, 18VAC155-20-40, 18VAC155-20-110 through 18VAC155-20-140, 18VAC155-20-160, 18VAC155-20-220, 18VAC155-20-230, 18VAC155-20-280; adding 18VAC155-20-235, 18VAC155-20-285; repealing 18VAC155-20-20, 18VAC155-20-30, 18VAC155-20-100, 18VAC155-20-150, 18VAC155-20-175).**

Statutory Authority: §§ 54.1-201 and 54.1-2211 of the Code of Virginia.

Public Hearing Information:

June 11, 2015 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Training Room 2, Richmond, VA 23233

Public Comment Deadline: July 31, 2015.

Agency Contact: Eric L. Olson, Executive Director, Board for Waste Management Facility Operators, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8511, FAX (866) 430-1033, or email wastemgt@dpor.virginia.gov.

Basis: Section 54.1-2211 A of the Code of Virginia states that, "The Board shall promulgate regulations and standards for the training and licensing of waste management facility operators."

Purpose: In the course of performing a general review of the regulations, the board found several sections that were unnecessary, confusing, or overly burdensome. Additionally, the formatting of some of the sections of the regulation was inconsistent, often making it difficult to find initial license eligibility criteria information, education requirements for renewal of existing licenses, and identification of conduct elements that, if not followed, could result in disciplinary action. It is imperative that a regulatory board effectively communicate its requirements and expectations in a manner that is consistent, is easy to understand, and allows requirements to be easily located. Clear, concise, less burdensome, and easy to follow regulations result in a more informed base of licensed individuals and directly affects the health, safety, and welfare of citizens.

Substance: Proposed amendments:

1. Clarify definitions, remove unnecessary language, and add language to definitions to read more clearly (18VAC155-20-10).
2. Repeal 18VAC155-20-20 and 18VAC155-20-100 because the requirements are addressed in statute.
3. Relocate provisions of 18VAC155-20-30 to 18VAC155-20-120.
4. Remove the fee for training course approvals (18VAC155-20-40).

5. Remove subsections A, C, D, E, and F and subdivisions B 2, B 3, B 4, B 6, B 7, B 8, and B 9 of 18VAC155-20-120 to consolidate the section and make the language clearer.
6. Remove subsection B of 18VAC155-20-130 because it is unnecessary.
7. Remove subdivisions A 2, A, A 4, A 5, B 2, and B3 of 18VAC155-20-140 and language is amended to clarify examination requirements.
8. Repeal 18VAC155-20-150 to allow the board more flexibility when approving agreements.
9. Repeal 18VAC155-20-160 E.
10. Relocate provisions of 18VAC155-20-175 to 18VAC155-20-220.
11. Clarify training requirements in 18VAC155-20-220.
12. Make the language in 18VAC 55-20-230 and 18VAC155-20-280 read more clearly.
13. Add 18VAC155-20-235 and 18VAC155-20-285 to add new guidelines on education providers and to clarify prohibited acts.

Issues: The proposed amendments are implemented as a result of a line-by-line review of the current regulations that identified those that are unnecessary and overly burdensome. An advantage to the public is the simplification of eligibility requirements. Additionally, the format of the regulations is simplified to eliminate difficulties for licensees and the public to locate provisions necessary for public protection. There are no disadvantages to the public. In amending the regulations, the Board for Waste Management Facility Operators is continuing to provide necessary public protection tasked to them through existing statutes. The advantage to the agency is that staff will be able to more easily explain the regulations to licensees and the public. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Waste Management Facility Operators (Board) proposes to amend its regulations to: 1) simplify regulatory language and eliminate language that is duplicative of the Code of Virginia or Board agreements, 2) explicitly state that applicants for licensure must follow the rules of facilities where they take their licensure exams, 3) eliminate the application fee for training course approval, 4) eliminate the requirement that applicants for licensure who have failed the written examination twice recomplete all initial training and 5) eliminate the requirement that applicants for initial licensure must have successfully completed either high school or a college degree program or have received a generalized equivalency diploma (GED).

Result of Analysis. Benefits likely exceed costs for all proposed regulatory changes.

Estimated Economic Impact. Current regulations contain text that is duplicative of the Code of Virginia or that may be duplicative of, or conflict with, other Board material such as license reciprocity agreements signed with other states. The Board proposes to eliminate regulatory text that falls into these categories. Affected entities are unlikely to incur costs on account of clarifying changes such as these. These changes are likely to benefit regulated entities as they will likely eliminate confusion that may arise when regulatory text conflicts with other pertinent documents.

Current regulations are silent on acceptable behavior for licensee applicants at independent testing facilities. Board staff reports, however, that testing facilities have had issues with individuals attempting to cheat and individuals who have threatened test proctors. To address concerns for such behavior, the Board proposes to add regulatory language that reminds potential licensees that they must follow the rules of the testing facility as a condition of licensure. No applicant for licensure is likely to incur costs on account of this change as they have to follow the rules of the testing facility they use anyway or risk not successfully completing their exam. Some applicants may benefit, however, from the additional reminder that bad behavior at a testing facility may adversely impact their chances to gain licensure.

Currently, potential training course providers must pay a \$125 application fee and present their curricula to the Board for approval. The Board now proposes to eliminate the \$125 application fee as unnecessary. Board staff reports that only very rarely does the Board get such an application but any entities that do want to newly provide Board-approved training in the future will benefit from the elimination of this fee.

Current regulations require that individuals who are applying for initial licensure "provide proof of high school or college graduation, or of having a General Equivalency Diploma (GED)" and also require that individuals who have twice taken, but failed to pass, the licensure examination to retake their basic training course (Board staff reports that this training takes eight hours and costs approximately \$1,350). The Board proposes to eliminate both of these requirements as they are likely unnecessary since the licensure examination indicates who has the knowledge to be licensed regardless of degrees or diplomas held and irrespective of how individuals choose to remediate in the face of a failed examination.

No entity is likely to incur costs on account of these changes. Elimination of the diploma/degree requirement is likely to slightly increase the pool of individuals who are likely to be able to achieve licensure but is unlikely to increase the number of entities working as waste management facility operators since licensed individuals are in every case employed by localities or private owners of waste management facilities. Entities who wish to become licensed will benefit from elimination of both of these requirements as

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both represent an unnecessarily burdensome barrier to completing licensure requirements.

**Businesses and Entities Affected.** The Department of Professional and Occupational Regulation (DPOR) reports that the Board currently licenses approximately 675 waste management facility operators. All of these individuals, as well as others who might someday seek to be licensed, will be affected by these proposed regulations.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action is unlikely to affect employment in the Commonwealth.

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

**Small Businesses: Costs and Other Effects.** No small business in the Commonwealth is likely to incur costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small business in the Commonwealth is likely to incur costs on account of this regulatory action.

**Real Estate Development Costs.** This regulatory action is unlikely to affect real estate development costs.

**Legal Mandate. General:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

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

Agency's Response to Economic Impact Analysis: The board concurs with the analysis.

## Summary:

*The proposed amendments (i) eliminate language that is duplicative of the Code of Virginia or board agreements, clarify existing sections, and consolidate duplicative sections; (ii) require that applicants for licensure follow the rules of facilities where they take their licensure exams; and (iii) simplify eligibility requirements by eliminating the application fee for training course approval, the requirement that applicants for licensure who have failed the written examination twice recomplete all initial training, and the requirement that applicants for initial licensure have successfully completed high school or a college degree program or have received a generalized equivalency diploma.*

## Part I General

### **18VAC155-20-10. 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 Board for Waste Management Facility Operators.

• "Board-approved training course" means a course that has been approved by the board to provide appropriate training to an applicant in accordance with this chapter.

• "Class I license" means the authorization from the board to act as a waste management facility operator of a transfer station, a material recovery facility receiving mixed waste, an experimental facility, or a composting facility receiving yard waste.

• "Class II license" means the authorization from the board to act as a waste management facility operator of a facility that composts municipal solid waste, a sanitary landfill, an industrial landfill, a construction landfill or a debris landfill.

• "Class III license" means the authorization from the board to act as a waste management facility operator of an infectious waste incinerator or autoclave.

"Class IV license" means the authorization from the board to act as a waste management facility operator of a municipal waste combustor.

~~"Closed facility" means a solid waste management facility that has been properly secured in accordance with an approved facility closure plan.~~

~~"Closure" means an act of securing a solid waste management facility pursuant to the requirements established by the Virginia Department of Environmental Quality or appropriate regulatory authority.~~

"Contact hour" means 50 minutes of participation in a group program or 60 minutes of completion time for a project.

~~"Continuing professional education/training (CPE/T)" means an integral part of the lifelong learning process that enables a licensed solid waste management facility operator to maintain and increase the competence required to assure the public's protection, which shall be pursued through an organized program or project in compliance with this chapter.~~

"Department" means the Department of Professional and Occupational Regulation.

"Full-time employment" means 1,760 hours per year or 220 work days per year.

"In charge" means the designation of any person by the owner to have duty and authority to operate or modify the operation of a waste management facility.

"License" means an authorization issued by the board to an individual to practice as a waste management facility operator who meets the provisions of this chapter.

"Municipal solid waste (MSW)" means that waste that is defined as "municipal solid waste" in 9VAC20-80-10.

"Municipal waste combustor" means a mass burn or a refuse derived fuel incinerator or facility designed or modified for the purpose of noninfectious solid waste combustion.

"Operation" means any waste management facility that is under construction, treating, processing, storing or disposing of solid waste, or in the act of securing a facility for closure.

"Organized program" means a formal learning process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a formal course, seminar or conference.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

~~\*"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.~~

"Project" means a learning process designed to permit a participant to perform work assigned by the owner, operator or manager of a waste management facility under the supervision of a knowledgeable person that results in a specific, predetermined end result and that increases the

participant's competence to practice as a waste management facility operator.

"Site" means within the vicinity of all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land within the property boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Solid waste" means any of those materials defined as nonhazardous solid waste in regulations promulgated by the Virginia Department of Environmental Quality.

"Storage" means housing a solid waste as consistent with the regulations of the Virginia Waste Management Board.

"Substantial change" means a deviation from a specific course that decreases the approved time of the course by more than 30 minutes or modifies the topics of the approved course to below the target levels of knowledge, as stated in the course application.

~~\*"Waste management facility" means a site used for planned treatment, storage, or disposal of nonhazardous solid waste.~~

~~\*"Waste management facility operator" means any person, including an owner, who is in charge of the actual, on-site operation of a waste management facility during any period of operation.~~

~~\*As defined by Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia.~~

## **18VAC155-20-20. License required. (Repealed.)**

~~For the purposes of this chapter, the individual acting as a waste management facility operator is an individual employed or contracted by the facility owner whose responsibilities include supervision of on-site activities and who, on and after January 1, 1993, has been licensed by the Board for Waste Management Facility Operators or is under the direct supervision of a waste management facility operator licensed by the Board for Waste Management Facility Operators.~~

## **18VAC155-20-30. Disclosure. (Repealed.)**

~~A. Any individual seeking licensure shall disclose on the application any other operator or related license issued by any other state(s).~~

~~B. Any individual seeking licensure shall disclose on the application any felony convictions or any final order actions issued by an administrative body or court regarding environmental violations or crimes resulting in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.~~

~~C. Each licensee shall notify the board in writing within 30 days of any felony convictions or final order actions issued by an administrative body or court regarding environmental violations or crimes resulting in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.~~

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## 18VAC155-20-40. Fees.

- A. All fees are nonrefundable and shall not be prorated.
- B. An application shall not be deemed complete and shall not be processed without the required fee.
  1. The application fee for licensure shall be \$75.
  2. The fee for renewal of licensure shall be \$50.
  3. The fee for late renewal of licensure shall be \$75.
  4. The fee for reinstatement of licensure shall be \$125.
  5. The examination fee is charged to the applicant by an outside vendor competitively negotiated and contracted for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the applicant in accordance with this contract.
  6. ~~The application fee for training course approval shall be \$125.~~
- C. All checks shall be made payable to the Treasurer of Virginia.
- D. Receipt and deposit of fees submitted with applications do not indicate licensure.

### Part II Licensure

## 18VAC155-20-100. Licensure required. (Repealed.)

~~Licensure is required for all individuals acting as waste management facility operators after June 30, 1995.~~

## 18VAC155-20-110. License classification.

- A. The applicant shall apply for at least one classification of license as outlined below:
  1. An individual operating a facility that is defined by the Department of Environmental Quality as a transfer station, a material recovery facility receiving mixed waste, an experimental facility, or a composting facility receiving yard waste shall hold a Class I license. An individual who has obtained a Class II, III or IV license may also operate a facility listed under Class I, if the individual has completed the board-approved basic training course.
  2. An individual operating a facility that composts municipal solid waste, or is defined by the Department of Environmental Quality as a sanitary, industrial, construction or debris landfill, shall hold a Class II license.
  3. An individual operating a facility defined by the Department of Environmental Quality as an infectious waste incinerator or an autoclave shall hold a Class III license.
  4. An individual operating a facility defined by the Department of Environmental Quality as a municipal waste combustor shall hold a Class IV license.
- B. A licensee may not operate a facility outside of his classification other than that defined by subdivision A 1 of this section.

C. An individual operating a solid waste management facility that has been issued a permit by the Department of Environmental Quality but for which the board has not established training and licensure requirements shall hold a Class I license until the board establishes the training and licensing requirements by regulation.

## 18VAC155-20-120. Qualifications for licensure.

~~A. The board shall issue a license only after an individual has met, through a completed application and addendum, all training, testing, and experience requirements for at least one specific class as set forth in this chapter.~~

~~B. The applicant shall meet the following requirements for licensure for all classes of licenses:~~

A. Every applicant to the Board for Waste Management Facility Operators for licensure shall meet the requirements and have the qualifications provided in this subsection.

1. The applicant shall be at least 18 years of age.
2. ~~The applicant shall provide proof of high school or college graduation, or of having a General Equivalency Diploma (GED).~~
3. ~~An applicant who cannot fulfill the requirement outlined in subdivision 2 of this subsection shall document at least five years of verified experience with a waste management facility during the preceding seven years, with at least three years of experience in at least one of the following activities:~~
  - a. Supervision;
  - b. Research;
  - e. Construction;
  - d. Project development;
  - e. Site development;
  - f. Compliance and enforcement of a permit or regulations;
  - g. Operation; or
  - h. Review of materials for permitting purposes.
4. ~~Except for applicants that qualify pursuant to subdivision 3 of this subsection, each applicant shall document one year of verified operational experience with a waste management facility.~~
5. ~~All applicants shall successfully complete the basic training course as defined in 18VAC155-20-220 B.~~
6. ~~An applicant may use employment responsibilities in lieu of facility specific training as defined in subsections D through F of this section provided that:~~
  - a. The applicant has been a full time employee at a waste facility specific to the desired license classification for at least three of the past seven years.
  - b. The employment responsibilities include at least one of those activities enumerated in subdivision 3 of this subsection.

~~7. Experience requirements claimed on the application for licensure shall be verified by the individual's supervisor(s) or personnel officer. Individuals who are under contract with a facility owner may obtain a letter from the facility owner to verify experience.~~

~~8. Education requirements claimed on the application for licensure shall be verified by the attendee's educational institution or authorizing jurisdiction on the provided form or in the form of an official transcript or letter. Diplomas will not be accepted for verification of degree or graduation.~~

~~9. The applicant holding a valid license from another state or jurisdiction may qualify by reciprocity under the provisions of 18VAC155-20-150.~~

~~C. The specific requirements for Class I licensure are as follows:~~

- ~~1. Complete a board approved basic training course; and~~
- ~~2. Pass the board approved examination for Class I.~~

~~D. The specific requirements for Class II licensure are as follows:~~

- ~~1. Complete a board approved basic training course and an approved training course specific to Class II facilities; and~~
- ~~2. Pass the board approved examination for Class II.~~

~~E. The specific requirements for Class III licensure are as follows:~~

- ~~1. Complete a board approved basic training course and an approved training course specific to Class III facilities and pass the board approved examination for Class III; or~~
- ~~2. Complete the training and examination requirement of a federal or state agency under the federal Clean Air Act, as amended, as of the date applicable to an interpretation of a regulation or adjudication of a case decision and complete the board approved basic training course within one year after licensure.~~

~~F. The specific requirements for Class IV licensure are as follows:~~

- ~~1. Complete a board approved basic training course and an approved training course specific to Class IV facilities and pass the board approved examination for Class IV; or~~
- ~~2. Complete the training and examination requirement of a federal or state agency under the federal Clean Air Act, as amended, as of the date applicable to an interpretation of a regulation or adjudication of a case decision and complete the board approved basic training course within one year after licensure.~~

2. Unless otherwise exempt, the applicant shall have successfully completed a basic training course approved by the board. Additionally, an applicant for a Class II, III, or IV license shall complete a training course approved by the board specific to the license for which he applies.

3. Unless exempt, the applicant shall have passed the applicable examination provided by the board or by a testing organization acting on behalf of the board.

4. Each applicant shall document a minimum of one year of verified operational experience with a waste management facility of the same class for which he applies. Experience claimed on the application for licensure shall be verified by the individual's supervisor or personnel officer. Individuals who are under contract with a facility owner may obtain a letter from the facility owner to verify experience.

5. Applicants certified or licensed as a waste management facility operator by governing bodies outside of the Commonwealth of Virginia shall be considered to be in compliance with this chapter if the board or its designee has determined the certifying system to be substantially equivalent to the Virginia system.

6. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

7. The applicant shall report suspensions, revocations, or surrendering of a certificate or license in connection with a disciplinary action or that have been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrender of certifications or licenses based on disciplinary action by any jurisdiction.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant.

**18VAC155-20-130. Application procedures.**

~~A. Application shall be made on forms supplied by the department, and application forms shall be completed in accordance with the instructions on the forms. Failure to provide a complete application and all applicable addenda may result in a denial of approval. The failure to provide complete information may be interpreted as misrepresentation and may result in disciplinary action as defined by 18VAC155-20-280.~~

~~B. Those already licensed who desire to add another classification or classifications to their license shall apply under the provisions of 18VAC155-20-110.~~

**18VAC155-20-140. Examinations.**

~~A. Initial examination:~~

- ~~1. An individual may not take the board approved examination until all training requirements have been~~

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~~completed and are verified to the board unless qualifying under 18VAC155-20-120 B 6.~~

~~2. All applicants approved for the examination by the board will be notified in writing with a request for the examination fee defined in 18VAC155-20-40 B 5. The applicant will be scheduled for the next available examination upon receipt of the examination fee.~~

~~3. The examination fee will be required at least 30 days before the scheduled date of the examination.~~

~~4. All applicants shall achieve a passing score on the examination as determined by the board.~~

~~5. An individual unable to take an examination at the time scheduled shall notify the board prior to the date of the examination; such an individual shall be rescheduled for the next examination. Failure to notify the board may require the submittal of a new examination fee.~~

## ~~B. Reexamination.~~

~~1. An individual may retake the board approved examination as many times as necessary to pass except those who have been waived from training requirements.~~

~~2. If the applicant has been waived from training under 18VAC155-20-120 B 6 and fails, the applicant may retake the examination once. After failing twice, the applicant shall complete the required training before retaking the examination.~~

~~3. Reexamination shall require the submission of the reexamination fee as defined in 18VAC155-20-40 B 5.~~

A. Applicants will be approved to sit for the examination for licensure once all education and experience requirements have been satisfied and documentation pertaining to all other qualifications have been received by the board.

B. An applicant must follow all rules established by the board or by the testing service acting on behalf of the board with regard to the conduct at the examination site. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

## **18VAC155-20-150. Reciprocity. (Repealed.)**

~~A. Any individual holding a valid license in another state may apply for licensure based on reciprocity.~~

~~B. The board will certify an individual who submits a completed application and the initial application fee and is in compliance with 18VAC155-20-280.~~

~~C. All applicants licensed through reciprocity shall complete the basic training course within one year after being licensed in Virginia.~~

~~D. If the licensee fails to complete the basic course and fails to properly notify the board of such failure within one year after licensure, the board may begin disciplinary action to suspend or revoke the license.~~

## Part III Renewal of License

### **18VAC155-20-160. Procedures for renewal.**

~~A. Licenses issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license, biennially. Licensees shall be notified by mail of the fee and the procedures for license renewal. Each licensee desiring to renew his license shall ensure that the department receives the renewal notice; evidence of completion of continuing professional education/training; a statement that the license renewal applicant is in compliance with all facility specific operator training and examination requirements of federal and Virginia law and regulations, and of the facility operating permit(s); and the appropriate fee before the license expires.~~

~~B. Licenses shall be renewed for a period of 24 months from the date of the expiring license. The board will mail a renewal notice to the licensee at the address on file with the board outlining the fee and procedures for license renewal. Failure to receive written notice from the department does not relieve the licensee from the requirement to renew his license. If the license holder fails to receive the renewal notice, a copy of the license may be submitted with evidence of completion of the continuing education requirements and the appropriate fee.~~

~~C. Failure to receive written notice from the department does not relieve the regulant from the requirement to renew his license. If the license holder fails to receive the renewal notice, a copy of the license may be submitted with evidence of completion of the continuing education/training and the appropriate fee.~~

~~D. C. The date the required fee is received by the department or its agent will be used to determine whether a penalty fee or the requirement for reinstatement of a license is applicable.~~

~~E. Revoked or suspended licenses are not renewable until reinstated by the board.~~

~~D. As a condition of renewal or reinstatement all individuals holding a license shall be required to satisfactorily complete eight hours of continuing education from a provider approved by the board in accordance with the provisions of this chapter.~~

### **18VAC155-20-175. Continuing professional education/training. (Repealed.)**

~~A. Each applicant for license renewal shall provide evidence of the completion of at least eight contact hours of continuing professional education/training, as defined in 18VAC155-20-10 and in accordance with this section, except that no continuing professional education/training shall be required for the first renewal after the issuance of the initial license to an individual.~~

~~B. All CPE/T contact hours must be specific to the operation of a waste management facility.~~

C. Renewal applicants shall submit one or both of the following to document completion of the hours of CPE/T required by subsection A of this section:

1. For an organized program, a document with:
  - a. The name, address and telephone number of the sponsor;
  - b. The date(s) the applicant participated in the organized program;
  - c. A copy of the syllabus or other descriptive material of the information presented during the organized program; and
  - d. Verification of the number of contact hours completed that were specific to the operation of a waste management facility.
2. For a project, a document with:
  - a. The name and address of the waste management facility where the project was conducted;
  - b. The name of the owner, operator or manager of the facility who assigned the project;
  - c. The name, address and telephone number of the knowledgeable person assigned to supervise the license renewal applicant during the project;
  - d. A brief description of how the project's specific predetermined end result increased the license renewal applicant's competence; and
  - e. A statement of the number of contact hours required for the license renewal applicant to satisfactorily complete the project, which is signed by the owner, operator or manager of the facility where the project was conducted or by the knowledgeable person supervising the project.

D. The board shall advise the license renewal applicant of the approval of his CPE/T by issuing the renewed license provided all of the other renewal requirements of this chapter have been met. The board shall advise the license renewal applicant in writing of the deficiencies it finds in the CPE/T submitted and shall allow a reasonable amount of time for the renewal applicant to correct the deficiencies and respond.

E. Each licensee shall maintain evidence of the satisfactory completion of CPE/T for a period of three years. Such documentation shall be in the form required by subsection C of this section and shall be provided to the board or its duly authorized agents upon request.

F. CPE/T contact hours taken after the expiration of the individual's license to meet the CPE/T requirement of the prior license term shall not be reported for any future renewal.

Part IV  
Training Requirements

**18VAC155-20-220. ~~Training course curriculum.~~  
Education courses.**

A. The board shall approve only training courses that document that their instruction meets the minimum curriculum standards contained in this section. All training and continuing education courses must be completed through accredited colleges, universities, junior and community colleges, Virginia Apprenticeship Council programs, proprietary schools approved by the Virginia Department of Education, or other programs approved by the board.

B. A board approved basic training course shall at a minimum include the following topics as they relate to nonhazardous solid waste management facilities:

1. Definitions.
2. Authority for regulations.
3. Purpose of regulations.
4. Administration of regulations.
5. Applicability of regulations.
6. Prohibitions.
7. Open dumps.
8. Unpermitted facilities.
9. Enforcement and appeal.
10. Penalties and enforcement.
11. Public participation.
12. Relationship with other regulations promulgated by the Virginia Waste Management Board, the State Water Control Board, and the Virginia State Air Pollution Control Board.
13. Identification of solid waste.
  - a. Purpose and scope.
  - b. Definitions of solid waste.
  - c. Special wastes.
  - d. Exclusions.
  - e. Conditional exemptions.
14. Identification of unauthorized waste.
15. Overview of open dumps and unpermitted facilities.
16. Permitting of solid waste management facilities.
17. Review of Department of Environmental Quality Inspection Form.
18. Overview of permitted solid waste management facilities.
  - a. Transfer stations.
  - b. Material recovery facilities.
  - c. Experimental facilities.
  - d. Sanitary landfills.

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- ~~e. Infectious waste incinerators.~~
- ~~f. Mass burn facilities.~~
- ~~g. Refuse derived fuel facilities.~~
- ~~h. Yard waste composting facilities.~~
- ~~i. Autoclaves.~~
- ~~19. Overview of general OSHA requirements.~~
- ~~20. Neighbor relations.~~
- ~~21. Recordkeeping and financial assurance.~~
- ~~C. A board approved training course specific to Class II facilities shall include at a minimum the following topics:~~
  - ~~1. Definitions.~~
  - ~~2. Special wastes.~~
    - ~~a. General.~~
    - ~~b. Asbestos wastes.~~
    - ~~c. Wastes containing polychlorinated biphenyls.~~
    - ~~d. Liquids.~~
    - ~~e. Tires.~~
    - ~~f. Drums.~~
    - ~~g. White goods.~~
    - ~~h. Soil contaminated with petroleum products.~~
    - ~~i. Lead acid batteries.~~
    - ~~j. Other prohibited wastes.~~
    - ~~k. Hazardous wastes.~~
    - ~~l. Screening for prohibited wastes.~~
    - ~~m. Handling procedures for special or hazardous wastes.~~
    - ~~n. Recordkeeping and notification requirements.~~
  - ~~3. Sanitary landfills.~~
    - ~~a. Design/construction.~~
    - ~~b. Operation.~~
    - ~~c. Groundwater monitoring.~~
    - ~~d. Control of decomposition gases and landfill gas recovery systems.~~
    - ~~e. Leachate control system and monitoring.~~
    - ~~f. Leachate control system appurtenances.~~
    - ~~g. Large landfill air operating permits.~~
  - ~~4. Construction/demolition debris standards.~~
  - ~~5. Industrial waste disposal standards.~~
  - ~~6. Other solid waste management facility standards.~~
    - ~~a. Compost facilities.~~
    - ~~b. Surface impoundments and lagoons.~~
    - ~~c. Waste piles.~~
    - ~~d. Miscellaneous units.~~
  - ~~7. Permitting of solid waste management facilities.~~
    - ~~a. Solid waste.~~
    - ~~b. Virginia Pollution Discharge Elimination System (VPDES) permits and related water and wastewater permits.~~
    - ~~c. Air.~~
- ~~8. Financial assurance documentation.~~
  - ~~a. Closure regulations.~~
  - ~~b. Post closure regulations.~~
  - ~~c. Corrective action.~~
- ~~9. Rulemaking petitions and procedures.~~
- ~~D. A board approved training course specific to Class III facilities shall include at a minimum the following topics:~~
  - ~~1. Identification and listing of infectious waste.~~
    - ~~a. General.~~
    - ~~b. Exemption to regulations.~~
    - ~~c. Exclusions.~~
    - ~~d. Characteristics of infectious waste.~~
    - ~~e. Controlled infectious waste.~~
  - ~~2. General requirements.~~
    - ~~a. Permits and permits by rule.~~
    - ~~b. Packaging and labeling requirements.~~
    - ~~c. Management of spills.~~
    - ~~d. Methods of treatment and disposal.~~
    - ~~e. Approved test method.~~
    - ~~f. Recordkeeping requirements.~~
  - ~~3. Requirements for storage facilities.~~
    - ~~a. Sanitation.~~
    - ~~b. Access.~~
    - ~~c. Temperature control and storage period.~~
    - ~~d. Drainage and ventilation.~~
  - ~~4. Requirements for transportation.~~
    - ~~a. Sanitation.~~
    - ~~b. Access.~~
    - ~~c. Temperature and storage period.~~
    - ~~d. Drainage.~~
    - ~~e. Packaging, labeling and placards.~~
    - ~~f. Management of spills.~~
    - ~~g. Loading and unloading.~~
    - ~~h. Registration of transportation.~~
  - ~~5. Requirements for incineration.~~
    - ~~a. Performance standards.~~
    - ~~b. Analysis and management of ash residue.~~
    - ~~c. Unloading operation.~~
    - ~~d. Facility air operating permits.~~
    - ~~e. Compliance with other regulatory requirements.~~

- 6. Requirements for steam sterilization.
    - a. Performance standards.
    - b. Compliance with other regulatory requirements.
  - 7. Medical waste combustor regulations.
  - 8. Financial assurance documentation.
    - a. Closure regulations.
    - b. Corrective action.
- E. A board approved training course specific to Class IV facilities shall include at a minimum the following topics:
1. Solid Waste Management Regulations.
    - a. Siting.
    - b. Design and construction.
    - c. Operation.
    - d. Waste characteristics.
  2. Emissions formation and control.
    - a. Type of emissions.
    - b. Environmental effect.
    - c. Control techniques.
  3. Emissions monitoring.
    - a. Parameters monitored.
    - b. Types of monitors.
    - c. Data acquisition.
    - d. Monitor calibration, certification and testing.
  4. Combustion and gas reactions.
    - a. Combustion components.
    - b. Optimizing solid waste combustion.
    - c. Gas reactions related to combustor construction materials.
  5. Solid waste materials handling.
    - a. Front end processing equipment.
    - b. Combustion enhancement.
    - c. Back end processing.
    - d. Recycling benefits.
  6. Waste combustion residue handling and disposal.
    - a. Types of residue.
    - b. Characteristics.
    - c. Regulations.
    - d. Monitoring.
    - e. Handling and transportation.
    - f. Disposal.
    - g. Alternative uses.
  7. Safety.
    - a. Employer/employee obligations.
    - b. OSHA.
    - c. Hazard communication.

- d. Equipment tagout.
- e. Respiratory protection.
- 8. Recordkeeping.
  - a. Engineering log keeping.
  - b. Maintenance.
  - c. Solid waste.
- 9. Virginia pressure vessel regulation.
- 10. Air pollution control regulations for waste combustors.
- 11. Facility air operating permits.
- 12. Plant operations.
  - a. Thermal fluids theory.
  - b. Boiler plant operations.
- 13. Financial assurance documentation.
  - a. Closure regulations.
  - b. Corrective action.

B. All continuing education courses must be specific to the operation of the class of waste management facility for which the course is being offered and must be approved by the board.

C. Each provider of a training or continuing education course shall submit an application for approval on a form provided by the board. The application shall include, but is not limited to:

1. The name of the provider;
2. Provider contact person, address, and telephone number;
3. Course contact hours;
4. Schedule of courses, if established, including dates, times, and locations;
5. Course syllabus;
6. Instructor information, including name, license number if applicable, education and training background, and a list of other appropriate trade designations or training certifications.

**18VAC155-20-230. Approval of training course. Training records.**

A. Each applicant for training course approval shall meet the requirements established by this chapter before being granted approval by the board. Those desiring approval of a training course shall apply on a form provided by the department. The form shall be completed in accordance with the instructions supplied, and shall be accompanied by three copies of the materials which document that the training course meets the requirements of this chapter and by the fee required by 18VAC155-20-40-B-6. Receipt and deposit of the required fee does not indicate board approval.

B. Training courses shall be approved by the board prior to the training activity in accordance with the following:

1. Training providers.

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a. ~~Organizations.~~ The board may approve training courses offered by a sponsor who is an identifiable organization which can demonstrate the capability to teach environmental or engineering material. The organization shall have a mission statement outlining its functions, structure, process and philosophy, and a staff of one or more persons that has the authority to administer and coordinate the training program.

b. ~~Schools.~~ The board may approve training courses offered by an accredited academic institution which can demonstrate the capability to teach environmental or engineering material.

c. ~~Businesses.~~ The board may approve training courses offered by a business entity which can demonstrate the capability to teach environmental or engineering material.

2. ~~Instructors.~~ The training course provider shall ensure training is only conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the teaching process to be used, and a proven ability to communicate.

3. ~~Objectives.~~ The training course provider shall ensure that the course has a series of stated objectives that are consistent with the type of facility, operator job requirements, and state and federal regulation. The training course shall be consistent with training criteria outlined in 18VAC155-20-220.

4. ~~The board shall only approve courses which provide the participants a complete tour of a facility appropriate to the course emphasizing operator responsibilities. The basic training course is exempt from this requirement.~~

5. ~~Course completion requirements.~~ For successful completion of a training program, participants must attend 90% or more of the class contact time and the tour of the facility.

6. ~~The training provider shall provide an effective means for evaluation of the quality of the course and the instructor(s).~~

7. ~~The training provider shall ensure the number of participants and physical facilities are appropriate for the course content and teaching method specified by the developer of the course.~~

8. ~~The training provider shall ensure all course materials are technically accurate, current and sufficient to meet the program's learning objectives.~~

## C. ~~Training records.~~

1. ~~An approved training provider shall retain records for all participants for a period of 10 years and shall maintain a written policy on the retention and release of records.~~

2. ~~All records pertaining to the approved training and participants shall be made available to the board immediately upon request.~~

D. ~~The board shall consider the following information before deciding to approve or disapprove an application for training provider approval:~~

### 1. ~~Course information.~~

a. ~~Course title.~~

b. ~~Planned audience.~~

c. ~~Name of sponsor.~~

d. ~~Name, address and telephone number of contact person.~~

e. ~~Scheduled presentation dates.~~

f. ~~Detailed course schedule on an hour by hour basis.~~

g. ~~List of planned breaks.~~

h. ~~Scheduled presentation locations.~~

i. ~~Scheduled tour locations.~~

j. ~~Instructor(s) resume.~~

### 2. ~~Training materials.~~

a. ~~Course objectives.~~ A listing of the course objectives stated in terms of the skills and knowledge the participant will be able to demonstrate as a result of the training.

b. ~~Course outline.~~ A detailed outline showing the planned activities that will occur during the training program, including major topics, planned presentation sequence, tour activities, audio visual presentations and other major activities.

c. ~~Course reference materials.~~ A list of name, publisher, and publication date of commercially available publications; for material developed specifically for the course, a copy of the reference material.

d. ~~Audio visual support materials.~~ A list of any commercially available audio visual support material that will be used in the course; a brief description of any audio visual material generated by the sponsor or instructor.

e. ~~Handouts.~~ Identification of all commercially available handout material including regulations; copies of other handouts generated by the sponsor or instructor.

E. ~~The board shall approve all substantial changes to the course before the changes may be implemented.~~

F. ~~The board reserves the right to withdraw approval if the board determines the course is not adequately teaching participants, or the sponsor or an instructor violates this chapter.~~

An approved training provider shall retain records for all participants for a period of 10 years and shall maintain a written policy on the retention and release of records. All records pertaining to the approved training and participants

shall be made available to the board immediately upon request.

**18VAC155-20-235. Denial or withdrawal of approval.**

The board may deny or withdraw the approval of any training or continuing education course for the following reasons:

1. Courses being offered no longer meet the standards established by the board;
2. The course provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way;
3. The course provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records or fails to produce records required by the Board for Waste Management Facility Operators.
4. The course provider fails to maintain student course completion records for a minimum of 10 years.

Part V  
Disciplinary Action

**18VAC155-20-280. Grounds for denial of application, denial of renewal, or discipline.**

A. The board shall have the authority to (i) deny an application for and to deny renewal of a license or training course approval, and to (ii) revoke or suspend the license or training course approval as well as to, and (iii) discipline a licensee or an approved training provider for the following reasons: who is found to be in violation of the statutes or regulations governing the practice of licensed waste management facility operators.

1. Violating or inducing another to violate any provisions of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.) or 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia, or any provision of this chapter.
2. Obtaining or renewing a license or training course approval through fraudulent means or misrepresentation.
3. Having been found guilty by the board, an administrative body or by a court of any material misrepresentation in the course of performing his operating duties.
4. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of jurisdiction, of any felony, or of any violation that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. A certified copy of the final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case

~~decision shall be admissible as prima facie evidence of such conviction.~~

~~5. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony, or of any violation that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.~~

~~6. Gross negligence, or a continued pattern of incompetence, in the practice as a waste management facility operator.~~

~~7. Violating the permit conditions for the facility, or violating any federal, state or local laws or regulations which that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.~~

B. Any individual whose license is revoked under this section shall not be eligible to apply for licensure for a period of one year from the effective date of the final order of revocation. After the one-year period, the individual shall meet all education, examination, experience and training requirements, complete the application and submit the required fee for consideration as a new applicant.

C. The board shall conduct disciplinary procedures in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

**18VAC155-20-285. Prohibited acts.**

Any of the following are cause for disciplinary action:

1. Violating or inducing another to violate any provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.) or 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia, or any provision of this chapter.
2. Obtaining or renewing a license through fraudulent means or misrepresentation.
3. Having been found guilty by the board, an administrative body, or by a court of any material misrepresentation in the course of performing his operating duties.
4. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of jurisdiction, of any felony or any violation that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment, there being no appeal pending therefrom, or the time of appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. A certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction.

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# Regulations

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5. Failing to inform the board in writing within 30 days of pleading guilty to, pleading nolo contendere to, being convicted of, or being found guilty of (i) any felony or (ii) any violation that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

6. Gross negligence, or a continued pattern of incompetence, in the practice of a waste management facility operator.

7. Violating the permit conditions for the facility, or violating federal, state, or local laws or regulations, which resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

8. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination.

**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 (18VAC155-20)

~~License Application, 46LICPKG (rev. 5/05)~~

~~Experience Verification Form, 46EXP (rev. 5/00)~~

~~Education Verification Form, 46ED (rev. 5/00)~~

~~Application for Training Course Approval, 46CRS (rev. 5/00)~~

[License Application, A438-4605LIC-v8 \(rev. 8/15\)](#)

[Training Course Approval Application, A438-46CRS-v4 \(rev. 8/15\)](#)

VA.R. Doc. No. R13-3737; Filed May 5, 2015, 9:47 a.m.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

### Final Regulation

**Title of Regulation:** 18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (amending 18VAC160-20-97).

**Statutory Authority:** §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

**Effective Date:** August 1, 2015.

**Agency Contact:** Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite

400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov).

### Summary:

*The amendment eliminates the need for an applicant for a conventional onsite sewage system installer license, who is applying for waiver of the examination, to provide documentation of experience attained working with professionals from a specific list.*

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

### 18VAC160-20-97. Qualifications for licensure - onsite sewage system installers.

A. Each applicant shall make application in accordance with 18VAC160-20-76 and shall meet the specific entry requirements provided for in this section for the license desired.

B. Each applicant holding a valid interim onsite sewage system installer license shall submit documentation of compliance with the continuing professional education requirements of this chapter at the time of application.

C. Specific entry requirements.

1. Conventional onsite sewage system installer. Each individual applying for an initial conventional onsite sewage system installer license shall pass a board-approved examination and shall meet one of the following requirements:

a. Have two years of full-time experience installing alternative or conventional onsite sewage systems during the last four years under the direct supervision of a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors; or

b. Have two years of full-time experience installing alternative or conventional onsite sewage systems during the last four years as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors; or

c. Have documentation certifying that the applicant is competent to install conventional onsite sewage systems. Certification must be provided by any combination of three of the following individuals:

(1) VDH Authorized Onsite Soil Evaluators (AOSE) for work performed prior to July 1, 2009;

(2) Licensed interim onsite soil evaluators;

(3) Licensed conventional or alternative onsite soil evaluators;

(4) Licensed conventional or alternative onsite sewage system installers; or

(5) Virginia licensed professional engineers.

2. Conventional onsite sewage system installer. The examination requirement provided for in subdivision 1 of

this subsection shall not apply to applicants seeking initial licensure as a conventional onsite sewage system installer provided that:

a. The applicant is able to satisfactorily demonstrate that he has been actively engaged in performing the duties of a conventional onsite sewage system installer, as defined in this chapter, for at least eight years within the 12-year period immediately preceding the date of application.

~~Documentation of being actively engaged in performing the duties of a conventional onsite sewage system installer, as defined in this chapter, for at least eight years within the 12-year period immediately preceding the date of application shall be provided by one or more of the following:~~

- ~~(1) VDH Authorized Onsite Soil Evaluator (AOSE) for work performed prior to July 1, 2009;~~
- ~~(2) Licensed interim onsite soil evaluator;~~
- ~~(3) Licensed conventional or alternative onsite soil evaluator;~~
- ~~(4) Licensed conventional or alternative onsite sewage system installer; or~~
- ~~(5) Virginia licensed professional engineer; and~~

b. The department receives a completed application no later than June 30, 2016. An individual who fails to have his application in the department's possession by June 30, 2016, shall be required to pass the board-approved examination provided for in subdivision 1 of this subsection.

3. Alternative onsite sewage system installer. Each individual applying for an initial alternative onsite sewage system installer license shall pass a board-approved examination and shall meet one of the following requirements:

a. Provide contractor completion statements and associated operation permits issued by the VDH for work performed after June 30, 2009. The statements and permits must verify that the applicant had successfully installed 36 onsite sewage systems during the preceding three years, six of which must be alternative systems. All contractor completion statements and associated VDH operation permits shall be certified by either a licensed alternative onsite soil evaluator, a licensed conventional or alternative onsite sewage system installer, or a Virginia licensed professional engineer;

b. Provide contractor completion statements and associated operation permits issued by the VDH for work performed on or before June 30, 2009. The statements and permits must verify that the applicant successfully installed 12 alternative onsite sewage systems during the past three years. All contractor completion statements and associated VDH operation permits shall be certified by either an authorized onsite soil evaluator or a Virginia licensed professional engineer;

c. Have two years of full-time experience installing sewage systems as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems;

d. Have two years of full-time experience installing sewage systems under the direct supervision a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems; or

e. Have two years of full-time experience as a licensed or interim licensed conventional onsite sewage system installer and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems.

If the applicant is not listed on the completion statement but did perform the installation, then the individual named on the contractor's completion statement and associated operation permit issued by the VDH may certify the applicant's work performed on an alternative onsite sewage system that was installed prior to June 30, 2009, provided that the application is received by the department no later than June 30, 2010.

D. Education and training substitution. Each individual applying for a conventional or an alternative onsite sewage system installer license may receive credit for up to half of the experience required by this section for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or

2. Satisfactory completion of board-approved onsite sewage system installer training courses at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.

**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

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# Regulations

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Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[ FORMS (18VAC160-20)

Continuing Professional Education (CPE) Certificate of Completion, 19CPE (rev. 5/09)

Application for Training Course Approval, 19CRS (rev. 5/09)

Experience Verification Form, 19EXP (eff. 7/09)

[Experience Verification Application – Onsite Sewage System Applicants Only, A436-19EXP \(rev. 10/12\)](#)

Education & Training Substitution Form, 19ET\_SUB (eff. 7/09)

Licensure Fee Notice, 19FEE (eff. 7/09)

Interim Onsite Soil Evaluator - VDH Employees Only License Application, 1930LIC (eff. 7/09)

Interim Onsite Sewage System Installer License Application, 1931\_32LIC (eff. 7/09)

Interim Onsite Sewage System Operator License Application, 1933\_34LIC (eff. 7/09)

Onsite Soil Evaluator Exam & License Application, 1940\_41EXLIC (eff. 7/09)

[Onsite Sewage System Installer Exam & License Application, A465-1944EXLIC \(rev. 12/12\)](#)

Onsite Sewage System Operator Exam & License Application, 1942\_43EXLIC (eff. 7/09)

~~Suspension of Examination—Conventional Onsite Sewage System Installer License Application, 1944WAIV (eff. 07/12)~~

[Suspension of Examination – Conventional Onsite Sewage System Installer License Application, A436-1944WAIV-v4 \(eff. 8/15\)](#)

[Onsite Sewage System Operator - Exam & License Application, A465-1942EXLIC-v3, \(eff. 7/13\) \]](#)

VA.R. Doc. No. R13-3570; Filed May 11, 2015, 3:32 p.m.

## Proposed Regulation

**Title of Regulation: 18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (amending 18VAC160-20-102).**

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

**Public Hearing Information:**

June 11, 2015 - 10:30 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 200, Board Room 2, Richmond, Virginia 23233

**Public Comment Deadline:** July 31, 2015.

**Agency Contact:** Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite

400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov).

**Basis:** Section 54.1-113 of the Code of Virginia (Callahan Act) requires regulatory boards to periodically review and adjust fees, subdivision 4 of § 54.1-201 of the Code of Virginia provides the authority to regulatory boards to levy and collect fees, subdivision 3 of § 54.1-304 of the Code of Virginia describes the authority of the Department of Professional and Occupational Regulation (DPOR) to collect and account for fees, and § 54.1-308 requires costs to be paid by regulatory boards. All of these provisions of the Code of Virginia are mandatory.

**Purpose:** The intent of the proposed amendments is to increase licensing fees for regulants of the board. The board must establish fees adequate to support the costs of board operations and a proportionate share of DPOR's operations. By the close of the next biennium, fees will not provide adequate revenue for those costs.

DPOR receives no general fund money but, instead, is funded almost entirely from revenue collected for license and certificate application fees, renewal fees, examination fees, and other licensing fees. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenue collected on behalf of the various boards funds DPOR's authorized special revenue appropriation.

The board has no other source of revenue from which to fund its operations.

**Substance:** The proposed amendment to 18VAC160-20-102 increases the license renewal fee from \$80 to \$100, is based on projected revenues and expenses, and meets the requirements of the applicable statutes while being the least burdensome to the regulant population.

**Issues:** The primary issue for the proposed fee increase is DPOR's statutory requirement to comply with the Callahan Act.

Further issues to be addressed as regulations are developed include:

The Callahan Act required DPOR to review each board's expenditures at the close of each biennium and to adjust fees if necessary. The board is expected to incur a deficit of \$36,121 by the end of the 2016-2018 biennium and a Callahan Act percentage of (-5.2%).

The regulatory review process generally takes a minimum of 18 months, so it is essential to consider fee increases now to avoid a greater deficit than currently projected. In order to address the deficit as currently projected, new fees will need to become effective by late in fiscal year 2016, otherwise the board's deficit will increase to the point that new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of the proposed amendment on the income of the regulated population should not be of a great significance compared to their level of income.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage Systems Professionals (Board) proposes to increase their license renewal fee.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for this regulatory program.

Estimated Economic Impact. Currently, individuals who are licensed by the Board pay an initial licensure fee of \$100 and a license renewal fee of \$80. These fees were last increased 12 years ago. The Board now proposes to increase the license renewal fee from \$80 to \$100. This fee increase will allow the Board to avoid a future funding deficit (the Board estimates that by 2016 expenditures will outstrip revenues).

Individuals who renew their licenses after this regulatory change is fully promulgated will incur an additional biennial cost of \$20. There is insufficient information to ascertain whether the benefits that may accrue to the public on account of the Board being able to maintain these programs in their current state will outweigh the costs incurred by regulated entities.

Businesses and Entities Affected. Board staff reports that this proposed regulation will affect any individuals working as licensed waterworks operators, licensed wastewater works operators and licensed onsite sewage systems professionals who renew Board issued licenses. Board staff further reports that 2,215 renewals were processed last year.

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

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

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No affected small business is likely to incur costs on account of these proposed regulations unless they choose to pay renewal fees for their employees.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No affected small business is likely to incur costs on account of these proposed regulations unless they choose to pay renewal fees for their employees.

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

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

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

Summary:

*The proposed amendment increases the license renewal fee for regulants of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.*

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# Regulations

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## 18VAC160-20-102. Fees.

A. All fees shall be nonrefundable.

B. The date of receipt of the fee by the board or its agent is the date that shall be used to determine whether the fee is timely received.

C. The following fees shall apply:

1. The license application fee shall be \$100.
2. The license renewal fee shall be ~~\$80~~ \$100.
3. The license renewal late penalty fee shall be \$25, in addition to the license renewal fee.
4. The fee for examination or reexamination is subject to charges to the department by an outside vendor based on a contract entered into in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

VA.R. Doc. No. R14-3972; Filed May 6, 2015, 11:38 a.m.

*schedule of allowable fees, it describes the requirements landowners must follow to receive payments, how payments will be made, as well as VDOT's role in explaining the entitlement.*

*This regulation is being repealed because the authorizing legislation expired on July 1, 2009.*

VA.R. Doc. No. R15-3490; Filed May 5, 2015, 9:26 a.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF TRANSPORTATION

#### Final Regulation

**REGISTRAR'S NOTICE:** The agency is claiming an exemption from the Administrative Process Act because the authorizing statute, § 25.1-417.1 of the Code of Virginia, expired on July 1, 2009, pursuant to clause 5 of Chapter 895 of the 2007 Acts of Assembly.

**Title of Regulation:** 24VAC30-45. Appraisal Fee Regulations (repealing 24VAC30-45-10, 24VAC30-45-20, 24VAC30-45-30).

**Statutory Authority:** Chapter 895 of the 2007 Acts of Assembly.

**Effective Date:** July 1, 2015.

**Agency Contact:** Michael McCall, Chief Appraiser, Right of Way and Utilities Division, Department of Transportation, VDOT Annex, 1401 East Broad Street, 5th Floor, Richmond, VA 23219, telephone (804) 786-3029, FAX (804) 786-1706, or email michael.mccall@vdot.virginia.gov.

**Summary:**

*This regulation was promulgated by the Virginia Department of Transportation (VDOT) in response to Chapter 895 of the 2007 Acts of Assembly to address partial reimbursements of costs to a landowner who obtains a written appraisal report in cases where the landowner and VDOT cannot reach an agreement as to the price of property needed for public purposes pursuant to § 25.1-417.1 of the Code of Virginia. In addition to the*

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## GUIDANCE DOCUMENTS

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Sections 2.2-4008 and 2.2-4103 of the Code of Virginia require annual publication in the *Virginia Register* of guidance document lists from state agencies covered by the Administrative Process Act and the Virginia Register Act. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

### DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

The list of guidance documents submitted by the Virginia Department of Rail and Public Transportation (DRPT) is subdivided by the work unit that issued or has custody of the document.

#### Transit and Congestion Management

Copies of the following documents may be viewed during regular work days from 8:30 a.m. until 5 p.m. in the office of Lynne McCarthy, Public Relations and Marketing Coordinator, Virginia Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219. Copies may be obtained for a fee (varies depending on document) by contacting Lynne McCarthy at the same address, telephone (804) 786-4443 or FAX (804) 225-3664, or for free online at <https://olga.drpt.virginia.gov/news.aspx>.

Questions regarding interpretation or implementation of these documents may be directed to Lynne McCarthy at the same address and phone number.

#### Guidance Documents:

[DRPT Public Transportation and Transportation Demand Management Grant Program Application Guidance](#) - includes guidance on applying for funds from the following state and federal programs:

##### State Aid Grant Programs

Operating Assistance  
Capital Assistance  
Demonstration Assistance  
Technical Assistance  
Public Transportation Intern Program  
TDM/Commuter Assistance  
Transportation Efficiency Improvement Fund (TEIF) Projects  
Senior Transportation Program

##### Federal Aid Grant Programs

FTA Section 5303 - Metropolitan Planning  
FTA Section 5304 - Statewide Planning  
FTA Section 5307 - Small Urban Areas Program

FTA Section 5310 - Transportation for Elderly Persons and Persons with Disabilities  
FTA Section 5311 - Rural Areas  
FTA Section 5316 - Jobs Access and Reverse Commute Program (JARC)  
FTA Section 5317 - New Freedom Program

#### Rail Transportation

Copies of the following documents may be viewed during regular work days from 8:30 a.m. until 5 p.m. in the office of Linda Balderson, Rail Project Manager, Virginia Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219. Copies may be obtained for a fee (varies depending on document) by contacting Linda Balderson, at the same address, telephone (804) 786-3427 or FAX (804) 255-3752, or for free online at <https://olga.drpt.virginia.gov/news.aspx>.

Questions regarding interpretation or implementation of these documents may be directed to Linda Balderson at the same address and phone number.

#### Guidance Documents:

Railroad Industrial Access Program Application Procedures  
Rail Preservation Program Application Procedures  
[Rail Enhancement Fund Application Procedures](#)  
[Intercity Passenger Rail Operating and Capital \(IPROC\) Fund Application Procedures](#)

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

### Stakeholder Meetings

The Virginia Department for Aging and Rehabilitative Services invites participation in Stakeholder Meetings as part of a review of Virginia's Employment Support Services Programs. Stakeholder input will be used to make recommendations on options that would advance the Commonwealth's progress toward facilitating the inclusion of people with the most significant disabilities in the workplace through community-based and integrated employment opportunities. This review was requested by the Virginia General Assembly during the 2015 session.

**Fairfax:** Wednesday, June 10, 2015, 9:30 a.m. - 12:30 p.m., Location to be determined

Please RSVP to Megan Grey at [megan.grey@dars.virginia.gov](mailto:megan.grey@dars.virginia.gov).

Please contact Megan Grey at telephone (804) 662-7081 or at the email address above with questions.

Contact Information: Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TDD (800) 464-9950, or email [vanessa.rakestraw@dars.virginia.gov](mailto:vanessa.rakestraw@dars.virginia.gov).

## STATE CORPORATION COMMISSION

### Bureau of Insurance

May 1, 2015

Administrative Letter 2015-09

To: All Companies Licensed, Approved, Registered or Accredited under Title 38.2 of the Code of Virginia, and All Interested Parties

Re: The Withdrawal of Administrative Letters 1981-11, 1983-6, 1985-13, 1985-15, 1986-20, 1987-15, 1988-9, 1988-14, 1990-13, 1992-8, 1992-14, 1992-15, 1992-16, 1992-17, 1992-24, 1993-16, 1997-1, 1997-13, 1998-4, 1998-6, 1998-7 and 1999-9

The Bureau of Insurance issues administrative letters to provide direction, instructions, interpretations and/or general information addressing various insurance issues. The purpose of this Administrative Letter is to inform all companies and interested parties of the withdrawal of Administrative Letters 1981-11, 1983-6, 1985-13, 1985-15, 1986-20, 1987-15, 1988-9, 1988-14, 1990-13, 1992-8, 1992-14, 1992-15, 1992-16, 1992-17, 1992-24, 1993-16, 1997-1, 1997-13, 1998-4, 1998-6, 1998-7 and 1999-9. These letters have been determined to be obsolete, because the issues they addressed are either no longer present or have been addressed elsewhere.

Questions regarding this letter may be directed to Raquel C. Pino, Principal Insurance Analyst/Research Section, Financial Regulation Division/Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, or email [raquel.pino@scc.virginia.gov](mailto:raquel.pino@scc.virginia.gov).

/s/ Jacqueline C. Cunningham  
Commissioner of Insurance

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Load of Moores Creek, Lodge Creek, Meadow Creek, and Schenks Branch

Public meeting: A meeting will be held Tuesday, June 16, 2015, at 6:30 p.m. at the Albemarle County Office Building, 401 McIntire Road, Charlottesville, VA 22902. This meeting will be open to the public and all are welcome. In the case of inclement weather, the meeting will take place on Tuesday, June 23, 2015, at the same time and place. Please contact Tara Sieber at (540) 574-7870 with any questions.

Purpose of notice: The Department of Environmental Quality (DEQ), its contractors, Virginia Tech's Biological Systems Engineering Department, and the Technical Advisory Committee comprised of local landowners and interested parties, will present the results of a water quality study known as a total maximum daily load (TMDL) for Moores Creek, Lodge Creek, Meadow Creek, and Schenks Branch. This is an opportunity for local residents to learn more about the water quality study and find out how they can help. A public comment period will follow the meeting (June 16, 2015, through July 17, 2015).

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

Description of study: Several streams in the Rivanna River watershed do not meet Virginia's water quality standards and have been placed on the 2006, 2008, and 2010 § 303(d) TMDL Priority List and Report as impaired. Moores Creek, Lodge Creek, Meadow Creek, and Schenks Branch 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 reviewed all data collected and determined the cause of the benthic impairment to be excess sediment and hydrologic modification. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

To restore water quality, sediment levels need to be reduced to the TMDL amount. Virginia agencies worked with local community partners to identify sources of excess sediment and recommend reductions. The stream segments included in this TMDL study are as follows:

Stream	County	Length (miles)	Impairment
Moores Creek	Charlottesville/ Albemarle	6.37 mi	Aquatic Life (benthics)
Lodge Creek	Charlottesville	1.57 mi	
Meadow Creek	Charlottesville/ Albemarle	4.0 mi	
Schenks Branch	Charlottesville	1.13 mi	

How to comment: The public comment period for these public meetings will end on July 17, 2015. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

**STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA**

**Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Council of Higher Education for Virginia is conducting a periodic review and small business impact review of 8VAC40-20, Regulations for the Senior Citizen Higher Education Program. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 1, 2015, and ends June 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 Melissa Wyatt, Senior Associate for Financial Aid, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-4113, FAX (804) 225-2604, or email melissacollumwyatt@schev.edu.

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

**STATE WATER CONTROL BOARD**

**Proposed Consent Special Order for Barksdale Oils, Inc.**

An enforcement action has been proposed for Barksdale Oils, Inc., for a discharge of petroleum products from a tanker truck on Interstate 95 near exit 58 in Chesterfield County, Virginia, on July 24, 2014. The State Water Control Board proposes to issue a consent special order to Barksdale Oils, Inc., 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](http://www.deq.virginia.gov). Frank Lupini will accept comments by hand delivery, email at [frank.lupini@deq.virginia.gov](mailto:frank.lupini@deq.virginia.gov), FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from June 1, 2015, through July 2, 2015.

**Proposed Enforcement Action: Snyder & Schneider Property Development, LLC**

An enforcement action has been proposed for Snyder & Schneider Property Development, LLC, for violations in Louisa County, Virginia at the Cutalong Development. The order resolves violations of 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](http://www.deq.virginia.gov). Sarah Baker will accept comments by email at [sarah.baker@deq.virginia.gov](mailto: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 June 2, 2015, through July 2, 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; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

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## General Notices/Errata

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

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

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

### ERRATA

#### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**Title of Regulation: 8VAC40-131. Virginia Student Financial Assistance Program Regulations.**

**Publication:** 31:18 VA.R. 1462-1468 May 4, 2015.

**Correction to Final Regulation:**

Page 1462, 8VAC40-131-10, definition of "cost of attendance," line 2, after "books," delete "and"

Page 1464, 8VAC40-131-50 A 1 g, line 1, after "schedule" delete "or new award schedules"

VA.R. Doc. No. R15-4266; Filed May 11, 2015, 3:36 p.m.