



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 31 ISS. 25

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

AUGUST 10, 2015

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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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## August 2015 through August 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
32:21	May 25, 2016	June 13, 2016
32:22	June 8, 2016	June 27, 2016
32:23	June 22, 2016	July 11, 2016
32:24	July 6, 2016	July 25, 2016
32:25	July 20, 2016	August 8, 2016
32:26	August 3, 2016	August 22, 2016

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Agency Decision

Title of Regulation: 12VAC35. None specified.

Statutory Authority: N/A.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Create a new regulation to require community services boards and behavioral health authorities (as defined in § 37.2-100) to produce guidance documents for petitions for modification or removal of conditions at any time, pursuant to § 19.2-182.11 of the Code of Virginia.

Agency Decision: Request denied.

Statement of Reason for Decision: The relevant statutes state that while a community services board (CSB) must file reports on the acquittee's progress at least every six months, it may petition the court for modification or removal of conditions at any time. Only the acquittee is limited to petitioning annually, commencing six months after the conditional release order is issued. On July 16, 2015, the board voted to deny the request for rulemaking as a change in the law or additional guidance documents do not seem warranted to give CSBs a legal mechanism to do what they can already do (petition anytime).

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 11th Floor, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).

VA.R. Doc. No. R15-33; Filed July 22, 2015, 12:40 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

#### Final Regulation

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

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

**Effective Date:** August 1, 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 amendments: (i) remove "domestica" from the scientific name of domestic swine; (ii) replace the words "free roaming" with "for which no claim of ownership can be made" to make this definition consistent with the feral swine definition in 4VAC15-20-160; (iii) replace the terms "bow and arrow" and "bow and arrow or crossbow" with "archery equipment" for all applicable licenses and permits; (iv) add a resident bear hunting license (fee of \$20) and a nonresident bear hunting license (fee of \$150) to the list of license and permit fees, and adjust the resident sportsman license fee; (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 under 16 years of age, and from the nonresident bear, deer, and turkey hunting licenses; and (vi) in the definition of "species," replace the erroneous word "district" with the correct word "distinct."*

**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 ~~serofa 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.).

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 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
Resident Hunting License for Partially Disabled Veterans	\$11.00
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00

# Regulations

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 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
Virginia Resident Licenses for Additional Hunting Privileges		Nonresident Annual Hunting License for Partially Disabled Veterans	\$55.00
Type license or permit	Fee	Nonresident Annual Hunting License for Totally and Permanently Disabled Veterans	\$27.50
Resident <del>Bear</del> , Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$22.00	Nonresident Lifetime License to Hunt	\$555.00
Resident Junior <del>Bear</del> , Deer, and Turkey Hunting License, for licensees under 16 years of age	\$7.50	Virginia Nonresident Licenses for Additional Hunting Privileges	
Resident Archery License to Hunt with <del>bow and arrow or crossbow</del> <u>archery equipment</u> during archery hunting season	\$17.00	Type license or permit	Fee
<u>Resident Bear Hunting License</u>	[ <del>\$25.00</del> \$20.00 ]	Nonresident <del>Bear</del> , Deer, and Turkey Hunting License, for licensees:	
Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00	16 years of age or older	\$85.00
Resident Bonus Deer Permit	\$17.00	12 through 15 years of age	\$15.00
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	under 12 years of age	\$12.00
		<u>Nonresident Bear Hunting License</u>	<u>\$150.00</u>
		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
Virginia Nonresident Licenses to Hunt		Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00
Type license	Fee	Nonresident Bonus Deer Permit	\$30.00
Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00	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
Nonresident Three-Day Trip License to Hunt	\$59.00		
Nonresident Youth License to Hunt, for licensees:		Miscellaneous Licenses or Permits to Hunt	
under 12 years of age	\$12.00	Type license or permit	Fee
12 through 15 years of age	\$15.00	Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50
		Waterfowl Hunting Floating Blind in Public Waters License	\$40.00

# Regulations

Foxhound Training Preserve License	\$17.00	Resident License to Fish in Designated Stocked Trout Waters	\$22.00		
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 Freshwater and Saltwater Fish	[ <del>\$39.00</del> \$38.50 ]		
		Resident License to Freshwater Fish for Five Consecutive Days	\$13.00		
<b>Virginia Resident and Nonresident Licenses to Trap</b>		Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00		
Type license	Fee				
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 Junior License to Trap, for licensees under 16 years of age	\$10.00				
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00				
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$20.00				
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00				
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00				
Nonresident License to Trap	\$205.00				
<b>Virginia Resident Licenses to Fish</b>					
Type license	Fee				
1-year Resident License to Freshwater Fish	\$22.00	Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:			
2-year Resident License to Freshwater Fish	\$43.00				
3-year Resident License to Freshwater Fish	\$64.00				
4-year Resident License to Freshwater Fish	\$85.00				
County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00				
Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00				
				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		
		Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, 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		
		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		

# Regulations

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 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 July 21, 2015, 11:13 p.m.

## Final Regulation

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

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

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

**Effective Date:** August 1, 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 amendment allows 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 immediately killed.*

**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*		

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		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	Tubenose 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
		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
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except Mustela putorius furo)	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas and Aardwolves*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Lepridae	Brachylagus idahoensis	Pygmy rabbit

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		Lepus europeaeus	European hare
		Oryctolagus cuniculus	European rabbit
		Sylvilagus bachmani riparius	Riparian brush rabbit
		Sylvilagus palustris hefneri	Lower Keys marsh rabbit
Rodentia		All species native to Africa	All species native to Africa
	Dipodidae	Zapus hudsonius preblei	Preble's meadow jumping mouse
	Muridae	Microtus californicus scirpensis	Amargosa vole
		Microtus mexicanus hualpaiensis	Hualapai Mexican vole
		Microtus pennsylvanicus dukecampbelli	Florida salt marsh vole
		Neotoma floridana smalli	Key Largo woodrat
		Neotoma fuscipes riparia	Riparian (= San Joaquin Valley) woodrat
		Oryzomys palustris natator	Rice rat
		Peromyscus gossypinus allapaticola	Key Largo cotton mouse
		Peromyscus polionotus allophrys	Choctawhatchee beach mouse
		Peromyscus polionotus ammobates	Alabama beach mouse
		Peromyscus polionotus niveiventris	Southeastern beach mouse
		Peromyscus polionotus peninsularis	St. Andrew beach mouse
		Peromyscus polionotus phasma	Anastasia Island beach mouse
		Peromyscus polionotus trissyllepsis	Perdido Key beach mouse
		Reithrodontomys raviventris	Salt marsh harvest mouse
		Heteromyidae	Dipodomys heermanni morroensis
	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
	Perognathus longimembris pacificus		Pacific pocket mouse
	Sciuridae	Cynomys spp.	Prairie dogs
		Spermophilus brunneus brunneus	Northern Idaho ground squirrel
		Tamiasciurus hudsonicus grahamensis	Mount Graham red squirrel
	Soricomorpha	Soricidae	Sorex ornatus relictus
<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

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# Regulations

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threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R15-4398; Filed July 21, 2015, 11:46 p.m.

## Final Regulation

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

**Title of Regulation:** **4VAC15-40. 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.

**Effective Date:** August 1, 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 amendments (i) define "bow and arrow," "crossbow," and "archery equipment," establish the minimum head width allowable to archery 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 establish requirements for when the top of the snare loop is set above a certain height; (vi) establish that a hunting permit is needed on any lands, public as well as private, that are managed by the department through a lease agreement or memorandum of agreement where the department issues an annual hunting 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~~ single-piece lock that is not power assisted ], 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~~ stamp permit. The annual hunting ~~stamp permit~~ stamp permit shall be in addition to the required licenses to hunt, and the cost of such ~~stamp permit~~ 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 July 21, 2015, 10:12 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:** 4VAC15-50. **Game:** Bear (amending 4VAC15-50-120).

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

**Public Hearing Information:**

August 20, 2015 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

**Public Comment Deadline:** August 5, 2015.

**Agency Contact:** Ryan Brown, Legislative and Policy Manager, Department of Game and Inland Fisheries, 7870

Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 263-3258, or email ryan.brown@dgif.virginia.gov.

**Summary:**

*The proposed amendment establishes a bear hound training season in Charlotte County that is open from the first Saturday in September through the last Saturday in September, both dates inclusive.*

**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, Charles City, Charlotte, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Grayson (west of Route 16), Greensville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Richmond, Roanoke (south of Interstate 81), Smyth (that part south of Interstate 81 and west of Route 16), Southampton, Spotsylvania, Stafford, Surry, Sussex, Westmoreland, 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, Greensville, 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, Charlotte, Greensville, Lunenburg, and Mecklenburg from the first Saturday in September through the 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. R15-4470; Filed July 21, 2015, 4:47 p.m.

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# Regulations

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## Final Regulation

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

**Title of Regulation:** 4VAC15-50. **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.

**Effective Date:** August 1, 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 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 (firearm) season and in the 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 establishment of a separate special license to hunt bears; (viii) clarify the areas dogs are not permitted during open (firearms) bear season; and (ix) allow for or adjust the length of bear hound training season in several 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, [ Grayson (east of Route 16), Henry, ] Loudoun, Northampton, [ Patrick, ] Pittsylvania (west of Norfolk Southern Railroad), Roanoke (south of Interstate 81), [ Smyth (south of Interstate 81 and east of Route 16), Washington (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 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 (west of Route 16), ] 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)~~, Smyth (that part south of Interstate 81 and west of Route 16), ] 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, Greenville, Lunenburg, and Mecklenburg from the first Saturday in September through the ~~third~~ last Saturday in September, both dates inclusive.

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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 July 21, 2015, 4:09 p.m.

## Final Regulation

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

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

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

**Effective Date:** August 1, 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 amendment removes 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 July 21, 2015, 7:23 p.m.

## Final Regulation

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

**Title of Regulation:** **4VAC15-90. Game: Deer (amending 4VAC15-90-23, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-89, 4VAC15-90-91, 4VAC15-90-231, 4VAC15-90-293).**

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

**Effective Date:** August 1, 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 amendments (i) expand the youth and apprentice hunter deer hunting day by one day, making it a youth and apprentice hunter deer hunting weekend; (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) in Rappahannock County, prohibit the taking of a second or third antlered deer prior to taking at least one or two, respectively, antlerless deer; (v) remove references to bear to accommodate the establishment of a special hunting license to hunt bears; (vi) remove language that could create a misimpression about whether cervids harvested from an area adjacent to a carcass-restriction zone may enter Virginia; and (vii) 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 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. E.~~ 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,

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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.

**EDITOR'S NOTE:** The Board of Game and Inland Fisheries did not adopt the proposed amendments to expand the area where elk are protected to all 31 counties west of the Blue Ridge Mountains. Such protection continues to apply to Buchanan, Dickenson, and Wise counties. Since the proposed amendments were not adopted, this section has no change.

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.

## 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 ~~13~~ 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.

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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.

-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 ~~13~~ 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 ~~13~~ 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 ~~13~~ 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 ~~13~~ 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.

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-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 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 July 22, 2015, 2:32 a.m.

**Final Regulation**

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

Title of Regulation: **4VAC15-105. Game: Fisher (adding 4VAC15-105-10).**

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

Effective Date: August 1, 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 regulation 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.

VA.R. Doc. No. R15-4403; Filed July 21, 2015, 6:23 p.m.

**Final Regulation**

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

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# Regulations

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**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.

**Effective Date:** August 1, 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 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 from one Saturday 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 terms "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; and (iv) remove references to bear to accommodate the 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~~ 1/2 ] 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 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 July 21, 2015, 6:57 p.m.

**Final Regulation**

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

**Title of Regulation:** 4VAC15-275. **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).

**Effective Date:** August 1, 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:**

*This regulation establishes the Virginia Hunter Education program, including minimum standards for hunter education course competency, hunter education course provider requirements, course availability, issuance of certificates and the Virginia Hunter Education Card, requirements for recordkeeping of student records, fees, penalties for violations, and instructor certification.*

**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:

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"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.

"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.

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## **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 form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form with a hyperlink to access it. The form is 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://ihe-USA.org>](#)

VA.R. Doc. No. R15-4406; Filed July 22, 2015, 0:55 a.m.

## **MARINE RESOURCES COMMISSION**

### **Final Regulation**

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

**Title of Regulation:** **4VAC20-560. Pertaining to Shellfish Management Areas (amending 4VAC20-560-20 through 4VAC20-560-60; adding 4VAC20-560-55).**

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

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

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email [jennifer.farmer@mrc.virginia.gov](mailto:jennifer.farmer@mrc.virginia.gov).

## **Summary:**

*The amendments (i) update boundary coordinates for the Newport News Shellfish Management Area; (ii) change the patent tong season from December 1 through April 30 and make it unlawful for any person to harvest clams in the Newport News Shellfish Management Area except from May 1 through September 30; (iii) make leasing any area of Newport News Shellfish Management Area unlawful; and (iv) change "marine patrol officer" to "marine police officer."*

## **4VAC20-560-20. Shellfish management areas.**

A. The Poquoson River Shellfish Management Area shall consist of all public grounds bounded by a line beginning at Hunts Point Survey Taylor and running northwesterly to Survey Station Spit; thence northeasterly to Survey Station Cabin North; thence east to Survey Station Cabin South; thence southeasterly following the general shoreline (not to include any creeks or canals) to the flag pole near Survey Station 80 at York Point; thence 175 degrees to Day Marker No. 14 and returning to Hunts Point Survey Taylor.

B. The Back River Shellfish Management Area shall consist of all current public clamming grounds bounded by a line from corner 3 on Shell Plant 115 through corner 17, a daymarker, on Shell Plant 115, 237.42 feet to a point being the point of beginning; thence southeasterly to corner number 1 Public Clamming Ground (PCG#12); thence southeasterly to corner number 3A Public Clamming Ground (PCG#12); thence northeasterly to corner number 3 Public Clamming Ground (PCG#12); thence northwesterly to corner number 2 Public Clamming Ground (PCG#12); thence southwesterly to the POB. Also, for a period of one year, throughout 1994, Shell Plant 115 will also be included in the Back River Shellfish Management Area.

C. The James River Broodstock Management Area is located inside Public Ground No. 1, Warwick County, south of the James River Bridge, further described as follows: Beginning at a corner number 611 (State Plane Coordinates North 249766.12 East 2596017.56); thence Grid Azimuth 308-39-51, 1074.35' to a corner number 613 (State Plane Coordinates North 250437.32 East 2595178.68); thence Grid Azimuth 28-15-00, 366.30' to a corner number 614 (State Plane Coordinates North 250759.99 East 2595352.06); thence Grid Azimuth 132-36-45, 1114.51' to a corner number 612 (State Plane Coordinates North 250005.43 East 2596172.28); thence Grid Azimuth 212-53-03, 284.97' to a corner number 611, being the point of beginning, containing 8.04 acres.

D. The York River Broodstock Management Area shall consist of the area under any portion of the George P. Coleman Memorial Bridge, in addition to the area within 300 feet of the eastern, or downstream, side of the George P. Coleman Memorial Bridge and the area within 300 feet of the western, or upstream, side of the George P. Coleman Memorial Bridge.

E. The Newport News Shellfish Management Area shall consist of all current public clamming grounds bounded by a line beginning at the intersection of the James River Bridge and Public Ground No. 1, Warwick County, downstream side; thence east southeasterly along the boundary to corner #5, Public Ground No. 1, Warwick County; thence southeast along the boundary to a corner (249,066.55/2,595,681.74); thence northeast along the boundary to the intersection of a line between the James River Bridge and the northwest corner of Newport News Shipbuilding and Drydock Company shipyard near station "HELO," said line being perpendicular to the James River Bridge; thence southeast along the defined line to the northwest corner of the shipyard; thence downstream to the offshore end of the floating drydock; thence to the offshore end of shipyard pier #6 just south of "Stack"; thence to the offshore end of pier #2 (F R Priv); thence to FI Y "A" off the end of the pier just south of 23rd Street; thence to the offshore end of pier #9 (2 F Y siren); thence to the offshore end of the old coal pier downstream of pier #9; thence to navigational aid FI G "13"; thence to the northeast corner of the Fan Building on the south island of the Monitor Merrimac Bridge Tunnel; thence southerly along the downstream side of the Monitor Merrimac Bridge Tunnel to the first overhead light structure on the bridge tunnel north of the small boat channel hump; thence northwesterly to corner #3, lease #10091 (Hazelwood); thence northwesterly along the boundary to corner #2, lease #10091 (Hazelwood); thence southwesterly to corner #1, Public Ground No. 2, Nansemond County; thence northwesterly along the boundary to corner #6, at the intersection of Public Ground No. 2, Nansemond County, and Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #614, Public Ground No. 6, Isle of Wight County; thence north northwesterly along the boundary to corner #2, Public Ground No. 6, Isle of Wight County; thence northwesterly along the boundary to the intersection of the James River Bridge and Public Ground No. 6, Isle of Wight County; thence northeasterly along the downstream side of the James River Bridge to the intersection with Public Ground No. 1, Warwick County, at the point of beginning.

E. The Newport News Shellfish Management Area shall consist of the area bounded by a line beginning at the point of intersection of the downstream side of the James River Bridge (U.S. Route 17 - northbound) , east of the draw span and the western boundary of Public Ground No. 1, Warwick County (City of Newport News), said point being at NAD 1983, latitude 37° 00.2694609' N., longitude 76° 27.9896511' W.; thence east southeasterly along the boundary to a corner of Public Ground No. 1, Warwick County, latitude 37° 00.1982568' N., longitude 76° 27.8155397' W.; thence southeasterly along the boundary to a corner, latitude 36° 59.9941747' N., longitude 76° 27.5831952' W.; thence northeasterly along the boundary to the intersection of the Condemned Shellfish Area Line, Area 056-007-A, as established by the Virginia Department of Health effective

January 8, 2014, latitude 37° 00.0789081' N., longitude 76° 27.4512191' W.; thence southeasterly following the condemned area boundary to a point near the offshore end of the Newport News Shipbuilding floating dry dock located at latitude 36° 59.2816669' N., longitude 76° 26.7950000' W.; thence to the northwest corner of the Virginia Port Authority container pier, latitude 36° 58.1833333' N., longitude 76° 26.0150000' W.; thence southeasterly to a point near the end of a coal loading pier, latitude 36° 57.9883333' N., longitude 76° 25.8316667' W.; thence southeasterly to a point near the end of a coal loading pier, latitude 36° 57.7483333' N., longitude 76° 25.4416667' W.; thence southeasterly to the northwest corner of the south island of the Monitor Merrimac Memorial Bridge Tunnel, latitude 36° 56.8799995' N., longitude 76° 24.3399996' W.; thence southerly along the upstream side of the Monitor Merrimac Memorial Bridge Tunnel to the first overhead light structure on the bridge tunnel north of the small boat channel hump, latitude 36° 55.6035310' N., longitude 76° 24.5674263' W.; thence northwesterly to the easternmost corner of Oyster Lease, Plat File 10091 (Johnson, III or successors), latitude 36° 55.9505383' N., longitude 76° 25.0031248' W.; thence northwesterly to the northernmost corner of said lease, latitude 36° 56.2062064' N., longitude 76° 25.4039147' W.; thence westerly to the easternmost corner of Public Ground No. 2, Nansemond County (City of Suffolk), latitude 36° 56.2025195' N., longitude 76° 25.4339957' W.; thence northwesterly to the southwest corner of Oyster Lease, Plat File 20663 (Melzer/Burton or successors), latitude 36° 56.8957714' N., longitude 76° 26.6177905' W.; thence northeasterly to a lease corner, latitude 36° 56.9688138' N., longitude 76° 26.4028827' W.; thence north-northwesterly to a lease corner, latitude 36° 58.2820197' N., longitude 76° 27.2355278' W.; thence northwesterly to a lease corner, latitude 36° 58.4440126' N., longitude 76° 27.3919892' W.; thence northwesterly to a corner on Oyster Lease, Plat File 20662 (Burton/Burton, Jr. or successors), latitude 36° 59.0856691' N., longitude 76° 27.9659794' W., thence northwesterly to a point on the boundary of Oyster Lease, Plat File 20662, latitude 36° 59.3207135' N., longitude 76° 28.4650941' W.; thence northeasterly to the southern corner of Oyster Lease, Plat File 20699 (Green or successors), latitude 36° 59.4032421' N., longitude 76° 28.3778693' N.; thence northeasterly to a lease corner, latitude 36° 59.7192188' N., longitude 76° 28.0438774' W.; thence north-northwesterly to the extending through the northern corner of Oyster Lease, Plat File 20699, to a point on the downstream side of the James River Bridge (U.S. Route 17 - northbound), latitude 37° 00.0685852' N., longitude 76° 28.2312958' W.; thence northeasterly along the downstream side of the bridge to a point east of the draw span and the intersection of the western boundary of Public Ground No. 1, Warwick County (City of Newport News), said point being the point of beginning.

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F. The Back River Reef Broodstock Management Area shall consist of the area within a 2000' radius of the center buoy, with a position of 37° 08' 12" north, 76° 13' 54" west.

G. The Middle Ground Light Broodstock Management Area shall consist of the area within a 1000' radius of the navigational light, with a position of 36° 56.7' north, 76° 23.5' west.

H. The York Spit Reef Broodstock Management Area shall consist of the area contained within the defined latitudes and longitudes: northwest corner 37° 14' 75" N—076° 14' 20" W, northeast corner 37° 14' 75" N—076° 13' 30" W, southwest corner 37° 14' 05" N—076° 14' 20" W, southeast corner 37° 14' 05" N—076° 13' 30" W.

#### **4VAC20-560-30. Permits required.**

Each boat or vessel engaged in the harvesting of clams by patent tong from the Poquoson River Shellfish Management Area or the Back River Shellfish Management Area shall first obtain a permit specific to the management area to be worked from any ~~Marine Patrol Officer~~ marine police officer, and this permit shall be on board the vessel at all times and available for inspection. The permit shall state the name and port of the vessel, the registration or documentation number of the vessel, the name and address of the owner of the vessel and the name of the captain of the vessel. Any change to any of the above information shall require the vessel owner or captain to obtain a new permit. These permits shall be in addition to all other licenses or permits required by law.

#### **4VAC20-560-40. Patent tong season.**

A. The lawful season for the harvest of clams by patent tong from the Poquoson River Shellfish Management Area shall be March 15 through May 1.

B. The lawful season for the harvest of clams by patent tong from the Back River Shellfish Management Area shall be January 1 through March 31.

C. It shall be unlawful for any person to harvest clams by patent tong from either the Poquoson River Shellfish Management Area or Back River Shellfish Management Area except as provided in subsections A and B of this section.

~~D. The lawful season for the harvest of clams by patent tong from the Newport News Shellfish Management Area shall be December 1 through April 30, except that if the catch of clams per tong hour for the previous season is less than 174 clams per tong hour, the lawful season shall be December 1 through March 31.~~

~~E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from May 1 through November 30, except that if the catch of clams per tong hour for the previous season is less than 174 clams per tong hour, it shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area from April 1 through November 30.~~

D. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area during any month, except May, June, July, August and September.

#### **4VAC20-560-50. Time of day and harvest restrictions.**

A. It shall be unlawful for any person to harvest clams by patent tong from the Poquoson River Shellfish Management Area before sunrise or after 2 p.m.

B. It shall be unlawful for any person to harvest clams by patent tong from the Back River Shellfish Management Area before sunrise or after 4 p.m.

C. It shall be unlawful for any person to harvest clams by patent tong from either the Poquoson River Shellfish Management Area, Newport News Shellfish Management Area, or Back River Shellfish Management Area on Saturday or Sunday.

D. It shall be unlawful for any person to harvest any shellfish from the James River Broodstock Management Area, Back River Reef Broodstock Management Area, Middle Ground Light Broodstock Management Area, York Spit Reef Broodstock Management Area, or York River Broodstock Management Area at any time.

E. It shall be unlawful for any person to harvest clams by patent tong from the Newport News Shellfish Management Area before sunrise or after 2 p.m.

F. It shall be unlawful for any person to possess any amount of hard clams from the Newport News Shellfish Management Area that consists of more than 2.0% by number of clams, which can be passed through a 1-3/8 inch inside diameter culling ring. The 2.0% allowance shall be measured by the marine ~~patrol~~ police officer from each container or pile of clams.

#### **4VAC20-560-55. Prohibition to lease in a shellfish management area.**

It shall be unlawful for any person to lease any area of the Newport News Shellfish Management Area.

#### **4VAC20-560-60. Penalty.**

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. In addition to the penalties prescribed by law, any person violating 4VAC20-560-50 D shall immediately return all harvested shellfish to the Broodstock Management Area, shall cease harvesting on that day, shall be required to appear before the Marine Resources Commission pursuant to any violation, and all harvesting apparatus shall be subject to seizure.

C. The Marine Resources Commission may revoke the permit of any person convicted of a violation of this chapter.

D. All clams in any container or pile found in violation of 4VAC20-560-50 F shall be returned to the water by the clammer as directed by the marine patrol police officer.

V.A.R. Doc. No. R15-4420; Filed July 30, 2015, 2:35 p.m.

**Final Regulation**

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

**Title of Regulation:** 4VAC20-610. **Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-10, 4VAC20-610-30, 4VAC20-610-40).**

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

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

**Agency Contact:** Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

**Summary:**

*The amendments establish the annual renewal period for the Commercial Fisherman Registration License from December through April and eliminate the exceptions to delayed entry unless it is strictly a medical or military reason.*

**4VAC20-610-10. Purpose.**

The purpose of this chapter is to establish the procedures for the registration of commercial fishermen and the manner and form of mandatory harvest reports from fishermen and others. ~~Further, the purpose is to license commercial fishermen using hook and line, rod and reel, or hand line.~~

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

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

1. Persons taking menhaden under the authority of licenses issued pursuant to § 28.2-402 of the Code of Virginia.
2. Persons independently harvesting and selling, trading, or bartering no more than three gallons of minnows per day who are not part of, hired by, or engaged in a continuing business enterprise.

- a. Only minnow pots, a cast net or a minnow seine less than 25 feet in length may be used by persons independently harvesting minnows.
- b. All other marine species taken during the process of harvesting minnows shall be returned to the water immediately.

**B. Requirements of authorized agents.**

1. No person whose Commercial Fisherman Registration License, fishing gear license, or fishing permit is currently revoked or rescinded by the Marine Resources Commission pursuant to § 28.2-232 of the Code of Virginia is authorized to possess the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any other registered commercial fisherman in order to serve as an agent for fishing the commercial fisherman's gear or selling the harvest.
2. No registered commercial fisherman shall use more than one person as an agent at any time.
3. Any person serving as an agent shall possess the Commercial Fisherman Registration License and gear license of the commercial fisherman while fishing.
4. When transporting or selling a registered commercial fisherman's harvest, the agent shall possess either the Commercial Fisherman Registration License of that commercial fisherman or a bill of lading indicating that fisherman's name, address, Commercial Fisherman Registration License number, date and amount of product to be sold.

**C. Requirements of authorized blue crab fishery agents.**

1. Any person licensed to harvest blue crabs commercially shall not be eligible to also serve as an agent.
2. Any person serving as an agent to harvest blue crabs for another licensed fisherman shall be limited to the use of only one registered commercial fisherman's crab license; however, an agent may fish multiple crab traps licensed and owned by the same person.
3. There shall be no more than one person, per vessel, serving as an agent for a commercial crab licensee.
4. Prior to using an agent in any crab fishery, the licensee shall submit a crab agent registration application to the commission. Crab agent registration applications shall be approved by the commissioner, or his designee, for a crab fishery licensee according to the following guidelines:
  - a. Only 125 agents may participate annually in the crab fishery, as described in subdivision 4 b of this subsection, unless the commissioner, or his designee, approves a request for agent use because of a non-economic hardship circumstance and
  - b. 125 agents may be utilized by those crab fishery licensees who received approval for agent use in 2012 or who currently are licensed by a transferred crab fishery license from a licensee approved for agent use in 2012,

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except that should any of these licensees described in this subdivision fail to register for agent use by March 1, applications for agent use by other licensees shall be approved on a first-come, first-served basis, starting with those licensees who have registered prior to March 1.

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

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

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

1. Menhaden purse seine licenses issued pursuant to § 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.
2. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

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

- ~~1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.~~
- ~~2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.~~
- ~~3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.~~

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

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

F. On or after January 1, 1993, fishermen not registered as commercial fishermen but who desire to sell their catch shall apply to the commission for a Commercial Fisherman Registration License. The effective date of status as a commercial fisherman shall be two years from the date the application is approved by the commission. A person whose registration as a commercial fisherman is not effective shall not sell, trade, or barter his catch or give his catch to another in order that it may be sold, traded, or bartered.

G. Exceptions to the two-year delay described in subsection F of this section may be granted by the commissioner or his designee, if any of the following criteria are met:

1. The applicant is purchasing another fisherman's Commercial Fisherman Registration License, and the seller holds a valid, current Commercial Fisherman Registration License and surrenders that license to the commission at the time the license is sold.
2. An immediate member of the applicant's family who holds a current Commercial Fisherman Registration License has died or is retiring from the commercial fishery and the applicant intends to participate in the fishery.
3. The applicant purchased a valid Commercial Fisherman Registration License during the preceding year, did not transfer that Commercial Fisherman Registration License, and can demonstrate a significant hardship on the basis of health or active military duty as described in subdivision 4 of this subsection.
4. Any exceptions based on a health condition shall only be granted by the commissioner or his designee only after receipt of an attending physician's description of the medical condition. Any exception based on active military duty shall only be granted by the commissioner or his designee after receipt of those military orders.

#### **4VAC20-610-40. Registration procedures.**

A. An applicant may renew his Commercial Fisherman Registration License by registering during the months of December through ~~February~~ April as commercial fishermen as follows:

1. The applicant shall complete an application for a Commercial Fisherman Registration License.
2. The applicant shall mail the completed application to the Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607.
3. The Commercial Fisherman Registration License will be returned to the applicant by mail upon validation of his application.

B. Persons desiring to enter the commercial fishery and those fishermen failing to register as provided in subdivision A ~~may apply only during December, January or February of each year~~ of this section shall apply to the commission for

registration as commercial fishermen. All such applications shall be for a delayed registration and shall be made as provided below.

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing his complete name, mailing address (and 911 address if different than mailing address), ~~social security number~~ valid driver's license number or Virginia Department of Motor Vehicles identification number, birth date, weight, height, eye color, hair color, telephone number of residence, and signature.

2. The applicant shall mail the completed application to the Virginia Marine Resources Commission, 2600 Washington Avenue, Newport News, VA 23607.

3. The Commercial Fisherman Registration License will be returned to the applicant by mail two years after the date of receipt of the application by the commission. Notification of any change in the address of the applicant shall be the responsibility of the applicant.

C. No part of the Commercial Fisherman Registration License fee shall be refundable.

D. The Commercial Fisherman Registration License may be renewed annually during the months of December, ~~January or February~~ through April, only when any and all mandatory reporting harvest reports are up to date and there are no outstanding compliance issues. Any person failing to renew his license after April 30 shall be subject to the delay provision of subsection B of this section.

VA.R. Doc. No. R15-4455; Filed July 30, 2015, 2:53 p.m.

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**TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

**CRIMINAL JUSTICE SERVICES BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Criminal Justice Services Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Criminal Justice Services Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **6VAC20-171. Regulations Relating to Private Security Services (repealing 6VAC20-171-10 through 6VAC20-171-560).**

**6VAC20-172. Regulations Relating to Private Security Services Businesses (adding 6VAC20-172-10 through 6VAC20-172-250).**

**6VAC20-173. Regulations Relating to Private Security Services Training Schools (adding 6VAC20-173-10 through 6VAC20-173-330).**

**6VAC20-174. Regulations Relating to Private Security Services Registered Personnel (adding 6VAC20-174-10 through 6VAC20-174-520).**

Statutory Authority: § 9.1-141 of the Code of Virginia.

Effective Date: September 9, 2015.

Agency Contact: Barbara Peterson-Wilson, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, or email barbara.peterson-wilson@dcjs.virginia.gov.

Summary:

*This exempt regulatory action repeals the existing Regulations Relating to Private Security Services (6VAC20-171) and breaks out the three distinct main components of the private security industry--business, training schools, and registered personnel--into three individual chapters numbered 6VAC20-172 (Businesses), 6VAC20-173 (Training Schools), and 6VAC20-174 (Registered Personnel) based on related topics. No substantive changes to the requirements established in the current regulations under 6VAC20-171 are made in this action.*

CHAPTER 172

REGULATIONS RELATING TO PRIVATE SECURITY SERVICES BUSINESSES

Part I  
Definitions

**6VAC20-172-10. Definitions.**

In addition to the words and terms defined in § 9.1-138 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:

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

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Electronic images" means an acceptable method of maintaining required documentation through the scanning, storage, and maintenance of verifiable electronic copies of original documentation.

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"Employee" means a natural person employed by a licensee to perform private security services that are regulated by the department.

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in 6VAC20-174.

"Firm" means a business entity, regardless of method of organization, applying for an initial or renewal private security services business license or private security services training school certification.

"Incident" means an event that exceeds the normal extent of one's duties.

"Intermediate weapon" means a tool not fundamentally designed to cause deadly force with conventional use. This would exclude all metal ammunition firearms or edged weapons. These weapons include but are not limited to baton/collapsible baton, chemical irritants, electronic restraining devices, projectiles, and other less lethal weapons as defined by the department.

"Licensed firm" means a business entity, regardless of method of organization, that holds a valid private security services business license issued by the department.

"Licensee" means a licensed private security services business.

"Official documentation" means personnel records; Certificate of Release or Discharge from Active Duty (DD214); copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive compensation for employment for which a registration or certification is required.

"Performance of his duties" means on duty in the context of this chapter.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Physical address" means the location of the building that houses a private security services business or training school or the location where the individual principals of a business reside. A post office box is not a physical address.

"Principal" means any sole proprietor, individual listed as an officer or director with the Virginia State Corporation

Commission, board member of the association, or partner of a licensed firm or applicant for licensure.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, security canine handler, detector canine handler, private investigator, personal protection specialist, alarm respondent, a locksmith, central station dispatcher, electronic security employee, an electronic security sales representative, electronic security technician, or electronic security technician's assistant.

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Related field" means any field with training requirements, job duties, and experience similar to those of the private security services field in which the applicant wishes to be licensed, certified, or registered. This term includes law enforcement and certain categories of the military.

"This chapter" means the Regulations Relating to Private Security Services Businesses (6VAC20-172).

## Part II

### Application Fees

#### **6VAC20-172-20. Application fees.**

A. Schedule of fees. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for licensing, certification, and other administrative requests for services relating to private security services.

<u>CATEGORIES</u>	<u>FEES</u>
<u>Fingerprint processing</u>	<u>\$50</u>
<u>Initial business license - 1-year license</u>	<u>\$550</u>
<u>Initial business license - 2-year license</u>	<u>\$800</u>
<u>Business license renewal - 2-year license</u>	<u>\$500</u>
<u>Business license category</u>	<u>\$50</u>
<u>Initial compliance agent certification</u>	<u>\$50</u>
<u>Compliance agent certification renewal</u>	<u>\$25</u>
<u>Regulatory compliance - entry-level training</u>	<u>\$75</u>
<u>Regulatory compliance - in-service training</u>	<u>\$50</u>

B. Reinstatement fee.

1. The department shall collect a reinstatement fee for license or certification renewal applications not received on or before the expiration date of the expiring license or certification.
2. The reinstatement fee shall be 50% above and beyond the renewal fee of the license, certification, or any other credential issued by the department wherein a fee is established and renewal is required.

C. Dishonor of fee payment due to insufficient funds.

1. The department may suspend the license, certification, or authority it has granted any person who submits a check or similar instrument for payment of a fee required by statute or regulation that is not honored by the financial institution upon which the check or similar instrument is drawn.
2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the person or licensee may request that the suspended license, certification, or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompanies the request. Suspension under this provision shall be exempt from the Administrative Process Act.

D. Manual processing service fee. The department shall collect a \$5.00 service fee for any applications under this chapter that are submitted to the department by other means than the available electronic methods established by the department.

Part III

Criminal History Records Search

**6VAC20-172-30. Fingerprint processing.**

A. On or before the first date of hire, each person applying for licensure as a private security services business, including principals, supervisors, and electronic security employees or for certification as a compliance agent shall submit to the department:

1. One completed fingerprint card provided by the department or another electronic method approved by the department;
2. A fingerprint processing application;
3. The applicable, nonrefundable fee; and
4. All criminal history conviction information on a form provided by the department.

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual or individuals have a record of conviction.

C. Fingerprint cards found to be unclassifiable will suspend all action on the application pending the resubmission of a

classifiable fingerprint card. The applicant shall be so notified in writing and must submit a new fingerprint card within 30 days of notification before the processing of his application shall resume. If a fingerprint card is not submitted within the 30 days, the initial fingerprint application process will be required to include applicable application fees.

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial. The compliance agent will also be notified in writing by DCJS that the applicant has been denied.

E. Fingerprint applications will be active for 120 days from the date of submittal. Applications for licenses and certifications must be submitted within that 120-day period or initial fingerprint submittal will be required.

Part IV

Business License Application Procedures; Administrative Requirements; Standards of Conduct

**6VAC20-172-40. Initial business license application.**

A. Prior to the issuance of a private security services business license, the applicant shall meet or exceed the requirements of licensing and application submittal to the department as set forth in this section.

B. Each person seeking a license shall file a completed application provided by the department including:

1. For each principal and supervisor of the applying business and for each electronic security employee of an electronic security services business, his fingerprints pursuant to this chapter;
2. Documentation verifying that the applicant has secured a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 per individual occurrence and \$300,000 general aggregate issued by an insurance company authorized to do business in Virginia;
3. For each nonresident applicant for a license, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;
4. For each applicant for a license except sole proprietor or partnership, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;
5. A physical address in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical address;

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6. On the license application, designation of at least one individual as compliance agent who is certified or eligible for certification;

7. The applicable, nonrefundable license application fee; and

8. Designation on the license application of the type of private security business license the applicant is seeking. The initial business license fee includes one category. A separate fee will be charged for each additional category. The separate categories are identified as follows: (i) security officers/couriers (armed and unarmed), (ii) private investigators, (iii) electronic security personnel, (iv) armored car personnel, (v) personal protection specialists, (vi) locksmiths, and (vii) detector canine handlers and security canine handlers. Alarm respondents crossover into both the security officer and electronic security category; therefore, if an applicant is licensed in either of these categories, he can provide these services without an additional category fee.

C. Upon completion of the initial license application requirements, the department may issue an initial license for a period not to exceed 24 months.

D. The department may issue a letter of temporary licensure to businesses seeking licensure under § 9.1-139 of the Code of Virginia for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and compliance agent of the business, provided the applicant has met the necessary conditions and requirements.

E. A new license is required whenever there is any change in the ownership or type of organization of the licensed entity that results in the creation of a new legal entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

F. Each license shall be issued to the legal business entity named on the application, whether it is a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity.

G. Each licensee shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

H. Each licensee shall be a United States citizen or legal resident alien of the United States.

## **6VAC20-172-50. Renewal business license application.**

A. Applications for license renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the licensee. However, if a renewal notification is not received by the licensee, it is the responsibility of the licensee to ensure renewal requirements are filed with the department. License renewal applications must be received by the department and all license requirements must be completed prior to the expiration date or shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Licenses will be renewed for a period not to exceed 24 months.

C. The department may renew a license when the following are received by the department:

1. A properly completed renewal application;

2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 per individual occurrence and \$300,000 general aggregate issued by an insurance company authorized to do business in Virginia;

3. Fingerprint records for any new or additional principals submitted to the department within 30 days of their hire date provided, however, that any change in the ownership or type of organization of the licensed entity has not resulted in the creation of a new legal entity;

4. On the application, designation of at least one compliance agent who has satisfactorily completed all applicable training requirements;

5. The applicable, nonrefundable license renewal fee and applicable category of service fees; and

6. On the first day of employment, each new and additional supervisor's fingerprints submitted to the department pursuant to § 9.1-139 I of the Code of Virginia.

D. Each business applying for a license renewal shall be in good standing in every jurisdiction where licensed, registered, or certified in a private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

E. Any renewal application received after the expiration date of a license shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

F. On the renewal application the licensee must designate the type of private security business license he wishes to

renew. The fee will be based upon the category or categories selected on the renewal application.

**6VAC20-172-60. General requirements.**

All private security services licensed businesses are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines, and this chapter.

**6VAC20-172-70. Business administrative requirements.**

A licensee shall:

1. Maintain at all times with the department its physical address in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department, the physical address of all locations in Virginia utilized by the licensee in which regulated services are offered, and email address if applicable. A post office box is not a physical address. Notification of any change shall be in writing and received by the department no later than 10 days after the effective date of the change.

2. Maintain at all times with the department its current operating name and all fictitious names. Any name change reports shall be submitted in writing within 10 days after the occurrence of such change and accompanied by certified true copies of the documents that establish the name change.

3. Report in writing to the department any change in its ownership or principals that does not result in the creation of a new legal entity. Such written report shall be received by the department within 30 days after the occurrence of such change to include fingerprint cards pursuant to this chapter.

4. Report in writing to the department any change in the entity of the licensee that results in continued operation requiring a license. Such written report shall be received by the department within 10 days after the occurrence of such change.

5. Maintain at all times current liability coverage at least in the minimum amounts prescribed by the application requirements of this chapter. Each day of uninsured activity would be construed as an individual violation of this requirement.

6. Maintain at all times with the department a completed irrevocable consent for service if the licensee is not a resident of the Commonwealth of Virginia. Licensees that move their business from the Commonwealth shall file a completed irrevocable consent for services within 15 days of the change in location.

7. Employ at all times at least one individual designated as a compliance agent who is in good standing and is certified pursuant to this chapter. In the event there is more than one compliance agent designated for the business, designate one as the primary compliance agent and point of contact.

8. Maintain at all times and for a period of not less than three years from the date of termination of employment the following documentation concerning all regulants: documentation or electronic images of the date of hire in the regulated category; documentation that the fingerprint processing application was submitted on the date of hire; verification that the employee is a United States citizen or legal resident alien and is properly registered or certified and trained; and current physical and mailing addresses for all regulated employees and telephone numbers if applicable.

9. Upon termination of employment of a certified compliance agent, notify the department in writing within 10 calendar days. This notification shall include the name of the individual responsible for the licensee's adherence to applicable administrative requirements and standards of conduct during the period of replacement.

10. Within 90 days of termination of employment of the sole remaining compliance agent, submit the name of a new compliance agent who is eligible for certification. Individuals not currently eligible may pursue certification pursuant to this chapter. This notification shall be in writing and signed by a principal of the business and the designated compliance agent.

11. Prominently display at all times for public inspection, in a conspicuous place where the public has access, the business license issued by the department.

12. Ensure that all individuals submit fingerprint cards pursuant to this chapter and as required by the Code of Virginia.

13. Inform the department in writing within 10 days of receiving knowledge of any principal, partner, officer, or compliance agent regulated by this chapter or any employee regulated or required to be regulated by the board, pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

14. Inform the department in writing within 10 days of receiving knowledge of any principal, licensee, subsidiary, partner, officer, or compliance agent regulated by this chapter, or any employee regulated or required to be regulated by the board, having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction.

15. On a form provided by the department and within 10 calendar days of receiving knowledge of an incident, submit a report of any incident in which any registrant has discharged a firearm while on duty, excluding any training exercise.

16. In the event a complaint against the licensee is received by the department, be required to furnish documentary

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evidence (written agreement) of the terms agreed to between licensee and client, which shall include at a minimum the specific scope of services and fees assessed for such services. The licensee shall retain a copy for a period of not less than three years from completion of said agreement.

17. Not fail to honor the terms and conditions of a warranty or written agreement.

18. In the event a licensee sells or otherwise transfers the ownership of a monitoring agreement of an electronic security customer in Virginia, notify the end user, in writing, within 30 days of the transfer of monitoring services. No licensee shall sell or otherwise transfer to an entity not licensed in Virginia.

19. Ensure that all employees regulated by the board carry a department issued registration card or temporary registration letter along with a photo identification while on duty.

20. Ensure that all regulated employees authorized to provide private security services while completing compulsory minimum training standards pursuant to § 9.1-139 H of the Code of Virginia carry a photo identification along with an authorization form provided by the department while on duty.

21. Maintain a written use of force policy dictating the business' policy for using deadly force and for use of less lethal force. A statement certifying that the employee has read and understands the business' use of force policy must be signed by each employee who is permitted to carry firearms or intermediate weapons and maintained in the employee's file.

22. Maintain records for individual employees permitted to carry intermediate weapons while on duty to verify training in the use of the permitted intermediate weapons.

23. Maintain at all times and for a period of not less than three years from the date of termination, decertification, or other separation records of detector canine handler team certifications to include a photo of detector canine teams utilized to provide regulated private security services.

## **6VAC20-172-80. Business standards of conduct.**

A licensee shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Ensure that all employees regulated or required to be regulated by the board conform to all application requirements, administrative requirements, and standards of conduct pursuant to the Code of Virginia, 6VAC20-174, and this chapter.

3. Not direct any employee regulated or required to be regulated by the board to engage in any acts prohibited by the Code of Virginia, 6VAC20-174, and this chapter.

4. Employ individuals regulated or required to be regulated as follows:

a. A licensee shall employ or otherwise utilize individuals possessing a valid registration issued by the department showing the registration categories required to perform duties requiring registration pursuant to the Code of Virginia;

b. A licensee shall not allow individuals requiring registration as armored car personnel, armed security officers/couriers, armed alarm respondents with firearm endorsement, private investigators, personal protection specialists, detector canine handlers, or security canine handlers to perform private security services until such time as the individual has been issued a registration by the department;

c. A licensee may employ individuals requiring registration as an unarmed alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative, an electronic security technician, an unarmed armored car driver, an unarmed security officer, or an electronic security technician's assistant for a period not to exceed 90 consecutive days in any registered category listed in this subdivision 4 c while completing the compulsory minimum training standards as set forth in 6VAC20-174 provided:

(1) The individual's fingerprint card has been submitted;

(2) The individual is not employed in excess of 120 days without having been issued a registration from the department; and

(3) The individual did not fail to timely complete the required training with a previous employer.

d. A licensee shall not employ any individual carrying or having access to a firearm in the performance of his duties who has not obtained a valid registration and firearms endorsement from the department; and

e. A licensee shall maintain appropriate documentation to verify compliance with these requirements. A licensee shall maintain these documents after employment is terminated for a period of not less than three years.

5. Not contract or subcontract any private security services in the Commonwealth of Virginia to a person not licensed by the department. Verification of a contractor's or subcontractor's license issued by the department shall be maintained for a period of not less than three years.

6. Ensure that the compliance agent conforms to all applicable application requirements, administrative requirements, and standards of conduct pursuant to the Code of Virginia and this chapter.

7. Permit the department during regular business hours to inspect, review, or copy those documents, electronic images, business records, or training records that are required to be maintained by the Code of Virginia and this chapter.

8. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia, 6VAC20-173, 6VAC20-174, or this chapter.

9. Not commit any act or omission that results in a private security license or registration being suspended, revoked, or not renewed, or the licensee or registrant otherwise being disciplined in any jurisdiction.

10. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. 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 prima facie evidence of such guilt.

11. Not obtain or aid and abet others to obtain a license, license renewal, registration, registration renewal, certification, certification renewal, or firearms endorsement through any fraud or misrepresentation.

12. Include the business license number issued by the department on all business advertising materials pursuant to the Code of Virginia. Business advertising materials containing information regarding more than one licensee must contain the business license numbers of each licensee identified.

13. Not conduct a private security services business in such a manner as to endanger the public health, safety, and welfare.

14. Not falsify or aid and abet others in falsifying training records for the purpose of obtaining a license, registration, or certification.

15. Not represent as one's own a license issued to another private security services business.

16. When providing central station monitoring services, attempt to verify the legitimacy of a burglar alarm activation by calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch. This shall not apply if the alarm user has provided written authorization requesting immediate or one-call dispatch to both his local police department and his dealer of record. This shall not apply to duress or hold-up alarms.

17. Not perform any unlawful or negligent act resulting in loss, injury, or death to any person.

18. Utilize vehicles for private security services using or displaying an amber flashing light only as specifically authorized by § 46.2-1025 A 9 of the Code of Virginia.

19. Not use or display the state seal of Virginia or the seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision of the Commonwealth, or any portion thereof, as a part of any logo, stationery, letter, training document, business card, badge, patch, insignia, or other form of identification or advertisement.

20. Not provide information obtained by the firm or its employees to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

21. Not engage in acts of unprofessional conduct in the practice of private security services.

22. Not engage in acts of negligent or incompetent private security services.

23. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

24. Not violate any state or local ordinance.

25. Satisfy all judgments to include binding arbitrations related to private security services not provided.

26. Not publish or cause to be published any material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

27. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist or otherwise prohibited under federal law.

28. Not act as or be an ostensible licensee for undisclosed persons who do or will control directly or indirectly the operations of the licensee's business.

29. Not provide false or misleading information to representatives of the department.

30. Not provide materially incorrect, misleading, incomplete, or untrue information on any email, application, or other document filed with the department.

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## Part V

### Compliance Agent Application Procedures; Administrative Requirements; Standards of Conduct

#### **6VAC20-172-90. Compliance agent certification requirements.**

A. Each person applying for certification as compliance agent shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;
2. Have (i) three years of managerial or supervisory experience in a private security services business; with a federal, state, or local law-enforcement agency; or in a related field or (ii) five years of experience in a private security services business; with a federal, state or local law-enforcement agency; or in a related field; and
3. Be a United States citizen or legal resident alien of the United States.

B. Each person applying for certification as compliance agent shall file with the department:

1. A properly completed application provided by the department;
2. Fingerprint card pursuant to this chapter;
3. Official documentation verifying that the individual has (i) three years of managerial or supervisory experience in a private security services business; with a federal, state, or local law-enforcement agency; or in a related field or (ii) five years of experience in a private security services business, with a federal, state, or local law-enforcement agency; or in a related field; and
4. The applicable, nonrefundable application fee.

C. The department may issue a certification for a period not to exceed 24 months when the following are received by the department:

1. A properly completed application provided by the department;
2. The applicable, nonrefundable certification fee;
3. Verification of eligibility pursuant to § 9.1-139 A of the Code of Virginia; and
4. Verification of satisfactory completion of department regulatory compliance entry-level training requirements pursuant to this chapter.

D. Each compliance agent shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

#### **6VAC20-172-100. Compliance agent certification renewal requirements.**

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address or email address provided by the

certified compliance agent. However, if a renewal notification is not received by the compliance agent, it is the responsibility of the compliance agent to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for compliance agent certification renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully apply on an application provided by the department and complete the in-service regulatory compliance agent classroom training session provided by the department, or successfully complete an approved online in-service training session pursuant to this chapter. Training must be completed within the 12 months immediately preceding the expiration date of the current certification; and
2. Be in good standing in every jurisdiction where licensed, registered, or certified in private security services or a related field. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application provided by the department;
2. The applicable, nonrefundable certification renewal fee; and
3. Verification of satisfactory completion of department regulatory compliance agent in-service training.

E. Any renewal application received after the expiration date of a certification shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

#### **6VAC20-172-110. Compliance agent regulatory compliance training requirements.**

A. Each eligible person applying to attend a regulatory compliance entry-level or in-service training session provided by the department shall file with the department:

1. A properly completed application provided by the department; and
2. The applicable, nonrefundable application fee.

Upon receipt of the training enrollment application the department will assign the applicant to a training session provided by the department. Applicants for initial certification as a compliance agent must achieve a minimum passing score of 80% on the entry-level regulatory compliance training examination.

B. Department entry-level regulatory compliance training must be completed within 12 months of approval of application for an initial compliance agent certification.

C. Each person certified by the department to act as a compliance agent shall complete the department in-service regulatory compliance training within the last 12-month period of certification.

**6VAC20-172-120. Compliance agent administrative requirements and standards of conduct.**

Private security services certified compliance agents are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines, and this chapter. A compliance agent shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Maintain at all times with the department his mailing address and email address if applicable. Written notification of any change of address shall be received by the department no later than 10 days after the effective date of the change.
3. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia, 6VAC20-173, 6VAC20-174, or this chapter.
4. Not commit any act or omission that results in a private security license or registration being suspended, revoked, or not renewed, or the licensee or registrant otherwise being disciplined in any jurisdiction.
5. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. 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 prima facie evidence of such guilt.
6. Inform the department, and the licensee for which the individual is designated as compliance agent if applicable, in writing within 10 days after pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.
7. Inform the department, and the licensee for which the individual is designated as compliance agent if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction

to have violated the private security services business statutes or regulations of that jurisdiction.

8. Not obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.

9. Be designated with the department as compliance agent for a licensee and shall:

a. Ensure that the licensee and all employees regulated or required to be regulated by the board conform to all application requirements, administrative requirements, and standards of conduct pursuant to the Code of Virginia, 6VAC20-174, and this chapter;

b. Maintain documentation for all employees or persons otherwise utilized that verifies compliance with requirements pursuant to the Code of Virginia, 6VAC20-174, and this chapter;

c. Notify the department in writing within 10 calendar days following termination of his employment as compliance agent for the licensee;

d. Ensure that all employees regulated by the board carry a department-issued registration card or temporary registration letter along with a photo identification while on duty; and

e. Ensure that all regulated employees authorized to provide private security services while completing compulsory minimum training standards pursuant to § 9.1-139 H of the Code of Virginia carry a photo identification along with an authorization form provided by the department while on duty.

10. Not engage in acts of unprofessional conduct in the practice of private security services.

11. Not engage in acts of negligent or incompetent private security services.

12. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

13. Satisfy all judgments to include binding arbitrations related to private security services not provided.

14. Not publish or cause to be published any material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive, or misleading.

15. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist or otherwise prohibited under federal laws.

16. Not violate any state or local ordinances related to private security services.

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17. Not provide false or misleading information to representatives of the department.

18. Not use access to the department's database information for any other purpose than verifying employee's application status.

19. Not allow another to use access granted to the department's database for any purpose.

20. Not provide materially incorrect, misleading, incomplete, or untrue information on any email, application, or other document filed with the department.

## Part VI

### Reinstatement and Renewal Extensions

#### **6VAC20-172-130. Reinstatement.**

A. Any business license or compliance agent certification not renewed on or before the expiration date shall become null and void. Pursuant to the Code of Virginia, all such persons must currently be licensed or certified with the department to provide private security services.

B. A renewal application must be received by the department within 60 days following the expiration date of the license or certification in order to be reinstated by the department providing all renewal requirements have been met. Prior to reinstatement the following shall be submitted to the department:

1. The appropriate renewal application and completion of renewal requirements including required training pursuant to this chapter; and

2. The applicable, nonrefundable reinstatement fee pursuant to this chapter.

The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid certification or license, including during the reinstatement period.

C. No license or certification shall be renewed or reinstated when all renewal application requirements are received by the department more than 60 days following the expiration date of the license or certification. After that date, the applicant shall meet all initial application requirements, including applicable training requirements.

D. Following submittal of all reinstatement requirements, the department will process and may approve any application for reinstatement pursuant to the renewal process for the application.

E. When a license or certification is reinstated, the applicant shall continue to have the same DCJS number and shall be assigned an expiration date two years from the previous expiration date of the license or certification.

F. An applicant who reinstates shall be regarded as having been continuously licensed or certified without interruption. Therefore, the applicant shall remain under the disciplinary authority of the department during this entire period and may be held accountable for his activities during this period.

G. A person who fails to reinstate his license or certification shall be regarded as unlicensed or uncertified from the expiration date of the license or certification forward.

H. Nothing in this chapter shall divest the department of its authority to discipline a person for a violation of the law or regulations during the period of time for which the person was licensed or certified.

#### **6VAC20-172-140. Renewal extension.**

A. An extension of the time period to meet renewal requirements may be approved only under specific circumstances that do not allow private security personnel or businesses to complete the required procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness;

2. Extended injury;

3. Military or foreign service; or

4. Any emergency temporary assignment of private security personnel for purposes of natural disaster, homeland security, or documented threat by the private security services business for which he is employed.

B. A request for extension shall:

1. Be submitted in writing, dated, and signed by the individual or principal of a licensed entity prior to the expiration date of the time limit required for completion of the requirements. This requirement may be waived by the department based on an evaluation of the justification for waiver;

2. Indicate the projected date the person or business will be able to comply with the requirements; and

3. Include a copy of the physician's record of the injury or illness, a copy of the government orders, or documentation of emergency temporary assignment.

C. Applications for additional extensions may be approved upon written request of the person or business.

D. The total time for renewal extension, including additional extensions, shall not exceed 12 months beyond the original expiration date. If renewal requirements are not met during the period of extension, the individual must complete all initial training requirements to include applicable entry-level training.

E. The private security services person or business shall be nonoperational during the period of extension unless (i) otherwise issued a temporary exemption and (ii) authorized by the department pursuant to § 9.1-139 of the Code of Virginia.

## Part VII

Sanctions; Exemptions; Recognition; Reciprocity

**6VAC20-172-150. Denial, probation, suspension, and revocation.**

A. The department may deny a license or certification in which any person or principal of an applying business has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of a conviction, 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 conviction.

B. The department may deny a license or certification in which any person or principal of an applying business (i) has not maintained good standing in every jurisdiction where licensed, registered, or certified in a private security services or related field; (ii) has had his license, registration, or certification denied upon initial application, suspended, revoked, surrendered, or not renewed; or (iii) has otherwise been disciplined in connection with a disciplinary action prior to applying for licensing, registration, or certification in Virginia.

C. Any false or misleading statement on any state application or supporting documentation is grounds for denial or revocation and may be subject to criminal prosecution.

D. The department may deny licensure or certification for other just cause.

E. A licensee or compliance agent shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or this chapter. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension, or revocation.

F. If a registrant or certified person is subject to disciplinary action for violations or noncompliance with the Code of Virginia, 6VAC20-174, or this chapter, the department will notify the last known licensed private security services business by which the registrant or certified person was employed or affiliated.

**6VAC20-172-160. Exemptions; recognition and reciprocity.**

A. The department may grant a temporary exemption from the requirements for licensing or certification for a period of not more than 30 days in a situation deemed an emergency by the department.

B. The department may recognize administrative and application requirements for licensing or certification based on agreements that have been entered into with other states and approved by the board.

## Part VIII

Complaints; Department Action and Sanctions; Adjudication

**6VAC20-172-170. Complaint submittal requirements.**

A. In accordance with § 9.1-141 of the Code of Virginia, this chapter establishes standards designed to secure the public safety and welfare against incompetent or unqualified persons engaging in private security services. It shall be the responsibility of the licensee, its compliance agents, and its employees to provide private security services in a professional and ethical manner utilizing sound business practices.

B. Any aggrieved or interested person may file a complaint against any individual, person, firm, or licensed firm whose conduct and activities are regulated or required to be regulated by the board. The complaint must allege a violation of the law governing private security services or this chapter.

C. Complaints may be submitted:

1. In writing, or on a form provided by the department, by a signed complainant;
2. In writing, submitted anonymously, and providing sufficient detailed information for the department to conduct an investigation; or
3. By telephone, providing the complaint alleges activities that constitute a life-threatening situation or have resulted in personal injury or loss to the public or to a consumer or that may result in imminent harm or personal injury and that provide sufficient detailed information for the department to conduct an investigation.

**6VAC20-172-180. Department investigation.**

A. The department may initiate or conduct an investigation based on any information received or action taken by the department to determine compliance with the Code of Virginia and this chapter.

B. Documentation.

1. Persons regulated or required to be regulated by this chapter pursuant to the Code of Virginia are required to provide department investigators with any and all records required to be maintained by this chapter.
  - a. This shall not be construed to authorize the department to demand records protected under applicable federal and state laws. If such records are necessary to complete an investigation, the department may seek a subpoena to satisfy the request.
  - b. The department shall endeavor to review, and request as necessary, only those records required to verify alleged violations of compliance with the Code of Virginia and this chapter.

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2. The department shall endeavor to keep any documentation, evidence, or information on an investigation confidential until such time as adjudication has been completed, at which time information may be released upon request pursuant to applicable federal and state laws or regulations.

## **6VAC20-172-190. Disciplinary action; sanctions; publication of records.**

A. Each person subject to jurisdiction of this chapter who violates any statute or regulation pertaining to private security services shall be subject to sanctions imposed by the department regardless of criminal prosecution.

B. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation of or in noncompliance with the Code of Virginia or this chapter:

1. Letter of reprimand or censure;
2. Probation for any period of time;
3. Suspension of license, certification, or approval granted for any period of time;
4. Revocation;
5. Refusal to issue, renew, or reinstate a license, certification, or approval;
6. Fine not to exceed \$2,500 per violation as long as the respondent was not criminally prosecuted;
7. Remedial training; or
8. Conditional agreements.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this chapter but do not hold a valid license or certification. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

D. The director may summarily suspend a license or certification under this chapter without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the licensee or certified person would constitute a life-threatening situation, has resulted in personal injury or loss to the public or to a consumer, or may result in imminent harm, personal injury, or loss.

E. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all persons, licensees, firms, compliance agents, and licensed firms whose conduct and activities are subject to this chapter and have been sanctioned or denied licensure, certification, or approval.

## **6VAC20-172-200. Fines; administrative and investigative costs.**

A. The department may recover costs of any investigation and adjudication of any violations of the Code of Virginia or regulations that result in a sanction, including fine, probation, suspension, revocation, or denial of any license or certification. Such costs shall be in addition to any monetary penalty that may be imposed.

B. All monetary penalties imposed as a sanction shall be deposited into the state treasury to the credit of the State Literary Fund.

## **6VAC20-172-210. Hearing process.**

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact-finding conference or formal hearing as established in this chapter. Pursuant to the authority conferred in § 9.1-141 C 6 of the Code of Virginia and in accordance with the procedures set forth by the Administrative Process Act and the procedures prescribed in this part, the department is empowered to receive, review, investigate, and adjudicate complaints concerning the conduct of any person whose activities are regulated by the board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

## **6VAC20-172-220. Informal fact-finding conference.**

The purpose of an informal fact-finding conference is to resolve allegations through informal consultation and negotiation. Informal fact-finding conferences shall be conducted in accordance with § 2.2-4019 of the Code of Virginia. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact-finding conference and request a formal hearing, provided that written notification is given to the department within 30 days of the date the informal fact-finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact-finding decision was served by mail, three days shall be added to that period.

## **6VAC20-172-230. Formal hearing.**

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision, or in any case to the extent the informal fact-finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with § 2.2-4020 of the Code of Virginia. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

B. After a formal hearing pursuant to § 2.2-4020 of the Code of Virginia wherein a sanction is imposed to fine or to suspend, revoke, or deny issuance or renewal of any license, certification, or approval, the department may assess the holder thereof the cost of conducting such hearing when the

department has final authority to grant such license, certification, or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

**6VAC20-172-240. Appeals.**

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

**6VAC20-172-250. Court review; appeal of final agency order.**

A. The agency's final administrative decision (final agency order) may be appealed. Any person affected by and claiming the unlawfulness of the agency's final case decision shall have the right to the direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; however, if such party is not a resident of Virginia, the venue shall be in the City of Richmond, Virginia.

B. Notification shall be given to the attention of the Director, Department of Criminal Justice Services, in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect, unless the court issues a stay of the order.

**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 (6VAC20-172)

**Business**

[Private Security Services - Business Compliance Inspection Form \(eff. 10/12\)](#)

[Private Security Services - Irrevocable Consent for Service Form \(eff. 10/12\)](#)

[Private Security Services - Initial Business License Application \(eff. 10/12\)](#)

[Private Security Services - Renewal Business License Application \(eff. 10/12\)](#)

[Private Security Services - Bond \(eff. 10/12\)](#)

[Private Security Services - Compliance Agent Designation and Acceptance Form \(eff. 10/12\)](#)

[Private Security Services - Additional License Category Application \(eff. 10/12\)](#)

[Private Security Services - Address Change Form for Businesses \(eff. 10/12\)](#)

**Compliance Agent**

[Compliance Agent - Training and Certification \(eff. 10/12\)](#)

[Compliance Agent - In-Service Training Enrollment \(eff. 10/12\)](#)

[Compliance Agent - Certification Application and Online Training Exemption Form \(eff. 10/12\)](#)

**Fingerprint Processing**

[DCJS Fingerprint Cards Order Form \(undated\)](#)

[Fingerprint Processing Application \(eff. 10/12\)](#)

[Criminal History Supplemental Form \(eff. 10/12\)](#)

[Fingerprint Application Instructions \(eff. 10/12\)](#)

[Acceptable Documents for Verifying Legal Presence/Name Change \(eff. 10/12\)](#)

**Miscellaneous**

[Complaint Form \(eff. 10/12\)](#)

[Firearms Discharge Report \(eff. 10/12\)](#)

[Request for Extension Form \(eff. 10/12\)](#)

[Individual Address Change Form \(eff. 10/12\)](#)

[Credit Card Authorization Form \(eff. 10/12\)](#)

**CHAPTER 173**

**REGULATIONS RELATING TO PRIVATE SECURITY SERVICES TRAINING SCHOOLS**

**Part I  
Definitions**

**6VAC20-173-10. Definitions.**

In addition to the words and terms defined in § 9.1-138 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:

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

"Assistant training school director" means a certified instructor designated by a private security training school director to submit training school session notifications and

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training rosters and perform administrative duties in lieu of the director.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Certified training school" means a training school that is certified by the department for the specific purpose of training private security services business personnel in at least one category of the compulsory minimum training standards as set forth by the board

"Class" means a block of instruction no less than 50 minutes in length on a particular subject.

"Classroom training" means instruction conducted in person by an instructor to students in an organized manner utilizing a lesson plan.

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Electronic images" means an acceptable method of maintaining required documentation through the scanning, storage, and maintenance of verifiable electronic copies of original documentation.

"Entry-level training" means the compulsory initial training for regulated categories and basic or intermediate firearms training standards adopted by the board for private security services business personnel who are either new registrants or failed to timely complete in-service training or firearms retraining within the prescribed time period.

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in 6VAC20-174.

"Firm" means a business entity, regardless of method of organization, applying for an initial or renewal private security services business license or private security services training school certification.

"Incident" means an event that exceeds the normal extent of one's duties.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"Intermediate weapon" means a tool not fundamentally designed to cause deadly force with conventional use. This would exclude all metal ammunition firearms or edged weapons. These weapons include but are not limited to baton/collapsible baton, chemical irritants, electronic

restraining devices, projectiles, and other less lethal weapons as defined by the department.

"Job-related training" means training specifically related to the daily job functions of a given category of registration or certification.

"Learning management system" or "LMS" means a software application or web-based technology used to plan, implement, monitor, and assess a specific learning process.

"Network administrator" means an individual designated by a certified training school that provides online training who serves as the technical contact between the department and the certified training school.

"Official documentation" means personnel records; Certificate of Release or Discharge from Active Duty (DD214); copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive compensation for employment for which a registration or certification is required.

"Online training" means training approved by the department and offered via the Internet or an Intranet for the purpose of remote access on-demand or distance training that meets all requirements for compulsory minimum training standards.

"Performance of his duties" means on duty in the context of this chapter.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Physical address" means the location of the building that houses a private security services business or training school or the location where the individual principals of a business reside. A post office box is not a physical address.

"Principal" means any sole proprietor, individual listed as an officer or director with the Virginia State Corporation Commission, board member of the association, or partner of a licensed firm, or applicant for licensure.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, an armed security officer/courier, an armored car personnel, a security canine handler, a detector canine handler, a private investigator, a personal protection specialist, an alarm respondent, locksmith, a central station dispatcher, an electronic security employee, an electronic security sales representative, an

electronic security technician, or electronic security technician's assistant.

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Related field" means any field with training requirements, job duties, and experience similar to those of the private security services field in which the applicant wishes to be licensed, certified, or registered. This term includes law enforcement and certain categories of the military.

"Session" means a group of classes comprising the total hours of mandated compulsory minimum training standards in any of the categories of licensure, registration, or certification in accordance with this article and in accordance with §§ 9.1-141, 9.1-150.2, 9.1-185.2, and 9.1-186.2 of the Code of Virginia.

"This chapter" means the Regulations Relating to Private Security Services Training Schools (6VAC20-173).

"Training certification" means verification of the successful completion of any training requirement established by the board.

"Training requirement" means any entry level, in-service, or firearms training or retraining standard established by the board.

"Training school director" means a natural person designated by a principal of a certified private security services training school to assure the compliance of the private security services training school with all applicable requirements as provided in the Code of Virginia and this chapter.

**Part II**  
**Application Fees**

**6VAC20-173-20. Application fees.**

A. Schedule of fees. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for certification and other administrative requests for services relating to private security services.

<u>CATEGORIES</u>	<u>FEES</u>
<u>CRIMINAL HISTORY RECORDS CHECK</u>	
<u>Fingerprint processing</u>	<u>\$50</u>
<u>CERTIFICATIONS</u>	
<u>Initial training school</u>	<u>\$800</u>
<u>Training school renewal</u>	<u>\$500</u>

<u>Training school category</u>	<u>\$50</u>
<u>Initial instructor certification</u>	<u>\$50</u>
<u>Instructor certification renewal</u>	<u>\$25</u>
<u>Instructor certification category</u>	<u>\$10</u>
<u>Initial detector canine handler examiner certification</u>	<u>\$50</u>
<u>Detector canine handler examiner certification renewal</u>	<u>\$25</u>
<u>Replacement card</u>	<u>\$20</u>
<u>TRAINING RELATED</u>	
<u>Entry-level training exemption</u>	<u>\$25</u>
<u>In-service training alternative credit evaluation</u>	<u>\$25</u>
<u>Training completion roster form</u>	<u>\$30</u>

**B. Reinstatement fee.**

1. The department shall collect a reinstatement fee for certification renewal applications not received on or before the expiration date of the expiring certification.

2. The reinstatement fee shall be 50% above and beyond the renewal fee of the certification or any other credential issued by the department wherein a fee is established and renewal is required.

**C. Dishonor of fee payment due to insufficient funds.**

1. The department may suspend the certification or authority it has granted any person who submits a check or similar instrument for payment of a fee required by statute or regulation that is not honored by the financial institution upon which the check or similar instrument is drawn.

2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the person may request that the suspended certification or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompanies the request. Suspension under this provision shall be exempt from the Administrative Process Act.

D. Manual processing service fee. The department shall collect a \$5.00 service fee for any applications under this chapter that are submitted to the department by other means than the available electronic methods established by the department.

**Part III**  
**Criminal History Records Search**

**6VAC20-173-30. Fingerprint processing.**

A. On or before the first date of hire, each person applying for certification as a private security services training school,

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a detector canine handler examiner, or an instructor shall submit to the department:

1. One completed fingerprint card provided by the department or another electronic method approved by the department;
2. A fingerprint processing application;
3. The applicable, nonrefundable fee; and
4. All criminal history conviction information on a form provided by the department.

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual or individuals have a record of conviction.

C. Fingerprint cards found to be unclassifiable will suspend all action on the application pending the resubmission of a classifiable fingerprint card. The applicant shall be so notified in writing and must submit a new fingerprint card within 30 days of notification before the processing of his application shall resume. If a fingerprint card is not submitted within the 30 days, the initial fingerprint application process will be required to include applicable application fees.

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial.

E. Fingerprint applications will be active for 120 days from the date of submittal. Applications for certifications must be submitted within that 120-day period or initial fingerprint submittal will be required.

## Part IV

### Training School Application Procedures; Administrative Requirements; Standards of Conduct

#### **6VAC20-173-40. Initial training school application.**

A. Prior to the issuance of a training school certification, the applicant shall meet or exceed the requirements of certification and application submittal to the department as set forth in this section.

B. Each person seeking certification as a private security services training school shall file a completed application provided by the department to include:

1. For each principal of the applying training school, the principal's fingerprints pursuant to this chapter;
2. Documentation verifying that the applicant has secured a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 per individual occurrence and \$300,000 general aggregate issued by an insurance company authorized to do business in Virginia;

3. For each nonresident applicant for a training school, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for certification as a private security services training school except sole proprietor and partnership, on a certification application provided by the department, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

5. A physical location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical location;

6. On the training school certification application, designation of at least one individual as training director who is not designated as training director for any other training school, and who is certified as an instructor pursuant to this chapter. A maximum of four individuals may be designated as an assistant training school director;

7. A copy of the curriculum in course outline format for each category of training to be offered, including the hours of instruction with initial and in-service courses on separate documents;

8. A copy of the training school regulations;

9. A copy of the range regulations to include the assigned DCJS range identification number if firearms training will be offered;

10. On the certification application, selection of the category of training the applicant is seeking to provide. The initial training school certification application fee includes one category. A separate fee will be charged for each additional category of training. The separate categories are identified as follows: (i) security officers/couriers/alarm respondents (armed and unarmed) to include arrest authority, (ii) private investigators, (iii) locksmiths and electronic security personnel to include central station dispatchers, (iv) armored car personnel, (v) personal protection specialists, (vi) detector canine handlers and security canine handlers, (vii) special conservators of the peace pursuant to § 9.1-150.1 of the Code of Virginia, (viii) bail bondsmen pursuant to § 9.1-185 of the Code of Virginia and bail enforcement agents pursuant to § 9.1-186 of the Code of Virginia, and (ix) firearms;

11. The applicable, nonrefundable category fee; and

12. The applicable, nonrefundable training school certification application fee.

C. When the department has received and processed a completed application and accompanying material, the department may inspect the training facilities, including an inspection of the firearms range, if applicable, to ensure

conformity with the minimum requirements set forth in 6VAC20-174 and this chapter.

D. Upon completion of the initial training school application requirements, the department may issue an initial certification for a period not to exceed 24 months.

E. The department may issue a letter of temporary certification to training schools for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and training director of the business, provided that the applicant has met the necessary conditions and requirements.

F. A new certification is required whenever there is any change in the ownership or type of organization of the certified entity that results in the creation of a new legal entity. Such changes include but are not limited to:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

G. Each certification shall be issued to the legal entity named on the application, whether it is a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the certification. No certification shall be assigned or otherwise transferred to another legal entity.

H. Each certified training school shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

**6VAC20-173-50. Renewal training school application.**

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address or email address provided by the certified training school. However, if a renewal notification is not received by the training school, it is the responsibility of the training school to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Upon completion of the renewal training school application requirements, the department may issue a renewal certification for a period not to exceed 24 months.

C. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application;

2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 per individual occurrence and \$300,000 general aggregate issued by an insurance company authorized to do business in Virginia;

3. On the application, designation of at least one certified instructor as training director who has satisfactorily completed all applicable training requirements;

4. Fingerprints for each new and additional principal pursuant to § 9.1-139 H of the Code of Virginia;

5. The applicable, nonrefundable certification renewal fee and category fees; and

6. Any documentation required for any new categories of training.

D. Each training school applying for a certification renewal shall be in good standing in every jurisdiction where licensed, registered, or certified in private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

E. Any renewal application received after the expiration date of a certification shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

**6VAC20-173-60. General requirements.**

All private security services certified training schools are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines, and this chapter.

**6VAC20-173-70. Training school administrative requirements.**

A training school shall:

1. Maintain at all times with the department its physical address and email address if applicable. A post office box is not a physical address. Notification of any change shall be in writing and received by the department no later than 10 days after the effective date of the change.

2. Employ at all times one individual designated as training director who is currently certified as an instructor pursuant to this chapter and who is not currently designated as training director for another training school. A training school may designate a maximum of four individuals as assistant training school directors.

3. Upon termination of the services of a certified instructor, notify the department in writing within 10 calendar days. Should the instructor also be designated as the training director for the training school, this notification shall include the name of the instructor responsible for the training school's adherence to applicable administrative

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requirements and standards of conduct during the period of training director replacement.

4. Within 90 days of termination of employment of the sole remaining training director, submit the name of a new instructor eligible for designation pursuant to this chapter and who is not currently designated for another training school. Individuals not currently eligible may pursue certification pursuant to this chapter. Such notification shall be in writing and signed by a principal of the training school and the designated training director.

5. Notify the department in writing of any certified instructors or subject matter specialists eligible to provide instruction at the training school. The notification shall be received by the department prior to the individual conducting any training for the training school and signed by the training school director and the designated instructor or subject matter specialist.

6. Prominently display at all times, in a conspicuous place where the public has access, the training school certification issued by the department.

7. Maintain at all times current liability coverage at least in the minimum amounts prescribed by the application requirements of this chapter. Each day of uninsured activity would be construed as an individual violation of this requirement.

8. Inform the department in writing within 10 days of any principal, partner, officer, instructor, or employee regulated or required to be regulated by this chapter pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

9. Inform the department in writing within 10 days of any principal, partner, officer, instructor, or employee regulated or required to be regulated by this chapter having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction.

10. Report in writing to the department any change in its ownership or principals that does not result in the creation of a new legal entity. Such written report shall be received by the department within 10 days after the occurrence of such change to include fingerprint cards submitted pursuant to this chapter.

11. Maintain at all times with the department its current operating name and fictitious names. Any name change reports shall be submitted in writing within 10 days after the occurrence of such change and accompanied by certified true copies of the documents that establish the name change.

12. Report in writing to the department any change in the entity of the training school that results in continued operation requiring a certification. Such written report shall

be received by the department within 10 days after the occurrence of such change.

13. Maintain written authorization from the department for any subject matter specialists being used to provide instruction.

14. Develop lesson plans for each training curriculum and subject being offered in accordance with the topical outlines submitted to the department to include hours of instruction as set forth in 6VAC20-174.

15. Maintain comprehensive and current lesson plans for each entry level training curriculum and subject being offered.

16. Maintain comprehensive and current lesson plans for each in-service training curriculum and subject being offered.

17. Maintain comprehensive and current lesson plans for each firearms training curriculum and subject being offered.

18. Date all lesson plans and handout material, including the initial date of development and subsequent revisions.

19. Ensure that current copies of the following requirements are provided to and maintained with the department, including:

a. A list of all training locations used by the training school, excluding hotel or motel facilities;

b. A list of all firing range names and locations;

c. A list of all subject matter specialists currently employed or otherwise utilized; and

d. Copies of current topical outlines for all lesson plans and curriculums. The lesson plans and subsequent course outlines shall include (i) specific reference to the course content involving the Code of Virginia, 6VAC20-174, and this chapter and (ii) the hours of instruction.

20. Ensure that range qualification for all firearms training is completed pursuant to the requirements set forth in 6VAC20-174 except with written authorization from the department.

21. On a form provided by the department and within 10 calendar days of an incident, submit a report of any incident in which any instructor, student, or employee has discharged a firearm while on duty, excluding any training exercise.

22. Not act as or be a certified training school for undisclosed persons who directly or indirectly control the operation of the training school.

23. Inform the department and compliance agent of the employing business if applicable, in a format prescribed by the department, within seven days of any person regulated by the board who fails to requalify with a minimum passing score on the range.

**6VAC20-173-80. Training school standards of conduct.**

A training school shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Ensure that the owners, principals, training directors, and all instructors employed by the training school conform to all applicable application requirements, administrative requirements, and standards of conduct pursuant to the Code of Virginia and this chapter.
3. Utilize only certified instructors or other individuals eligible to provide instruction pursuant to this chapter in the conduct of private security training sessions.
4. Maintain current files that include copies or electronic images of attendance records, a master final examination, pass/fail recording of examination and firearms qualification scores, training completion rosters, and training completion forms for each student for three years from the date of the training session in which the individual student was enrolled.
5. Permit the department during regular business hours to inspect, review, or copy those documents, electronic images, business records, or training records that are required to be maintained by the Code of Virginia and this chapter.
6. Permit the department to inspect and observe any training session. Certified training schools that conduct training sessions not located within Virginia may be required to pay the expenses of inspection and review.
7. Include the training school certification number issued by the department on all business advertising materials pursuant to the Code of Virginia.
8. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia, 6VAC20-172, 6VAC20-174, or this chapter.
9. Not commit any act or omission that results in a private security license, registration, or certification being suspended, revoked, or not renewed or the licensee, registrant, or certificate holder otherwise being disciplined in any jurisdiction.
10. Ensure that the owners, principals, training directors, and all instructors employed by the training school have not been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. 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 prima facie evidence of such guilt.

11. Not obtain or aid and abet others to obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.
12. Conduct entry-level and in-service training sessions separately. In-service subjects and curriculums may not be incorporated or included as a part of the entry-level subjects and curriculums unless otherwise authorized by the department.
13. Not conduct a private security services training school in such a manner as to endanger the public health, safety, and welfare.
14. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director, or instructor.
15. Not represent as one's own a certification issued to another private security services training school.
16. Not perform any unlawful or negligent act resulting in loss, injury, or death to any person.
17. Not use or display the state seal of Virginia, or any portion thereof, as a part of any logo, stationery, business card, badge, patch, insignia, or other form of identification or advertisement.
18. Not use or display the seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision of the Commonwealth, or any portion thereof, as a part of the training school's logo, stationery, letter, training document, business card, badge, patch, insignia, or other form of identification or advertisement.
19. Not engage in acts of unprofessional conduct in the practice of private security services.
20. Not engage in acts of negligent or incompetent private security services.
21. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.
22. Not violate any state or local ordinances related to private security services.
23. Satisfy all judgments to include binding arbitrations related to private security services not provided.
24. Not publish or cause to be published any material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.
25. Not provide false or misleading information to representatives of the department.

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26. Not act as or be an ostensible certified training school for undisclosed persons who do or will control directly or indirectly the operations of the training school.

27. Not provide materially incorrect, misleading, incomplete, or untrue information on any email, application, or other document filed with the department.

## Part V

### Instructor Application Procedures; Administrative Requirements; Standards of Conduct

#### **6VAC20-173-90. Initial instructor application.**

A. Each person applying for certification as an instructor shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;
2. Have a high school diploma or equivalent (GED);
3. Have either (i) successfully completed a DCJS instructor development course within the three years immediately preceding the date of the application or submitted a waiver application for an instructor development course that meets or exceeds standards established by the department or (ii) successfully completed an approved DCJS instructor development program longer than three years prior to the date of application and provided documented instruction during the three years immediately preceding or provided documented instruction in a related field at an institution of higher learning;
4. Have a minimum of (i) three years management or supervisory experience with a private security services business; with any federal, military police, state, county, or municipal law-enforcement agency; or in a related field; (ii) five years general experience in a private security services business; with a federal, state or local law-enforcement agency; or in a related field; or (iii) one year experience as an instructor or teacher at an accredited educational institution or agency in the subject matter for which certification is requested or in a related field;
5. Have previous training and a minimum of two years work experience for those subjects in which certification is requested; and
6. Be a United States citizen or legal resident alien of the United States.

B. Each person applying for certification as an instructor shall file with the department:

1. A properly completed application provided by the department;
2. Fingerprint card pursuant to this chapter;
3. Official documentation verifying that the applicant meets the minimum eligibility requirements pursuant to this section;
4. On the certification application, selection of the category of training the applicant is seeking to provide. The initial instructor certification fee includes one category. A

separate fee will be charged for each additional category of training. The separate categories are identified as follows: (i) security officers/couriers/alarm respondent (armed and unarmed) to include arrest authority, (ii) private investigators, (iii) locksmiths and electronic security personnel to include central station dispatchers, (iv) armored car personnel, (v) personal protection specialists, (vi) detector canine handlers and security canine handlers, (vii) special conservators of the peace pursuant to § 9.1-150.1 of the Code of Virginia, (viii) bail bondsmen pursuant to § 9.1-185 of the Code of Virginia and bail enforcement agents pursuant to § 9.1-186 of the Code of Virginia, and (ix) firearms;

5. The nonrefundable instructor certification application fee and category fee or fees if applicable; and

6. Evidence of status as a United States citizen or legal resident alien of the United States.

C. In addition to the instructor qualification requirements described in subsections A and B of this section, each applicant for certification as a firearms instructor shall submit to the department:

1. Official documentation that the applicant has successfully completed a DCJS firearms instructor school or a waiver application with supporting documentation demonstrating completion of a firearms instructor school specifically designed for law-enforcement or private security personnel that meets or exceeds standards established by the department within the three years immediately preceding the date of the instructor application.

2. Official documentation, in the form of a signed, dated range sheet with the qualification score and course of fire as prescribed in the firearms training requirements in 6VAC20-174, that the applicant has successfully qualified, with a minimum range qualification of 85%, with each of the following:

- a. A revolver;
- b. A semi-automatic handgun; and
- c. A shotgun.

Firearms instructors applying to provide patrol rifle training must submit official documentation in the form of a signed, dated range sheet that the applicant has successfully qualified, with a minimum range qualification of 85%, with a patrol rifle.

Range qualifications must have been completed within the 12 months immediately preceding the instructor application date and have been completed at a Virginia criminal justice agency, training academy, correctional facility, or a department approved range utilized by a certified private security training school. The qualifications must be documented by another instructor certified as a law-enforcement firearms instructor or private security services firearms instructor.

The firearms instructor training must have been completed within the three years immediately preceding the date of the instructor application, or in the event that the school completion occurred prior to three years, the applicant shall have provided firearms instruction during the three years immediately preceding the date of the instructor application.

D. Upon completion of the initial instructor application requirements, the department may issue an initial certification for a period not to exceed 24 months.

E. The department may issue a letter of temporary certification to instructors for not more than 120 days while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.

F. Each certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No certification shall be assigned or otherwise transferred to another individual.

G. Each instructor shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

#### **6VAC20-173-100. Renewal instructor application.**

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address or email address provided by the certified instructor. However, if a renewal notification is not received by the instructor, it is the responsibility of the instructor to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for instructor certification renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully complete a minimum of four hours of continuing education in instructor development. Training must be completed within the 12 months immediately preceding the expiration date of the current certification; and
2. Be in good standing in every jurisdiction where licensed, registered, or certified in a private security services or related field. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application provided by the department;

2. The nonrefundable certification renewal fee and applicable category fees;

3. Any documentation required for any new categories of training;

4. Verification of satisfactory completion of instructor development continuing education requirements; and

5. For firearms instructors, official documentation in the form of a signed, dated range sheet along with the qualification score and course of fire as prescribed in the firearms training qualifications in 6VAC20-174, with a minimum range qualification of 85%, with each of the following:

a. A revolver;

b. A semi-automatic handgun; and

c. A shotgun.

Firearms instructors applying to provide patrol rifle training must submit official documentation in the form of a signed, dated range sheet that the applicant has successfully qualified, with a minimum range qualification of 85%, with a patrol rifle.

Range qualifications must have been completed within the 12 months immediately preceding the instructor application date and have been completed at a Virginia criminal justice agency, training academy, correctional facility, or a department approved range utilized by a certified private security training school. The qualifications must be documented by another instructor certified as a law-enforcement firearms instructor or private security services firearms instructor.

E. Any instructor renewal application received by the department shall meet all renewal requirements prior to the expiration date of a certification or shall be subject to the requirements set forth by the reinstatement provisions pursuant to this chapter.

#### **6VAC20-173-110. Instructor administrative requirements and standards of conduct.**

All private security services certified personnel are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines, and this chapter. An instructor shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Maintain at all times with the department his mailing address and email address if applicable. Notification of any address change shall be in writing and received by the department no later than 10 days after the effective date of the change.

3. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and

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battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. 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 prima facie evidence of such guilt.

4. Inform the department, and the training school for which the individual is designated as an instructor if applicable, in writing within 10 days after pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

5. Inform the department, and the training school for which the individual is designated as instructor if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction.

6. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia, 6VAC20-172, 6VAC20-174, or this chapter.

7. Not commit any act or omission that results in a private security license, registration, or certification as defined in the § 9.1-138 of the Code of Virginia being suspended, revoked, or not renewed or the licensee, registrant, or certificate holder otherwise being disciplined in any jurisdiction.

8. Not obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.

9. Conduct training sessions pursuant to requirements established in this chapter.

10. Notify the department within 10 calendar days following termination of his employment as instructor for the training school.

11. Not engage in acts of unprofessional conduct in the practice of private security services.

12. Not engage in acts of negligent or incompetent private security services.

13. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

14. Not violate any state or local ordinances relating to private security services.

15. Maintain documentation of successful completion of a minimum of two hours of professional development for

topics related to each category of instructor certification as established in this chapter during each certification period or successful completion of compulsory in-service training by another private security services certified instructor if also registered in the same categories.

16. Not publish or cause to be published any material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive, or misleading.

17. Not provide false or misleading information to representatives of the department.

18. Not provide materially incorrect, misleading, incomplete, or untrue information on any email, application, or other document filed with the department.

19. Transport, carry, and utilize firearms while on duty only in a manner that does not endanger the public health, safety, and welfare.

20. Report in writing to the training school director within 24 hours of any person regulated by the board who fails to requalify with a minimum passing score on the range.

21. Provide any person who fails to requalify with a minimum passing score on the range with a failure to requalify notice provided by the department.

## **6VAC20-173-120. Designated training school director administrative requirements and standards.**

All private security services certified personnel are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines, and this chapter. A training school director shall:

1. Ensure that the certified training school and all employees regulated or required to be regulated by this chapter conform to all application requirements, administrative requirements, and standards of conduct pursuant to the Code of Virginia and this chapter.

2. Conform to all application requirements, administrative requirements, and standards of conduct as a certified instructor pursuant to the Code of Virginia and this chapter.

3. Maintain documentation for all employees or persons otherwise utilized that verifies compliance with requirements pursuant to the Code of Virginia and this chapter.

4. Notify the department in writing within 10 calendar days following termination of his employment as training director for the certified training school.

5. Use access to the department's database information only for the purpose of verifying employed instructors' or students' application status.

6. Not allow another to use access granted to the department's database for any purpose.

7. Inform the department and compliance agent of the employing business if applicable, in a format prescribed by

the department within seven days of any person regulated by the board, who fails to requalify with a minimum passing score on the range.

Part VI

Detector Canine Handler Examiner Application Procedures; Administrative Requirements; Standards of Conduct

**6VAC20-173-130. Initial detector canine handler examiner certification application.**

A. Each person applying for certification as a detector canine handler examiner shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;
2. Have a high school diploma or equivalent (GED);
3. Have a minimum of five years experience as a detector canine handler and a minimum of two years experience as a detector canine trainer within the previous 10 years prior to application with the department;
4. Have an active certification as a detector canine handler examiner or equivalent credential from a department-approved national organization, a unit of the United States military, or another formal entity; and
5. Be a United States citizen or legal resident alien of the United States.

B. Each person applying for certification as a detector canine handler examiner shall file with the department:

1. A properly completed application provided by the department;
2. Fingerprint card pursuant this chapter;
3. Official documentation according to subdivisions A 3 and A 4 of this section; and
4. The applicable, nonrefundable application fee.

C. Upon completion of the initial detector canine handler examiner application requirements, the department may issue an initial certification for a period not to exceed 24 months.

D. The department may issue a letter of temporary certification to detector canine handler examiners for not more than 120 days while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.

E. Each certification shall be issued to the individual named on the application and shall be valid only for use by that individual. No certification shall be assigned or otherwise transferred to another individual.

F. Each detector canine handler examiner shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

**6VAC20-173-140. Renewal detector canine handler examiner certification application.**

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The

department will provide a renewal notification to the last known mailing address of the certified examiner. However, if a renewal notification is not received by the examiner, it is the responsibility of the examiner to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for examiner certification renewal shall meet the minimum requirements for eligibility as follows:

1. Have maintained certification as a detector canine handler examiner or equivalent credential according to the minimum eligibility requirements set forth in this chapter and demonstrate the completion of a minimum of 16 hours of continuing education during the previous certification period; and
2. Be in good standing in every jurisdiction where licensed, registered, or certified in private security services or a related field. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a certification for a period not to exceed 24 months.

D. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application provided by the department;
2. The applicable, nonrefundable certification renewal fee; and
3. Official documentation according to subsection B of this section.

E. Any examiner renewal application received by the department shall meet all renewal requirements prior to the expiration date of a certification or shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

**6VAC20-173-150. Detector canine handler examiners administrative requirements and standards of conduct.**

A. All private security services certified personnel are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines, and this chapter.

B. Administrative requirements. An examiner shall:

1. Maintain at all times with the department his mailing address and email address if applicable. Notification of any address change shall be in writing and received by the department no later than 10 days after the effective date of the change.
2. Inform the department, and the business or training school for which the individual is employed if applicable, in writing within 10 days after pleading guilty or nolo

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contendere, and after being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

3. Inform the department and the licensed business or training school for which the individual is employed or utilized in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction .

4. Satisfy all judgments to include binding arbitrations related to private security services not provided.

5. Notify the department within 10 calendar days following termination of his employment as an examiner for a business or training school.

6. Conduct examinations in accordance with the standards of the Department of Defense Military Working Dog Program, Scientific Working Group on Dog and Orthogonal Detector Guidelines, or other nationally recognized organization approved by the department.

7. Notify the department within 10 calendar days following termination of any certification as a detector canine handler examiner or equivalent with any national organization, a unit of the United States military, or another formal entity involved with certifying, training, or setting standards for detection canines.

8. Notify the department in writing within 10 calendar days of determining that a detector canine handler or detector canine fails to successfully complete the certification examination as prescribed in 6VAC20-174.

9. Maintain documentation and a photograph of the examined detector canine team for three years for all examinations conducted that verifies compliance with requirements pursuant to the Code of Virginia, 6VAC20-174, and this chapter.

10. Utilize only department-approved certification examinations for the testing and certification of detector canine teams.

## C. Standards of conduct. An examiner shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms.. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. 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 prima facie evidence of such guilt.

3. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia, 6VAC20-172, 6VAC20-174, or this chapter.

4. Not commit any act or omission that results in a private security license, registration, or certification being suspended, revoked, or not renewed or the licensee, registrant or certificate holder otherwise being disciplined in any jurisdiction.

5. Not obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.

6. Not engage in acts of unprofessional conduct in the practice of private security services.

7. Not engage in acts of negligent or incompetent private security services.

8. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

9. Not violate any state or local ordinances relating to private security services.

10. Not publish or cause to be published any material relating to private security services that contain an assertion, representation, or statement of fact that is false, deceptive, or misleading.

11. Not provide false or misleading information to representatives of the department.

12. Not provide materially incorrect, misleading, incomplete, or untrue information on any email, application, or other document filed with the department.

## **6VAC20-173-160. Instructor alternatives.**

### A. Subject matter specialist.

1. Training schools may employ or otherwise utilize individuals as subject matter specialists to provide instruction in specific areas of a training curriculum. During the approved portions of training, a certified instructor is not required to be present.

2. The training school shall obtain written authorization from the department prior to any subject matter specialist providing instruction. Written authorization may be requested by submitting on a form provided by the department:

- a. A written request for authorization specifically outlining the requested subject matter; and
- b. Documentation that supports the individual's credentials for instructing in the proposed subject matter.

3. The department may issue a written authorization for a period not to exceed 24 months.

B. Guest lecturer. Training schools may employ or otherwise utilize individuals as guest lecturers in specific areas of a training curriculum. A certified instructor is required to be present during all portions of training conducted by a guest lecturer.

**6VAC20-173-170. Private security services training session.**

A. Training sessions will be conducted in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance, and standards of conduct are the responsibility of the training school, training school director, and instructor of the training session.

B. Administrative requirements.

1. In a manner approved by the department, a notification to conduct a training session shall be submitted to the department. All notifications shall be received by the department, or postmarked if mailed, no less than seven calendar days prior to the beginning of each training session to include the date, time, instructors, and location of the training session. The department may allow a session to be conducted with less than seven calendar days of notification with prior approval. Session notifications require no fee from the training school. A notification to conduct a training session shall be deemed to be in compliance unless the training school director is notified by the department to the contrary.

2. Notification of any changes to the date, time, or location or cancellation of a future training session must be submitted to the department in writing and received by the department at least 24 hours in advance of the scheduled starting time of the class. In the event that a session must be canceled on the scheduled date, the department must be notified immediately followed by a cancellation in writing as soon as practical.

3. Course outline and training objectives must be approved by the department prior to offering a course of instruction for enrollment.

4. The training school director shall issue an original training completion form provided by the department to each student who satisfactorily completes a training session no later than five business days following the training completion date.

5. In a manner approved by the department, the training school director shall submit an original training completion roster to the department affirming each student's successful completion of the session. The training completion roster shall be received by the department within seven calendar days or, if mailed, postmarked no later than five business days following the training completion date and must be accompanied by the applicable, nonrefundable processing fee.

6. A written examination shall be administered at the conclusion of each entry-level training session. The

examination shall be based on the applicable learning objectives. The student must attain a minimum grade of 70% for all entry-level training examinations and pass any applicable practical exercises to satisfactorily complete the training session.

7. Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

8. Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

9. To successfully complete the handgun or shotgun firearms range training, the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

10. To successfully complete the advanced firearms range training, the individual must achieve a minimum qualification score of 92% of the scoring value of the target.

11. To successfully complete the patrol rifle firearms range training, the individual must achieve a minimum qualification score of 85% of the scoring value of the target.

C. Attendance.

1. Private security services business personnel enrolled in an approved training session are required to be present for the hours required for each training session unless they have been granted a partial exemption to training from the department.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed. All training must be completed within the 12 months prior to application of a registration or certification. Individuals not completing the required training within this period are required to complete the entire training session.

3. Individuals who do not successfully complete the compulsory minimum training standards of the training session shall not be issued a training completion form or training certificate.

4. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the training school. If the training school director or instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on examinations, the training school director or instructor may expel the individual from the school. Notification of such action shall immediately be reported to the employing firms and the department.

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## D. Standards of conduct.

1. The training school, training school director, and instructor shall at all times conform to the application requirements, administrative requirements, and standards of conduct established for certification as a training school and instructor.
2. Training sessions will be conducted by certified instructors or other individuals authorized to provide instruction pursuant to this chapter and each of whom must be present for all periods of instruction unless otherwise authorized by the department.
3. Training sessions will be conducted utilizing lesson plans developed including at a minimum the compulsory minimum training standards established by the board as prescribed in 6VAC20-174.
4. Instruction shall be provided in no less than 50-minute classes.
5. Training sessions shall not exceed nine hours of classroom instruction per day. Range qualification and practical exercises shall not be considered classroom instruction; however, total training, including the maximum allotment of nine hours classroom instruction and applicable range qualification and practical exercises, shall not exceed 12 hours per day. This does not include time allotted for breaks, meals, and testing.
6. All audiovisual training aids must be accompanied by a period of instruction where the instructor reviews the content of the presentation and the students are provided the opportunity to ask questions regarding the content.
7. A training session must adhere to the minimum compulsory training standards as set forth by the board and must be presented in its entirety. Training school directors may require additional hours of instruction, testing, or evaluation procedures.
8. A training session must provide accurate and current information to the students.
9. Mandated training that is not conducted in accordance with the Code of Virginia, 6VAC20-174, and this chapter is null and void.
10. A duplicate set of instructor course materials, including all student materials, shall be made available to any department inspector during the training session, if requested.
11. Certifiable in-service training may include a maximum of one hour of instruction dedicated to the review of regulations unless otherwise authorized by the department.
12. Live ammunition, pyrotechnics, and explosives are not to be utilized or present in any firearms training environment except on a firing range approved by the department.

## **6VAC20-173-180. Online in-service training programs.**

Online training programs may only be offered for compulsory minimum in-service training requirements. Online training programs shall meet the following requirements:

1. All online schools shall maintain a private security services training school certification in good standing and meet all of the administrative requirements and standards of conduct specified in this chapter.
2. All online training courses must meet the minimum compulsory in-service training standards as prescribed in 6VAC20-174 to include topic and hour requirements.
3. All online training courses must provide that a private security services instructor certified in the category of training in which the course is being offered is available to the students during normal business hours.
4. All online training material to include complete course content, performance objectives, and other applicable instructional material of mandated compulsory training requirements must be approved by the department prior to offering a course of instruction for enrollment.
5. Certifiable in-service training may include a maximum of one hour of instruction dedicated to the review of regulations unless otherwise authorized by the department.
6. All online training course content, lesson plans, course objectives, and other applicable instructional material must be updated every two years to ensure curriculum is current.
7. All online training must be delivered through a learning management system capable of managing training records, delivering course content, monitoring participation, assessing performance, and creating and editing course content.
8. Students enrolled in an online training program shall successfully complete all course material within 30 days of the first log-on to the training school learning management system or prior to the registration or certification expiration date or final reinstatement date.
9. All online training must include assessment instruments that evaluate student performance.
10. Training schools offering online courses that accept credit card payments shall subscribe to an e-commerce solution service to protect the security and integrity of the monetary transaction.
11. The learning management system used by a certified training school shall allow the department auditing access to the training system. Such auditing access shall be available 24 hours a day, seven days a week.
12. The learning management system shall be capable of generating a unique electronic notification of training completion for each student completing the course requirements and each course of instruction on a 24-hour a day basis.

13. The training completion form shall include the following:

- a. The name, a unique identification number, and address of the individual;
- b. The name of the particular course that the individual completed;
- c. Dates of course completion;
- d. Name, address, telephone number, and license number of the training school; and
- e. Name and DCJS identification number of the school director and primary instructor.

14. The learning management system shall be capable of generating a training certificate for each student and each course of instruction that can be printed by the student's computer and printer. This training certificate shall only be made available to the student upon successful completion of all course material.

15. The learning management system shall be capable of capturing and archiving student information for a period of not less than three years.

16. Training schools offering online training courses will designate one individual as the network administrator for that school's network server. The network administrator will be the technical contact between the department and the training school. Upon termination of the services of the designated network administrator, a new administrator shall be designated and notification made to the department within 10 days after effective date of the change.

#### Part VIII

##### Additional Category and Replacement Certification

#### **6VAC20-173-190. Additional category application.**

A. Individuals may apply for multiple certification categories during the initial application process by completing the applicable requirements for each category.

B. Certified individuals seeking to add categories to a current certification must:

1. Successfully complete all initial requirements for each additional certification category requested pursuant to this chapter;
2. Submit a properly completed application provided by the department; and
3. Submit the applicable, nonrefundable application fee.

#### **6VAC20-173-200. Replacement certification.**

Certified individuals seeking a replacement state-issued certification card shall submit to the department:

1. A properly completed application provided by the department; and
2. The applicable, nonrefundable application fee.

#### Part IX

##### Reinstatement and Renewal Extension

#### **6VAC20-173-210. Reinstatement.**

A. Any training school, instructor, or detector canine handler examiner certification not renewed on or before the expiration date shall become null and void. Pursuant to the Code of Virginia, all such persons must currently be certified with the department to provide private security services.

B. A renewal application must be received by the department within 60 days following the expiration date of the certification in order to be reinstated by the department providing all renewal requirements have been met. Prior to reinstatement the following shall be submitted to the department:

1. The appropriate renewal application and completion of renewal requirements including required training pursuant to this chapter; and
2. The applicable, nonrefundable reinstatement fee pursuant to this chapter.

The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid certification including during the reinstatement period.

C. No certification shall be renewed or reinstated when all renewal application requirements are received by the department more than 60 days following the expiration date of the license. After that date, the applicant shall meet all initial application requirements, including applicable training requirements.

D. Following submittal of all reinstatement requirements, the department will process and may approve any application for reinstatement pursuant to the renewal process for the application.

E. When a certification is reinstated, the applicant shall continue to have the same DCJS number and shall be assigned an expiration date two years from the previous expiration date of the certification.

F. An applicant who reinstates shall be regarded as having been continuously certified without interruption. Therefore, the applicant shall remain under the disciplinary authority of the department during this entire period and may be held accountable for his activities during this period.

G. A person who fails to reinstate his certification shall be regarded as uncertified from the expiration date of the certification forward.

H. Nothing in this chapter shall divest the department of its authority to discipline a person for a violation of the law or regulations during the period of time for which the person was certified.

#### **6VAC20-173-220. Renewal extension.**

A. An extension of the time period to meet renewal requirements may be approved only under specific

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circumstances that do not allow private security personnel or training schools to complete the required procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness;
2. Extended injury;
3. Military or foreign service; or
4. Any emergency temporary assignment of private security personnel for purposes of natural disaster, homeland security, or documented threat by the private security services training school for which he is employed.

B. A request for extension shall:

1. Be submitted in writing, dated, and signed by the individual or principal of a certified entity prior to the expiration date of the time limit required for completion of the requirements. This requirement may be waived by the department based on an evaluation of the justification for waiver;
2. Indicate the projected date the person or training school will be able to comply with the requirements; and
3. Include a copy of the physician's record of the injury or illness, a copy of the government orders, or documentation of emergency temporary assignment.

C. Applications for additional extensions may be approved upon written request of the person or training school.

D. The total time for renewal extension, including additional extensions, shall not exceed 12 months beyond the original expiration date. If renewal requirements are not met during the period of extension, the individual must complete all initial training requirements to include applicable entry-level training.

E. The private security services person or training school shall be nonoperational during the period of extension unless otherwise (i) issued a temporary exemption and (ii) authorized by the department pursuant to § 9.1-139 of the Code of Virginia.

## Part X

### Sanctions; Exemptions; Recognition/Reciprocity

#### **6VAC20-173-230. Denial, probation, suspension, and revocation.**

A. The department may deny a certification in which any person or principal of an applying training school has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of a conviction, 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 conviction.

B. The department may deny a certification in which any person or principal of an applying training school (i) has not maintained good standing in every jurisdiction where licensed, registered, or certified in a private security services or related field; (ii) has had his license, registration, or certification denied upon initial application, suspended, revoked, surrendered, or not renewed; or (iii) has otherwise been disciplined in connection with a disciplinary action prior to applying for licensing, registration, or certification in Virginia.

C. Any false or misleading statement on any state application or supporting documentation is grounds for denial or revocation and may be subject to criminal prosecution.

D. The department may deny certification for other just cause.

E. A training school, instructor, or detector canine handler examiner shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or this chapter. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension, or revocation.

F. If a certified person is subject to disciplinary action for violations or noncompliance with the Code of Virginia or this chapter, the department will notify the last known certified private security services training school by which they were employed or affiliated.

#### **6VAC20-173-240. Exemptions; recognition and reciprocity.**

A. The department may grant a temporary exemption from the requirements for certification for a period of not more than 30 days in a situation deemed an emergency by the department.

B. The department may recognize administrative and application requirements for certification based on agreements that have been entered into with other states and approved by the board.

## Part XI

Complaints; Department Actions and Sanctions; Adjudication

#### **6VAC20-173-250. Complaint submittal requirements.**

A. In accordance with § 9.1-141 of the Code of Virginia, this chapter establishes standards designed to secure the public safety and welfare against incompetent or unqualified persons engaging in private security services. It shall be the responsibility of the licensee, its compliance agents, and its employees to provide private security services in a professional and ethical manner utilizing sound business practices.

B. Any aggrieved or interested person may file a complaint against any individual, person, firm or licensed firm, or school or certified school whose conduct and activities are regulated or required to be regulated by the board. The complaint must allege a violation of the law governing private security services or this chapter.

C. Complaints may be submitted:

1. In writing, or on a form provided by the department, by a signed complainant;
2. In writing, submitted anonymously, and providing sufficient detailed information for the department to conduct an investigation; or
3. By telephone, providing the complaint alleges activities that constitute a life-threatening situation or have resulted in personal injury or loss to the public or to a consumer or that may result in imminent harm or personal injury and that provide sufficient detailed information for the department to conduct an investigation.

### **6VAC20-173-260. Department investigation.**

A. The department may initiate or conduct an investigation based on any information received or action taken by the department to determine compliance with the Code of Virginia and this chapter.

B. Documentation.

1. Persons regulated or required to be regulated by this chapter pursuant to the Code of Virginia are required to provide department investigators with any and all records required to be maintained by this chapter.

a. This shall not be construed to authorize the department to demand records protected under applicable federal and state laws. If such records are necessary to complete an investigation, the department may seek a subpoena to satisfy the request.

b. The department shall endeavor to review, and request as necessary, only those records required to verify alleged violations of compliance with the Code of Virginia and this chapter.

2. The department shall endeavor to keep any documentation, evidence, or information on an investigation confidential until such time as adjudication has been completed, at which time information may be released upon request pursuant to applicable federal and state laws or regulations.

### **6VAC20-173-270. Disciplinary action, sanctions, publication of records.**

A. Each person subject to jurisdiction of this chapter who violates any statute or regulation pertaining to private security services shall be subject to sanctions imposed by the department regardless of criminal prosecution.

B. The department may impose any of the following sanctions, singly or in combination, when it finds the

respondent in violation of or in noncompliance with the Code of Virginia or of this chapter:

1. Letter of reprimand or censure;
2. Probation for any period of time;
3. Suspension of certification or approval granted for any period of time;
4. Revocation;
5. Refusal to issue, renew, or reinstate a certification or approval;
6. Fine not to exceed \$2,500 per violation as long as the respondent was not criminally prosecuted;
7. Remedial training; or
8. Conditional agreements.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this chapter but do not hold a valid certification. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

D. The director may summarily suspend a certification under this chapter without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations would constitute a life-threatening situation, has resulted in personal injury or loss to the public or to a consumer, or may result in imminent harm, personal injury, or loss.

E. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all persons, firms, training schools, and school directors whose conduct and activities are subject to this chapter and have been sanctioned or denied certification or approval.

### **6VAC20-173-280. Fines; administrative and investigative costs.**

A. The department may recover costs of any investigation and adjudication of any violations of the Code of Virginia or regulations that result in a sanction, including fine, probation, suspension, revocation, or denial of any certification. Such costs shall be in addition to any monetary penalty that may be imposed.

B. All monetary penalties imposed as a sanction shall be deposited into the state treasury to the credit of the State Literary Fund.

### **6VAC20-173-290. Hearing process.**

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact-finding conference or formal hearing as established in this chapter. Pursuant to the authority conferred in § 9.1-141 C 6 of the Code of Virginia and in accordance with the procedures set forth by the

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Administrative Process Act and the procedures prescribed in this part, the department is empowered to receive, review, investigate, and adjudicate complaints concerning the conduct of any person whose activities are regulated by the board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

## **6VAC20-173-300. Informal fact-finding conference.**

The purpose of an informal fact-finding conference is to resolve allegations through informal consultation and negotiation. Informal fact-finding conferences shall be conducted in accordance with § 2.2-4019 of the Code of Virginia. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact-finding conference and request a formal hearing, provided that written notification is given to the department within 30 days of the date the informal fact-finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact-finding decision was served by mail, three days shall be added to that period.

## **6VAC20-173-310. Formal hearing.**

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision, or in any case to the extent the informal fact-finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with § 2.2-4020 of the Code of Virginia. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

B. After a formal hearing pursuant to § 2.2-4020 of the Code of Virginia wherein a sanction is imposed to fine or to suspend, revoke, or deny issuance or renewal of any certification or approval, the department may assess the holder thereof the cost of conducting such hearing when the department has final authority to grant such certification or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

## **6VAC20-173-320. Appeals.**

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

## **6VAC20-173-330. Court review; appeal of final order.**

A. The agency's final administrative decision (final agency order) may be appealed. Any person affected by and claiming the unlawfulness of the agency's final case decision shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; however, if such party is not a resident of Virginia, the venue shall be in the City of Richmond, Virginia.

B. Notification shall be given to the attention of the Director, Department of Criminal Justice Services, in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect, unless the court issues a stay of the order.

**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 (6VAC20-173)**

### **Instructor**

[Private Security Services - Firearms Instructor In-Service Training Enrollment \(eff. 10/12\)](#)

[Private Security Services - General Instructor Entry Level Training Enrollment \(eff. 10/12\)](#)

[Private Security Services - General Instructor In-Service Training Enrollment \(eff. 10/12\)](#)

[Private Security Services - Initial Instructor Application \(eff. 10/12\)](#)

[Private Security Services - Renewal Instructor Application \(eff. 10/12\)](#)

### **Training School**

[Private Security Services - Initial Training School Application \(eff. 2/13\)](#)

[Private Security Services - Training Completion Form \(eff. 10/12\)](#)

[Private Security Services - Training Session Notification Form \(eff. 10/12\)](#)

[Private Security Services - Renewal Training School Application \(eff. 10/12\)](#)

[Private Security Services - Training School Compliance Inspection Form \(eff. 10/12\)](#)

[Private Security Services - Training Completion Roster Application \(eff. 10/12\)](#)

[Private Security Services - Subject Matter Specialist and Guest Lecturers Form \(eff. 10/12\)](#)

[Private Security Services - Bond \(eff. 10/12\)](#)

[Private Security Services - Irrevocable Consent for Service Form \(eff. 10/12\)](#)

[Private Security Services - Address Change Form for Schools \(eff. 10/12\)](#)

[Private Security Services - School Director Designation and Acceptance Form \(eff. 10/12\)](#)

[Private Security Services - School Staff Change Form \(eff. 10/12\)](#)

[Private Security Services - Training School Add Category Form \(eff. 10/12\)](#)

## **Fingerprint Processing**

[DCJS Fingerprint Cards Order Form \(undated\)](#)

[Fingerprint Processing Application \(eff. 10/12\)](#)

[Criminal History Supplemental Form \(eff. 10/12\)](#)

[Fingerprint Application Instructions \(eff. 10/12\)](#)

[Acceptable Documents for Verifying Legal Presence/Name Change \(eff. 10/12\)](#)

## **Miscellaneous**

[Complaint Form \(eff. 10/12\)](#)

[Firearms Discharge Report \(eff. 10/12\)](#)

[Partial Training Exemption Application - Entry Level \(eff. 10/12\)](#)

[Partial Training Exemption Application - In-Service \(eff. 10/12\)](#)

[Request for Extension Form \(eff. 10/12\)](#)

[Individual Address Change Form \(eff. 10/12\)](#)

[Credit Card Authorization Form \(eff. 10/12\)](#)

## **CHAPTER 174**

### **REGULATIONS RELATING TO PRIVATE SECURITY SERVICES REGISTERED PERSONNEL**

#### **Part I** **Definitions**

#### **6VAC20-174-10. Definitions.**

In addition to the words and terms defined in § 9.1-138 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:

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

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Business advertising material" means display advertisements in telephone directories, on letterhead, on

business cards, in local newspaper advertising, and in contracts.

"Certified training school" means a training school that is certified by the department for the specific purpose of training private security services business personnel in at least one category of the compulsory minimum training standards as set forth by the board.

"Class" means a block of instruction no less than 50 minutes in length on a particular subject.

"Classroom training" means instruction conducted in person by an instructor to students in an organized manner utilizing a lesson plan.

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Electronic images" means an acceptable method of maintaining required documentation through the scanning, storage, and maintenance of verifiable electronic copies of original documentation.

"Employee" means a natural person employed by a licensee to perform private security services that are regulated by the department.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Entry-level training" means the compulsory initial training for regulated categories and basic or intermediate firearms training standards adopted by the board for private security services business personnel who are either new registrants or failed to timely complete in-service training or firearms retraining within the prescribed time period.

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in this chapter.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"Intermediate weapon" means a tool not fundamentally designed to cause deadly force with conventional use. This would exclude all metal ammunition firearms or edged weapons. These weapons include but are not limited to baton/collapsible baton, chemical irritants, electronic restraining devices, projectiles, and other less lethal weapons as defined by the department.

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"Job-related training" means training specifically related to the daily job functions of a given category of registration or certification as defined in this chapter.

"Official documentation" means personnel records; Certificate of Release or Discharge from Active Duty (DD214); copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications, or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive compensation for employment for which a registration or certification is required.

"Online training" means training approved by the department and offered via the Internet or an Intranet for the purpose of remote access on-demand or distance training that meets all requirements for compulsory minimum training standards.

"Performance of his duties" means on duty in the context of this chapter.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, security canine handler, detector canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security employee, electronic security sales representative, electronic security technician, or electronic security technician's assistant.

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Related field" means any field with training requirements, job duties, and experience similar to those of the private security services field in which the applicant wishes to be licensed, certified, or registered. This term includes law enforcement and certain categories of the military.

"Session" means a group of classes comprising the total hours of mandated compulsory minimum training standards in any of the categories of licensure, registration, or certification in accordance with this part and in accordance

with §§ 9.1-150.2, 9.1-185.2 and 9.1-186.2 of the Code of Virginia.

"This chapter" means the Regulations Relating to Private Security Services Registered Personnel (6VAC20-174).

"Training certification" means verification of the successful completion of any training requirement established in this chapter.

"Training requirement" means any entry-level, in-service, or firearms training or retraining standard established in this chapter.

"Training school director" means a natural person designated by a principal of a certified private security services training school to assure the compliance of the private security services training school with all applicable requirements as provided in the Code of Virginia and this chapter.

"Uniform" means any clothing with a badge, patch, or lettering that clearly identifies persons to any observer as private security services business personnel, not law-enforcement officers.

## Part II Application Fees

### **6VAC20-174-20. Fees.**

A. Schedule of fees. The fees listed below reflect the costs of handling, issuance, and production associated with administering and processing applications for registration and other administrative requests for services relating to private security services.

<u>CATEGORIES</u>	<u>FEES</u>
<u>Fingerprint processing application</u>	<u>\$50</u>
<u>Initial registration</u>	<u>\$25</u>
<u>Registration renewal</u>	<u>\$20</u>
<u>Additional registration category form</u>	<u>\$20</u>
<u>Replacement registration card</u>	<u>\$20</u>
<u>Firearm endorsement</u>	<u>\$10</u>
<u>Entry-level training exemption</u>	<u>\$25</u>
<u>In-service training alternative credit evaluation</u>	<u>\$25</u>

### B. Reinstatement fee.

1. The department shall collect a reinstatement fee for registration renewal applications not received on or before the expiration date of the expiring registration.

2. The reinstatement fee shall be 50% above and beyond the renewal fee of the registration or any other credential issued by the department wherein a fee is established and renewal is required.

C. Dishonor of fee payment due to insufficient funds.

1. The department may suspend the registration or authority it has granted any person who submits a check or similar instrument for payment of a fee required by statute or regulation that is not honored by the financial institution upon which the check or similar instrument is drawn.

2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the person or registrant may request that the suspended registration or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompanies the request. Suspension under this provision shall be exempt from the Administrative Process Act.

D. Manual processing service fee. The department shall collect a \$5.00 service fee for any applications under this chapter that are submitted to the department by other means than the available electronic methods established by the department.

Part III

Criminal History Records Search

**6VAC20-174-30. Fingerprint processing.**

A. On or before the first date of hire, each person applying for a private security registration shall submit to the department:

1. One completed fingerprint card provided by the department or another electronic method approved by the department;
2. A fingerprint processing application;
3. The applicable, nonrefundable fee; and
4. All criminal history conviction information on a form provided by the department.

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual or individuals have a record of conviction.

C. Fingerprint cards found to be unclassifiable will suspend all action on the application pending the resubmission of a classifiable fingerprint card. The applicant shall be so notified in writing and must submit a new fingerprint card within 30 days of notification before the processing of his application shall resume. If a fingerprint card is not submitted within the 30 days, the initial fingerprint application process will be required to include applicable application fees.

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial. The compliance agent will also be notified in writing by DCJS that the applicant has been denied.

E. Fingerprint applications will be active for 120 days from the date of submittal. Applications for registrations must be

submitted within that 120-day period or initial fingerprint submittal will be required.

Part IV

Application Procedures and Requirements

**6VAC20-174-40. Initial registration application.**

A. Individuals required to be registered, pursuant to § 9.1-139 C of the Code of Virginia, in the categories of armored car personnel, courier, unarmed security officer, armed security officer, security canine handler, explosives detector canine handler, narcotics detector canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant shall meet all registration requirements in this section. Prior to the issuance of a registration, the applicant shall meet or exceed the requirements of registration and application submittal to the department as set forth in this section. Individuals who carry or have access to a firearm while on duty must have a valid registration with a firearm endorsement pursuant to this chapter. If carrying a handgun concealed, the individual must also have (i) a valid concealed handgun permit pursuant to Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia and (ii) the written permission of his employer.

B. Each person applying for registration shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age;
2. Successfully complete all initial training requirements for each registration category requested, including firearms endorsement if applicable, pursuant to the compulsory minimum training standards as set forth in this chapter; and
3. Be a United States citizen or legal resident alien of the United States.

C. Each person applying for registration shall file with the department:

1. A properly completed application provided by the department;
2. On the application, his mailing address;
3. Fingerprint card; and
4. The applicable, nonrefundable application fee.

D. Each person seeking or required to seek registration as an unarmed security officer, an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative, an electronic security technician, or an electronic security technician's assistant may be employed for a period not to exceed 90 consecutive days in any categories listed in this subsection while completing the compulsory minimum training standards, provided:

1. Fingerprints have been submitted;

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2. The individual is not employed in excess of 120 days without having been issued a registration from the department; and

3. The individual did not fail to timely complete the required training with a previous employer.

E. Upon completion of the initial registration application requirements, the department may issue an initial registration for a period not to exceed 24 months.

F. The department may issue a letter of temporary registration valid for not more than 120 days while awaiting the results of the state and national fingerprint search, provided the applicant has met the necessary conditions and requirements.

G. Each registration shall be issued to the individual named on the application and shall be valid only for use by that individual. No registration shall be assigned or otherwise transferred to another individual.

H. Each registrant shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

## **6VAC20-174-50. Renewal registration application.**

A. Applications for registration renewal shall meet all renewal requirements and should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address or email address provided by the registrant. However, if a renewal notification is not received by the individual, it is the responsibility of the individual to ensure renewal requirements are filed with the department. Registration renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

B. Each person applying for registration renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully complete the in-service training, and firearms retraining if applicable, pursuant to the compulsory minimum training standards set forth by this chapter; and

2. Be in good standing in every jurisdiction where licensed, registered, or certified. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

C. The department may renew a registration when the following are received by the department:

1. A properly completed renewal application provided by the department;

2. For individuals applying for renewal with the category of armored car personnel, a fingerprint card;

3. The applicable, nonrefundable registration renewal fee; and

4. For individuals with firearms endorsements, evidence of completion of annual firearms retraining in accordance with this chapter.

D. Upon completion of the renewal registration application requirements, the department may issue a registration for a period not to exceed 24 months.

E. Any renewal application received by the department shall meet all renewal requirements prior to the expiration date of a registration or shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

## **6VAC20-174-60. Firearms endorsement.**

A. A firearms endorsement is required for all private security services business personnel who carry or have access to a firearm while on duty. Each person who carries or has access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

B. Each person applying for a firearms endorsement shall meet the minimum requirements for eligibility as follows:

1. Must be registered in a regulated category.

2. Must complete entry-level handgun training and, if applicable, shotgun and patrol rifle training as described in this chapter.

C. All armed private security services business personnel with the exception of personal protection specialist must satisfactorily complete applicable firearms retraining.

D. All armed personal protection specialists must satisfactorily complete advanced handgun retraining and firearms retraining for shotgun and patrol rifle if applicable.

E. Firearms endorsements are issued for a period not to exceed 12 months. Individuals must complete firearms retraining within the 90 days prior to the expiration of their current firearm endorsement or will be required to complete entry-level training requirements prior to applying for an active endorsement.

## **6VAC20-174-70. Additional registration category application.**

A. Individuals may apply for multiple registration categories during the initial application process by completing the applicable training requirements for each category.

B. Registrants seeking to add categories to a current registration must:

1. Successfully complete all initial training requirements for each additional registration category requested pursuant to the compulsory minimum training standards of this chapter;

2. Submit a properly completed application provided by the department; and

3. Submit the applicable, nonrefundable application fee.

C. Individuals may avoid paying a separate fee for additional registration categories when the categories are requested on the application for renewal.

**6VAC20-174-80. Replacement registration.**

Registrants seeking a replacement state-issued registration card shall submit to the department:

1. A properly completed application provided by the department; and
2. The applicable, nonrefundable application fee.

**6VAC20-174-90. Reinstatement.**

A. Any registration not renewed on or before the expiration date shall become null and void. Pursuant to the Code of Virginia, all such persons must currently be registered with the department to provide private security services.

B. A renewal application must be received by the department within 60 days following the expiration date of the registration in order to be reinstated by the department providing all renewal requirements have been met. Prior to reinstatement the following shall be submitted to the department:

1. The appropriate renewal application and completion of renewal requirements including required training pursuant to this chapter; and
2. The applicable, nonrefundable reinstatement fee pursuant to this chapter.

The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid registration including during reinstatement period.

C. No registration shall be renewed or reinstated when all renewal application requirements are received by the department more than 60 days following the expiration date. After that date, the applicant shall meet all initial application requirements, including applicable training requirements.

D. Following submittal of all reinstatement requirements, the department will process and may approve any application for reinstatement pursuant to the renewal process for the application.

E. When a registration is reinstated, the applicant shall continue to have the same DCJS number and shall be assigned an expiration date two years from the previous expiration date of the registration.

F. An applicant who reinstates shall be regarded as having been continuously registered without interruption. Therefore, the applicant shall remain under the disciplinary authority of the department during this entire period and may be held accountable for his activities during this period.

G. A person who fails to reinstate his registration shall be regarded as unregistered from the expiration date of the registration forward.

H. Nothing in this chapter shall divest the department of its authority to discipline a person for a violation of the laws or regulations during the period of time for which the person was registered.

I. Firearms endorsements are not eligible for reinstatement. If renewal requirements are not met pursuant to this chapter, the applicant shall meet all initial application requirements, including applicable initial firearms training requirements.

**6VAC20-174-100. Renewal extension.**

A. An extension of the time period to meet renewal requirements may be approved only under specific circumstances that do not allow private security personnel to complete the required procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness;
2. Extended injury;
3. Military or foreign service; or
4. Any emergency temporary assignment of private security personnel for purposes of natural disaster, homeland security, or documented threat by the private security services business or training school for which he is employed.

B. A request for extension shall:

1. Be submitted in writing, dated, and signed by the individual prior to the expiration date of the time limit required for completion of the requirements. This requirement may be waived by the department based on an evaluation of the justification for waiver;
2. Indicate the projected date the person will be able to comply with the requirements; and
3. Include a copy of the physician's record of the injury or illness, a copy of the government orders, or documentation of emergency temporary assignment.

C. Applications for additional extensions may be approved upon written request of the person.

D. The total time for renewal extension, including additional extensions, shall not exceed 12 months beyond the original expiration date. If renewal requirements are not met during the period of extension, the individual must complete all initial training requirements to include applicable entry-level training.

E. The private security services person shall be nonoperational during the period of extension unless (i) otherwise issued a temporary exemption and (ii) authorized by the department pursuant to § 9.1-139 of the Code of Virginia.

**Part V**

**Application Sanctions; Exemptions; Recognition and Reciprocity**

**6VAC20-174-110. Denial, probation, suspension, and revocation.**

A. The department may deny a registration in which any person has been convicted in any jurisdiction of any felony or of a misdemeanor involving moral turpitude, assault and

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battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of a conviction, 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 conviction.

B. The department may deny registration in which any person (i) has not maintained good standing in every jurisdiction where licensed, registered, or certified in a private security services or related field; (ii) has had his license, registration, or certification denied upon initial application, suspended, revoked, surrendered, or not renewed; or (iii) has otherwise been disciplined in connection with a disciplinary action prior to applying for registration in Virginia.

C. Any false or misleading statement on any state application or supporting documentation is grounds for denial or revocation and may be subject to criminal prosecution.

D. The department may deny registration for other just cause.

E. A registrant shall be subject to disciplinary action for violations of or noncompliance with the Code of Virginia or this chapter. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act. The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension, or revocation.

F. If a registrant is subject to disciplinary action for violations of or noncompliance with the Code of Virginia or this chapter, the department will notify the last known licensed or certified private security services business or training school by which they were employed or affiliated.

## **6VAC20-174-120. Exemptions; recognition and reciprocity.**

A. The department may grant a temporary exemption from the requirements for registration for a period of not more than 30 days in a situation deemed an emergency by the department.

B. The department may recognize administrative and application requirements for registration based on agreements that have been entered into with other states and approved by the board.

### **Part VI**

#### **Administrative Requirements and Standards of Conduct**

## **6VAC20-174-130. General requirements.**

All private security services registered personnel are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines, and this chapter.

## **6VAC20-174-140. Administrative requirements.**

A registrant shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Maintain at all times with the department his mailing address, email address, and phone number, if applicable. Written notification of any change in mailing address, email address, or phone number shall be in writing and received by the department no later than 10 days after the effective date of the change.

3. Inform the department, and the business for which the individual is employed if applicable, in writing within 10 days after pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor as outlined in § 9.1-139 K of the Code of Virginia.

4. Inform the department, and the business for which the individual is employed if applicable, in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the private security services business statutes or regulations of that jurisdiction.

5. Inform the department, and the compliance agent of the licensee if employed by a private security services business, of any incident in which any registrant has discharged a firearm while on duty, excluding any training exercise. This report shall be made within 24 hours of the incident.

## **6VAC20-174-150. Standards of conduct.**

A registrant shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.

2. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.

3. Not commit any act or omission that results in a private security license, registration, or certification being suspended, revoked, or not renewed or the licensee, registrant, or certificate holder otherwise being disciplined in any jurisdiction.

4. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. 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 prima facie evidence of such guilt.

5. Not obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.

6. Not solicit or contract to provide any private security services without first having obtained a private security services business license with the department.

7. Carry a valid registration card or valid temporary registration letter at all times while on duty. Individuals requiring registration as an unarmed security officer, an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative, or an electronic security technician may be employed for not more than 90 consecutive days in any category listed in this subdivision while completing the compulsory minimum training standards and may not be employed in excess of 120 days without having been issued a registration or an exception from the department and must carry a photo identification and authorization from their employer on a form provided by the department at all times while on duty.

8. Carry the private security state-issued registration card at all times while on duty once the authorization has been approved from the department, except those individuals operating outside the Commonwealth of Virginia who shall obtain the state-issued registration card prior to providing services when physically located in the Commonwealth.

9. Perform those duties authorized by his registration only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is registered as an armed security officer from being employed by a nonlicensee as provided for in § 9.1-140 of the Code of Virginia.

10. Possess a valid firearms training endorsement if he carries or has access to firearms while on duty and then only those firearms by type of action and caliber to which he has been trained on and is qualified to carry. Carry or have access to a patrol rifle while on duty only with the expressed written authorization of the licensed private security services business employing the registrant.

11. Carry a firearm concealed while on duty only with the expressed written authorization of the licensed private security services business employing the registrant and only in compliance with Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia.

12. Transport, carry, and utilize firearms while on duty only in a manner that does not endanger the public health, safety, and welfare.

13. If authorized to make arrests, make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest.

14. Engage in no conduct that shall mislead or misrepresent through word, deed, or appearance that a registrant is a law-enforcement officer or other government official.

15. Display one's registration or temporary registration along with a photo identification while on duty in response to the request of a law-enforcement officer, department personnel, or client. Individuals providing private security services as authorized pursuant to subdivision 7 of this section who have not received their registration must display a state-issued photo identification and authorization while on duty in response to the request of a law-enforcement officer, department personnel, or a client.

16. Not perform any unlawful or negligent act resulting in a loss, injury, or death to any person.

17. If a uniform is required, wear the uniform required by his employer. If wearing a uniform while employed as an armed security officer, unarmed security officer, alarm respondent, or armored car personnel, that uniform must:

a. Include at least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a nameplate or tape bearing, at a minimum, the individual's last name attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. Include no patch or other writing (i) containing the word "police" or any other word suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the word "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions, or the federal government.

18. When providing central station monitoring services, attempt to verify the legitimacy of a burglar alarm activation by calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch. This shall not apply if the alarm user has provided written authorization requesting immediate dispatch or one-call dispatch to both his local police department and his dealer of record. This shall not apply to duress or hold-up alarms.

19. Act only in such a manner that does not endanger the public health, safety, and welfare.

20. Not represent as one's own a registration issued to another individual.

21. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director, or instructor.

22. Not provide information obtained by the registrant or his employing firm to any person other than the client who secured the services of the licensee without the client's

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prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

23. Not engage in acts of unprofessional conduct in the practice of private security services.

24. Not engage in acts of negligent or incompetent private security services.

25. Not make any misrepresentation or make a false promise to a private security services business client or potential private security services business client.

26. Satisfy all judgments to include binding arbitrations related to private security services not provided.

27. Not provide false or misleading information to representatives of the department.

28. Not provide materially incorrect, misleading, incomplete, or untrue information on a registration application, renewal application, or any other document filed with the department.

## Part VII

### Training Requirements and Exemptions

#### **6VAC20-174-160. Entry-level training.**

A. Each person employed by a private security services business or applying to the department for registration as an unarmed security officer, an armed security officer/courier, a personal protection specialist, armored car personnel, a security canine handler, an explosives detector canine handler, a narcotics detector canine handler, a private investigator, an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative, or an electronic security technician, or electronic security technician's assistant as defined by § 9.1-138 of the Code of Virginia must meet the compulsory minimum training standards herein established, unless provided for otherwise in accordance with this chapter.

B. Training will be credited only if application for registration is received by the department within 12 months of completion of training.

#### **6VAC20-174-170. In-service training.**

Each person registered with the department as an armed security officer/courier, a personal protection specialist, armored car personnel, a security canine handler, a narcotics detector canine handler, an explosives detector canine handler, a private investigator, an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative, an electronic security technician, an unarmed security officer, or an electronic security technician's assistant shall complete the compulsory in-service training standard once during each 24-month period of registration.

#### **6VAC20-174-180. Training exemptions.**

Persons who meet the statutory requirements as set forth in § 9.1-141 of the Code of Virginia may apply for a partial exemption from the compulsory training standards. Individuals requesting such partial exemption shall file an application furnished by the department and include the applicable, nonrefundable application fee. The department may issue such partial exemption on the basis of individual qualifications as supported by required documentation. Those applying for and receiving exemptions must comply with all regulations promulgated by the board. Each person receiving a partial exemption for entry-level training must apply to the department for registration within 12 months from the date of issuance, otherwise the partial exemption shall become null and void.

#### **6VAC20-174-190. Entry-level training exemption.**

A. Persons previously employed as law-enforcement officers who have not terminated or been terminated from said employment more than five years prior to the application date must submit official documentation of the following with the application for exemption:

1. Completion of law-enforcement entry-level training; and
2. Five continuous years of law-enforcement employment provided such employment as a law-enforcement officer was not terminated due to misconduct or incompetence.

B. Persons having previous training or employment in any of the classifications defined in § 9.1-138 of the Code of Virginia must submit official documentation of the following with the application for exemption:

1. Completion of previous private security training that has been approved by the department and that meets or exceeds the compulsory minimum training standards promulgated by the board; or
2. Five years continuous employment in the category for which exemption is sought, provided such employment was not terminated due to misconduct or incompetence and such employment ended within five years of the date of application.

#### **6VAC20-174-200. In-service training exemption.**

Persons who have completed training that meets or exceeds the compulsory minimum training standards promulgated by the board for the in-service training required for the individual's particular category may be authorized credit for such training, provided the training has been completed within 24 months of the expiration date of the registration period during which in-service training is required. Such training must be provided by a third party organization category. Official documentation of the following must accompany the application for in-service training credit:

1. Information regarding the sponsoring organization, including documentation regarding the instructor for each session;

2. An outline of the training session material, including the dates, times, and specific subject matter; and
3. Proof of attendance and successful completion.

Part VIII

Compulsory Minimum Training Standards

**6VAC20-174-210. Alarm respondent - compulsory minimum training requirements:**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Alarm respondent - 18 hours

01E: Security Officer Core Subjects - 18 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course, excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

Security officer core subjects (01E) - 18 hours (excluding examination)

The entry-level curriculum for alarm respondent sets forth the following areas identified as:

a. Orientation

(1) Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

(2) Code of ethics

(3) General duties and responsibilities

(4) Signs of terrorism

b. Law

c. Security patrol, access control, and communications

d. Documentation

e. Emergency procedures

f. Confrontation management

g. Use of force

h. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(01I) Security Officer Core Subjects In-Service - 4 hours job-related training

**6VAC20-174-220. Armed security officer/courier - compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Armed security officer/courier - 50 hours (53 hours including shotgun training)

a. 01E: Security Officer Core Subjects - 18 hours

b. 05E: Armed Security Officer Arrest Authority - 8 hours

c. 075E: Security Officer Handgun - 24 hours

d. 08E: Entry-level Shotgun - 3 hours (if applicable - to also have access to a shotgun while on duty, the additional shotgun course is required)

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

1. Security officer core subjects (01E) - 18 hours (excluding examination)

The entry-level curriculum for alarm respondent sets forth the following areas identified as:

a. Orientation

(1) Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

(2) Code of ethics

(3) General duties and responsibilities

(4) Signs of terrorism

b. Law

c. Security patrol, access control, and communications

d. Documentation

e. Emergency procedures

f. Confrontation management

g. Use of force

h. Written comprehensive examination

2. Armed Security Officer Arrest Authority (05E) - 8 hours (excluding examination)

a. Arrest powers, policies, and procedures

b. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(01I) Security Officer Core Subjects In-Service - 4 hours job-related training (not including range retraining)

**6VAC20-174-230. Armored car personnel – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Armored car personnel - 28 hours (31 hours with shotgun)

a. 03E: Armored Car Procedures - 12 hours

b. 07E: Entry-level Handgun - 16 hours

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c. 08E: Entry-level Shotgun - 3 hours (if applicable - to also have access to a shotgun while on duty, the additional shotgun course is required)

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

Armored Car Procedures (03E) - 12 hours (excluding examination)

a. Administration and armored car orientation

b. Signs of terrorism

c. Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

d. Armored car procedures

e. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(03I) Armored Car Personnel In-Service - 4 hours job-related training (not including range retraining)

## **6VAC20-174-240. Central station dispatcher – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Central station dispatcher - 8 hours

a. 30E: Electronic Security Core Subjects - 4 hours

b. 38E: Central Station Dispatcher - 4 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

1. Electronic security core subjects (30E) - 4 hours (excluding examination)

a. Administration and orientation

(1) Applicable sections of the Code of Virginia

(2) Regulations Relating to Private Security Services

(3) Signs of terrorism

b. Overview of electronic security

c. False alarm prevention

d. Written comprehensive examination

2. Central station dispatcher (38E) - 4 hours (excluding examination)

a. Central station dispatcher subjects

(1) Duties and responsibilities

(2) Communications skills

(3) Emergency procedures

b. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises and range qualification, shall be as follows:

(30I) Electronic Security Subjects In-Service - 4 hours job-related training

## **6VAC20-174-250. Detector canine handler – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Detector Canine Handler - 160 hours (excluding certification examination)

a. 04ED: Detector Canine Handler - 160 hours

b. Certification exam by a certified detector canine handler examiner

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

Detector canine handler (04ED) - 160 hours to include practical exercises (excluding certification exam)

a. Introduction/orientation/administration

(1) Code of ethics

(2) General duties and responsibilities

(3) Legal

(4) Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

(5) Signs of terrorism

b. Working canines

(1) Historical perspective

(2) Terms and definitions

(3) Methodology and application

(4) Training documentation

(5) Search patterns

c. Basic canine handling (including practical exercises)

(1) Training

(2) Care and health

(3) Emergency medical care

d. Detector canine deployment

Canine behavior: reading and understanding

e. Explosive or narcotics familiarization (including practical exercises)

- (1) Illegal narcotics familiarization
- (2) Explosives substance and I.E.D. familiarization
- (3) Safety
- f. Written comprehensive exam

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(04ID) Detector Canine Handler In-Service - 8 hours (excluding certification exam)

- a. Detector canine team retraining and problem solving
- b. Search techniques
- c. Terrorist/criminal intelligence updates and team safety
- d. Certification exam (conducted by a certified detector canine handler examiner)

**6VAC20-174-260. Electronic security technician – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Electronic security technician - 14 hours

- a. 30E: Electronic Security Core Subjects - 4 hours
- b. 35E: Electronic Security Technician - 10 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

1. Electronic security core subjects (30E) - 4 hours (excluding examination)

- a. Administration and orientation
  - (1) Applicable sections of the Code of Virginia
  - (2) Regulations Relating to Private Security Services
  - (3) Signs of terrorism

- b. Overview of electronic security
- c. False alarm prevention
- d. Written comprehensive examination

2. Electronic security technician (35E) - 4 hours (excluding examination)

- a. Electronic security technician subjects - 10 hours
  - (1) Duties and responsibilities
  - (2) Electronics
  - (3) Control panels
  - (4) Protection devices and application
  - (5) Test equipment
  - (6) Power and grounding

- (7) National electrical code
- (8) Job safety

b. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(30I) Electronic Security Subjects In-Service - 4 hours job-related training

**6VAC20-174-270. Electronic security technician assistant – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Electronic security technician's assistant - 4 hours

30E: Electronic Security Core Subjects - 4 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

Electronic security core subjects (30E) - 4 hours (excluding examination)

a. Administration and orientation

- (1) Applicable sections of the Code of Virginia
- (2) Regulations Relating to Private Security Services
- (3) Signs of terrorism

b. Overview of electronic security

c. False alarm prevention

d. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(30I) Electronic Security Subjects In-Service - 4 hours job-related training

**6VAC20-174-280. Electronic security sales representative – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Electronic security sales representative - 8 hours

a. 30E: Electronic Security Core Subjects - 4 hours

b. 39E: Electronic Security Sales - 4 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course,

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excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

1. Electronic security core subjects (30E) - 4 hours (excluding examination)

a. Administration and orientation

- (1) Applicable sections of the Code of Virginia
- (2) Regulations Relating to Private Security Services
- (3) Signs of terrorism

b. Overview of electronic security

c. False alarm prevention

d. Written comprehensive examination

2. Electronic security sales representative (39E) - 4 hours (excluding examination)

a. Electronic security sales representative subjects

- (1) Duties and responsibilities
- (2) System design and components
- (3) False alarm prevention

b. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(30I) Electronic Security Subjects In-Service - 4 hours job-related training

**6VAC20-174-290. Locksmith – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Locksmith - 18 hours

25E: Locksmith - 18 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

Locksmith (25E) –18 hours (excluding examination)

a. Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

b. Signs of terrorism

c. Orientation to locksmithing

- (1) History of locksmithing
- (2) Ethics
- (3) Trade resources
- (4) Terminology
- (5) Professional conduct

(6) Job safety

d. Public safety codes

(1) National Fire Protection Association Codes 80 and 101

(2) Overview of authorities having jurisdiction (AHJs)

(3) Americans with Disabilities Act of 1990, as amended

(4) Terminology

(5) Safety code resources

e. Technical applications

(1) Terminology (to include definition, purpose, and function)

(2) Locks/types

(3) Handing

(4) Master keying

(5) Key records and codes

(6) Key blanks and keyways

(7) Physical security

(8) Types of client sites

(9) Safes and vaults

(10) Access control

(11) Handling restricted keys

(12) Door system components

(13) Automotive

f. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(25I) Locksmith In-Service - 4 hours job-related training

**6VAC20-174-300. Personal protection specialist – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Personal protection specialist - 60 hours

a. 32E: Personal Protection Specialist - 60 hours

b. 07E: Entry-level Handgun - 16 hours (prerequisite for 09E Advanced Handgun)

c. 09E: Advanced Handgun - 14 hours (for armed personal protection specialists)

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

Personal protection specialist (32E) - 60 hours (excluding written examination and practical exercises)

- a. Administration and personal protection orientation
- b. Signs of terrorism
- c. Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services
- d. Assessment of threat and protectee vulnerability
- e. Legal authority and civil law
- f. Protective detail operations
- g. Emergency procedures
  - (1) CPR
  - (2) Emergency first aid
  - (3) Defensive preparedness
- h. Performance evaluation - five practical exercises
- i. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(32I) Personal Protection Specialist In-Service - 8 hours job-related training (not including range retraining for armed)

**6VAC20-174-310. Private investigator – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

- Private investigator - 60 hours
- 02E: Private Investigator Subjects - 60 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

Private investigator (02E) - 60 hours (excluding examination and practical exercises)

- a. Orientation
  - (1) Applicable sections of the Code of Virginia
  - (2) Regulations Relating to Private Security Services
  - (3) Standards of professional conduct
  - (4) Ethics
  - (5) Signs of terrorism
- b. Law - one practical exercise
  - (1) Basic law
  - (2) Legal procedures and due process
  - (3) Criminal and civil law

- (4) Evidence
- (5) Legal privacy requirements
- c. General investigative skills - one practical exercise
  - (1) Tools and techniques
  - (2) Surveillance
  - (3) Research
  - (4) Interviewing
- d. Documentation - one practical exercise
  - (1) Report preparations
  - (2) Photography
  - (3) Audio recording
  - (4) General communication
  - (5) Courtroom testimony
- e. Types of investigations - one practical exercise

- (1) Accident
- (2) Insurance
- (3) Background
- (4) Domestic
- (5) Undercover
- (6) Fraud and financial
- (7) Missing persons and property
- (8) Criminal

f. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises and range qualification shall be as follows:

(02I) Private Investigator In-Service - 8 hours job-related training

**6VAC20-174-320. Security canine handler – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations, practical exercises, and range qualification shall be:

Security canine handler - 30 hours (excluding basic obedience training)

- a. 01E: Security Officer Core Subjects - 18 hours (prerequisite for 04ES)
- b. Prerequisite for 04ES - Basic Obedience Training
- c. 04ES: Security Canine Handler - 12 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course excluding examinations, mandated practical exercises, and range qualification shall be as provided in this subsection.

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1. Security officer core subjects (01E) - 18 hours (excluding examination)

The entry level curriculum for unarmed security officer, armed security officer/courier, security canine handler, and alarm respondent sets forth the following areas identified as:

a. Orientation

(1) Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

(2) Code of ethics

(3) General duties and responsibilities

(4) Signs of terrorism

b. Law

c. Security patrol, access control, and communications

d. Documentation

e. Emergency procedures

f. Confrontation management

g. Use of force

h. Written comprehensive examination

2. Security canine handler (04ES) - 12 hours (excluding examination and basic obedience training)

a. Prerequisites for security canine handler entry level (official documentation required): successful completion of basic obedience training

b. Demonstration of proficiency. The student must demonstrate his proficiency in the handling of a security canine to satisfy the minimum standards

c. Evaluation by a certified private security canine handler instructor and basic obedience retraining

d. Security canine handler orientation; legal authority

e. Canine patrol techniques

f. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations, practical exercises, and range qualification shall be as follows:

(04IS) Security Canine Handler In-Service - 8 hours

a. Basic obedience evaluation and retraining

b. Canine grooming, feeding, and health care

c. Apprehension techniques

d. Obedience

**6VAC20-174-330. Unarmed security officer – compulsory minimum training requirements.**

A. Entry-level course and minimum hour requirement. The compulsory minimum entry-level training courses and specific minimum hour requirement excluding examinations and practical exercises shall be:

Unarmed security officer - 18 hours

01E: Security Officer Core Subjects - 18 hours

B. Entry-level course content. The compulsory minimum entry-level training course content by specific course, excluding examinations and mandated practical exercises shall be as provided in this subsection.

Security officer core subjects (01E) - 18 hours (excluding examination)

a. Orientation

(1) Applicable sections of the Code of Virginia and Regulations Relating to Private Security Services

(2) Code of ethics

(3) General duties and responsibilities

(4) Signs of Terrorism

b. Law

c. Security patrol, access control, and communications

d. Documentation

e. Emergency procedures

f. Confrontation management

g. Use of force

h. Written comprehensive examination

C. In-service course content and minimum hour requirement. The compulsory minimum in-service training content and minimum hour requirement excluding examinations and practical exercises shall be as follows:

(01I) Security Officer Core Subjects In-Service - 4 hours job-related training

Part IX

Firearms Training Requirements and Exemptions

**6VAC20-174-340. General firearms training requirements.**

A. Firearms training endorsement is required for all private security services business personnel who carry or have immediate access to a firearm while on duty. Each person who carries or has immediate access to a firearm while on duty shall qualify with each type of action and caliber of firearm to which he has access.

B. Each person registered as armored car personnel, security canine handler, detector canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant must complete entry-level handgun training in order to apply for a firearms training endorsement.

C. Each person applying for a registration as an armed security officer/courier must complete security officer handgun training in order to apply for a firearms training endorsement.

D. Each person registered as a personal protection specialist must complete entry-level or armed security officer handgun

training and advanced handgun training in order to apply for a firearms training endorsement.

**6VAC20-174-350. Prior firearms training exemption.**

Persons having previous department-approved firearms training may be authorized credit for such training that meets or exceeds the compulsory minimum training standards for private security services business personnel, provided such training has been completed within the 12 months preceding the date of application. Official documentation of the following must accompany the application for partial training credit:

1. Completion of department-approved firearms training; and
2. Qualification at a Virginia criminal justice agency, academy, or correctional department.

**6VAC20-174-360. Entry-level handgun training.**

Handgun classroom training.

1. The entry-level handgun classroom training will include but not be limited to the following:

a. Practical handgun handling

- (1) Identification of handgun parts
- (2) Draw
- (3) Reholstering
- (4) Ready position
- (5) Loading
- (6) Administrative loading
- (7) Tactical reloading
- (8) Rapid reloading
- (9) Unloading
- (10) Malfunctions
- (11) Immediate actions procedures
- (12) Remedial action
- (13) Proper care and maintenance
- (14) Firearms retention
- (15) Ammunition identification and management
- (16) Range safety

b. Fundamentals of marksmanship

- (1) Grip
- (2) Stance (position)
- (3) Sight alignment
- (4) Sight picture
- (5) Trigger control
- (6) Breathing
- (7) Follow through

c. Dim light/low light/reduced light practice and familiarization

- (1) Identification of target/threat/background

- (2) Unaided training
  - (3) Aided training
  - (4) Flashlight use
  - (5) Reloading during low light conditions
  - (6) Malfunctions
  - (7) Range safety
- d. Use of force
- (1) Deadly force
  - (2) Justifiable deadly force

e. Liability

- (1) Criminal liability
- (2) Civil liability
- (3) Negligent discharge prevention

f. Judgmental shooting: judgmental shooting scenarios will be conducted in the classroom or range

g. Lead exposure

Total hours (excluding written examination) - 16 hours

2. Written examination required.

**6VAC20-174-370. Security officer handgun training.**

Handgun classroom training.

1. The security officer handgun classroom training will include but not be limited to the following:

a. Practical handgun handling

- (1) Identification of handgun parts
- (2) Draw
- (3) Reholstering
- (4) Ready position
- (5) Loading
- (6) Administrative loading
- (7) Tactical reloading
- (8) Rapid reloading
- (9) Unloading
- (10) Malfunctions
- (11) Immediate actions procedures
- (12) Remedial action
- (13) Proper care and maintenance
- (14) Firearms retention
- (15) Ammunition identification and management
- (16) Range safety
- (17) Tactical considerations
- (18) Movement
- (19) Cover and concealment

b. Fundamentals of marksmanship

- (1) Grip
- (2) Stance (position)

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(3) Sight alignment

(4) Sight picture

(5) Trigger control

(6) Breathing

(7) Follow through

c. Dim light/low light/reduced light practice and familiarization

(1) Identification of target/threat/background

(2) Unaided training

(3) Aided training

(4) Flashlight use

(5) Reloading during low light conditions

(6) Malfunctions

(7) Range safety

(8) Tactical considerations

(9) Movement

(10) Cover and concealment

(11) Multiple target drills

d. Use of force

(1) Deadly force

(2) Justifiable deadly force

e. Liability

(1) Criminal liability

(2) Civil liability

(3) Negligent discharge prevention

f. Judgmental shooting: judgmental shooting scenarios will be conducted in the classroom or range

(1) Shoot/don't shoot judgment

(2) Turn and fire drills

(3) Failure to stop drills

(4) Multiple target drills

g. Lead exposure

Total hours (excluding written examination) - 24 hours

2. Written examination required.

## **6VAC20-174-380. Entry-level and security officer handgun range qualification.**

A. Range qualification (no minimum hours). The purpose of the range qualification course is to provide practical firearms training and qualification to individuals desiring to become armed private security services business personnel.

1. Prior to the date of range training, it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training. Equipment needed: handgun, belt with directional draw holster (i.e., one that is worn on the same side of the body

as the shooting hand), two speed loaders or three magazines, ammunition (100 rounds).

2. Each student will fire a minimum of 22 rounds of factory loaded ammunition for familiarization prior to qualification. (There is no course of fire and it is not scored; it is at the firearms instructor's discretion on how the round will be utilized.)

3. Course shall be fired double action or double/single action, except for single action semi-automatic handguns.

4. All qualifications shall be conducted using a B-27 silhouette target or the FBI "Q" target. Alternate targets may be utilized with prior approval by the department.

5. With prior approval of the department, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.

6. For those utilizing semi-automatic firearms, it is not necessary to reload after every stage so long as there are at least three tactical reloads during the course of fire.

7. A certified firearms instructor must be present on the range directly controlling the firing line during all phases of firearms training. There shall be a minimum of one certified firearms instructor per five shooters on the line.

8. The range qualification of individuals shall be scored as follows:

a. B27 target: (use indicated K-value) 7, 8, 9, 10 X rings - value 5 points, other hits on silhouette - value 0 points: divide points scored by maximum possible score to obtain decimal and convert to percentage, (e.g.,  $225 \div 300 = .75 = 75\%$ ).

b. FBI Q target: all hits inside the bottle - value 5 points; hits outside the bottle - value 0 points.

9. Although not scored, each student is required to complete the low light range/night time practice as outlined in subsection C of this section and the familiarization course of fire.

B. Course: Virginia private security course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:

1. Phase 1: 3 yards, utilizing weaver, modified weaver, or isosceles stance, 18 rounds:

a. Load 6 rounds and holster loaded firearm

b. On command, draw and fire 2 rounds (3 seconds), repeat 2 times

c. Load 6 rounds and holster loaded firearm

d. On command, draw and fire 6 rounds with strong hand

e. Unload, reload 6 rounds and fire 6 rounds with weak hand (25 seconds)

2. Phase 2: 7 yards, utilizing weaver, modified weaver or isosceles stance, 24 rounds:

- a. Load 6 rounds and holster loaded firearm
- b. On command, draw and fire 1 round (2 seconds), repeat 5 times
- c. Load 6 rounds and holster loaded firearm
- d. On command, draw and fire 2 rounds (3 seconds), repeat 2 times
- e. Load 6 rounds and holster loaded firearm
- f. On command, draw and fire 6 rounds, reload 6 rounds, fire 6 rounds (30 seconds)

3. Phase 3: 15 yards, 70 seconds, 18 rounds:

- a. Load 6 rounds and holster loaded firearm
- b. On command, assume kneeling position, draw and fire 6 rounds with strong hand
- c. Assume standing position, unload, reload and fire 6 rounds from weak-hand barricade position
- d. Unload, reload and fire 6 rounds from strong-hand barricade position (kneeling position may be fired using barricade position) (70 seconds)

C. Low light course: Virginia private security low light familiarization course of fire for handguns. The course of fire shall be conducted using, at a minimum, the requirements set forth in this subsection. Equipment needed: belt with directional draw holster, handgun, two speed loaders or three magazines, range ammunition (18 rounds). Equipment provided by instructor: A range that can simulate low light or a pair of welders goggles for each student that simulates low light. Strong/weak hand refers to the primary hand used in firing the firearm. The opposite hand may be used for support. The course of fire shall be conducted in the following phases:

1. Phase 1: 3 yards, utilizing weaver or isosceles stance, 6 rounds:

- a. Load 6 rounds and come to ready
- b. On command, fire 2 rounds (3 seconds) repeat 2 times (30 seconds)

2. Phase 2: 7 yards, utilizing weaver or isosceles stance, 12 rounds:

- a. Load 6 rounds and come to ready
- b. On command, fire 2 rounds (5 seconds), repeat 2 times
- c. Load 6 rounds and come to ready
- d. On command, draw and fire 3 rounds (6 seconds), and repeat

### **6VAC20-174-390. Entry-level shotgun training and range qualification.**

A. Shotgun classroom training. Individual must first successfully complete entry-level or security officer handgun training. The entry-level shotgun classroom instruction will emphasize but not be limited to:

1. Shotgun handling techniques

- a. Identification of shotgun parts
- b. Slings – traditional sling, single point sling, 3 point sling
- c. Cruiser carry conditions
- d. Cruiser safe
- e. Chambering
- f. Reloading
- g. Transition from handgun to shotgun/shotgun to handgun (if applicable)
- h. Malfunctions
  - (1) Immediate actions procedures
  - (2) Remedial action
- i. Proper care and maintenance
- j. Shotgun retention
- k. Ammunition management and identification
  - l. Range safety
  - m. Dim light/low light

2. Fundamentals of shotgun marksmanship

- a. Grip
- b. Stance (position)
- c. Sight alignment
- d. Sight picture
- e. Trigger control
- f. Breathing
- g. Follow through

3. Written examination

Total hours (excluding examination) - 3 hours

B. Range qualification (no minimum hours). The purpose of the range firing course is to provide practical shotgun training and qualification to those individuals who carry or have immediate access to a shotgun in the performance of their duties.

1. Familiarization: Prior to the qualification course, all shooters are required to fire a familiarization exercise consisting of 5 rounds using 12 gauge, double aught "00" buckshot or rifle slug ammunition and 6 rounds minimum of handgun rounds. The exercise shall include transition drills from handgun to shotgun and shotgun to handgun. This exercise is not scored and the distance is at the discretion of the instructor.

2. Fire 5 rounds of shotgun rounds (buckshot, rifled slugs, or both, if issued) on a daylight course using B27 single/multiple targets with 70% accuracy.

C. Course: Virginia private security course of fire for shotguns.

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<u>Distance</u>	<u>Position</u>	<u>No. Rounds</u>	<u>Target</u>	<u>Time</u>
<u>Combat load &amp; fire 15 Yds.</u>	<u>Standing/ Shoulder</u>	<u>3</u>	<u>B-27 Silhouette</u>	<u>20 sec.</u>
<u>Combat load &amp; fire 25 Yds.</u>	<u>Kneeling/ Shoulder</u>	<u>2</u>	<u>B-27 Silhouette</u>	<u>15 sec.</u>

D. A certified firearms instructor must be present on the range directly controlling the firing line during all phases of firearms range training. There shall be a minimum of one certified firearms instructor per five shooters on the line.

## **6VAC20-174-400. Advanced handgun training and range qualification.**

A. The entry level handgun training is a prerequisite for taking the advanced handgun training.

B. Advanced handgun classroom training.

1. The advanced handgun training will include but not be limited to:

- a. Firearms safety;
- b. Civil and criminal liability;
- c. Concealed carry law and authority;
- d. Function of firearms in close protection operations;
- e. Deployment of firearms in close protection operations;
- f. Use of force;
- g. Principles of advanced marksmanship; and
- h. Decision-making for the personal protection specialist.

Total hours (excluding written examination) - 14 hours

2. Written examination required.

C. Range qualification (no minimum hours). The purpose of this course of fire is to assess and improve the tactical, protection-related shooting skills for personal protection specialist candidates seeking certification to be armed. This course entails five increasingly challenging stages of advanced firearms exercises with a 92% score required for qualification.

1. The advanced handgun course of fire is comprised of the following exercises:

- a. Shoot/don't shoot judgment;
- b. Turn and fire drills;
- c. Failure to stop drills;
- d. Multiple target drills; and
- e. Judgmental shooting.

2. For all range practicals (Stage 2 through stage 4):

a. The student will fire at a man-size silhouette target with the following requirements:

- (1) 4-inch diameter circle in head;
- (2) 8-inch diameter circle in chest/body area; and

(3) Center points of circles - 13-1/2 inches apart.

b. All rounds fired must hit within these circles.

c. Minimum 92% qualification score = 25 rounds total requiring 23 hits. With regard to scoring:

(1) 25 points (1 round is good for 1 point).

(2) 92% of shots must be "in circle" hits for a passing grade (2 misses allowed on total course).

(3) Shots not taken during stage 5 when a "no-shoot" situation is presented scores a point, just as an accurate shot in a hostile situation.

(4) 92% is 23 of 25 possible points.

3. A certified advanced handgun firearms instructor must be on the range during all phases of advanced handgun training. There shall be no less than one certified firearms instructor per four students.

D. Course: Virginia private security advanced handgun course of fire.

1. Stage 1: Shoot/don't shoot drill. Stage 1 of the advanced handgun course of fire is conducted in a classroom using a 16 mm film or video cassette tape, or other audiovisual electronics, of firearms combat scenarios or in practical exercises on the range to assess the student's decision-making capability given job-related shoot/don't shoot incidents.

After the interaction of the scenario, the students must explain all of their commands and actions.

Dry-fire response from a weapon rendered safe should be incorporated into the scenario interaction.

2. Stage 2: Turn-and-fire drill. Stage 2 of the advanced handgun course of fire is held at a firing range and consists of turn-and-fire drills from varying distances (straight draw hip holsters only).

All handguns are loaded with 6 rounds of ammunition and safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the target. Upon the command "fire," the students must quickly turn while acquiring a firm grip on the weapon. Once facing the target and in a stable position, they must safely draw and fire 2 rounds at the designated target circle. After shooting, while facing the target, the student must reholster safely, then turn around to face up range, ready to continue the exercise. The "fire" commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

3. Stage 3: Failure to stop drill. Stage 3 of the advanced handgun course of fire is held at a firing range and consists of failure to stop drills fired from the 7-yard line (straight draw hip holsters only).

All handguns are loaded with 6 rounds of ammunition and are safely holstered. Shooters are positioned with their backs to the targets, facing the instructor up-range. The

instructor will command all shooters to walk at a normal pace, directly away from the target. Upon the command "fire," given at approximately the 7-yard line, each shooter must safely turn around while acquiring a firm grip on their weapon as performed in the previous drill. Once facing the target, the students will draw and fire 2 rounds at the 8-inch body circle, and then one immediate round to the 4-inch head circle. The student will then safely reholster. The drill will be repeated three times.

4. Stage 4: Multiple target identification drill. Stage 4 of the advanced handgun course of fire is held at a firing range and consists of multiple target identification drills fired from varying distances (straight draw hip holsters only).

Each shooter will line up on a set of three targets. Only two shooters at one time can complete this exercise on a standard 10-12 station range. However, smaller ranges may allow for only one shooter at a time.

Each handgun is loaded with six rounds of ammunition and safely holstered. The shooters are positioned with their backs to the targets, facing the instructor up-range. The instructor will command all shooters to walk at a normal pace, directly away from the targets. Upon the command "left," "right," or "center," the student must again turn around safely while establishing a firm grip on the weapon. Then, once stable, the student must quickly draw and fire 2 rounds at the designated circle on the "called" target ("L," "R," "C"). Then, the shooter, while still facing the targets, must safely reholster, turn around to face up range, and continue the exercise. Each two-round pair must be fired within 4 seconds of the called command. Direction commands will be called at 3-5 yards, 5-7 yards, and then 8-10 yards.

5. Stage 5: Judgmental shooting. This drill combines the skills developed in the prior four stages. The shooter will be required to safely turn and fire at a "photograph" type target which may be either friendly or hostile. It requires hostile targets to be stopped using deadly force. Necessity (immediate jeopardy) is presumed for this exercise. This stage allows the instructor to evaluate the decision-making capability of the student as well as his shooting accuracy and safety.

Shooter is placed on the 10-yard line facing the instructor with the target to his rear. The target will be placed at any location along the range target line and should not be seen by the student until he is given the "turn" command during the drill. Each shooter has the opportunity to complete this drill four times. Each decision is worth one point. If he shoots at a hostile target, a hit anywhere on that target will score the point. If a friendly target is presented, it is clearly a no-shoot situation and the student should merely holster safely to score the point. There is a 4-second time limit at this stage for any "shoot" situation.

The instructor will allow each shooter two opportunities to complete this drill and place two targets downrange for each. Four points or hits are still necessary at this stage for the total score. If two targets are used, then the time limit is raised to 6 seconds, regardless of whether two hostile targets are used or one hostile with one friendly.

## **6VAC20-174-410. Entry-level patrol rifle training and range qualification.**

A. Patrol rifle classroom training. Individual must first successfully complete security officer handgun training. The entry-level patrol rifle classroom instruction will emphasize but not be limited to:

### 1. Rifle handling techniques

a. Nomenclature and identification of rifle parts

b. Field striping and reassembling

c. Loading and unloading

d. Chambering

e. Reloading

f. Slings

(1) Traditional sling

(2) Single point sling

(3) 3-point sling

g. Transition from handgun to rifle and rifle to handgun

h. Malfunctions

i. Immediate actions procedures

j. Remedial action

k. Proper care and maintenance

l. Rifle retention

m. Ammunition management and identification

n. Range safety

o. Dim light/low light

### 2. Fundamentals of rifle marksmanship

a. Grip

b. Stance (position)

c. Sight alignment

d. Sight picture

e. Trigger control

f. Breathing

g. Follow through

### 3. Zeroing iron sights

a. Establishing mechanical zero

b. Zeroing process

### 4. Dim light shooting

a. Hours of darkness/dim light

b. Identification requirements

c. Unaided reduced light shooting techniques

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d. Aided reduced light shooting techniques

## 5. Shooting positions

a. Fundamentals of shooting positions

b. Basic patrol positions

6. Use of force

7. Criminal and civil liability

8. Written comprehensive examination

Total hours (excluding examination) - 16 hours

B. Range qualification (no minimum hours). The purpose of the range firing course is to provide practical patrol rifle training and qualification to those individuals who carry or have immediate access to a patrol rifle in the performance of their duties with the sighting system that will be carried on duty.

## C. Patrol rifle qualification course.

1. All rifle qualification will be done with a law-enforcement type and caliber rifle. A total of 60 rounds of ammunition will be fired for rifle qualification.

2. All rifle qualification firing will be done with iron sights. In addition, if an officer is using an optic while on duty, they must qualify with that optic.

3. All indoor rifle qualification firing will be done at a range that accommodates a distance of 25 yards between the shooter and the target. No variances of this distance are allowed. The indoor target system will contain two targets per shooter mounted side by side. The targets will be FBI Q-R, half-sized silhouette targets. Use of this target type will simulate shooting at 50 yards.

4. All outdoor rifle qualification firing will be done at 50 yards using the FBI Q silhouette full-sized targets. Two of these targets will be mounted side by side for each shooter.

5. FBI Q silhouette targets are used for rifle qualification, scoring will be all hits inside the bottle – value 5 points; outside the bottle – value 0 points. With these targets a maximum score of 300 points is possible. Minimum qualification is 85% or 255 points.

## D. Patrol rifle course of fire.

1. Prior to qualification, all shooters are required to fire a minimum of 30 familiarization rounds which will include transition drills from handgun to rifle and rifle to handgun. Shooters will fire a minimum of 10 rounds with a handgun. This exercise is not scored and the distance is at the discretion of the instructor.

2. Stage 1: 50 yards/25 yards (indoors) – Shooters will load their rifle with a magazine of 20 rounds and place the selector on safe. From the standing position with the rifle in the sling carry position, on command the shooters will fire 5 rounds from the standing position, place the selector on safe, assume a kneeling position and fire 5 rounds, place the selector on safe; shooter will assume the prone position, the shooter will fire 10 rounds. All 20 rounds of

this stage will be fired at the left hand target. (1 minute) When firing is complete shooters will place the selector on safe and await further command.

3. Stage 2: 25 yards – Shooters will load their rifle with a magazine of 15 rounds and place the selector on safe. From the standing position with the rifle in the sling carry position, on command the shooters will fire 5 rounds from the standing position, place the selector on safe, assume a kneeling position and fire 5 rounds, place the selector on safe; shooter will assume the prone position, the shooter will fire 5 rounds. All 15 rounds of this stage will be fired at the right hand target. (45 seconds) When firing is complete shooters will place the selector on safe and await further command.

4. Stage 3: 15 yards - On command shooters will assume the standing position and load rifle with a magazine of 10 rounds. On command shooters will fire 5 rounds at the right-hand target, place the selector on safe, assume the kneeling position and fire 5 rounds at the left-hand target in 15 seconds.

5. Stage 4: 7 yards - On command shooters will load rifle with a magazine of 20 rounds, selector in the safe position, and then place the rifle in the sling carry position. On command shooters will fire 2 rounds into the right target with a 2 second time limit. Upon completion of firing, shooters will place the selector on safe and the rifle in the sling carry position. This exercise will be fired 5 times with a total of 10 rounds expended.

6. Stage 5: 5 yards - On command shooters will load rifle with a magazine of 5 rounds, selector in the safe position, and then place the rifle in the sling carry position. On command shooters will fire 1 round into the left target head with a 2 second time limit. Upon completion of firing, shooters will place the selector on safe and the rifle in the sling carry position. This exercise will be fired 5 times with a total of 5 rounds expended.

## E. Low light/dim light qualification course of fire.

7 yards - Under low-light conditions, on command shooters will fire 5 rounds at the left target, place the selector in the safe position, assume the kneeling position and fire 5 rounds at the right target. A time limit of 1 minute is allowed for this stage.

## **6VAC20-174-420. Firearms retraining.**

A. All armed private security services business personnel with the exception of personal protection specialists must satisfactorily complete four hours of firearms classroom training or practical exercises and range training, and requalify for handgun as prescribed in this chapter.

B. Requalification training with the shotgun shall be comprised of three hours of classroom training or practical exercises and range training and requalification firing as specified in this chapter.

C. Requalification training with the patrol rifle shall be comprised of four hours of firearms classroom training or practical exercises and range training and requalification firing as specified in this chapter.

D. All applicable firearms retraining must be completed and documented with the department on an annual basis prior to the issuance of a firearms endorsement.

**6VAC20-174-430. Advanced handgun retraining.**

All armed private security services business personnel registered in the category of personal protection specialist or other armed category seeking advanced handgun designation must satisfactorily complete advanced handgun retraining, which includes eight hours of firearms classroom training and range training, and requalify for handgun as prescribed in this chapter as follows:

1. Legal authority and decision-making
2. Handgun safety, marksmanship, and skill development
3. Completion of advanced handgun course of fire

Total hours (excluding range qualification) - 8 hours

Part X

Complaints; Department Actions; Adjudication

**6VAC20-174-440. Complaint submittal requirements.**

A. In accordance with § 9.1-141 of the Code of Virginia, this chapter establishes standards designed to secure the public safety and welfare against incompetent or unqualified persons engaging in private security services. It shall be the responsibility of the licensee, its compliance agents, and its employees to provide private security services in a professional and ethical manner utilizing sound business practices.

B. Any aggrieved or interested person may file a complaint against any person, whose conduct and activities are regulated or required to be regulated by the board. The complaint must allege a violation of the law governing private security services or this chapter.

C. Complaints may be submitted:

1. In writing, or on a form provided by the department, by a signed complainant;
2. In writing, submitted anonymously, and providing sufficient detailed information for the department to conduct an investigation; or
3. By telephone, providing the complaint alleges activities that constitute a life-threatening situation or have resulted in personal injury or loss to the public or to a consumer or may result in imminent harm or personal injury and that provide sufficient detailed information for the department to conduct an investigation.

**6VAC20-174-450. Department investigation.**

A. The department may initiate or conduct an investigation based on any information received or action taken by the

department to determine compliance with the Code of Virginia and this chapter.

**B. Documentation.**

1. Persons regulated or required to be regulated by this chapter pursuant to the Code of Virginia are required to provide department investigators with any and all records required to be maintained by this chapter.

a. This shall not be construed to authorize the department to demand records protected under applicable federal and state laws. If such records are necessary to complete an investigation, the department may seek a subpoena to satisfy the request.

b. The department shall endeavor to review, and request as necessary, only those records required to verify alleged violations of compliance with the Code of Virginia and this chapter.

2. The department shall endeavor to keep any documentation, evidence, or information on an investigation confidential until such time as adjudication has been completed, at which time information may be released upon request pursuant to applicable federal and state laws or regulations.

**6VAC20-174-460. Disciplinary action; sanctions; publication of records.**

A. Each person subject to jurisdiction of this chapter who violates any statute or regulation pertaining to private security services shall be subject to sanctions imposed by the department regardless of criminal prosecution.

B. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation or in noncompliance of the Code of Virginia or of this chapter:

1. Letter of reprimand or censure;
2. Probation for any period of time;
3. Suspension of registration or approval granted, for any period of time;
4. Revocation;
5. Refusal to issue, renew, or reinstate a registration or approval;
6. Fine not to exceed \$2,500 per violation as long as the respondent was not criminally prosecuted;
7. Remedial training; or
8. Conditional agreements.

C. The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this chapter but do not hold a valid registration. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

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D. The director may summarily suspend a registration under this chapter without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the registrant would constitute a life-threatening situation, has resulted in personal injury or loss to the public or to a consumer, or may result in imminent harm, personal injury, or loss.

E. All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all persons and registrants whose conduct and activities are subject to this chapter and have been sanctioned or denied registration or approval.

## **6VAC20-174-470. Fines; administrative and investigative costs.**

A. The department may recover costs of any investigation and adjudication of any violations of the Code of Virginia or regulations that result in a sanction, including fine, probation, suspension, revocation, or denial of any registration. Such costs shall be in addition to any monetary penalty that may be imposed.

B. All monetary penalties imposed as a sanction shall be deposited into the state treasury to the credit of the State Literary Fund.

## **6VAC20-174-480. Hearing process.**

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact-finding conference or formal hearing as established in this chapter. Pursuant to the authority conferred in § 9.1-141 C 6 of the Code of Virginia and in accordance with the procedures set forth by the Administrative Process Act and the procedures prescribed in this part, the department is empowered to receive, review, investigate, and adjudicate complaints concerning the conduct of any person whose activities are regulated by the board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

## **6VAC20-174-490. Informal fact-finding conference.**

The purpose of an informal fact-finding conference is to resolve allegations through informal consultation and negotiation. Informal fact-finding conferences shall be conducted in accordance with § 2.2-4019 of the Code of Virginia. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact-finding conference and request a formal hearing, provided that written notification is given to the department within 30 days of the date the informal fact-finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact-finding decision was served by mail, three days shall be added to that period.

## **6VAC20-174-500. Formal hearing.**

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision, or in any case to the extent the informal fact-finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with § 2.2-4020 of the Code of Virginia. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

B. After a formal hearing pursuant to § 2.2-4020 of the Code of Virginia wherein a sanction is imposed to fine or to suspend, revoke, or deny issuance or renewal of any registration or approval, the department may assess the holder thereof the cost of conducting such hearing when the department has final authority to grant such registration or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

## **6VAC20-174-510. Appeals.**

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

## **6VAC20-174-520. Court review; appeal of final agency order.**

A. The agency's final administrative decision (final agency order) may be appealed. Any person affected by and claiming the unlawfulness of the agency's final case decision shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; however, if such party is not a resident of Virginia, the venue shall be in the city of Richmond, Virginia.

B. Notification shall be given to the attention of the Director, Department of Criminal Justice Services, in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect, unless the court issues a stay of the order.

**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 (6VAC20-174)

**Registration**

[Private Security Services - Duplicate/Replacement Registration Application \(eff. 10/12\)](#)

[Private Security Services - Initial Registration Application \(eff. 3/13\)](#)

[Private Security Services - Renewal Registration Application \(eff. 3/13\)](#)

[Private Security Services - Additional Registration Category Application \(eff. 10/12\)](#)

[Private Security Services - Firearms Endorsement Application \(eff. 10/12\)](#)

**Fingerprint Processing**

[DCJS Fingerprint Cards Order Form \(undated\)](#)

[Fingerprint Processing Application \(eff. 10/12\)](#)

[Criminal History Supplemental Form \(eff. 10/12\)](#)

[Fingerprint Application Instructions \(eff. 10/12\)](#)

[Acceptable Documents for Verifying Legal Presence/Name Change \(eff. 10/12\)](#)

**Miscellaneous**

[Locksmith - Training Waiver \(eff. 10/12\)](#)

[Complaint Form \(eff. 10/12\)](#)

[Firearms Discharge Report \(eff. 10/12\)](#)

[Training Exemption Application - Entry Level \(eff. 10/12\)](#)

[Training Exemption Application - In-Service \(eff. 10/12\)](#)

[Request for Extension Form \(eff. 10/12\)](#)

[Individual Address Change Form \(eff. 10/12\)](#)

[Credit Card Authorization Form \(eff. 10/12\)](#)

FORMS (6VAC20-174-9999)

**Registration**

[Private Security Services - Duplicate/Replacement Registration Application \(eff. 10/12\)](#)

[Private Security Services - Initial Registration Application \(eff. 3/13\)](#)

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VA.R. Doc. No. R15-3957; Filed July 15, 2015, 4:12 p.m.

**TITLE 8. EDUCATION**

**STATE BOARD OF EDUCATION**

**Final Regulation**

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

**Title of Regulation:** 8VAC20-22. Licensure Regulations for School Personnel (amending 8VAC20-22-10, 8VAC20-22-40, 8VAC20-22-50, 8VAC20-22-110, 8VAC20-22-220 through 8VAC20-22-250, 8VAC20-22-270, 8VAC20-22-280, 8VAC20-22-290).

**Statutory Authority:** § 22.1-298.1 of the Code of Virginia.

**Effective Date:** September 9, 2015.

**Agency Contact:** Patty Pitts, Assistant Superintendent for Teacher Licensure, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

**Summary:**

*The amendments (i) eliminate the Local Eligibility License; (ii) establish a Teach For America License; (iii) permit the Board of Education, upon request of the employing school division or education agency, to issue a provisional license*

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*to a teacher seeking an initial license who has not attained an industry certification credential in the area in which the teacher seeks endorsement to allow time for the teacher to attain the required credential; and (iv) establish that no person may be compelled to satisfy license renewal requirements by completing coursework and earning credit at an institution of higher education. The amendments conform the regulation to Chapters 53, 440, 588, and 650 of the 2013 Acts of Assembly and Chapters 385 and 562 of the 2015 Acts of Assembly.*

## Part I Definitions

### **8VAC20-22-10. Definitions.**

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

"Accredited institution" means an institution of higher education accredited by a regional accrediting agency recognized by the United States Department of Education.

"Alternate route to licensure" means a nontraditional route to licensure available to individuals who meet the criteria specified in 8VAC20-22-90.

"Approved program" means a professional education program recognized as meeting state standards for the content and operation of such programs so graduates of the program will be eligible for state licensure. The Board of Education has the authority to approve programs in Virginia.

"Cancellation" means the withdrawal of a teaching license following the voluntary return of the license by the license holder.

"Certified provider" means a provider certified by the Department of Education to provide preparation and training for applicants seeking the Provisional License specified in 8VAC20-22-90.

"Collegiate Professional License" means a five-year, renewable license available to an individual who has satisfied all requirements for licensure, including the professional teacher's assessments prescribed by the Board of Education.

"Content area coursework" means courses at the undergraduate level (i.e., two-year or four-year institution) or at the graduate level that will not duplicate previous courses taken in the humanities, history and social sciences, the sciences, mathematics, health and physical education, and the fine arts. These courses are usually available through the college or department of arts or sciences.

"Denial" means the refusal to grant a teaching license to a new applicant or to an applicant who is reapplying after the expiration of a license.

"Division Superintendent License" means a five-year, renewable license available to an individual who has completed an earned master's degree from an accredited institution of higher education and meets the requirements

specified in 8VAC20-22-600. The individual's name must be listed on the Board of Education's list of eligible division superintendents.

"Experiential learning" means a process of applying for an initial license through the alternate route as prescribed by the Board of Education and meeting the criteria specified in 8VAC20-22-90 E to be eligible to request experiential learning credits in lieu of the coursework for the endorsement (teaching) content area.

"Industry certification credential" means a ~~a~~ an active career and technical education credential that is earned by successfully completing a Board of Education-approved industry certification examination, being issued a state professional license in the Commonwealth, or successfully completing an occupational competency examination.

"International Educator License" means a three-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional, teaching license issued for no more than three years to an exchange educator with citizenship in a nation other than the United States of America and employed as an educator in a Virginia public or accredited nonpublic school, to teach for up to three consecutive years.

"Licensure by reciprocity" means a process used to issue a license to an individual coming into ~~Virginia~~ the Commonwealth from another state when that individual meets certain conditions specified in the Board of Education regulations.

~~"Local Eligibility License" means a license issued pursuant to § 22.1-299.3 of the Code of Virginia to an individual by a local school board based on specified criteria set forth by that section. The Local Eligibility License shall not be issued in the federal core teaching areas or special education. The license is valid for three years and is not transferable to another school division. The Local Eligibility License is a nonrenewable credential and is not reciprocal with other states.~~

"Mentor" means a classroom teacher hired by the local school division who has achieved continuing contract status or other instructional personnel including retired teachers who meet local mentor selection criteria. The mentor should work in the same building as the beginning teacher or be instructional personnel who is assigned solely as a mentor. A mentor should be assigned a limited number of teachers at any time. Instructional personnel who are not assigned solely as mentors should not be assigned to more than four teachers at any time. Mentors guide teachers in the program through demonstrations, observations, and consultations.

"Postgraduate Professional License" means a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from a regionally accredited institution.

"Professional teacher's assessment" means those tests or other requirements mandated for licensure as prescribed by the Board of Education.

"Provisional License" means a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in these regulations. The individual must have a minimum of an undergraduate degree from a regionally accredited college or university (with the exception of those individuals seeking the Technical Professional License). The Provisional License, with the exception of those individuals seeking licensure through a career switcher program who will be issued a one-year Provisional License, will be issued for three years. Individuals must complete all requirements for a renewable license within the validity period of the license.

"Pupil Personnel Services License" means a five-year, renewable license available to an individual who has earned an appropriate graduate degree from a regionally accredited institution with an endorsement for guidance counselor, school psychologist, school social worker, or vocational evaluator. This license does not require teaching experience.

"Renewable license" means a license issued by the Board of Education for five years to an individual who meets the requirements specified in the Board of Education regulations.

"Revocation" means the withdrawal of a teaching license.

"Suspension" means the temporary withdrawal of a teaching license.

"Teach For America License" means a two-year provisional license available to an individual who is a participant in Teach For America and meets the requirements specified in 8VAC20-22-50.

"Technical Professional License" means a five-year, renewable license available to an individual who has graduated from an accredited high school (or possesses a General Education Development Certificate); has exhibited academic proficiency, technical competency, and occupational experience; and meets the requirements specified in 8VAC20-22-50.

#### **8VAC20-22-40. Conditions for licensure.**

A. Applicants for licensure must:

1. Be at least 18 years of age;
2. Pay the appropriate fees as determined by the Board of Education and complete the application process;
3. Have earned a baccalaureate degree (with the exception of the Technical Professional License) from a regionally accredited institution of higher education and meet requirements for the license sought. Persons seeking initial licensure who graduate from Virginia institutions of higher education shall only be licensed as instructional personnel by the Board of Education if the endorsement areas offered at such institutions have been assessed by a national

accrediting agency or by a state approval process with final approval by the Board of Education; and

4. Possess good moral character (free of conditions outlined in Part VII (8VAC20-22-690 et seq.) of this chapter.

B. All candidates who hold at least a baccalaureate degree from a regionally accredited college or university and who seek an initial Virginia teaching license must obtain passing scores on professional teacher's assessments prescribed by the Board of Education. With the exception of the career switcher program that requires assessments as prerequisites, individuals must complete the professional teacher's assessments within the three-year validity of the initial provisional license. Candidates seeking a Technical Professional License, the International License, the School Manager License, or the Pupil Personnel Services License are not required to take the professional teacher's assessments. Individuals who hold a valid out-of-state license (full credential with no deficiencies) and who have completed a minimum of three years of full-time, successful teaching experience in a public or accredited nonpublic school (kindergarten through grade 12) in a state other than Virginia are exempted from the professional teacher's assessment requirements.

C. All individuals seeking an initial endorsement in early/primary education preK-3, elementary education preK-6, special education-general curriculum, special education-hearing disorders, special education-visual impairments and individuals seeking an endorsement as a reading specialist must obtain passing scores on a reading instructional assessment prescribed by the Board of Education.

D. Licensure by reciprocity is set forth in 8VAC20-22-100. A school leader's assessment prescribed by the Board of Education must be met for all individuals who are seeking an initial endorsement authorizing them to serve as principals and assistant principals in the public schools. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Board of Education.

E. Individuals seeking initial licensure must demonstrate proficiency in the use of educational technology for instruction, complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services, and receive professional development in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments.

F. Every person seeking initial licensure of a license shall provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. The certification or

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training program shall be based on the current national evidenced-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross. The Virginia Board of Education shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training.

G. Every teacher seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education shall have an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

## **8VAC20-22-50. Types of licenses; dating licenses.**

The following types of licenses are available:

1. Provisional License. The Provisional License is a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in these regulations. The individual must have a minimum of an undergraduate degree from a regionally accredited college or university (with the exception of those individuals seeking the Technical Professional License). The Provisional License, with the exception of those individuals seeking licensure through a career switcher program, will be issued for three years. Individuals must complete the requirements for the regular, five-year license within the validity period of the Provisional License.
2. Collegiate Professional License. The Collegiate Professional License is a five-year, renewable license available to an individual who has satisfied all requirements for licensure, including an earned undergraduate degree from a regionally accredited college or university and the professional teacher's assessments prescribed by the Board of Education.
3. Postgraduate Professional License. The Postgraduate Professional License is a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from a regionally accredited college or university.
4. Technical Professional License. The Technical Professional License is a five-year, renewable license available to a person who has graduated from an accredited high school (or possesses a General Education Development Certificate); has exhibited academic proficiency, skills in literacy and communication, technical

competency, and occupational experience; and has completed nine semester hours of specialized professional studies credit from a regionally accredited college or university. The nine semester hours of professional studies coursework must include human growth and development (three semester hours), curriculum and instructional procedures (three semester hours), and applications of instructional technology or classroom and behavior management (three semester hours). The Technical Professional License is issued at the recommendation of an employing educational agency in the areas of career and technical education, educational technology, and military science. Individuals seeking military science must have the appropriate credentials issued by the United States military. In addition to demonstrating competency in the endorsement area sought, the individual must:

- a. Hold a license issued by the appropriate Virginia board for those program areas requiring a license and a minimum of two years of satisfactory experience at the journeyman level or an equivalent;
- b. Have completed a registered apprenticeship program and two years of satisfactory experience at the journeyman level or an equivalent level in the trade; or
- c. Have four years of work experience at the management or supervisory level or equivalent or have a combination of four years of training and work experience at the management or supervisory level or equivalent.

Individuals holding the Technical Professional License who seek the Collegiate Professional or Postgraduate Professional License must meet the professional teacher's assessments requirement.

5. School Manager License. The school manager license is a five-year, renewable license intended to provide for the differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. For example, a school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian. The license is available to a candidate who holds a baccalaureate degree from a regionally accredited college or university; has three years of successful managerial experience; and is recommended for the license by a Virginia school division superintendent.

6. Pupil Personnel Services License. The Pupil Personnel Services License is a five-year, renewable license available to an individual who has earned an appropriate graduate degree from a regionally accredited college or university with an endorsement for guidance counselor, school psychologist, school social worker, or vocational evaluator. This license does not require teaching experience.

7. Division Superintendent License. The Division Superintendent License is a five-year, renewable license

available to an individual who has completed an earned master's degree from a regionally accredited college or university and meets the requirements specified in 8VAC20-22-600. The individual's name must be listed on the Board of Education's list of eligible division superintendents.

8. International Educator License. The International Educator License provides a three-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional, teaching license issued for no more than three years to an exchange educator with citizenship in a nation other than the United States of America, and employed as an educator in a Virginia public or accredited nonpublic school, to teach for up to three consecutive years. This license does not require professional teacher's assessments; however, the individual will be subject to assessment requirements if the individual seeks a five-year renewable license. To be issued the International Educator License an individual must:

- a. Be employed by a Virginia public or accredited nonpublic school;
- b. Hold non-U.S. citizenship and be a nonpermanent resident;
- c. Serve as an exchange teacher for a time period not to exceed three consecutive years; and
- d. Meet the following requirements as verified by a state-approved, federally-designated Exchange Visitor Program (22 CFR Part 62):
  - (1) Be proficient in written and spoken English;
  - (2) Demonstrate competence in the appropriate academic subject area(s);
  - (3) Hold the U.S. equivalent of a baccalaureate degree or higher as determined by an approved credential agency; and
  - (4) Hold U.S. or foreign educator credentials and completed at least one year of successful teaching experience that:
    - (a) Enables the educator to fulfill a similar assignment in his home country; or
    - (b) Is comparable to those requirements for Virginia teachers.

~~9. Local Eligibility License. The Local Eligibility License, established by the Virginia General Assembly, is a valid, three year nonrenewable license issued by a local school board to an individual who has met specified criteria set forth in § 22.1-299.3 of the Code of Virginia. The Local Eligibility License shall not be issued in the federal core teaching areas or special education. The license is not transferable to another division. The Local Eligibility License is a nonrenewable credential and is not reciprocal with other states.~~

9. Teach For America License. The Teach For America License is a two-year provisional license.

a. This provisional license is available to any participant in Teach For America, a nationwide nonprofit organization focused on closing the achievement gaps between students in high-income and low-income areas, who submits an application and meets the following requirements:

(1) Holds, at minimum, a baccalaureate degree from a regionally accredited institution of higher education;

(2) Has met the requirements prescribed by the Virginia Board of Education for all endorsements sought or has met the qualifying scores on the content area assessment prescribed by the board for the endorsements sought;

(3) Possesses good moral character according to criteria developed by the Virginia Board of Education;

(4) Has been offered and has accepted placement in Teach For America;

(5) Has successfully completed pre-service training and is participating in the professional development requirements of Teach For America, including teaching frameworks, curricula, lesson planning, instructional delivery, classroom management, assessment and evaluation of student progress, classroom diversity, and literacy development;

(6) Has an offer of employment from a local school board to teach in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia; and

(7) Receives a recommendation from the employing school division for a Teach For America License in the endorsement area in which the individual seeks to be licensed.

b. In addition to the criteria set forth in subdivision a of this subdivision 9, any individual who seeks an endorsement in early childhood, early/primary, or elementary education shall either (i) agree to complete such coursework in the teaching of reading as may be prescribed by the Virginia Board of Education pursuant to 8VAC20-22-130 during the first year of employment or (ii) achieve a passing score on a reading instructional assessment prescribed by the Virginia Board of Education.

c. Teachers issued a Teach For America provisional license shall not be eligible for continuing contract status while employed under the authority of a Teach For America license and shall be subject to the probationary terms of employment specified in § 22.1-303 of the Code of Virginia.

d. The Virginia Board of Education may extend any Teach For America License for one additional year upon request of the employing school division, provided that

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no Teach For America License shall exceed a total of three years in length.

e. Notwithstanding any provision of law to the contrary, upon completion of at least two years of full-time teaching experience in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia, an individual holding a Teach For America License shall be eligible to receive a renewable license if he has (i) achieved satisfactory scores on all professional teacher assessments required by the Virginia Board of Education and (ii) received satisfactory evaluations at the conclusion of each year of employment.

f. Notwithstanding any provision of law to the contrary, the Virginia Board of Education shall issue a Teach For America License to any individual who (i) has completed two years of successful teaching in the Teach For America program in another state, (ii) is not eligible to receive a renewable license, and (iii) meets the criteria in subdivision a of this subdivision 9.

All licenses will be effective from July 1 in the school year in which the application is made. A Virginia employing education division or agency is required to notify employees in writing at the time of employment of the need to meet appropriate assessment requirements for licensure.

## **8VAC20-22-110. Requirements for renewing a license.**

A. The Division Superintendent, Postgraduate Professional, Collegiate Professional, Technical Professional, Pupil Personnel Services, and School Manager Licenses may be renewed upon the completion of 180 professional development points within a five-year validity period based on an individualized professional development plan that includes ongoing, sustained, and high-quality professional development. Every person seeking renewal of a license shall complete all renewal requirements, including professional development in a manner prescribed by the board, except that no person seeking renewal of a license shall be required to satisfy any such requirement by completing coursework and earning credit at an institution of higher education.

B. Virginia public school divisions and public education agencies must report annually to the Department of Education that instructional personnel have completed high quality professional development each year as set forth by the Virginia Department of Education.

C. Any individual licensed and endorsed to teach (i) middle school civics or economics or (ii) high school government or history who is seeking renewal of such license is required to demonstrate knowledge of Virginia history or state and local government by completing a module or professional development course specifically related to Virginia history or state and local government that has a value of five professional development points. This requirement applies for

purposes of the individual's next or initial renewal occurring after July 1, 2014.

D. Every person seeking renewal of a license shall provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. The certification or training program shall be based on the current national evidenced-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross. The Virginia Board of Education shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training.

E. Professional development points may be accrued by the completion of professional development activities to improve and increase instructional personnel's knowledge of the academic subjects the teachers teach or the area assigned from one or more of the following eight options.

1. College credit. Acceptable coursework offers content that provides new information and is offered on-campus, off-campus, or through extension by any regionally accredited two-year or four-year college or university. College coursework must develop further experiences in subject content taught, teaching strategies, uses of technologies, leadership, and other essential elements in teaching to high standards and increasing student learning. ~~At least 90 points for each five year renewal shall be in the content area(s) currently being taught if the license holder does not hold a graduate degree.~~ Instructional personnel must complete coursework to improve and increase the knowledge of the academic subjects or endorsement areas in which they are assigned. No person seeking renewal of a license shall be required to complete coursework and earn credit at an institution of higher education.

2. Professional conference. A professional conference is a workshop, institute, or seminar of four or more hours that contributes to ongoing, sustained, and high-quality professional development.

3. Curriculum development. Curriculum development is a group activity in which the license holder contributes to the improvement of the curriculum of a school, a school division, or an education institution in the teaching area assigned. This includes the alignment of curriculum frameworks, instructional materials, and assessments to provide a system with clear expectations of what is to be taught and learned.

4. Publication of article. The article must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. Grant reports that present the results of educational research are acceptable provided the license holder had an active role in planning, analyzing, interpreting,

demonstrating, disseminating, or evaluating the study or innovation. The article must be published in a recognized professional journal.

5. Publication of book. Books must be published for purchase and must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. The published book must increase the field of content knowledge, planning and assessment for evaluating and providing students with feedback that encourages student progress and measures student achievement, instruction, safety and learning environment, communication and community relations working with students, parents, and members of the community to promote broad support for student learning. Points will not be awarded for books self-published.

6. Mentorship. Mentoring is the process by which an experienced professional, who has received mentorship training, provides assistance to one or more persons for the purpose of improving their performance. Assistance may involve role modeling, direct instruction, demonstration, observation with feedback, developing of plans, and consultation to promote instructional excellence and increased student achievement. Mentoring may include the supervision of a field experience of a preservice student teacher or an intern in an approved teacher/principal preparation program, as well as mentoring as part of the induction process for a beginning teacher or a first-year administrator. Individuals serving in this role and submitting documentation for license renewal based on the mentorship option shall receive training as a mentor prior to the assignment and at least once during the five-year renewal cycle.

7. Educational project. Educational projects must be planned, focused projects based on high standards of teaching and learning. Projects must result in a written report or other tangible product. Projects must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. A project could include participation in new professional responsibilities, such as leading a school improvement initiative.

8. Professional development activity. Professional development activities must focus on student learning and achievement, schoolwide educational improvement, leadership, subject content, teaching strategies, and use of technologies and other essential elements in teaching to high standards. Activities must be planned, rigorous, systematic, and promote continuous inquiry and reflection. Local employing educational agencies are encouraged to design professional development activities that are conducted in school settings and linked to student learning and achievement.

~~F. A minimum of 90 points (three semester hours in a content area) at the undergraduate (two year or four year~~

~~institution) or graduate level in the license holder's endorsement areas shall be required of license holders without a master's degree and may be satisfied at the undergraduate (two year or four year institution) or graduate level. Special education coursework designed to assist classroom teachers and other school personnel in working with students with disabilities, a course in gifted education, a course in educational technology, or a course in English as a second language may be completed to satisfy the content course requirement for one cycle of the renewal process. Professional development activities designed to support the Virginia Standards of Learning, Standards of Accreditation, and Assessments may be accepted in lieu of the content course for one renewal cycle. The substance of the activities must clearly support these initiatives and address one or more of the following areas: (i) new content knowledge to implement the Virginia Standards of Learning; (ii) curriculum development initiative designed to translate the standards from standards to classroom objectives; (iii) teaching beginning reading skills including phonemic awareness and the structure of language (phonics); (iv) staff development activities in assessment to assist classroom teachers in the utilization of test results to improve classroom instruction; and (v) professional development designed to implement the technology standards in the schools. Technical Professional License holders without baccalaureate degrees may satisfy the requirement through career and technical education workshops, career and technical education institutes, or through undergraduate coursework at two year or four year institutions.~~

~~G. Content area courses are courses at the undergraduate level (two year or four year institution) or at the graduate level that will not duplicate previous courses taken in the humanities, history and social sciences, the sciences, mathematics, health and physical education, and the fine arts. These courses are usually available through the college or department of arts and sciences. License holders with elementary education, middle education, special education, or reading endorsements must satisfy the 90 point requirement through reading coursework or content coursework in one of the areas listed above. Courses available through a regionally accredited college's or institution's department of education may be used to satisfy the content requirement for those license holders with endorsements in health and physical education, career and technical education, and library science education.~~

~~H. With prior approval of the division superintendent, the 90 points in a content area also may be satisfied through coursework taken to obtain a new teaching endorsement or coursework taken because of a particular need of a particular teacher.~~

~~I. The remaining 90 points F. Points may be accrued by activities drawn from one or more of the eight renewal options. Renewal work is designed to provide licensed personnel with opportunities for professional development~~

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relative to the grade levels or teaching fields to which they are assigned or for which they seek an added endorsement. Such professional development encompasses (i) responsible remediation of any area of an individual's knowledge or skills that fail to meet the standards of competency and (ii) responsible efforts to increase the individual's knowledge of new developments in his field and to respond to new curricular demands within the person's area of professional competence.

~~J. G.~~ The proposed work toward renewal in certain options must be approved in advance by the chief executive officer or designee of the employing educational agency. Persons who are not employed by an educational agency may renew or reinstate their license by submitting to the Office of Professional Licensure, Department of Education, their individualized renewal record and verification of points, including official student transcripts of coursework taken at an accredited two-year or four-year college or university.

~~K. H.~~ Accrual of professional development points shall be determined by criteria set forth by the Virginia Department of Education.

~~L. I.~~ Persons seeking license renewal as teachers must demonstrate proficiency in the use of educational technology for instruction.

~~M. J.~~ Virginia school divisions and nonpublic schools will recommend renewal of licenses using the renewal point system. The renewal recommendation must include verification of demonstrated proficiency in the use of educational technology for instruction.

~~N. K.~~ Training in instructional methods tailored to promote academic progress and effective preparation for the Standards of Learning tests and end-of-grade assessments is required for licensure renewal.

~~O. L.~~ If they have not already met the requirement, persons seeking licensure renewal as teachers must complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes.

## **8VAC20-22-220. Career and technical education – agricultural education.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in agricultural education; or
2. Completed a major in agricultural education or 39 semester hours of coursework in agriculture, including at least three semester hours in each of the following:
  - a. Plant science;
  - b. Animal science;
  - c. Agricultural mechanics;
  - d. Agricultural economics and management;
  - e. Forestry/wildlife management; and

f. Horticulture.

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

B. Technical Professional License. An endorsement in horticulture or agricultural machinery may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. Completed four years of occupational experience in the endorsement area sought; and
3. Completed professional studies requirements (human growth and development: three semester hours; curriculum and instructional procedures in career and technical education: three semester hours; and applications of instructional technology or classroom and behavior management: three semester hours).

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

## **8VAC20-22-230. Career and technical education – business and information technology.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in business and information technology; or
2. Completed 39 hours of coursework in business and information technology, including:
  - a. Accounting: six semester hours;
  - b. Economics: three semester hours;
  - c. Business law, business principles, management, marketing, or finance: nine semester hours;
  - d. Communications: three semester hours;
  - e. Information systems and technology to include computer software applications (word processing, spreadsheet, database, and presentation) information

- technology fundamentals, database management, programming, and networking: 12 semester hours;
- f. Input technologies to include touch keyboarding (required), speech recognition, handwriting recognition, Personal Digital Assistants (PDAs) and other hand-held devices, touch screen or mouse, scanning, and other emerging input technologies: three semester hours; and
- g. Supervised business experience: three semester hours.

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

B. Technical Professional License. An endorsement in a specialized business and information technology area, such as networking, administration, communications systems, programming, database management, Internet application development, medical office procedures, legal office procedures, network administration, and other emerging highly specialized areas may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. Completed two years of occupational experience in the endorsement area sought;
3. Completed a business program equivalent to a two-year associate degree in the endorsement area sought; and
4. Completed professional studies requirements (human growth and development: three semester hours; curriculum and instructional procedures in career and technical education: three semester hours; and applications of instructional technology or classroom and behavior management: three semester hours).

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

**8VAC20-22-240. Career and technical education – family and consumer sciences.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in family and consumer sciences; or
2. Completed 39 semester hours of coursework distributed in the following areas:
  - a. Development of individual and family: nine semester hours;
  - b. Management, family finance, and consumer economics: six semester hours;
  - c. Food and nutrition: six semester hours;
  - d. Housing, home furnishing, and equipment: six semester hours;
  - e. Clothing and textiles: three semester hours;
  - f. Health: three semester hours;
  - g. Occupational program management: three semester hours; and
  - h. Documented work experience related to family and consumer sciences: three semester hours.

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

B. Technical Professional License. An endorsement in a specialized family and consumer sciences area, such as child care occupations, consumer services, family and human services, fashion design occupations, food occupations, hospitality occupations, interior design occupations, and home furnishings occupations, and home and institutional services, may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or are certified as a professional practitioner in the endorsement area sought, if applicable, or demonstrate competency in the specialized area of family and consumer sciences;
3. In the area of occupational experience, evidence of at least two years or 4,000 clock hours of satisfactory occupational experience within the past five years in the teaching specialty for which they are seeking endorsement; and
4. Completed professional studies requirements (human growth and development: three semester hours; curriculum and instructional procedures in career and technical education: three semester hours; and applications of instructional technology or classroom and behavior management: three semester hours).

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If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

## **8VAC20-22-250. Career and technical education – health and medical sciences.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved program of study for the preparation of health care professionals;
2. A license or be certified as a professional practitioner in the endorsement area sought; and
3. Completed two years of occupational experience in an area related to the area to be taught.

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

B. Technical Professional License. An endorsement in a specialized health occupations area may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or be certified as a professional practitioner in the endorsement area sought;
3. Completed two years of occupational experience in the area sought;
4. Completed a health occupations certificate or associate degree program; and
5. Completed professional studies requirements (human growth and development: three semester hours; curriculum and instructional procedures in career and technical education: three semester hours; and applications of instructional technology or classroom and behavior management: three semester hours).

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which

the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

## **8VAC20-22-270. Career and technical education – marketing education.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in marketing education; or
2. Completed the following educational and occupational requirements:
  - a. A major in marketing or 30 semester hours of coursework distributed in the following areas: marketing process and management, economics, merchandising and operations, advertising/sales promotion, personal selling, marketing math, communication theory and techniques, business ethics, human resources/training and development, international business/marketing, and marketing technology; and
  - b. Supervised marketing internship: three semester hours or one year of successful work experience in the field of marketing.

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

B. Technical Professional License. An endorsement in a specialized marketing area, such as apparel and accessories, financial services, hotel/motel operations, international marketing, real estate, or restaurant, may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or are certified as a professional practitioner in the endorsement area sought;
3. Completed a registered apprenticeship program and two years of satisfactory experience at the journeyman level or an equivalent level in the trade;
4. Completed four years of work experience at the management or supervisory level or equivalent or have a combination of four years of training and work experience at the management or supervisory level or equivalent; and

5. Completed professional studies requirements (human growth and development: three semester hours; curriculum and instructional procedures in career and technical education: three semester hours; and applications of instructional technology or classroom and behavior management: three semester hours).

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

**8VAC20-22-280. Career and technical education – technology education.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in technology education;
2. Completed a major in technology education or 39 semester hours in technology education distributed in the following areas:
  - a. Technology and culture (experiences shall include the historical development of technology and its present and future impact on the individual, society, and the environment): six semester hours;
  - b. Technological foundations (experiences shall include technical design and illustration, energy and power, electronics, and materials science): 12 semester hours;
  - c. Technological processes (experiences shall include technical design, material processing, manufacturing, construction, and graphic communication): 12 semester hours; and
  - d. Technological systems (experiences shall include communication, production, and transportation systems): nine semester hours; or
3. Earned a baccalaureate degree from a regionally accredited college or university with a major in one of the following fields of study: architecture, design, engineering, industrial technology, or physics; and completed 12 semester hours of technology education content coursework, including at least three semester hours in each of the following areas: technology and culture, technological foundations, technological processes, and technological systems.

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher

seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

**8VAC20-22-290. Career and technical education – trade and industrial education.**

A. Endorsement requirements.

1. The candidate must have graduated from an approved teacher preparation program in the trade and industrial education program subject area for which the candidate is seeking endorsement; or
2. A candidate who has graduated from an approved teacher preparation program that is not in the trade and industrial education program subject area for which the candidate is seeking endorsement must have:

- a. A current state licensure or industry certification based upon the prescribed standard or examination, if applicable; and
- b. Evidence of at least two years or 4,000 clock hours of satisfactory occupational experience within the past five years in the teaching specialty for which endorsement is sought. A candidate whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty.

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

B. Technical Professional License. An endorsement in a specialized trade and industrial education area will be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or are certified as a professional practitioner in the endorsement area sought, if applicable, or can demonstrate competency in that area of trade and industrial education;
3. Evidence of at least two years or 4,000 clock hours of satisfactory occupational experience within the past five years in the teaching specialty for which they are seeking

endorsement. Candidates whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty; and

4. Completed professional studies requirements (human growth and development: three semester hours; curriculum and instructional procedures in career and technical education: three semester hours; and applications of instructional technology or classroom and behavior management: three semester hours).

If an individual is seeking ~~initial licensure~~ an initial license in the Commonwealth with an endorsement in the area of career and technical education, an industry certification credential, as defined in 8VAC20-22-10, in the area in which the teacher seeks endorsement is required. If a teacher seeking an initial license in the Commonwealth has not attained an industry certification credential in the area in which the teacher seeks endorsement, the board may, upon request of the employing school division or educational agency, issue the teacher a provisional license to allow time for the teacher to attain such credential.

C. Add-on endorsement requirements. A candidate must:

1. Hold a Collegiate Professional or Postgraduate Professional License with a teaching endorsement;
2. Demonstrate competency in the trade or technology to be taught;
3. Hold licensure for the trade or industrial area for which endorsement is sought based upon the prescribed standard or examination;
4. Have completed two years or 4,000 clock hours of satisfactory, full-time employment experience at the journeyman level or an equivalent level in the occupation within the last five years. Candidates whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty; and
5. Have completed three semester hours in curriculum and instructional procedures specific to vocational industrial education.

VA.R. Doc. No. R15-4450; Filed July 9, 2015, 10:48 a.m.

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## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

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

**Title of Regulation:** **10VAC5-110. Credit Counseling (amending 10VAC5-110-10, 10VAC5-110-20, 10VAC5-110-30; adding 10VAC5-110-40 through 10VAC5-110-70).**

**Statutory Authority:** §§ 6.2-2013 and 12.1-13 of the Code of Virginia.

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

**Public Comment Deadline:** September 4, 2015.

**Agency Contact:** Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

**Summary:**

*The proposed amendments (i) define various terms including "advertisement," "business day," and "total amount disbursed" and clarify that the Bureau of Financial Institutions will retain licensees' surety bonds notwithstanding the occurrence of certain events; (ii) prescribe the amount of coverage required by subdivision A 7 of § 6.2-2005 of the Code of Virginia and specify additional events that require licensees to file a written report with the Commissioner of Financial Institutions; (iii) prohibit a licensee from providing debt management plan services in connection with a debt management plan that has been set up by a person other than a credit counselor employed by the licensee; (iv) clarify that money received by a licensee for distribution to consumers' creditors is held in trust for the benefit of consumers and cannot be commingled with the licensee's operating funds or the funds of any other person; (v) prohibit a licensee from selling or assigning a debt management plan to another person unless the purchaser or assignee also is a licensee and require licensees to provide consumers with a written notice containing the bureau's contact information; (vi) prohibit licensees from providing information to the bureau or to consumers that is false, misleading, or deceptive; (vii) prescribe the application fee for any person submitting an application under § 6.2-2007 of the Code of Virginia to acquire 25%*

*or more of the ownership of a licensee and clarify the requirements applicable to the disclosures specified in subdivision A 9 of § 6.2-2005 of the Code of Virginia; (viii) condition the authority of licensees to delegate any of their debt pooling and distribution responsibilities to third parties and require licensees to disclose certain information in their advertisements; and (ix) include various technical and clarifying changes.*

AT RICHMOND, JULY 17, 2015

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2015-00039

Ex Parte: In re: amendments to credit counseling regulations

ORDER TO TAKE NOTICE

Section 6.2-2013 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2 of the Code. The Commission's regulations governing licensed credit counseling agencies ("licensees") are set forth in Chapter 110 of Title 10 of the Virginia Administrative Code ("Chapter 110").

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 110. The proposed regulations (i) define various terms including "advertisement," "business day," and "total amount disbursed"; (ii) clarify that the Bureau will retain licensees' surety bonds notwithstanding the occurrence of certain events; (iii) prescribe the amount of coverage required by subdivision A 7 of § 6.2-2005 of the Code; (iv) specify additional events that require licensees to file a written report with the Commissioner of Financial Institutions; (v) prohibit a licensee from providing debt management plan services in connection with a debt management plan that has been set up by a person other than a credit counselor that is employed by the licensee; (vi) clarify that money received by a licensee for distribution to consumers' creditors is held in trust for the benefit of consumers and shall not be commingled with the licensee's operating funds or the funds of any other persons; (vii) prohibit a licensee from selling or assigning a debt management plan to another person unless the purchaser or assignee also is a licensee; (viii) require licensees to provide consumers with a written notice containing the Bureau's contact information; (ix) prohibit licensees from providing information to the Bureau or to consumers that is false, misleading, or deceptive; (x) prescribe the application fee for any person submitting an application under § 6.2-2007 of the Code to acquire 25% or more of the ownership of a licensee; (xi) clarify the requirements applicable to the disclosures specified in subdivision A 9 of § 6.2-2005 of the Code; (xii) condition the authority of licensees to delegate any of their debt pooling and distribution responsibilities to third parties;

and (xiii) require licensees to disclose certain information in their advertisements. Various technical and other clarifying amendments also have been proposed.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of October 15, 2015.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before September 4, 2015. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2015-00039. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed credit counseling agencies and such other interested parties as he may designate.

**10VAC5-110-10. Definitions.**

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

~~"Bureau" means the Bureau of Financial Institutions.~~

~~"Commissioner" means the Commissioner of Financial Institutions.~~

"Advertisement" for purposes of Chapter 20 and this chapter means a commercial message in any medium that promotes, directly or indirectly, the offering of a debt management plan to any consumer. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils,

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notepads, hats, calendars, etc., as well as other information distributed or made available solely to other businesses.

"Bureau," "commission," and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Business day" for purposes of Chapter 20 means a day on which the licensee's office is open for business.

"Chapter 20" means Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2 of the Code of Virginia.

"Debt Counselor," "credit counselor," "debt management plan," "debt pooling and distribution service," and "licensee" shall have the meanings ascribed to them in § 6.2-2000 of the Code of Virginia.

"Reporting period" means the first six months of a calendar year or the last six months of a calendar year, as the case may be.

"Total amount disbursed" for purposes of § 6.2-2015 of the Code of Virginia means funds sent to creditors on a monthly basis on behalf of a consumer.

## **10VAC5-110-20. Surety bond standards; reporting requirements.**

A. Every licensee shall be bonded in a principal amount determined by the commissioner. The bond amount shall be equal to the licensee's average monthly volume of funds received from Virginia consumers under debt management plans during the preceding reporting period, rounded to the next highest multiple of \$10,000, but not exceeding \$350,000.

B. The amount of bond required of a new licensee shall be based upon the applicant's financial condition, capitalization, projected Virginia monthly volume of funds received under debt management plans, experience, and other factors deemed pertinent by the commissioner.

C. The minimum bond required shall be \$25,000.

D. The form of the bond will be prescribed and provided by the commissioner. The required bond shall be filed with the bureau prior to issuance of a license and shall be maintained continuously thereafter.

E. When a licensee files a bond with the bureau, as required by § 6.2-2003 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked;
2. The licensee ceases offering debt management plans or providing debt pooling and distribution services; or
3. The licensee has distributed all consumers' funds to their creditors in accordance with their debt management plans.

F. A licensee shall maintain the coverage required by subdivision A 7 of § 6.2-2005 of the Code of Virginia in the amount of at least \$250,000.

E. G. Licensees shall file a written report with the bureau within 45 days after the end of each reporting period. The report shall contain information regarding the volume of funds received from Virginia consumers under debt management plans and such other information as the commissioner may require concerning the licensee's business and operations. The commissioner may require additional reports as he deems necessary.

F. H. If the legal name of a licensee is changed, the licensee shall file with the bureau within 15 days a written notice of such change and a document effecting a change of name on its bond.

I. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the commissioner describing the event and its expected impact upon the business of the licensee:

1. Bankruptcy, reorganization, or receivership proceedings are filed by or against the licensee.
2. Any local, state, or federal governmental authority institutes revocation, suspension, or other formal administrative, regulatory, or enforcement proceedings against the licensee.
3. Any local, state, or federal governmental authority (i) revokes or suspends the licensee's credit counseling license, license to provide debt management plans, or other license for a similar business; (ii) takes formal administrative, regulatory, or enforcement action against the licensee relating to its credit counseling, debt management plan, or similar business; or (iii) takes any other action against the licensee relating to its credit counseling, debt management plan, or similar business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.
4. Based on allegations by any local, state, or federal governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed credit counseling, debt management plan, or similar business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.
5. The licensee surrenders its credit counseling license, debt management plan license, or other license for a similar business in another state in lieu of threatened or pending license revocation; license suspension; or other administrative, regulatory, or enforcement action.
6. The licensee is denied a credit counseling license, debt management plan license, or other license for a similar business in another state.

7. The licensee or any of its members, partners, directors, officers, principals, or employees is indicted or convicted of a felony.

8. The licensee's accreditation has expired or been suspended, revoked, or otherwise terminated.

9. Any funds held by the licensee are (i) seized by or on behalf of any court or governmental instrumentality or (ii) forfeited to or on behalf of any court or governmental instrumentality.

J. At least 15 days prior to selling or assigning any debt management plans to another person licensed under Chapter 20, a licensee shall file a written report with the commissioner that contains the following information:

1. A list of the licensee's debt management plans that are to be sold or assigned.

2. The name, address, telephone number, and email address of (i) a designated contact person for the licensee that will be selling or assigning the debt management plans and (ii) a designated contact person for the licensee that will be acquiring the debt management plans.

3. The date that the sale or assignment is scheduled to occur.

4. A copy of the agreement between the licensees.

5. A copy of the notification letter to be sent to consumers whose debt management plans are included in the sale or assignment.

K. The reports required by this section shall contain such additional information as the commissioner may reasonably require. The commissioner may also require any additional reports that he deems necessary.

**10VAC5-110-30. Schedule of annual fees for the examination, supervision, and regulation of agencies providing debt management plans.**

Pursuant to § 6.2-2012 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by persons licensed under Chapter 20 (~~§ 6.2-2000 et seq.~~) of Title 6.2 of the Code of Virginia. The fees are to defray the costs of examination, supervision, and regulation of licensees by the ~~Bureau of Financial Institutions~~ bureau.

**SCHEDULE**

If a licensee maintained less than 250 debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of \$0 plus \$4.33 per debt management plan.

If a licensee maintained 250 or more debt management plans for Virginia residents as of December 31 of the calendar year preceding the year of assessment, the licensee shall pay an annual fee of \$500 plus \$4.33 per debt management plan.

The fee assessed using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before June 1 for the current calendar year. The fee shall be paid on or before July 1.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment. In cases where a license has been granted between January 1 and March 25, the licensee's initial annual fee shall be \$250.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection B of § 6.2-2012 of the Code of Virginia.

**10VAC5-110-40. Operating requirements.**

A. A licensee shall continuously maintain the requirements and standards for licensure prescribed in § 6.2-2005 of the Code of Virginia.

B. A licensee shall not provide debt management plan services in connection with a debt management plan that has been set up or established by any other person except a credit counselor that is employed by the licensee.

C. All money received by a licensee for distribution to consumers' creditors shall be deposited by the licensee into a separate trust account with an FDIC-insured depository institution.

1. All money in the trust account shall be deemed to be held in trust for the benefit of consumers who have given their money to the licensee for distribution. Money held in trust is not the property of the licensee or any person acting on the licensee's behalf and shall not be available to creditors of the licensee or any person acting on the licensee's behalf. However, this provision shall not be construed to prevent the recovery of funds by consumers who have given their money to the licensee for distribution provided that the money has not been disbursed to the consumers' creditors.

2. A licensee shall not commingle consumers' funds in a trust account with any of the licensee's operating funds or the funds of any other persons.

3. The provisions of this subsection shall be applicable regardless of whether consumers' funds are received or handled by (i) a licensee or (ii) a third party acting on behalf of a licensee.

D. A licensee shall comply with all federal laws and regulations applicable to the conduct of its business, including but not limited to the Standards for Safeguarding Customer Information (16 CFR Part 314).

E. A licensee shall not sell or otherwise assign a debt management plan to another person unless the purchaser or assignee is also licensed under Chapter 20.

F. On or before entering into a debt management plan, a licensee shall provide a consumer with a written notice in at least 10-point boldface type. The notice shall state the following: "Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you

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may have against this agency regarding your debt management plan, please contact the Bureau of Financial Institutions at (800) 552-7945 or on the Internet at <http://www.scc.virginia.gov/bfi>. Complaints must be filed in writing with the Bureau of Financial Institutions. Complaints should be mailed to the Bureau of Financial Institutions, Attn: Complaints, P.O. Box 640, Richmond, Virginia 23218-0640, or faxed to the Bureau of Financial Institutions, Attn: Complaints at (804) 371-9416."

The written notice shall be furnished either as a separate document or included in the debt management plan agreement that is required by subdivision 1 of § 6.2-2014 of the Code of Virginia.

G. A licensee shall not provide any information to the bureau that is false, misleading, or deceptive.

H. A licensee shall not provide any information to a consumer that is false, misleading, or deceptive.

I. A licensee shall not engage in any activity that directly or indirectly results in an evasion of the provisions of Chapter 20 or this chapter.

J. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under Chapter 20 shall pay a nonrefundable application fee of \$500.

K. Prior to the execution of a debt management plan, a licensee shall provide each consumer with a form that contains the disclosures specified in subdivision A 9 of § 6.2-2005 of the Code of Virginia. The form shall appear in at least 12-point type and be separated from all other papers, documents, or notices obtained or furnished by the licensee. The form shall contain an acknowledgment that is signed and dated by each consumer. The acknowledgment shall appear in at least 14-point boldface type immediately above the consumer's signature line and state the following: "I acknowledge that I have received and signed this form prior to entering into a debt management plan."

L. A licensee shall not (i) allow a third party to provide any debt pooling and distribution services on its behalf or (ii) delegate to a third party any of its responsibilities under a debt management plan whereby the third party obtains control over any money provided by consumers for subsequent distribution to the consumers' creditors, unless:

1. The licensee enters into and maintains a written agreement with the third party whereby the licensee designates or appoints the third party as its agent; and

2. The licensee notifies the bureau in writing and agrees to such conditions relating to its use of such agent as may be prescribed by the bureau.

A licensee that designates or appoints a third party as its agent shall be liable and subject to enforcement action under Chapter 20 for any acts and omissions of the third party that

would violate Chapter 20 or this chapter if done directly by the licensee.

M. A person shall remain subject to the provisions of Chapter 20 and this chapter applicable to licensees in connection with all debt management plan agreements that the person executed while licensed under Chapter 20 notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended, or revoked; or

2. The person ceases offering debt management plans or providing debt pooling and distribution services.

## **10VAC5-110-50. Advertising.**

A. A licensee shall disclose the following information in its advertisements:

1. The name of the licensee as set forth in the license issued by the commission.

2. A statement that the licensee is "licensed by the Virginia State Corporation Commission."

3. The license number assigned by the commission to the licensee (i.e., DC-XXX).

B. A licensee shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

C. A licensee shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

## **10VAC5-110-60. Enforcement.**

A. Failure to comply with any provision of Chapter 20 or this chapter may result in civil penalties, license revocation, the entry of a cease and desist order, or other appropriate enforcement action.

B. Pursuant to § 6.2-2021 of the Code of Virginia, a person shall be subject to a civil penalty of up to \$1,000 for every violation of Chapter 20, which includes any violation of this chapter. Furthermore, if a person violates any provision of Chapter 20 or this chapter in connection with multiple debt management plans, the person shall be subject to a separate civil penalty for each debt management plan. For example, if a person provides five debt management plans and the person violates two provisions of this chapter in connection with each of the five debt management plans, there would be a total of 10 violations and the person would be subject to a maximum civil penalty of \$10,000.

**10VAC5-110-70. Commission authority.**

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

V.A.R. Doc. No. R15-4449; Filed July 20, 2015, 4:12 p.m.

**TITLE 11. GAMING**

**VIRGINIA RACING COMMISSION**

**Final Regulation**

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

**Title of Regulation:** 11VAC10-20. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (amending 11VAC10-20-10, 11VAC10-20-190).

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

**Effective Date:** September 9, 2015.

**Agency Contact:** David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

**Summary:**

*The amendments conform to changes enacted by Chapters 731 and 751 of the 2015 Acts of Assembly, which revised the Virginia horse racing statute. The amendments (i) revise the definitions of "licensee" and "owner's license" to permit any licensee to own or operate a racetrack, (ii) define "recognized majority horsemen's group," (iii) limit the number of live racing days for a licensee to 125 in each calendar year, and (iv) eliminate the minimum distance requirements for different types of racing surfaces of a racetrack licensee.*

**Part I**

**General Provisions**

**11VAC10-20-10. Definitions.**

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

"Act" means Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of \$.10.

"Carryover" means the nondistributed pool moneys which are retained and added to a corresponding pool in accordance with this chapter.

"Commission" means the Virginia Racing Commission.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the commission.

"Entry" means two or more horses in a race that are treated as a single wagering interest for pari-mutuel wagering purposes.

"Expired ticket" means an outstanding ticket which was not presented for redemption within the required time period for which it was issued.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Horse owner" means a person owning an interest in a horse.

"Horse racing" means a competition on a set course involving a race among horses on which pari-mutuel wagering is permitted.

"Licensee" includes any person holding an owner's, ~~or operator's, limited or unlimited~~ license, or any other license issued by the commission.

"Limited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with pari-mutuel wagering privileges, for a period not exceeding 14 days in any calendar year.

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Minus pool" means that the payout is in excess of the net pool.

"Mutuel field" means two or more horses are treated as a single wagering interest because the number of wagering interests exceeds the number that can be handled individually by the totalizator.

"Net pool" means the amount of gross pari-mutuel ticket sales less refundable wagers and retainage.

"Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards.

"Off time" means the moment at which the starter dispatches the field.

"Operator's license" means a license issued by the commission allowing the holder to conduct a horse race meeting with pari-mutuel wagering privileges.

"Outstanding ticket" means a winning or refundable pari-mutuel ticket which was not cashed during the program for which it was issued.

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"Owner's license" means a license issued by the commission allowing the holder to construct a horse racing facility for the purpose of conducting a ~~limited or unlimited~~ race meeting with pari-mutuel wagering privileges.

"Pari-mutuel wagering" means the system of wagering on horse racing in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, less deductions required or permitted by law.

"Permit holder" includes any person holding a permit to participate in horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting where pari-mutuel wagering is offered thereon as provided in the Act.

"Person" includes a natural person, partnership, joint venture, association or corporation.

"Pool" means the amount wagered during a race meeting in straight wagering, in multiple wagering, or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members, owns or controls, directly or indirectly, 5.0% or more of the stock of any person who is a licensee, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of 5.0% or more of any such stock.

"Profit" means the net pool after the deduction of the amount wagered on the winners.

"Profit split" means a division of profit among the separate wagering interests or winning combinations resulting in two or more payout prices.

"Program" means a schedule of races run consecutively at a racetrack or simulcast to a satellite facility.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Recognized majority horsemen's group" means the organization recognized by the commission as the representative of the majority of owners and trainers racing at race meetings subject to the commission's jurisdiction.

"Retainage" means the total amount deducted, from the pari-mutuel wagering pool in the percentages designated by statute for the Commonwealth of Virginia, purse money for the participants, Virginia Breeders Fund, and the operators.

"Single price pool" means an equal distribution of profit to winning wagering interests or winning wagering combinations through a single payout price.

"Stock" includes all classes of stock of an applicant or licensee corporation, and any debt or other obligation of such corporation or stockholder thereof or stock of any affiliated corporation if the commission finds that the holder of such obligation or stock derives therefrom such control of or voice in the operation of the applicant or licensee corporation that he should be deemed a stockholder.

"Totalizator" means an electronic data processing system for registering wagers placed on the outcomes of horse racing, deducting the retainage, calculating the mutuel pools and returns to ticket holders, and displaying approximate odds and payouts, including machines utilized in the sale and cashing of wagers.

"Unlimited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with pari-mutuel wagering privileges, for periods of 15 days or more in any calendar year.

"Virginia Breeders Fund" means the fund established to foster the industry of breeding racehorses in the Commonwealth of Virginia.

"Wagering interest" means one or more horses in a race which are identified by a single program number for wagering purposes.

## **11VAC10-20-190. Criteria for ~~unlimited~~ horse racing facilities.**

A. Generally. Every license to conduct a horse race meeting with pari-mutuel wagering privileges, of 15 days or more in any calendar year is granted by the commission upon the condition that the licensee will conduct horse racing at its facility or meeting for the promotion, sustenance, and growth of a native industry in a manner consistent with the health, safety, and welfare of the people. The adequacy and sufficiency with which the licensee meets the criteria for the procedures, facilities, and equipment for conducting a horse race meeting of such duration shall rest with the commission.

1. Each licensee shall accept, observe, and enforce all federal and state laws, regulations of the commission, and local ordinances.
2. Each licensee shall at all ~~time~~ times maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of the public, employees, other persons whose business requires their attendance, and for the health and safety of the horses there stabled.
3. Each licensee shall honor commission exclusions from the enclosure and eject immediately any person found within the enclosure who has been excluded by the commission and report the ejection to the commission. Whenever any licensee ejects a person from the enclosure, it shall furnish a written notice to the person ejected and shall report the ejection to the commission.
4. No later than 15 days before the first day of any race meeting, each licensee shall submit to the commission the most recent inspection reports issued by governmental authorities regarding the condition of facilities, sanitation, and fire prevention, detection, and suppression.
5. Each licensee shall provide the commission daily attendance reports showing a turnstile count of all persons admitted to the enclosure and the reports shall indicate the

daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

6. Each licensee shall furnish to the commission within three months of the closing of its fiscal year, three copies of its balance sheet and of its operating statement for the previous fiscal year with comparison to the prior fiscal year, the same duly sworn to by the treasurer of the association, and certified by an independent certified public accountant. The financial report shall be in the form as may be prescribed from time to time by the commission.

7. Each licensee shall maintain a separate bank account to be known as the "horsemen's account," with the amount of purse money statutorily mandated to be deposited in the account within 48 hours of the running of the race. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded:

a. All portions of purse money shall be made available when the stewards have authorized payment to the earners; and

b. No portion of purse money other than jockey fees shall be deducted by the licensee for itself or for another, unless so requested in writing by the person to whom such purse moneys are payable, or his duly authorized representative. Irrespective of whether requested, at the close of each race meeting the horsemen's bookkeeper shall mail to each owner a duplicate of each owner's account showing every deposit, withdrawal, or transfer of funds affecting such owner's account.

8. Each licensee shall remit to the commission within five days of the day on which the revenue for pari-mutuel taxes, admission taxes, and breeders' funds were collected. The remittance shall be accomplished by a direct deposit in a financial institution designated by the commission. On those days when the fifth day is a holiday or a weekend day, the payment must be made by the succeeding business day. At the close of each month in which racing is conducted, the licensee must report to the commission all deposits of taxes and breeders' funds for that month.

9. On each day that deposits are made by the licensee, a report must be filed with the commission containing the following recapitulation: total retainage, pari-mutuel tax; state and local admissions taxes; purse moneys; total breakage; and breeders' fund taxes.

10. Each licensee shall provide areas within the enclosure where publications, other informational materials, and tip sheets, may be sold to the public. All persons holding a tip sheet concession at the facility must possess a permit from the commission as vendors. Such vendor shall post in a conspicuous place the previous day's tip sheet and the outcome of the races. Such vendor shall deliver one copy of the tip sheet to a commission representative at least one hour before post time.

11. Each licensee shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who are licensed and have access to the stabling area. No licensee by virtue of this regulation shall attempt to control or monopolize proper selling to owners, trainers, or stable employees; nor shall a licensee grant a sole concession to any vendor of feed, racing supplies, or racing services.

12. Each licensee shall provide to the commission copies of all subordinate contracts, in the amount of \$15,000 annual gross and above, entered into by the owner, owner-operator, or operator, and such contracts shall be subject to approval of the commission.

13. Each licensee shall submit to the commission each calendar year a request for live racing days for the next calendar year as provided in 11VAC10-20-200. The holder of an ~~unlimited~~ license shall schedule ~~not less~~ no more than ~~150~~ 125 days live racing days in the Commonwealth each calendar year; however, the commission may alter the number of live racing days based on what it deems to be in the best interest of the Virginia horse industry.

14. Each licensee shall post in a conspicuous place in every place where pari-mutuel wagering is conducted a sign that bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers.

B. Facilities. Each ~~unlimited~~ licensee shall provide all of the facilities for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, or dishonest practices and to maintain in horse racing complete honesty and integrity.

~~1. Each licensee shall provide for flat racing a main racing surface of at least one mile in circumference; for flat or jump racing on the turf a racing surface of at least seven-eighths of a mile in circumference; for harness racing a main racing surface of at least five eighths of a mile in circumference; and for other types of racing a racing surface of generally accepted standards.~~

~~a.~~ 1. Prior to the first race meeting at a facility owned or operated by the holder of an unlimited license, the licensee shall provide to the commission a certified report of a qualified surveyor, certifying the grade and measurement of the distances to be run.

~~b.~~ a. Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

~~e.~~ b. The surveyor's report must be approved by the commission's executive secretary prior to the first race day of the meeting.

2. Turf course requirements include the following:

a. The licensee shall maintain an adequate stockpile of growing medium, and shall provide an irrigation system

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or other means of adequately watering the entire turf course evenly.

b. All turf course paths from inside rails to turf courses shall resemble the rest of the terrain, with no rails leading from the main course to the turf courses.

c. A portable rail shall be secure to absorb the impact of a horse.

3. Main track requirements include the following:

a. Each licensee shall provide a safety rail on the inside of each racing surface and such other fencing that is appropriate to safely enclose the racing surface for horses and riders.

b. The rail height shall be from 38 inches to 42 inches from the top of the cushion to the top of the rail. All top rails shall be bolted to poles and shall be smooth with no jagged edges. Rail posts shall be of a gooseneck type design and shall have no less than a 24-inch overhang with a continuous smooth elevated cover over posts.

c. All rails shall be constructed of materials designed to withstand the impact of a horse running at racing speed.

d. All rail posts shall be set in concrete at least six inches below the surface and 24 inches deep. A portable turf rail shall be secure to absorb the impact of a horse. No rail or post shall be used that will not take the impact of a horse or will break away, such as fiberglass, PVC, wood or hedges.

e. The design and construction of rails shall be approved by the commission prior to the first race meeting at the racetrack.

4. Each licensee shall provide distance poles marking off the racing surface and the poles shall be painted in the following colors: quarter poles, red and white; eighth poles, green and white; and sixteenth poles, black and white. All distance poles, including photofinish mirror imaging equipment and any other equipment, shall be set back a minimum of 10 feet from the back of the inside rail.

5. Each licensee shall provide racing surfaces whose construction, elevation, and surfaces have received scientific approval as safe and humane, adequate and proper equipment to maintain the racing surface, and sufficient trained personnel to properly operate the equipment. Daily records of maintenance shall be open for inspection.

6. Each licensee shall provide stabling in a sufficient amount to conduct a successful horse race meeting. The horses shall be quartered in individual stalls with separate feeding and watering facilities. Each barn, including the receiving barn, shall have a hot and cold water supply available, be well-ventilated, have proper drainage to prevent standing water and be constructed to be comfortable in all seasons during which racing is conducted.

7. Each licensee shall provide a stabling area that is maintained in approved sanitary condition with satisfactory drainage, manure, and other refuse kept in separate boxes or containers distant from living quarters, and the boxes or containers promptly and properly removed.

8. Each licensee shall provide a systematic and effective insect control program and programs to eliminate hazards to public health and comfort in the stabling area and throughout the enclosure.

9. Each licensee shall provide satisfactory living quarters for persons employed in the stabling area as well as satisfactory commissary, recreation, and lavatory facilities, and maintain the facilities in a clean and sanitary manner. No employee shall be permitted to sleep in any stall or barn loft.

10. Each licensee shall provide on every racing day satisfactory sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business within the enclosure.

11. Each licensee shall provide a paddock where the horses are assembled prior to the post parade. Each licensee shall provide a public viewing area where patrons may watch the activities in the paddock. Each licensee shall also provide a sufficient number of roofed stalls so that horses may be housed during inclement weather.

12. Each licensee shall provide satisfactory facilities for jockeys or drivers who are participating in the day's program. The facilities shall include accommodations for rest and recreation, showers, toilets, wash basins, reducing facilities (sauna or steam room), arrangements for safe keeping of apparel and personal effects, and snack bar during horse race meetings.

13. Each licensee shall maintain an information desk where the public may make complaints regarding the facilities, operations of the licensee, or rulings of the commission. The licensee shall respond promptly to complaints, and inform the commission regarding any alleged violation of its regulations.

14. Each licensee shall maintain a test barn for use by commission employees in securing from horses that have run a race, samples of urine, saliva, blood, or other bodily substances for chemical analysis. The test barn shall include a wash rack, commission veterinarian office, a walking ring, and a sufficient number of stalls each equipped with a window sufficiently large to allow the taking of samples to be witnessed from outside the stall. The test barn shall be located convenient to the racing surface and shall be enclosed by a fence so that unauthorized persons shall be excluded. Space shall be provided for signing in and signing out of permittees whose attendance is required in the test barn.

15. Each licensee shall maintain a receiving barn conveniently located for use by horses arriving for races

that are not quartered in the stabling area. The licensee shall have a sufficient number of stalls to accommodate the anticipated number of horses, hot and cold running water, and stall bedding. The licensee shall maintain the receiving barn in a clean and sanitary manner.

16. Each licensee shall provide and maintain lights so as to ensure adequate illumination in the stabling area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

17. Each licensee shall provide and maintain stands commanding an uninterrupted view of the entire racing surface for the stewards with the location to be approved by the commission. The licensee shall provide patrol judge stands so that the floor shall be at least six feet higher than the track rail. For harness racing, each licensee shall provide space for a patrol judge in the mobile starting gate that will accompany the horses during the race.

18. Each licensee shall furnish office space, approved by the commission, for the commission's use within the enclosure and an appropriate number of parking spaces so that its members and staff may carry out their duties.

19. Each licensee shall submit to the commission, at least 30 days prior to the opening day of a meeting, a complete list of its racing officials, as set forth elsewhere in these regulations, and department heads. No person shall hold any appointment for a horse race meeting unless approved by the commission after determination that the appointee is qualified for his duties, not prohibited by any law of the Commonwealth of Virginia or regulation of the commission, and eligible to hold a permit issued by the commission.

20. Each licensee shall provide a condition book, or for harness racing, a condition sheet, listing the proposed races for the upcoming racing days and prepared by the racing secretary, to the commission at least one week prior to opening day. Additional condition books or condition sheets shall be provided to the commission as soon as published.

21. No licensee shall allow any person to ride in a race or exercise any horse within the enclosure unless that person is wearing a protective helmet with the chin strap buckled. For flat racing, the term "exercising" is defined to include breezing, galloping, or ponying horses.

22. Each licensee shall employ at least three outriders for flat and steeplechase racing to escort starters to the post and to assist in the returning of all horses to the unsaddling area for flat races. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse that might cause injury to a jockey or driver or others. During racing hours, outriders will wear traditional attire. For flat race meetings, outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times when the track is open for exercising.

23. Each licensee shall employ for flat meets a sufficient number of valets to attend each jockey on a day's program. Valets will be under the immediate supervision and control of the clerk of scales. Each licensee shall provide uniform attire for valets who shall wear the uniform attire at all times while performing their duties within public view.

24. No licensee shall allow any person to ride in a race or to exercise any horse within the enclosure unless that person is wearing a protective safety vest. The vest shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five as defined by the British Equestrian Trade Association (BETA).

C. Equipment. Each ~~unlimited~~ licensee shall provide all of the equipment for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled practices, and to maintain in horse racing complete honesty and integrity.

1. Each licensee shall maintain at least two operable starting gates for flat meetings and two operable mobile starting gates for harness racing. The licensee shall have in attendance one or more persons qualified to keep the starting gates in good working order and provide for periodic inspection. For flat meetings, the licensee shall also make at least one starting gate along with adequate personnel available for schooling for two hours each day during training hours, exclusive of nonrace days. For flat race meetings, the licensee shall have an adequate number of assistant starters to ensure the integrity of the start and to provide safe conditions for horse and rider. If a flat race is started at a place other than in a chute, the licensee shall maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure. For harness racing meetings, a mobile starting gate shall be made available for qualifying races and schooling.

2. Each licensee shall maintain photo-finish equipment to assist the stewards and placing judges, where employed for flat race meetings, in determining the order of finish of each race. The licensee shall provide two electronic photofinish devices with mirror images to photograph the finish of each race. The location and operation of the photofinish devices must be approved by the commission before its first use in a race. The licensee shall ensure that the photofinish devices are calibrated before the first day of each race meeting and at other times as required by the commission. The standards and operations of the photo-finish camera as well as the methodology of the personnel shall be subject to the approval of the stewards:

a. The photo-finish photographer shall promptly furnish the stewards and placing judges prints as they are requested, and the photographer will promptly inform the

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stewards and placing judges of any malfunction of his equipment;

b. A print of a photo finish where the placing of horse is a half of length or less shall be displayed either by posting copies of the print or video means to the public promptly after the race has been declared "official"; and

c. Each licensee shall be responsible for maintaining a file of photo finishes of all races for one year after the closing of the horse race meeting.

3. Each licensee shall provide color video tape recordings of the running of each race clearly showing the position and actions of the horse and jockeys or drivers at close range. Each licensee shall provide at least three cameras to record panoramic and head-on views of the race. One camera shall be located on the finish line:

a. Promptly after a race has been declared "official," video tape recordings shall be replayed for the benefit of the public. In those races where there was a disqualification, video tapes of the head-on views may also be shown with an explanation by the public address announcer.

b. The licensee shall safeguard the tapes of all videotapes for one year after the close of the horse race meeting.

c. The stewards may, in their discretion, direct a video camera operator to videotape the activities of any horses or persons handling horses prior to, during or following a race.

4. Each licensee shall provide an electronic timing system. The system shall have the capability of timing the leading horse in at least hundredths of a second. Each licensee shall also provide a qualified person to manually time each race, including splits of each quarter of a mile, in the event of a malfunction of the electronic system.

5. Each licensee shall provide an internal communication system which links the stewards' stand, racing secretary's office, pari-mutuel department, jockeys' or drivers' room, paddock, test barn, commission veterinarian's office, starting gate, film patrol office, ambulances, public address announcer, patrol judges, and any other personnel designated by the commission.

6. Each licensee shall provide a public address system whereby calls of the races and other pertinent information may be communicated to the public. This system shall be utilized by a qualified person, and the system shall have the capability of transmitting throughout the stabling area.

7. Each licensee shall provide a totalizator and employ qualified personnel to operate the system, provide maintenance of the hardware, software, and ancillary wagering devices, and be able to perform emergency repairs in case of emergencies. The licensee shall also provide a mutuel board in the infield where approximate odds, amounts wagered in the win, place, and show pools

on each betting interest, and other pertinent information may be prominently displayed to the public:

a. The totalizator shall maintain at least two independent sets of pool totals and compare them at least once every 60 seconds. The totalizator shall record in a system log file any difference in the final pool totals;

b. The totalizator shall have the capability of calculating the mutuel pools, approximate odds, probable payoffs and display them to the public at intervals of not more than 60 seconds;

c. The totalizator shall have the capability of being locked and wagering terminated automatically at the command of a steward. Any failure of the system to lock at the start of the race shall be reported immediately by the mutuel manager to the stewards;

d. The totalizator shall have the capability of displaying the probable payouts on various combinations in the daily double, exacta, and quinella wagering, and displaying the payoffs to the public;

e. The totalizator shall have the capability of recording the wagering by individual wagers, including the amount wagered, the betting interest, and the mutuel window where the wager was placed. The records of the wagering shall be promptly made available to the commission upon request. The licensee shall preserve the records of the wagering for one year after closing of the horse race meeting. The records shall not be destroyed without permission of the commission;

f. The personnel operating the totalizator shall report immediately to the stewards any malfunction in the system, or what they perceive to be any unusual patterns in the wagering;

g. The totalizator personnel shall make available to the commission any special reports or requests that may assist the commission in carrying out its statutory duties and responsibilities for the conduct of horse racing; and

h. The commission may require an independent certified audit of the totalizator's software attesting to the accuracy of its calculations and the integrity of its accounting processes.

8. Each licensee shall provide at least one human ambulance and at least one equine ambulance within the enclosure at all times during those hours when the racing and training surface is open for racing and exercising. However, a human ambulance shall not be required to be present during the exercising of Standardbred horses. The ambulances shall be manned and equipped to render immediate assistance, and shall be stationed at a location approved by the stewards.

a. The equine ambulance must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The equine ambulance must be able to

navigate on the racetrack during all weather conditions and transport a horse outside the enclosure.

b. The equine ambulance must be equipped with large portable screens to shield a horse from public view, ramps to facilitate loading a horse, adequate means of loading a horse that is down, a rear door and a door on each side, a padded interior, a movable partition to initially provide more room to load a horse and to later restrict a horse's movement, a shielded area for the person who is attending to the horse, and an adequate area for the storage of water and veterinary medicines and equipment.

c. A licensee shall not conduct a race unless an equine ambulance or a commission veterinarian-approved substitute is readily available.

d. The equine ambulance, its supplies and attendants, and the operating procedures for the vehicle must be approved by the commission veterinarian.

e. The licensee shall maintain a properly equipped human ambulance, staffed with certified paramedics at any time the racetrack is open for racing or exercising horses. However, a human ambulance shall not be required to be present during the exercising of Standardbred horses. If the ambulance is being used to transport an individual, horses may not be raced or exercised until the ambulance is replaced.

f. Unless otherwise approved by the stewards, a human ambulance shall follow the field at a safe distance during the running of races, or in the event of inclement weather, two ambulances shall be parked to render immediate service. The human ambulance must be parked at an entrance to the racing surface unless the ambulance is being used to transport a person or when it is following the field during the running of a race.

g. During a racing day, the licensee shall maintain a first aid room equipped with at least two beds and other appropriate equipment, and the services of at least one physician during flat race meetings.

9. Each licensee shall maintain lighting for the racetrack and the patron facilities that is adequate to ensure the safety and security of the patrons, participants and horses. Lighting to ensure the proper operation of the videotape and photofinish devices must be approved by the commission.

a. The licensee shall maintain adequate additional lighting in the stable area as required by the commission.

b. If racing is conducted at night, the licensee shall maintain a backup lighting system that is sufficient to ensure the safety of patrons, participants and horses.

D. Safety. Each ~~unlimited~~ licensee shall employ sufficient trained personnel to provide for the safety and security of the public and others who have business within the enclosure. Each licensee shall also take all measures to prevent the

outbreak of fires within the enclosure and develop plans for the quick extinguishing of any fires that should occur.

1. Each licensee shall provide sufficient trained security personnel under the supervision of a qualified director of security. If the licensee contracts with a private security service, the security service must be bonded and meet all applicable licensing requirements. If the licensee establishes its own security force, then director of security shall forward to the commission detailed plans for the screening, hiring, and training of its own personnel.

2. The director of security of each licensee shall cooperate fully with the commission and its staff, federal and state law enforcement agencies, local police and fire departments, and industry security services to enforce all laws and regulations to ensure that horse racing in the Commonwealth of Virginia is of the highest integrity.

3. Each licensee shall develop a detailed security plan describing the equipment; (i.e., fences, locks, alarms, and monitoring devices); the procedures to admit persons to restricted areas; (i.e., stabling area, paddock, jockeys' or drivers' room, vault, mutuel lines, totalizator room, and test barn); and the trained personnel in sufficient numbers to provide for the safety and security of all persons during racing and nonracing hours.

4. Each licensee may provide a perimeter fence around the entire enclosure, but shall fence off the stabling area. The entrance to the stabling area shall be guarded on a 24-hour basis by uniformed security personnel so that unauthorized persons shall be denied access to the restricted stabling area. The licensee shall also provide for routine patrolling by uniformed security personnel on a 24-hour basis within the stabling area.

5. During racing hours, the licensee shall provide uniformed security personnel to guard the entrances to the paddock, jockeys' or drivers' room, and other restricted areas as may be deemed appropriate by the commission so that unauthorized persons shall be denied access to them.

6. The licensee's director of security shall submit to the commission a written report describing every arrest or completed incident of security investigation or rule violation including the person charged, the charges against the person, the present whereabouts of the person, and disposition of the charges, if any.

7. The licensee's director of security shall submit to the commission a detailed plan describing the procedures to be followed in case of fire or any other emergency within the enclosure. The plan shall contain the resources immediately available within the surrounding communities to cope with fire or other emergencies, route of evacuation for the public, controlling traffic, and those resources available from the surrounding communities for police, fire, ambulance, and rescue services.

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8. Each licensee shall observe and enforce all state and local building codes and regulations pertaining to fire prevention, and shall prohibit the following:

- a. Smoking in horse stalls, feed rooms, or under the shedrow;
- b. Open fires and oil or gasoline burning lanterns or lamps in the stable area;
- c. The unsafe use of electrical appliances or other devices which would pose a hazard to structures, horses, permittees, or the public; and
- d. Keeping flammable materials including cleaning fluids or solvents in the stabling area.

VA.R. Doc. No. R15-4425; Filed July 17, 2015, 3:09 p.m.

## Final Regulation

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

**Title of Regulation:** 11VAC10-30. Limited Licenses (amending 11VAC10-30-10, 11VAC10-30-20, 11VAC10-30-30).

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

**Effective Date:** September 9, 2015.

**Agency Contact:** David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7404, or email david.lermond@vrc.virginia.gov.

### Summary:

*The amendments conform to changes enacted by Chapters 731 and 751 of the 2015 Acts of Assembly, which revised the Virginia horse racing statute. The amendments (i) revise the definitions of "licensee" and "owner's license" to permit any licensee to own or operate a racetrack, (ii) define "significant infrastructure facility" and "significant infrastructure limited license," and (iii) provide the requirements for the significant infrastructure limited license, including an application affidavit.*

### 11VAC10-30-10. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Virginia Racing Commission.

"Licensee" includes any person holding an owner's, or operator's, ~~limited or unlimited~~ license, or any other license issued by the commission.

"Limited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with any calendar year.

"Pari-mutuel wagering" means the system of wagering on horse racing in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, less deductions required or permitted by law.

"Person" includes a natural person, partnership, joint venture, association or corporation.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Significant infrastructure facility" means a horse racing facility that has been approved by a local referendum pursuant to § 59.1-391 of the Code of Virginia and has a minimum racing infrastructure consisting of (i) a one-mile dirt track for flat racing, (ii) a seven-eighths-mile turf course for flat or jump racing, (iii) covered seating for no fewer than 500 persons, and (iv) barns with no fewer than 400 permanent stalls.

"Significant infrastructure limited licensee" means a person who owns or operates a significant infrastructure facility and holds a limited license under § 59.1-376 of the Code of Virginia.

"Totalizator" means an electronic data processing system for registering wagers placed on the outcomes of horse racing, deducting the retainage, calculating the mutuel pools and returns to ticket holders, and displaying approximate odds and payouts, including machines utilized in the sale and cashing of wagers.

### 11VAC10-30-20. Generally.

A. The commission is authorized to issue limited licenses for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people. The horse racing, with pari-mutuel wagering privileges, shall be conducted by limited licensees so as to maintain horse racing in the Commonwealth of Virginia of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in horse racing complete honesty and integrity.

~~A.~~ B. Number of racing days. The commission may issue limited licenses to conduct horse race meetings, with pari-mutuel wagering privileges on races held at the site, for a period not to exceed 14 days in any calendar year or in the case of a significant infrastructure limited licensee, 75 days in any calendar year.

~~B.~~ C. Local referendum. The commission shall not grant a limited license to conduct a horse race meeting, with pari-mutuel wagering privileges, until a referendum approving the question is held in the county or city in which the race meeting is to be conducted; however, the commission may, in accordance with § 59.1-378.1 of the Code of Virginia, grant a

limited license to the owner or operator of a ~~steeplechase~~ facility to conduct pari-mutuel wagering on ~~steeplechase~~ Thoroughbred and Standardbred race meetings and simulcast horse racing at that facility in conjunction with the race meetings for a period not to exceed 14 days in any calendar year if the ~~steeplechase~~ facility has been ~~sanctioned by the Virginia Steeplechase Association or National Steeplechase Association~~ approved by the commission and the owner or operator of such facility has been granted tax-exempt status under § 501(c)(3) or (4) of the Internal Revenue Code.

~~C.~~ D. Observance of regulations. The holder of a limited license shall be charged with the same duties and responsibilities as are the holders of unlimited licenses with respect to the observance and enforcement of ~~the Act~~ Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia and the regulations of the commission.

~~D.~~ E. Racing surfaces. The holders of limited licenses shall utilize racing surfaces which are safe and humane for participants and meet generally accepted standards for the type of racing, ~~but any dirt surface for flat racing shall be at least one mile in circumference, any turf surface for flat or jump racing shall be at least seven eighths of a mile in circumference, and any dirt surface for Standardbred or Quarter Horse racing shall be at least five eighths of a mile being conducted.~~

~~E.~~ F. Renewal of limited licenses. Limited licenses are valid for one calendar year during which the licensee may conduct as many as 14 days of horse racing with pari-mutuel wagering privileges or in the case of a significant infrastructure limited licensee, 75 days in any calendar year. A licensee may apply for a renewal of a limited license by submitting an application to the commission as set forth in 11VAC10-30-30 of this chapter. An applicant for a renewal of a limited license may incorporate by reference any information submitted in previous applications.

### **11VAC10-30-30. Application for a limited license.**

A. Where to file application. An applicant for a limited license shall submit an application on a form, prepared by the commission, to the main office of the commission no later than September 1, excluding Saturdays, Sundays or holidays, for the following calendar year. The commission may, in its discretion, extend the deadline to receive applications.

1. An application to be sent by certified mail shall be addressed to:

Executive Secretary  
Virginia Racing Commission  
Post Office Box 1123  
Richmond, VA 23218

2. An application to be hand-delivered shall be delivered to the Executive Secretary, Virginia Racing Commission at the ~~Commission's~~ commission's office in Richmond, Virginia.

3. An application delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed or the extended deadline.

4. Delivery to other than the commission's main office is not acceptable.

5. The licensee assumes full responsibility for the method chosen to deliver the request.

B. Identification of applicant for limited license. An application for a limited license shall include the name, address and telephone number of the applicant, and the name, position, address, telephone number and authorized signature of an individual to whom the commission may make inquiry.

C. Applicant's affidavit. An application for a limited license shall include an affidavit from the chief executive officer, director, officer or other participant in the applicant setting forth:

1. That application is made for a limited license to conduct a horse race meeting, with pari-mutuel wagering privileges, for a period not to exceed 14 days in any calendar year or in the case of a significant infrastructure limited licensee, 75 days in any calendar year;

2. That the affiant is the agent of the applicant, its owners, partners, members, directors, officers and personnel, and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached (Identify attached exhibit number);

3. That the applicant seeks a grant of privilege from the Commonwealth of Virginia, and the burden of proving the applicant's qualifications rests at all times with the applicant;

4. That the applicant consents to inquiries by the Commonwealth of Virginia, its employees, commission members, staff and agents, into the financial, character and other qualifications of the applicant by contacting individuals and organizations;

5. That the applicant, its owners, partners, members, directors, officers and personnel accept any risk of adverse public notice, embarrassment, criticism or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the Commonwealth of Virginia, its employees, the commission, and its staff or agents;

6. That the affiant has read the application and knows the contents; the contents are true to the affiant's own knowledge, except matters therein stated as information and belief, and that as to those matters, the affiant believes them to be true;

7. That the applicant recognizes all representations in the application are binding, and false or misleading information in the application, omission of required information, or substantial deviation from representations

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in the application may result in denial, revocation, suspension or conditioning of a license or imposition of a fine, or any or all of the foregoing;

8. That the applicant will comply with all applicable state and federal statutes and regulations, all regulations of the commission and all other local ordinances;

9. The affiant's signature, name, organization, position, address and telephone number; and

10. The date.

D. Disclosure of ownership and control. An applicant for a limited license must disclose the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association or other.

1. If the applicant is an individual, the applicant shall disclose his legal name, whether the applicant is a United States citizen, and any aliases and business or trade names currently or previously used.

2. If the applicant is a corporation, the applicant shall disclose the applicant's full corporate name, any trade names currently or previously used; jurisdiction of incorporation, date of incorporation, and the date the applicant began doing business in the Commonwealth of Virginia. In addition, the applicant shall include:

a. A copy of the applicant's certificate of authority to do business in Virginia;

b. A copy of the applicant's articles of incorporation;

c. A description of the general nature of the applicant's business; and

d. A list of the names, in alphabetical order, and addresses of the directors, and in a separate list, the names and addresses, in alphabetical order, of the officers of the applicant.

3. If the applicant is an organization other than a corporation, the applicant shall disclose the applicant's full name, any aliases, business or trade names currently or previously used; the jurisdiction of organization; the date the applicant began doing business in Virginia; and the general nature of the applicant's business. In addition, the applicant shall include:

a. Copies of any agreements creating or governing the applicant's organization; and

b. The names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority.

4. If the applicant is a tax exempt organization, the applicant shall submit copies of documentation from the Internal Revenue Service granting tax exempt status.

E. Disclosure of character information. An applicant for a limited license shall disclose and furnish particulars as follows whether the applicant or any individual identified in subsection D of this section has:

1. Been charged in any criminal proceeding other than a traffic violation. If so, the applicant shall disclose the nature of the charge, the date charged, court and disposition;

2. Had a horse racing, gambling, business, professional or occupational license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant shall disclose the date of commencement, circumstances and disposition; and

3. Begun an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant shall disclose the date of commencement, forum, circumstances and disposition.

F. Disclosure of site and facilities. An applicant for a limited license shall disclose the following concerning the site and facilities where horse racing will be conducted with pari-mutuel wagering privileges:

1. The location of the horse racing facility including street address, municipality where the facility is located and the county in which the facility is located;

2. The present ownership of the horse racing facility;

3. If the applicant leases the site of the horse racing facility, the applicant shall submit copies of any leasing agreement, and any other arrangements for the use of the facility between the applicant and the owner of the facility;

4. The type or types of racing to be offered, the number of races to be run each day, the post time of the first race each day, type of pari-mutuel pools to be offered, and any organization that is sanctioning the races;

5. A description of the post-race detention facilities and sample collection arrangements;

6. A description of the totalizator, including vendor and manufacturer, if known;

7. A description of starting, timing, photo finish and photo patrol or video equipment, including vendor and manufacturer, if known; and

8. A description of the work areas for stewards and patrol judges.

G. Disclosure of governmental actions. An applicant for a limited license shall disclose whether the applicant is in compliance with all state statutes, local charter provisions, local ordinances, and street and local regulations pertaining to the development, ownership and operation of its horse racing facility. If the applicant is not in compliance, the applicant shall disclose the reasons why the applicant is not in compliance and summarize plans to obtain compliance.

H. Disclosure of management. An applicant for a limited license shall disclose its management personnel by listing the names of the personnel and their titles.

I. Disclosure of safety and security plan. An applicant for a limited license shall describe the safety and security plan for the horse racing facility in regards to the procedures for

accepting and cashing wagers, detention facility and participants.

J. Effects on competition. An applicant for a limited license shall make a brief statement indicating why its racing days will not be harmful to other limited or unlimited licenses issued by the Virginia Racing Commission.

K. Personal information and authorization for release. An applicant for a limited license shall include the following with respect to each individual identified as an applicant, partner, director, officer, policymaker or management personnel in subsection D or ~~subsection H~~ of this section:

1. Full name, business and residence addresses and telephone numbers, date of birth, place of birth, social security number, if the individual is willing to provide it;
2. An authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he:
  - a. Authorizes a review by, and full disclosure to, an agent of the Virginia State Police, of all records concerning the individual;
  - b. Recognizes the information reviewed or disclosed may be used by the Commonwealth of Virginia, its employees, the commission, members, staff and agents to determine the signer's qualifications for a license; and
  - c. Release authorized providers and users of the information from any liability under state or federal data privacy statutes.

L. Additional information. Upon receipt of a properly completed application for a limited license, the commission may, in its discretion, require any further information from the applicant that it deems necessary for a full understanding and evaluation of the application.

M. Amendment of application. An applicant for a limited license may amend a properly completed and properly submitted application to the commission.

N. Application fee. An applicant for a limited license as provided for in § 59.1-376 of the Code of Virginia shall submit a nonrefundable application fee to the commission's designee at the time of application by a certified check or bank draft to the order of the Commonwealth of Virginia in the amount of \$100 per number of racing days requested. The applicant also shall pay the costs of background investigations conducted by the Virginia State Police of the persons enumerated in subsections D and H of this section.

VA.R. Doc. No. R15-4426; Filed July 17, 2015, 3:14 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Virginia Racing Commission is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Racing

Commission will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 11VAC10-40. Satellite Facilities (amending 11VAC10-40-10, 11VAC10-40-60).

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

**Effective Date:** September 9, 2015.

**Agency Contact:** David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

**Summary:**

*The amendments conform to changes enacted by Chapters 731 and 751 of the 2015 Acts of Assembly, which revised the Virginia horse racing statute. The amendments (i) revise the definition of "licensee" to permit any licensee to own or operate a racetrack and (ii) modify the requirements for majority ownership of satellite facilities.*

Part I  
General Provisions

**11VAC10-40-10. Definitions.**

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Virginia Racing Commission.

"Licensee" includes any person holding an owner's, ~~or operator's, or limited~~ license under §§ Article 2 (§ 59.1-375 ~~through 59.1-386 et seq.~~) of Chapter 29 of Title 59.1 of the Code of Virginia. ~~The licensee under a limited license shall not be deemed an owner for the purposes of owning or operating a satellite facility.~~

"Satellite facility" means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the commission.

"Simulcast horse racing" means the simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.

**11VAC10-40-60. Majority ownership.**

The commission shall require that the majority ownership of satellite facilities be restricted to an entity licensed by the commission ~~which owns a horse racetrack in the Commonwealth~~ that is (i) a significant infrastructure limited

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# Regulations

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licensee or (ii) the nonprofit industry stakeholder organization recognized by the commission if by August 1, 2015, there is no significant infrastructure limited licensee or a pending application for such license. After the issuance of a license to own or operate a satellite facility to the nonprofit industry stakeholder organization, if the commission grants a license to a significant infrastructure limited licensee pursuant to § 59.1-376 of the Code of Virginia, then such limited licensee may own or operate the remaining available satellite facilities authorized in accordance with this section. In no event shall the commission authorize any such entities to own or operate more than a combined total of 10 satellite facilities. Nothing in these regulations this chapter shall be deemed to preclude private local ownership or participation in any satellite facility.

VA.R. Doc. No. R15-4427; Filed July 17, 2015, 3:18 p.m.

## Final Regulation

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

**Title of Regulation:** 11VAC10-45. Advance Deposit Account Wagering (amending 11VAC10-45-10, 11VAC10-45-20, 11VAC10-45-30, 11VAC10-45-40, 11VAC10-45-50).

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

**Effective Date:** September 9, 2015.

**Agency Contact:** David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

**Summary:**

*The amendments conform to changes enacted by Chapters 731 and 751 of the 2015 Acts of Assembly, which revise the Virginia horse racing statute. The amendments eliminate (i) the definitions for "racetrack licensee" and "source market fee"; (ii) the requirement of a contractual agreement between the prospective account wagering licensee, the racetrack licensee, and the representatives of the recognized majority horsemen's organizations; (iii) a quarterly account wagering summary report generated for the racetrack licensee; and (iv) the rules for the distribution of the source market fee paid by online wagering companies (account wagering) licensed by the Virginia Racing Commission for specified and commission-approved purposes.*

## 11VAC10-45-10. Definitions.

The following definitions and interpretations shall apply to these rules unless otherwise indicated or the text otherwise requires:

"Account" means an account for account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the account-wagering licensee.

"Account holder" means an individual who successfully completed an application and for whom the account-wagering licensee has opened an account.

"Account wagering center" means an actual location, equipment, and staff of an account wagering licensee or agents of the account wagering licensee involved in the management, servicing and operation of account wagering.

"Account wagering licensee" means an entity licensed by the commission to accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts.

"Advance deposit account wagering" (hereafter account wagering) means a method of pari-mutuel wagering conducted in the Commonwealth that is permissible under the Interstate Horseracing Act (15 USC § 3001 et seq.) and in which an individual may establish an account with an entity, licensed by the commission, to place pari-mutuel wagers in person or electronically.

"Applicant" means an individual who has submitted an application to establish an account with either (i) an account wagering licensee or (ii) a company applying for an account wagering license from the commission.

"Commission" means the Virginia Racing Commission.

"Confidential information" means:

1. The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;
2. The amount of money wagered by a particular account holder on any race or series of races;
3. The account number and secure personal identification code of a particular account holder;
4. The identities of particular entries on which the account holder is wagering or has wagered; and
5. Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the account wagering center and race meet licensee that would identify the account holder to anyone other than the commission or the account wagering licensee.

"Credits" means all inflow of money to an account.

"Debits" means all outflow of money from an account.

"Deposit" means a payment of money by cash, check, money order, credit card, debit card, or electronic funds

transfer made by an account holder to the account holder's account.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Individual" means any natural person at least 18 years of age, but does not include any corporation, partnership, limited liability company, trust, estate or other legal entity.

"Other electronic media" means any electronic communication device or combination of devices including but not limited to personal computers, the Internet, private networks, interactive televisions and wireless communication technologies or other technologies approved by the commission.

"Principal residence address" means the street address identified by an applicant or a current account holder as that individual's residential address, as such address may be verified by the account wagering licensee.

"Proper identification" means a form of identification accepted in the normal course of business to establish that the person making a transaction is an account holder.

~~"Racetrack licensee" means any person holding a current unlimited license to own or operate a horse racetrack or satellite facility where pari-mutuel wagering is permitted.~~

"Retainage" means the total amount deducted from the pari-mutuel wagering pool for (i) a license fee to the commission and localities, (ii) the unlimited license, (iii) purse money for the participants, (iv) the Virginia Breeders Fund, and (v) certain enumerated organizations as required or permitted by law, regulation or contract approved by the commission.

"Secure personal identification code" means either a numeric or an alpha-numeric character code chosen by an account holder as a means by which the account wagering licensee may verify a wager or account transaction as authorized by the account holder.

~~"Source market fee" means the fee payable by the account wagering licensee pursuant to the terms and provisions of the contractual agreement among the prospective account wagering licensee, the racetrack licensee and the recognized majority horsemen's organizations.~~

"Source market fee area" means the Commonwealth of Virginia.

"Terms of agreement" means the agreement, approved by the commission, between an account wagering licensee and an account holder that includes but is not limited to the deposits, credits, debits, withdrawals and the opening and closing of accounts.

"Withdrawal" means a payment of money from an account by the account wagering licensee to the account holder when properly requested by the account holder.

"Withdrawal slip" means a form provided by the account wagering licensee for use by an account holder in withdrawing funds from an account.

**11VAC10-45-20. Authorization to conduct account wagering.**

A. No person shall conduct account wagering in the Commonwealth unless he has applied for and has been granted an account wagering license by the commission. No account wagering license shall be granted by the commission unless the applicant meets the criteria specified in § §§ 59.1-369 and 59.1-392.1 of the Code of Virginia and these regulations.

B. An account wagering license shall be valid for the calendar year in which it is issued.

C. An application shall include, on a form prescribed by the commission, the names, addresses and telephone numbers of all officers and directors. It shall solicit the same information for an account wagering license, to the extent relevant, as required for an unlimited license as specified in 11VAC10-20-30 (Applicant's affidavit), 11VAC10-20-40 (Disclosure of ownership and control), 11VAC10-20-50 (Disclosure of character information), and subdivision 1 of 11VAC10-20-80 (Disclosure of financial resources) of the commission's regulations with the following modifications:

1. The first paragraph of the applicant's affidavit shall state that the application is made for a license to conduct account wagering in the Commonwealth;
2. The applicant must disclose any agreements or understandings that the applicant or any individual or entity identified pursuant to 11VAC10-20-40 has entered into with a person or persons other than the applicant regarding ownership or operation of the applicant and must provide copies of any such agreements or understandings with the application; and
3. The disclosure of character information that is required by 11VAC10-20-50 must be made if the applicant, any individual or entity that owns a 5.0% or greater equity interest in the applicant, or any person or entity that will exercise any degree of management or control of the applicant has committed any of the acts or otherwise meets any of the criteria listed in 11VAC10-20-50. Nothing in this subsection shall require an applicant to include with its application copies of employment agreements unless requested by the commission.

D. As part of the application process, the license applicant also shall submit a detailed plan, including a detailed budget of the cost of implementation, of how its proposed account wagering system would operate including internal controls procedures. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent material changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

~~E. As part of the application process, the license applicant must provide a copy of the contractual agreement among the~~

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# Regulations

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~~prospective account wagering licensee, the racetrack licensee, and representatives of the recognized majority horsemen's organizations. Included in such agreement shall be the agreed upon terms between the racetrack licensee and the recognized majority horsemen's organizations that details the distribution of retainage generated by account wagering within the source market fee area for each breed after the license fee to the commission has been paid.~~

~~F. E.~~ The commission may conduct investigations or inspections or request additional information from the applicant for a license and its officers, directors, managers and equity holders, as applicable, holding 5.0% or more of the applicant's equity interest as it deems appropriate in determining if the applicant has the financial resources to conduct account wagering, and whether to allow the applicant to conduct account wagering.

~~G. F.~~ Before being granted its original account wagering license, and every six months thereafter, the account wagering licensee shall furnish the commission with proof that the account holders will be guaranteed the full value of their accounts regardless of the acts of the account wagering licensee or any other entity. If the proof offered to the commission is not acceptable to the commission, the commission may require the account wagering licensee to purchase a bond or other form of insurance guaranteeing that the account holders receive the full value of their accounts.

~~H. G.~~ An application to renew an account wagering license for each succeeding calendar year is due in the offices of the commission by 5 p.m. on December 1 on a form prescribed by the commission.

## **11VAC10-45-30. Operations by account wagering licensee.**

A. Before beginning operations in Virginia, the account wagering licensee must be qualified to do business in Virginia.

B. Any action that suspends or otherwise prohibits an account wagering licensee of the commission from operating in another state may be used as grounds for a suspension of its account wagering license in Virginia pursuant to § 59.1-385 C of the Code of Virginia.

C. All employees working on behalf of the account wagering licensee's account wagering center must either have a Virginia commission permit or be licensed, permitted or otherwise authorized by the state where the account wagering center is located.

~~D. Within 45 days following the end of each quarter, the account wagering licensee shall provide to the racetrack licensee a summary report detailing wagering processed through the account wagering system by Virginia residents wagering on both in state and out of state races and non-Virginia residents wagering on Virginia races. The reports shall be subject to review by the commission.~~

~~E. D.~~ Only individuals who have established accounts with an account wagering company licensed by the commission may wager through an account and that account must be with an account wagering company licensed in Virginia.

~~F. E.~~ Opening an account.

1. An account wagering licensee shall require from an applicant the following information including, but not limited to:

- a. Name;
- b. Principal residence address;
- c. Telephone number;
- d. Social security number;
- e. Age; and
- f. Other information necessary for the account administration.

2. The information obtained from the applicant shall be verified by the account wagering licensee using means acceptable to the commission.

~~G. F.~~ Administration of an account.

1. Each account holder's wagering account shall be administered in accordance with the terms of agreement, which have been approved by the commission, including but not limited to:

- a. Deposits;
- b. Credits to accounts;
- c. Debits to accounts;
- d. Withdrawals;
- e. Minimum deposit; and
- f. Fees, if any, per wager.

2. A person may not directly or indirectly act as an intermediary, transmitter or agent in the placing of wagers for an account holder. A person may not place a wager on behalf of an account holder. Only an account holder may place an account wager. Direct or indirect involvement as an intermediary, transmitter or agent in the placing of wagers includes a system, known as a transfer account or master account, whereby funds are deposited to one account from another account. This section does not prohibit use of credit or debit cards specifically approved by the account wagering center or the use of checks, money orders or negotiable orders of withdrawal.

3. An account wagering licensee shall maintain for at least one year all records of the opening and closing of accounts, wagers, earnings and withdrawals;

4. An account wagering licensee may close accounts for violation of its terms of agreement or other appropriate reasons;

5. An account wagering licensee may close wagering on any particular race or racetrack;

6. An account wagering licensee shall provide the account holder with appropriate identification materials and the terms of agreement; and

7. The principal residence address provided in writing by the account holder at the time of application is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder.

**11VAC10-45-40. Account wagering licensee requirements.**

A. An account wagering licensee shall conduct its operations with account holders in accordance with the terms of agreement, previously approved by the commission;

B. No employee or agent of the account wagering licensee shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the account wagering center except:

1. To the account holder as required by these rules;
2. To the commission;
3. To the account wagering licensee and its affiliates; and
4. ~~To the racetrack licensee as required by the agreement between the account wagering licensee and the racetrack licensee; and~~
5. ~~4.~~ As otherwise required by state or federal law.

C. All wagering conversations, transactions or other wagering communications through the account wagering system, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of such communications shall be kept by the account wagering center for a period of one year. These tapes and other records shall be made available to commissioners, employees and designees of the commission on request.

D. The recording of the confirmation of the transaction, as reflected in the voice or data recording records, shall be deemed to be the actual wager, regardless of what was recorded by the pari-mutuel system;

E. An account wagering licensee shall not accept wagers if its transcribing system is not operable;

F. An account wagering license shall be administered in accordance with its terms of licensure and the previously approved terms of agreement; and

G. The commission may review and monitor the equipment, staff and records of an account wagering licensee and any of the transactions conducted by the account wagering licensee in regards to wagers made by account holders.

**11VAC10-45-50. Fees.**

A. Application for account wagering license.

1. A nonrefundable application fee of \$5,000 must be submitted with the application.

2. The applicant will be billed and shall be responsible for any costs involved in the background checks and review of the application in excess of \$5,000.

B. Annual fees.

1. An annual fee of \$1,000 shall be payable to the commission on issuance of the original license and thereafter on or before January 1 of each year. The licensee will be billed and shall be responsible for any costs in excess of \$1,000 associated with the review of the annual renewal application.

2. ~~One-half~~ A license fee of one and one-half percent (0.5%) (1.5%) of the gross total handle from the source market area shall be payable to the commission on the tenth day of each month for the previous month.

~~C. Distribution for source market fees single racetrack licensee:~~

~~1. The account wagering licensee shall distribute source market fees, and host fees if applicable, to the racetrack licensee on the tenth of each month for the previous month.~~

~~2. The racetrack licensee shall distribute the horsemen's shares to the respective partners accounts within 48 hours after receipt from the account wagering licensee.~~

~~D. Distribution of source market fees more than one racetrack licensee. If more than one racetrack licensee operates in Virginia, then the source market fees shall be distributed as follows:~~

~~1. All source market fees derived from account wagers placed by account holders with a principal residence address located within a 50 mile radius (the "50 mile radius") of any track or satellite wagering facility operated by a racetrack licensee shall be distributed to each such licensee;~~

~~2. All source market fees derived from account wagers placed by account holders with a principal residence address located outside any 50 mile radius shall be shared among the racetrack licensees in proportion to each licensee's respective capital expenditures on such licensee's track and satellite wagering facilities in Virginia; and~~

~~3. If an overlap exists between two 50 mile radii, the racetrack licensee to first operate a track or satellite wagering facility in such area shall receive the source market fees from account wagers placed within the overlapping area.~~

VA.R. Doc. No. R15-4428; Filed July 17, 2015, 3:22 p.m.



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# Regulations

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## TITLE 12. HEALTH

### DEPARTMENT OF HEALTH

#### Withdrawal of Fast-Track Regulation

**Title of Regulation:** 12VAC5-371. Regulations for the Licensure of Nursing Facilities (adding 12VAC5-371-191).

**Statutory Authority:** §§ 32.1-12 and 32.1-127 of the Code of Virginia.

The Department of Health has withdrawn the above-referenced fast-track rulemaking action published in [31:22 VA.R. 2063-2065 June 29, 2015](#), so this regulation will not take effect on August 29, 2015. This action pertains to the implementation of electronic monitoring in nursing home resident rooms. Chapters 674 and 682 of the 2013 Acts of Assembly mandated that the department promulgate regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes to codify a 2007 Department of Health guideline developed to assist nursing facilities with the privacy intricacies related to installing electronic monitoring equipment. Subsequent to publication of the fast-track rulemaking action in the Virginia Register of Regulations, several stakeholder organizations stated to the department that certain provisions in the regulatory text go beyond the provisions of the 2007 guideline. The department agrees and plans to initiate a new fast-track rulemaking action that is more consistent with the provisions of the 2007 guideline.

**Agency Contact:** Susan Puglisi, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or email [susan.puglisi@vdh.virginia.gov](mailto:susan.puglisi@vdh.virginia.gov).

VA.R. Doc. No. R15-3575; Filed July 24, 2015, 11:03 a.m.

### BOARD OF MEDICAL ASSISTANCE SERVICES

#### Final Regulation

**Title of Regulation:** 12VAC30-120. Waivered Services (amending 12VAC30-120-1600, 12VAC30-120-1610).

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

**Effective Date:** September 9, 2015.

**Agency Contact:** Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

#### Summary:

*The amendments adopt the expanded definition of covered individuals and the use of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) that provides for the expanded definition of related dementias as required in the*

*legislative mandate in Item 301 TTTT of Chapter 665 of the 2015 Acts of Assembly.*

#### Part XVI Alzheimer's Waiver

#### 12VAC30-120-1600. Definitions.

The following words or terms when used in this regulation shall have the following meanings unless the content clearly indicates otherwise.

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining the appropriate level of care and service needs.

"Administrator" means the person who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admissions summary" means the Virginia Uniform Assessment Instrument and other relevant social, psychological, and medical information gathered by the assisted living facility staff for use in the development and updates of the individual service plan.

"Alzheimer's" means a diagnosis of Alzheimer's as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR) or Fifth Edition (DSM-5), published by the American Psychiatric Association.

"Alzheimer's Assisted Living Waiver" or "AAL Waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who have a diagnosis of Alzheimer's or a related dementia who meet nursing facility level of care.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq., as amended.

"Appeal" means the process used to challenge actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assisted living facility" means a congregate residential setting as defined in § 63.2-100 of the Code of Virginia.

"Auxiliary Grant Program" means a state and locally funded assistance program to supplement the income of an individual who receives Supplemental Security Income (SSI) or an adult who would be eligible for SSI except for excess income and who lives in a licensed assisted living facility with an approved rate.

"Barrier crime" means those crimes as defined in § 32.1-162.9:1 of the Code of Virginia.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Designated preauthorization or service contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services or service authorizations.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DSS" means the Virginia Department of Social Services.

"Enrolled provider" means an entity that is either licensed or certified by the appropriate state agency that also meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization/service authorizations contractor shall only give preauthorization/service authorization for medically necessary Medicaid-reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations and who (i) meets the eligibility criteria for residing in a safe, secure environment as described in 22VAC40-72-10; (ii) meets the eligibility criteria for the AAL Waiver; and (iii) resides in a safe, secure environment of an assisted living facility.

"Individual service plan" means the written individual plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while living in the assisted living facility.

"Legally authorized representative" means a person legally responsible for representing or standing in the place of an individual for the conduct of the individual's affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney, trustee, or other person expressly named by a court of competent jurisdiction or the individual as his agent in a legal document that specifies the scope of the

representative's authority to act. A legally authorized representative may only represent or stand in the place of the individual for the function or functions for which he has legal authority to act.

"Licensed health care professional" or "LHCP" means any health care professional currently licensed by the relevant health regulatory board of the Department of Health Professions of the Commonwealth who is practicing within the scope of his license.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission screening team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Related dementia" means a diagnosis of Dementia of the Alzheimer's Type as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR) or Fifth Edition (DSM-5), published by the American Psychiatric Association.

"Safe, secure environment" means a self-contained special care unit as defined in 22VAC40-72-10.

"Serious cognitive impairment" means a condition in which an individual cannot recognize danger or protect his own safety, as defined in 22VAC40-72-10, and who is also residing in a safe, secure environment as defined in 22VAC40-72-10.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by the Centers for Medicare and Medicaid Services identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Virginia Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the preadmission screening team, in a face-to-face meeting with the individual and legally authorized representative, as may be appropriate, which assesses an individual's physical health, mental health, and social and functional abilities to determine if the individual meets the level of care for certain publicly funded long-term care programs such as nursing facility services.

### **12VAC30-120-1610. Individual eligibility requirements.**

A. Waiver service population. The AAL Waiver shall be available through a § 1915(c) of the Social Security Act

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waiver to eligible aged and disabled Auxiliary Grant individuals who live in licensed assisted living facilities.

B. Eligibility criteria. To qualify for AAL Waiver services, individuals ~~must~~ shall meet all of the following criteria:

1. The waiver individual ~~must~~ shall be either:
  - a. Elderly as defined by § 1614 of the Social Security Act; or
  - b. Disabled as defined by § 1614 of the Social Security Act.
2. The waiver individual ~~must~~ shall meet the criteria for admission to a nursing facility as determined by a preadmission screening team using the full UAI.
3. The waiver individual ~~must~~ shall (i) have a diagnosis of either Alzheimer's or a related dementia as diagnosed by a licensed clinical psychologist or a licensed physician, or (ii) be a resident with a serious cognitive impairment, who resides in a safe, secure environment as defined in 22VAC40-72-10. The individual may not have a diagnosis of mental retardation/intellectual disability as defined by the American Association on Intellectual and Developmental Disabilities, or a serious mental illness as defined in 42 CFR 483.102(b).
4. The waiver individual ~~must~~ shall be receiving an Auxiliary Grant, and living in or seeking admission to a safe, secure unit of a DMAS-enrolled assisted living facility.

C. The waiver individual may not have a diagnosis of intellectual disability, as defined by the American Association on Intellectual and Developmental Disabilities, or a serious mental illness as defined in 42 CFR 483.102(b).

D. Assessment. Medicaid will not pay for any AAL Waiver services delivered prior to the date of the preadmission screening by the preadmission screening team and the physician signature on the Medicaid-Funded Long-Term Care Services Authorization Form (DMAS-96). Medicaid will not pay for any AAL Waiver services delivered prior to the individual's effective date of Medicaid eligibility and qualification for an Auxiliary Grant.

E. Enrollment. For the enrollment of all CMS-approved waiver slots, individuals will be reviewed on a first-come, first-served basis in accordance with available waiver funding. If there is ~~not a~~ no waiver slot available for an individual, the individual shall be placed on the waiting list. Individuals ~~must~~ shall meet all waiver eligibility criteria in order to be placed on the waiting list.

F. Preauthorization. Before a provider can bill DMAS for AAL Waiver services, preauthorization ~~must~~ shall be obtained from DMAS. Providers ~~must~~ shall submit all required information to the designated preauthorization contractor within 10 business days of initiating care. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the

date the provider initiated services but not preceding the date of the physician's signature on the Medicaid-Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to either the designated preauthorization contractor or DMAS within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the preadmission screening team physician's signature on the DMAS-96.

G. Review of the waiver individual's level of care. DMAS conducts this review based on the documentation submitted by the provider. The level of care assessments are performed to ensure that individuals receiving services in the waiver continue to meet the criteria for the waiver.

H. Termination of services. In the case of termination of AAL Waiver services by DMAS, waiver individuals shall be notified of their appeal rights pursuant to 12VAC30-110, Eligibility and Appeals. DMAS may terminate AAL Waiver services for any of the following reasons:

1. The AAL Waiver is no longer required to prevent or delay institutional placement;
2. The waiver individual is no longer eligible for Medicaid;
3. The waiver individual is no longer eligible to receive an ~~auxiliary grant~~ Auxiliary Grant;
4. The waiver individual no longer meets AAL Waiver criteria;
5. The waiver individual has been absent from, or has not received services from, the assisted living facility for more than 30 consecutive days;
6. The waiver individual's environment does not provide for his health, safety, and welfare; or
7. The assisted living facility no longer meets safe and secure licensing standards set by DSS or standards set by DMAS for service providers.

## DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-120)

Intellectual Disability: Definition, Classification, and Systems of Supports, 11th edition, 2010, American Association on Intellectual and Developmental Disabilities, 501 3rd Street, NW, Suite 200, Washington, DC 20001-2760; <http://www.aaid.org/intellectualdisabilitybook/>

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), 2000, American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209

[Diagnostic and Statistical Manual of Mental Disorders \(DSM-5®\), Fifth Edition, copyright 2013, American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209, <http://www.psychiatry.org/dsm5>](#)

Underwriter's Laboratories Safety Standard 1635, Standard for Digital Alarm Communicator System Units, Third

Edition, January 31, 1996, with revisions through August 15, 2005

Underwriter's Laboratories Safety Standard 1637, Standard for Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006

[MR/ID Waiver Slot Assignment Process, August 20, 2010, Department of Behavioral Health and Developmental Services](#)

Virginia Medicaid Provider Manual

[Chapter I: General Information \(rev. 12/1/2011\)](#)

[Chapter II: Provider Participation Requirements \(rev. 2/8/2012\)](#)

[Chapter III: Recipient Eligibility \(rev. 12/1/2011\)](#)

[Chapter IV: Covered Services and Limitations \(rev. 7/14/2010\)](#)

[Chapter V: Billing Instructions \(rev. 1/26/2011\)](#)

[Chapter VI: Quality Management Review \(rev. 7/14/2010\)](#)

[Chapter VII: Day Support Waiver \(rev. 7/14/2010\)](#)

VA.R. Doc. No. R15-4309; Filed July 10, 2015, 4:02 p.m.

**TITLE 16. LABOR AND EMPLOYMENT**

**SAFETY AND HEALTH CODES BOARD**

**Final Regulation**

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

**Title of Regulation:** **16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (amending 16VAC25-85-1904.2, 16VAC25-85-1904.39).**

**Statutory Authority:** §§ 40.1-6 and 40.1-22 of the Code of Virginia.

**Effective Date:** September 15, 2015.

**Agency Contact:** John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email [crisanti.john@dol.gov](mailto:crisanti.john@dol.gov).

**Summary:**

*In a revised final rule, federal Occupational Safety & Health Administration (OSHA) made revisions to the reporting and*

*recording requirements in 29 CFR 1904. In 1904.2, the nonmandatory Appendix A to Subpart B updated the list of partially exempted industries to use a list classified by the North American Industry Classification System (NAICS). In 1904.39 the following amendments are made to reportable work-related injuries and illness events: (i) reporting of fatalities resulting from a work-related incident are limited to those occurring within 30 days of the incident; (ii) every in-patient hospitalization (instead of a minimum of three) within eight hours of the hospitalization requires reporting; and (iii) each amputation and loss of an eye resulting from a work-related incident requires reporting within eight hours of the incident. Additional changes include (i) an added method of reporting; (ii) allowing that if the employer does not immediately learn of an incident, the employer is required to report within eight hours of the incident being reported to the employer; and (iii) definitions for "in-patient hospitalization" and "amputation" are added.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On July 9, 2015, the Safety and Health Codes Board adopted federal OSHA's revised final rule for Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions, as published in 79 FR 56186 through 79 FR 56188 on September 18, 2014, with an effective date of January 1, 2015.

**Federal Terms and State Equivalents:** When the regulations as set forth in the amendment to Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
OSHA	VOSH
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Area Office	Regional Office
Agency	Department
January 1, 2015	September 15, 2015

VA.R. Doc. No. R15-4458; Filed July 17, 2015, 11:49 a.m.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### COMMON INTEREST COMMUNITY BOARD

#### Fast-Track Regulation

**Title of Regulation:** 18VAC48-40. Time-Share Regulations (amending 18VAC48-40-20, 18VAC48-40-40; adding 18VAC48-40-25, 18VAC48-40-120 through 18VAC48-40-160).

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

**Public Hearing Information:** No public hearing is scheduled.

**Public Comment Deadline:** September 9, 2015.

**Effective Date:** October 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.

**Basis:** Section 55-396 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 Virginia Real Estate Time-Share Act, Chapter 21 (§ 55-360 et seq.) of Title 55 of the Code of Virginia. Section 55-394.5 of the Code of Virginia states the registration requirements for time-share alternative purchases.

**Purpose:** An amendment to the Time-Share Regulations is necessary as a result of changes to the Virginia Real Estate Time-Share Act pursuant to Chapter 623 of the 2014 Virginia Acts of Assembly. The changes to the Time-Share Act include alternative purchase registration requirements, therefore, regulation amendment is necessary to incorporate and reflect the statutory changes and ensure full and accurate disclosure to potential and actual purchasers of alternative purchases, all to better protect the health, safety, and welfare of citizens of the Commonwealth.

**Rationale for Using Fast-Track Process:** The fast-track rulemaking process is being used because this amendment is a result of a statutory change. The need for a statutory change was identified during general review of the Time-Share Regulations. During that review, it was determined that the statutory requirements to register alternative purchases included the same items required of time-share project registration such as escrow bonds for deposits and lengthy disclosure statements, which would be onerous and overly burdensome for the developer. The committee involved in conducting the general review of the Time-Share Regulations included consumers, time-share developers, representation from time-share industry organizations, the American Resort Development Association (ARDA), and the Virginia Resort Development Association (VRDA). ARDA and VRDA assisted in the general review and sought the statutory change

to the alternative purchase registration requirements because the statutory provisions were overly and unnecessarily burdensome to developers, and such requirements did not serve to increase protection to the public.

This amendment should not be controversial as it is more detrimental to protection of the public (including developers) by not having the process formalized in regulation in a manner that can be clearly understood by the affected parties. In order to be consistent with current industry and common interest community processes, the regulations for alternative purchase registration require a disclosure statement and yearly renewal through an annual report process. Annual reports are submitted currently by time-share projects, exchange programs, condominium project registrations, and community association registrations.

**Substance:** This amendment includes procedures for alternative purchase application for registration such as the filing must be in a form prescribed by the board's regulations and shall include a general description of the types of alternatives purchases; a copy of the terms and conditions applicable to the alternative purchase; the name, address, and contact information of the developer offering the alternative purchases; and such additional information as required by the board. The amendments also incorporate a fee for filing a time-share alternative purchase registration application and annual report and a directive that any material change to the standard terms and conditions applicable to an alternative purchase shall be filed with the board within 30 days.

**Issues:** The primary advantage to the Commonwealth and public is that the revisions will ensure consistency with current legal requirements and ensure full and accurate disclosure to potential and actual purchasers of alternative purchases, all to better protect the health, safety, and welfare of citizens of the Commonwealth. No disadvantages to the public or the Commonwealth could be identified.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 623 of the 2014 Virginia Acts of Assembly, the Common Interest Community Board (Board) proposes to establish alternative purchase registration procedures.

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

**Estimated Economic Impact.** Virginia Code § 55-362 defines alternative purchase as:

... anything valued in excess of \$100 which is offered to a potential purchaser by the developer during the developer's sales presentation and which is 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. A membership camping contract as defined in § 59.1-313 is not an

alternative purchase. An alternative purchase shall be registered with the Board unless it is otherwise registered as a travel service under the Virginia Travel Club Act (§ 59.1-445 et seq.), and shall include, without limitation, vacation packages (howsoever denominated) and exit programs (howsoever denominated).

Currently, alternative purchases are registered through the time-share registration process. Alternative purchases are typically much less complex and have significantly lower dollar values compared to time-shares.<sup>1</sup> The proposed alternative purchase registration process will be less costly than the current process whereby alternative purchases are registered via the time-share process.

The proposed fees for the alternative purchase registration are substantially lower than the time-share registration fee: 1) \$100 rather than \$1,500 for initial application and registration, and 2) \$100 rather than \$500 for annual renewal. There are substantially fewer requirements for the alternative purchase public offering statement versus the time-share offering statement. Thus under the proposed alternative purchase registration process less staff time would be required in preparation of offering statements.

For time-share registration, Virginia Code § 55-386 requires that "The developer shall file with the Board a payment and performance bond in the sum equal to 100 percent of the estimated cost of completing all promised and incomplete units and common elements comprising the time-share project described in the time-share instrument and the public offering statement." The proposed alternative purchase registration does not require a bond. Given the lower values and nature of alternative purchases, the Board does not believe a bond is necessary for alternative purchases.

Registration for alternative purchases has value in that the public offering disclosure statements help inform consumers and help the Board and Department monitor the industry. The proposed alternative purchase registration will substantially lower costs for developers while maintaining some consumer protection. Thus the proposed amendments likely produce a net benefit.

**Businesses and Entities Affected.** The approximate 100 time-share projects and related developers are affected by the proposed amendments.<sup>2</sup>

**Localities Particularly Affected.** The proposed amendments apply throughout the Commonwealth. Time-shares and thus alternative purchases are more common in areas frequented for vacations.

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

**Effects on the Use and Value of Private Property.** In that the proposed establishment of alternative purchase registration procedures will lower the cost of offering alternative purchases, developers may be induced to offer more alternative purchases than under the status quo.

**Small Businesses: Costs and Other Effects.** The proposed alternative purchase registration will moderately reduce costs for small developers who choose to offer alternative purchases.

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

**Real Estate Development Costs.** The proposed amendments will moderately reduce costs for real estate developers offering alternative purchases associated with time-shares.

**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>Source: Department of Professional and Occupational Regulation

<sup>2</sup>Data source: Department of Professional and Occupational Regulation

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

Summary:

*The amendments incorporate alternative purchase registration procedures to the Time-Share Regulations (18VAC48-40) as a result of changes to the Virginia Real Estate Time-Share Act pursuant to Chapter 623 of the 2014 Acts of Assembly, including (i) procedures for alternative purchase application for registration; (ii) a fee for filing a time-share alternative purchase registration application and an annual report; and (iii) a directive that any material change to the standard terms and conditions applicable to an alternative purchase shall be filed with the board within 30 days.*

**18VAC48-40-20. Application for registration of time-share projects and programs.**

Application for registration of time-share projects and programs shall be filed with the board on an application form furnished by the board and shall contain all of the documents and information required by § 55-391.1 of the Code of Virginia.

**18VAC48-40-25. Application for registration of alternative purchase.**

Application for registration of alternative purchase shall be filed with the board on an application form furnished by the board and shall contain all of the documents and information required by § 55-394.5 of the Code of Virginia.

**18VAC48-40-40. Filing fees.**

1. The filing fee for an original application for registration of a time-share project shall be \$1,500.
2. The filing fee for an amendment to the application for registration adding a phase or phases to the time-share project shall be \$250.
3. The filing fee for ~~the~~ a time-share registration annual report filed by the developer shall be \$500.
4. The filing fee for an original application for registration of an exchange company shall be \$1,000. The filing fee for the annual report of an exchange company shall be \$250.
5. There shall be no fee for filing an amended public offering statement with the board.
6. The filing fee for an application for registration of an alternative purchase shall be \$100.
7. The filing fee for an alternative purchase registration annual report shall be \$100.

**18VAC48-40-120. Registration of alternative purchase required.**

As required by § 55-394.5 of the Code of Virginia, a time-share developer shall register as an alternative purchase as defined in § 55-362 of the Code of Virginia.

**18VAC48-40-130. 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. The registration period of the alternative purchase shall expire the last day of the month one year from the date of issuance.

**18VAC48-40-140. 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 18VAC48-40-40.

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 alternative purchase.

C. 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.

**18VAC48-40-150. 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. 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.

**18VAC48-40-160. Reporting of changes to the alternative purchase.**

In accordance with § 55-394.5 B of the Code of Virginia, any material change made or known by the developer that may affect the accuracy or completeness of the alternative purchase registration file shall be filed with the board within 30 days of the effective date of the change. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia) and 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 (18VAC48-40)**

~~Time-Share Registration Application, TSREG (eff. 9/08).~~

~~Exchange Company Registration Application, EXCOREG (eff. 9/08).~~

[Time-Share Annual Report, A492-0515ANRPT-v3 \(eff. 6/15\)](#)

[Time-Share Bond/Letter of Credit Verification Form, A492-0515BOND-v1 \(eff. 9/13\)](#)

[Time-Share Registration Application, A492-0515REG-v1 \(eff. 9/13\)](#)

[Time-Share Building Status Form, A492-0515BLDST-v1 \(eff. 9/13\)](#)

[Time-Share Amendment Application, A492-0515AMEND-v1 \(eff. 9/13\)](#)

[Time-Share Exchange Company Registration Application, A492-0516REG-v1 \(eff. 9/13\)](#)

[Time-Share Exchange Company Annual Report, A492-0516ANRPT-v1 \(eff. 9/13\)](#)

[Alternative Purchase Registration Application, A492-05ALTPURREG-v1 \(eff. 10/15\)](#)

[Alternative Purchase Annual Report, A492-05ALTPURANRPT-v1 \(eff. 10/15\)](#)

VA.R. Doc. No. R15-4212; Filed July 9, 2015, 11:14 a.m.

**BOARD FOR CONTRACTORS**

**Proposed Regulation**

**Title of Regulation:** **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30).**

**Statutory Authority:** §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

**Public Hearing Information:**

September 9, 2015 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Training Room 2, Richmond, Virginia 23233

**Public Comment Deadline:** October 9, 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).

**Basis:** Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth.

**Purpose:** The board seeks to amend the current regulations to correct commercial improvement contracting and radon mitigation contracting and to add specialties for drywall contracting; finish carpentry contracting; flooring and floor covering contracting; glass and glazing contracting; insulation and weather stripping contracting; steel erection contracting; tile, marble, ceramic, and terrazzo contracting; and underground utility and excavating contracting.

The amendments to the definitions will serve multiple purposes related to the health, safety, and welfare of the public by making sure the regulations clearly define the scope of practice allowed for each specialty classification, ensuring that only those contractors who are qualified will complete specific contracting work.

**Substance:** 18VAC50-22-30 of the Board for Contractors Regulations defines the scope of practice allowed for each specialty. The proposed amendments add specific specialties that are currently under a more general specialty in order that contractors who perform those specific specialties are not required to complete an examination in areas in which they do not perform work. The proposed amendments would also clarify the definitions of these specialties to reflect changes in the industry and the Virginia Uniform Statewide Building Code, if applicable.

**Issues:** In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, clarify existing requirements, essentially providing an advantage to certain contractors by allowing them to complete work they are qualified to complete and trained to perform without the added burden of obtaining additional licenses or interpretations from the board.

The proposed amendments are advantageous to the agency by decreasing the amount of contact time required with the current regulant population and potential applicants who often require technical assistance in understanding the current regulatory requirements. Reallocating the time currently spent on providing technical assistance and explanations regarding

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the examination requirements to actually processing applications will result in a reduction in the processing time, subsequently reducing the current waiting time experienced by all applicants. Currently the board's staff spends a considerable amount of time processing applications and providing guidance to both the regulant population and the general public in those areas impacted by these proposed amendments.

The proposed amendment of the definitions provides needed clarification to the building officials of the various localities throughout the Commonwealth who are tasked with issuing permits to those contractors who are appropriately licensed. Permitting staff at localities utilize the definitions of the scope of practice to determine if the work being listed on the application for a building permit falls into the classification or specialty shown on the license of the contractor applying for the permit.

There are no disadvantages to the public or the Commonwealth anticipated by the promulgation of these amendments.

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

**Summary of the Proposed Amendments to Regulation.** The Board for Contractors (Board) proposes to amend its regulation to carve out eight discrete specialties that are currently part of larger specialties so that licensees and applicants for licensure can choose to just test for and obtain these narrower certifications if they do not intend their practice to be broader.

**Result of Analysis.** Benefits likely outweigh costs for all proposed changes.

**Estimated Economic Impact.** Current Board regulation contains umbrella contractor specialty licenses that cover many different types of contracting skills. For instance, the Board's home improvement specialty covers multiple skill sets used to repair or improve one or two family residential buildings or structures annexed to real property; this includes putting up dry wall, laying tile or other flooring, installing cabinets, etc. Some individuals interested in becoming contractors do not want to do all of the jobs that fall under the home improvement specialty and may have no experience with some of the skills covered. This puts these individuals at a disadvantage when they have to take the home improvement specialty examination because they may not have the knowledge to pass all parts of that exam that may only have a few questions on the particular skills that they will use once licensed. Board staff reports that some individuals actually take the exam knowing they will likely fail just so that they can get a feel for what they need to study outside their areas of expertise. To address this issue, the Board is proposing to divide eight of these skill sets<sup>1</sup> into their own distinct specialties, while at the same time continuing these specific skills as part of the applicable umbrella specialty. Since the wider umbrella specialties will still be available for

individuals who wish to be licensed to offer a wider group of services, no entity is likely to incur costs on account of these changes. Individuals who wish to specialize more narrowly will greatly benefit from being able to choose to be tested only on the services they intend to offer. This will likely save all of these individuals time as they will not have to study to answer questions about jobs they never intend to do. Some individuals will also be saved the costs (both in time and fees) of retaking the broader specialty exam.

**Businesses and Entities Affected.** This proposed regulation will affect all individuals who apply for contract licensure in the new specialties after this proposed regulation becomes effective. Board staff reports that the Board receives approximately 5,875 applications for licensure a year but estimates that only about 1,000 of those applicants could possibly choose the new, narrower specialties.

**Localities Particularly Affected.** No localities will likely be disproportionately affected by this proposed regulatory change.

**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 impact on the use or value of private property.

**Small Businesses: Costs and Other Effects.** No small businesses are likely to incur costs on account of this proposed regulation.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small businesses are likely to incur costs on account of this proposed regulation.

**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.

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<sup>1</sup>Drywall contracting, finish carpentry contracting, flooring and floor covering contracting, glass and glazing contracting, insulation and weather stripping contracting, steel erection contracting, tile, marble, ceramic and terrazzo contracting and underground utility and excavation contracting.

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

**Summary:**

*The proposed amendments (i) adjust the definitions of two contracting specialties and (ii) add eight categories of contracting specialties to the list of specialties with defined scopes.*

**18VAC50-22-30. Definitions of specialty services.**

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:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting – LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts,

dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation of asphalt paving or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and BLD are the only other classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to nonresidential property and multifamily property as defined in the Virginia Uniform Statewide Building Code. The BLD classification also provides for this function. The CIC ~~classification~~ specialty does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing,

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coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also included. The BLD and H/H classifications also provide for this function.

"Drywall contracting" (Abbr: DRY) means the service that provides for the installation, taping, and finishing of drywall, panels and assemblies of gypsum wallboard, sheathing, and cementitious board and the installation of studs made of sheet metal for the framing of ceilings and nonstructural partitioning. The BLD classification and HIC and CIC specialties also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery including but not limited to conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The BLD classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Finish carpentry contracting" (Abbr: FIN) means the service that provides for the installation, repair, and finishing of cabinets, sash casing, door casing, wooden flooring, baseboards, countertops, and other millwork. Finish carpentry does not include the installation of ceramic tile, marble, and artificial or cultured stone. The BLD classification and HIC and CIC specialties also provide for this function.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems which operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement, or removal of fire suppression systems including but not limited to halon and other gas systems; dry chemical systems; and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Flooring and floor covering contracting" (Abbr: FLR) means the service that provides for the installation, repair, improvement, or removal of materials that are common in the flooring industry. This includes, but is not limited to, wood and wood composite flooring, tack strips or other products used to secure carpet, vinyl and linoleum, ceramic, marble, stone, and all other types of tile, and includes the installation or replacement of subflooring, leveling products, or other materials necessary to facilitate the installation of the flooring or floor covering. This does not include the installation, repair, or removal of floor joists or other structural components of the flooring system. The BLD classification and HIC and CIC specialties also provide for this function.

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Glass and glazing contracting" (Abbr: GLZ) means the service that provides for the installation, assembly, repair, improvement, or removal of all makes and kinds of glass, glass work, mirrored glass, and glass substitute for glazing; executes the fabrication and glazing of frames, panels, sashes and doors; or installs these items in any structure. This specialty includes the installation of standard methods of weatherproofing, caulking, glazing, sealants, and adhesives. The BLD classification and HIC and CIC specialties also provide for this function.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The BLD classification also provides for this function.

"Insulation and weather stripping contracting" (Abbr: INS) means the service that provides for the installation, repair, improvement, or removal of materials classified as insulating media used for the sole purpose of temperature control or sound control of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping. The BLD classification and the HIC and CIC specialties also provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or

placement of landscaping timbers. This specialty may remove stumps and roots below grade. The BLD and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The BLD and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging and cleaning and welding of reinforcement steel related to masonry construction. The BLD classification and HIC and CIC specialties also provide for this function.

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires an HVA or

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PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The BLD classification and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. ~~This function can only be performed by a firm holding the BLD classification or CIC (for other than one family and two family dwellings), FIC (for nonresidential farm buildings) or HIC (for one family and two family dwellings) specialty services.~~ No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The BLD classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVAC classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The BLD classification and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other on-site sewage disposal systems annexed to real property.

"Steel erection contracting" (Abbr: STL) means the service that provides for the fabrication and erection of structural steel shapes and plates, regardless of shape or size, to be used as structural members, or tanks, including any related riveting, welding, and rigging. This specialty includes the fabrication, placement and tying of steel reinforcing bars (rods), and post-tensioning to reinforce concrete buildings and structures. The BLD and H/H classifications also provide for this function.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement or removal of in-ground swimming pools. The BLD classification and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow or HVAC work is included in this specialty.

"Tile, marble, ceramic, and terrazzo contracting" (Abbr: TMC) means the service that provides for the preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, terrazzo, encaustic, falence, quarry, semi-vitreous, cementitious board, and other tile, excluding hollow or structural partition tile. The BLD classification and the HIC and CIC specialties also provide for this function.

"Underground utility and excavating contracting" (Abbr: UUC) means the service that provides for the construction, repair, improvement, or removal on public or private property whether accomplished through open excavations or through other means, including but not limited to directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line, or residential or single-occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extend to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. This specialty may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings if each conduit system installed is designed by a professional engineer or an authorized employee of a municipality, county, or public utility and the installation of such conduit does not include installation of any conductor wiring or connection to an energized electrical system. The H/H classification also provides for this function.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude PLB, ELE or HVAC from installation of pumps and tanks.

Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC ~~and/or~~ and FIC specialty services, or they may fall under the BLD classification.

Appliances	Fireplaces	Rubber linings
Awnings	Fireproofing	Sandblasting
Blinds	Fixtures	Scaffolding
Bulkheads	<del>Floor coverings</del>	Screens
<del>Cabinetry</del>	Flooring	Sheet metal
Carpentry	Floors	Shutters
Carpeting	Glass	Siding
<del>Casework</del>	Glazing	Skylights
Ceilings	Grouting	Storage bins and lockers
Chimneys	Grubbing	Stucco
Chutes	Guttering	Temperature controls
Conduit rodding	<del>Insulation</del>	<del>Terrazzo</del>
Curtains	Interior decorating	Tile
Curtain walls	Lubrication	Vaults
Decks	Metal work	<del>Vinyl flooring</del>
Doors	Millwrighting	Wall panels
Drapes	Mirrors	<del>Wall tile</del>
<del>Drywall</del>	Miscellaneous iron	Waterproofing
Epoxy	Ornamental iron	<del>Weatherstripping</del>
Exterior decoration	Partitions	<del>Welding</del>
Facings	Protective coatings	Windows

Fences                      Railings                      ~~Wood floors~~  
 Fiberglass                  ~~Rigging~~

**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 (18VAC50-22)

- [Contractor Licensing Information, A503-27INTRO v-3 \(rev. 12/12\)](#)
- ~~Requirements for Qualified Individuals, A501-27EXINFO-v2 (rev. 12/12)~~
- ~~Contractor's License Application, A501-27LIC v5 (rev. 12/12)~~
- ~~Expedited Class A License Application, A503-2705A\_ELIC v5 (rev. 12/12)~~
- ~~Additional Specialty Designation Application, A503-27ADDSP v5 (rev. 12/12)~~
- ~~Change in Qualified Individual and Designated Employee Application, A501-27CH\_QIDE v5 (rev. 7/13)~~
- [Requirements for Qualified Individuals, A501-27EXINFO-v5 \(rev. 1/16\)](#)
- [Contractor's License Application, A501-27LIC-v7 \(rev. 1/16\)](#)
- [Additional Specialty Designation Application, A501-27ADDSP-v7 \(rev. 1/16\)](#)
- [Change in Qualified Individual and Designated Employee Application, A501-27CH\\_QIDE-v7 \(rev. 1/16\)](#)
- [Change of Responsible Management Application, A501-27CHRM-v4 \(rev. 12/12\)](#)
- [Certificate of License Termination, A501-27TERM-v3 \(rev. 12/12\)](#)
- [Education Provider Registration/Course Approval Application, A501-27EDREG-v5 \(rev. 12/12\)](#)
- [Education Provider Listing Application, A501-27EDLIST-v3 \(rev. 12/12\)](#)
- [Financial Statement, A501-27FINST-v4 \(rev. 12/12\)](#)
- ~~Change in License Class Application, A501-27CHLIC v5 (rev. 12/12)~~
- [Change in License Class Application, A501-27CHLIC-v7 \(rev. 1/16\)](#)
- [Firm – Residential Building Energy Analyst Application, A501-2707LIC-v2 \(rev. 7/13\)](#)
- [Statement of Consumer Protections \(RBC-9.1\)](#)

# Regulations

## [Contractor's Temporary License Application, A501-2703LIC-v2 \(rev. 1/16\)](#)

VA.R. Doc. No. R14-4047; Filed July 14, 2015, 9:57 a.m.

### Forms

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

### **Title of Regulation: 18VAC50-22. Board for Contractors Regulations.**

**Contact Information:** Mindy Spruill, Regulatory Boards Administrator, Board for Contractors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-7226, FAX (866) 430-1033, or email [mindy.spruill@dpor.virginia.gov](mailto:mindy.spruill@dpor.virginia.gov).

#### FORMS (18VAC50-22)

[Contractor Licensing Information, A503-27INTRO v-3 \(rev. 12/12\)](#)

[Requirements for Qualified Individuals, A501-27EXINFO-v2 \(rev. 12/12\)](#)

[Contractor's License Application, A501-27LIC-v5 \(rev. 12/12\)](#)

[Expedited Class A License Application, A503-2705A\\_ELIC-v5 \(rev. 12/12\)](#)

[Additional Specialty Designation Application, A503-27ADDSP-v5 \(rev. 12/12\)](#)

[Change in Qualified Individual and Designated Employee Application, A501-27CH\\_QIDE-v5 \(rev. 7/13\)](#)

[Change of Responsible Management Application, A501-27CHRM-v4 \(rev. 12/12\)](#)

[Certificate of License Termination, A501-27TERM-v3 \(rev. 12/12\)](#)

[Education Provider Registration/Course Approval Application, A501-27EDREG-v5 \(rev. 12/12\)](#)

[Education Provider Listing Application, A501-27EDLIST-v3 \(rev. 12/12\)](#)

[Financial Statement, A501-27FINST-v4 \(rev. 12/12\)](#)

[Change in License Class Application, A501-27CHLIC-v5 \(rev. 12/12\)](#)

[Firm – Residential Building Energy Analyst Application, A501-2707LIC-v2 \(rev. 7/13\)](#)

~~[Statement of Consumer Protections \(RBC 9.1\)](#)~~

[Statement of Consumer Protections, RBC-9.1 \(rev. 12/14\)](#)

VA.R. Doc. No. R15-4456; Filed July 9, 2015, 4:05 p.m.

## BOARD OF VETERINARY MEDICINE

### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Veterinary Medicine 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 Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Veterinary Medicine will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

### **Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-100).**

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

**Effective Date:** September 9, 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).

#### **Summary:**

*The amendment reduces the reinstatement fee for veterinary establishments from \$350 to \$75.*

#### **18VAC150-20-100. Fees.**

The following fees shall be in effect:

Veterinary application for licensure	\$200
Veterinary license renewal (active)	\$175
Veterinary license renewal (inactive)	\$85
Veterinary reinstatement of expired license	\$255
Veterinary license late renewal	\$60
Veterinarian reinstatement after disciplinary action	\$450
Veterinary technician application for licensure	\$65
Veterinary technician license renewal	\$50
Veterinary technician license renewal (inactive)	\$25
Veterinary technician license late renewal	\$20
Veterinary technician reinstatement of expired license	\$95
Veterinary technician reinstatement after disciplinary action	\$125
Equine dental technician initial registration	\$100
Equine dental technician registration renewal	\$70
Equine dental technician late renewal	\$25
Equine dental technician reinstatement	\$120

Initial veterinary establishment permit registration	\$300
Veterinary establishment renewal	\$200
Veterinary establishment late renewal	\$75
Veterinary establishment reinstatement	<del>\$350</del> \$75
Veterinary establishment reinspection	\$300
Veterinary establishment -- change of location	\$300
Veterinary establishment -- change of veterinarian-in-charge	\$40
Duplicate license	\$15
Duplicate wall certificate	\$25
Returned check	\$35
Licensure verification to another jurisdiction	\$25

VA.R. Doc. No. R15-4461; Filed July 17, 2015, 11:22 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 18VAC160-20-10, 18VAC160-20-97).**

**Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.**

**Effective Date: October 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.**

**Summary:**

*The amendments change the definitions of "direct supervisor" and "direct supervision," allowing licensees to supervise the work of unlicensed individuals who are not seeking licensure. Also, the requirements for applicants for an individual sewage system installer license are modified to reflect current industry procedures consistent with the Virginia Department of Health. The amendments also change the experience requirement for the individual sewage system installer license to allow an individual's installation experience to fulfill the requirement for licensure as long as the applicant's firm is properly licensed as a Virginia contractor with the specialty of sewage disposal systems at the time he applies for the installer license.*

**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  
Definitions

**18VAC160-20-10. Definitions.**

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

"Alternative onsite sewage system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Alternative onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional and alternative onsite sewage systems.

"Alternative onsite sewage system operator" means an individual licensed by the board to operate and maintain conventional and alternative onsite sewage systems.

"Alternative onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effect of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional and alternative onsite sewage systems suitable for the soils.

"Authorized onsite soil evaluator" or "AOSE" means an individual holding an authorized onsite soil evaluator certification issued by the Virginia Department of Health that was valid on June 30, 2009.

"Board" means the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals or any successor agency.

"Category" means waterworks operator, wastewater works operator, onsite soil evaluator, onsite sewage system installer, and onsite sewage system operator.

"Classification" means the divisions within each category of waterworks and wastewater works operators' licenses into classes where Class "1" represents the highest classification.

"Classified facility" means a waterworks that has been granted a classification by the Virginia Department of Health or a wastewater works that has been granted a classification by the Virginia Department of Environmental Quality.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Continuing Professional Education (CPE)" means participation in a structured training activity that enables a licensee to maintain and increase the competence required to assure the public's protection.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity,

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pumped, or siphoned conveyance to a gravity distributed subsurface drain field.

"Conventional onsite sewage system installer" means an individual licensed to construct, install, and repair conventional onsite sewage systems.

"Conventional onsite sewage system operator" means an individual licensed by the board to operate and maintain a conventional onsite sewage system.

"Conventional onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional onsite sewage systems suitable for the soils.

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

"Direct supervision" means being responsible for the compliance with this chapter by any unlicensed individual who, ~~for the purpose of obtaining the necessary competence to qualify for licensure,~~ is engaged in activities requiring an operator, installer, or evaluator license.

"Direct supervisor" means a licensed operator, installer, or evaluator who undertakes the supervision of an unlicensed individual engaged in activities requiring a license ~~for the purpose of obtaining the competence necessary to qualify for licensure and who.~~ The direct supervisor shall be responsible for the unlicensed individual's full compliance with this chapter.

"Distance learning" means participation in a training activity, with or without interaction with an instructor, that utilizes [ ~~DVD's~~ DVDs ], videos, or other audio/visual materials, or is computer-based. Documentation of distance learning must meet the requirements of 18VAC160-20-109 D.

"Experience" means time spent learning how to physically and theoretically operate the waterworks, wastewater works, or onsite sewage system as an operator-in-training or time spent operating a waterworks or wastewater works for which the operator is currently licensed for the purpose of obtaining the necessary competence to qualify for a specific license. Experience also means the time spent under the direct supervision of an authorized onsite soil evaluator, onsite soil evaluator licensee, onsite sewage system installer licensee or onsite site sewage system operator licensee for the purpose of obtaining the necessary competence to qualify for a specific license.

"Interim license" means a method of regulation whereby the board authorizes an unlicensed individual to engage in activities requiring a specific license provided for in this

chapter for a limited time to obtain the necessary competence to qualify for that specific license.

"Interim licensee" means an individual holding a valid interim license.

"Licensed operator" means an operator with a license in the category of onsite sewage systems operator, waterworks operator, or wastewater works operator. For waterworks operators and wastewater works operators, the license classification must be equal to or higher than the classification of the waterworks or wastewater works being operated.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Maintenance" or "maintain" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drain field piping, distribution boxes, or work requiring a construction permit and a licensed onsite sewage system installer.

"Nonclassified facility" means a facility located in Virginia that has not been classified by the Virginia Department of Health or a facility that has not been classified by the Virginia Department of Environmental Quality.

"Onsite sewage system" means a conventional onsite sewage system or an alternative onsite sewage system.

"Operate" means any act of an individual that may impact on the finished water quality at a waterworks, the plant effluent at a wastewater works, or the effluent at an onsite sewage system.

"Operating staff" means individuals employed or appointed by an owner to work at a waterworks or wastewater works.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks, wastewater works operations, or to operate onsite sewage systems. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Operator-in-training" means an individual employed by an owner to work under the direct supervision and direction of an operator holding a valid license in the proper category and classification for the purpose of gaining experience and

knowledge in the duties and responsibilities of an operator of a waterworks, wastewater works, or onsite sewage system. An operator-in-training is not an operator.

"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, or any other entity organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, propose to own, manage, or maintain waterworks, wastewater works, or onsite sewage systems.

"Provisional licensee" means an individual holding a valid provisional license issued by the board.

"Provisional licensure" or "provisional license" means a method of regulation whereby the Commonwealth recognizes an individual as having met specific standards but who is not authorized to operate a classified facility until he has met the remaining requirements for licensure and has been issued a license.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Responsible charge" means the designation by the owner of any individual to have the duty and the authority to operate a waterworks, wastewater works, or onsite sewage system.

"Sewage" means water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes separately or together with such underground, surface, storm or other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewage handler" means any person who removes or contracts to remove and transports by vehicle the contents of any septic tank, sewage treatment plant, privy, holding tank, portable toilet, or other treatment or holding device, or any sewage, septage or sewage sludges and who is permitted under the Sewage Handling and Disposal Regulations (12VAC5-610) or successor regulation.

"Sewerage system" means pipelines or conduits, pumping stations and force mains, and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal, as defined in the Sewage Handling and Disposal Regulations (12VAC5-610).

"Structured training activity" means a formal educational process designed to permit a participant to learn a given subject or subjects through interaction with an instructor in a course, seminar, conference, or other performance-oriented format, or distance learning.

"Training credit or education credit" means a unit of board-approved training or formal education completed by an individual that may be used to substitute for experience when applying for a license. Formal education used to meet a

specific education requirement for license entry cannot also be used as a training credit for experience substitution.

"Transportation" means the vehicular conveyance of sewage, as defined in § 32.1-163 of the Code of Virginia.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes including, but not limited to, pumping, power and other equipment and appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluent resulting from such treatment.

"VDH" means Virginia Department of Health.

"Wastewater works" means a system of (i) sewerage systems or sewage treatment works serving more than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18 of the Code of Virginia, if so certified by the State Water Control Board; and (iii) facilities for discharge into state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

"Wastewater works operator" means any individual employed or appointed by any owner, who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works are not included in this definition.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) at least 15 connections or (ii) at least 25 of the same individuals for more than six months out of the year. The term waterworks shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

"Waterworks operator" means any individual employed or appointed by any owner, who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks operations. Superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks are not included in this definition.

## **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

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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 successfully 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 and be currently employed by a firm holding a current and valid Virginia contractor license with the sewage disposal system (SDS) specialty;

b. Have two years of full-time experience successfully 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 and be a member of responsible management in a firm holding a current and valid Virginia contractor license with the sewage disposal system (SDS) specialty; or

c. Have two years of full-time experience successfully installing alternative or conventional onsite sewage systems during the last four years working under the direct supervision of, or working as, a properly licensed Virginia contractor with the sewage disposal system (SDS) specialty; or

d. 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.

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 each corresponding professional engineer's or onsite soil evaluator's inspection report [ and completion statement filed with VDH ] for work performed after June 30, 2009. Where applicable, a VDH inspection report shall accompany the corresponding [~~contractor~~] completion statement in lieu of a professional engineer's or [~~a non-VDH an~~] onsite soil evaluator's inspection report and completion statement. The [~~contractor~~] completion 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 professional engineer, onsite soil evaluator, and VDH inspection reports and completion statements shall be certified by either a licensed alternative onsite soil evaluator, a licensed conventional or alternative onsite sewage system installer [ an authorized VDH employee, or a Virginia licensed professional engineer, as appropriate ];~~

b. Provide [~~contractor~~] completion statements and associated operation permits issued by the VDH each corresponding AOSE/professional engineer inspection report and completion statement for work performed on or before June 30, 2009. The [~~contractor~~] completion 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~~ AOSE/professional engineer inspection reports and completion statements shall be certified [~~by either an authorized onsite soil evaluator or a Virginia licensed professional engineer~~];

c. Have two years of full-time experience successfully installing sewage systems as a properly licensed contractor holding a sewage disposal system (SDS)

specialty issued by the Virginia Board for Contractors, be a member of responsible management in a firm holding a current and valid Virginia contractor license with the sewage disposal system (SDS) specialty, 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 successfully 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, be currently employed by a firm holding a current and valid Virginia contractor license with the sewage disposal system (SDS) specialty, 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 successfully installing sewage systems during the last four years working under the direct supervision of, or working as, a properly licensed Virginia contractor with the sewage disposal system (SDS) specialty 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. f. 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. Each applicant applying under subdivision 3 a or b of this subsection shall provide written and signed verification from a supervisor within the company that is listed on each contractor completion statement. The verification must explicitly show that the applicant was employed by the company that performed the installation as well as show that the applicant himself performed the installation.~~

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 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 Installer License Application, A465-1944LIC-v2 \(eff. 10/15\) \]](#)

Onsite Sewage System Operator Exam & License Application, 1942\_43EXLIC (eff. 7/09)

[Suspension of Examination – Conventional Onsite Sewage System Installer License Application, A436-1944WAIV-v4 \(eff. 8/15\)](#)

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Onsite Sewage System Operator - Exam & License Application, A465-1942EXLIC-v3, (eff. 7/13)

VA.R. Doc. No. R13-2270; Filed July 8, 2015, 4:10 p.m.

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## TITLE 21. SECURITIES AND RETAIL FRANCHISING

### STATE CORPORATION COMMISSION

#### Final Regulation

<p><b>REGISTRAR'S NOTICE:</b> The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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**Titles of Regulations:** 21VAC5-20. **Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-85, 21VAC5-20-155, 21VAC5-20-280).**

**21VAC5-40. Exempt Securities and Transactions (adding 21VAC5-40-190).**

**21VAC5-45. Federal Covered Securities (amending 21VAC5-45-20).**

**21VAC5-80. Investment Advisors (amending 21VAC5-80-130, 21VAC5-80-200, 21VAC5-80-220).**

**Statutory Authority:** §§ 12.1-13 and 13.1-523.1 of the Code of Virginia (21VAC5-20-85, 21VAC5-20-155).

§§ 12.1-13 and 13.1-523 of the Code of Virginia (21VAC5-20-280, 21VAC5-45-20, 21VAC5-80-130, 21VAC5-80-200, 21VAC5-80-220).

§§ 12.1-13 and 13.1-514 of the Code of Virginia (21VAC5-40-190).

**Effective Date:** July 31, 2015.

**Agency Contact:** Timothy O'Brien, Chief Examiner, Securities Division, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email timothy.o'brien@scc.virginia.gov.

**Summary:**

Chapters 354 and 400 of the 2015 Acts of the Assembly establish a new exemption from the registration provisions of the Securities Act (Chapter 5 of Title 13.1 of the Code of Virginia) for certain intrastate securities offerings known as "crowdfunding." To implement this intrastate crowdfunding exemption (ICE) 21VAC5-40-190 includes (i) limiting the aggregate price of the offering to \$2 million; (ii) requiring certain financial statements that vary depending on the amount of the offering; (iii) requiring an exemption filing, which includes a Form ICE,

filing fee, and disclosures, at least 20 days prior to an offer of securities or use of any publicly available website in connection with the offering; (iv) imposing conditions on offers and sales over the Internet; (v) requiring reports to investors and to the State Corporation Commission; (vi) prohibiting the use of the exemption with other exemptions; and (vii) establishing disqualifications for use of the exemption.

The amendments to 21VAC5-20-85 and 21VAC5-20-155 grant certain Canadian broker-dealers and their agents relief from the prohibited business conduct provisions found in 21VAC5-20-280, but not the anti-fraud provisions of the Securities Act. The amendments to 21VAC5-20-280 (i) address concerns regarding customer privacy by adding privacy to the list of the standards promulgated by the Financial Industry Regulatory Authority Rules or the federal Securities and Exchange Commission (SEC) and (ii) permit broker-dealers to deliver prospectuses either by hard copy or by electronic means.

The amendments to 21VAC5-45-20 allow filers to use the new SEC Form D to file for federal Regulation D, Rule 506(b) and 506(c) offerings.

The amendments to 21VAC5-80 (i) clarify that investment advisor representatives who meet the examination requirements and are registered in any state jurisdiction will not have to retake the examination in Virginia as long as they have been registered within the two-year period immediately preceding the date of filing an application; (ii) waive certain examinations if representatives currently hold a designation from and are in good standing with certain professional organizations; (iii) add privacy standards to the investment advisor rules, similar to those proposed for the broker-dealers; and (iv) increase to \$1 million the amount that must be under management and increase the net worth of the client from to at least \$2 million for investment advisors compensated on the basis of a share of the capital gains of the funds, capital appreciation of the funds, or any portion of the funds under management.

Based on comments received, the commission made several changes to the proposed ICE rules. These changes include (i) changing 21VAC5-40-190 A 4 concerning maximum allowable dollar amounts of offerings by issuers who lack audited financial statements; (ii) changing the issuer reporting requirements from quarterly to annually; and (iii) limiting the time period for this reporting to a period of three years after an offering closes.

AT RICHMOND, JULY 20, 2015  
COMMONWEALTH OF VIRGINIA, *ex rel.*  
STATE CORPORATION COMMISSION  
CASE NO. SEC-2015-00014

Ex Parte: In the matter of  
Adopting a Revision to the Rules  
Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on March 30, 2015,<sup>1</sup> all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of revisions to Chapters 20, 40, 45 and 80 of Title 21 of the Virginia Administrative Code. On April 1, 2015, the Commission's Division of Securities and Retail Franchising ("Division") mailed and e-mailed the Order of the proposed rules to interested persons pursuant to the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia. The Order described the proposed revisions and afforded interested persons an opportunity to file comments and requests for hearing with the Clerk of the Commission on or before May 22, 2015. The Order provided that requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments.

The Commission received written comments from Carrie Roth of the Virginia Biotechnology Research Partnership Authority, which supported adopting the proposed rules. Michael Koffler, Esquire, of the law firm of Sutherland Asbill & Brennan LLP, submitted written comments on behalf of their broker-dealer clients, which supported the proposed amendments to rule 21 VAC 5-20-280 A 10.

The Commission also received two written comments objecting to certain portions of proposed new rule 21 VAC 5-40-190 relating to the proposed intrastate crowdfunding exemption ("ICE") passed by the 2015 Virginia General Assembly. J. Thomas O'Brien, Jr., Chairman, Business Law Council, Business Law Section of the Virginia Bar Association ("Business Law Section"), submitted written comments on behalf of the Business Law Section.<sup>2</sup> The Business Law Section discussed its concerns and requested changes regarding two aspects of the proposed rules: (1) the requirement for reviewed and audited financials for offerings of more than \$100,000 and \$500,000; and (2) the quarterly reporting requirements for so long as any shares sold in a crowdfunding offering remain outstanding.

Kirk T. Schroder, Esquire, of the law firm of Schroder Fidlow, PLC, submitted written comments and a request for hearing. Mr. Schroder's comments asserted that the proposed rules should: (1) require that intrastate crowdfunding exempt offerings occur only through registered Virginia funding portals; (2) give the funding portal the necessary authority to manage the crowd for the benefit of investors and offerors and to monitor compliance; (3) provide the funding portal a

safe harbor from disputes between the investor and the offeror; and (4) establish a more appropriate cap of investor offerings at \$3 million.

By Order dated June 1, 2015,<sup>3</sup> the Commission directed the Division to provide a written response to the comments submitted by the Business Law Section and Mr. Schroder regarding ICE and provided the Business Law Section and Mr. Schroder an opportunity to reply to the Division's comments.

On June 8, 2015, the Division filed its response ("Response"). Among other comments, the Division stated that the proposed rules provide for the development of funding portals but do not mandate their use. In addition, the Division provided statistical information from other states regarding their crowdfunding rules, including those states that mandate funding portals.<sup>4</sup> The Division noted that only four of the 39 states that have adopted crowdfunding rules have mandated the use of funding portals, and nine additional states have pending rules that would mandate such portals.<sup>5</sup> The Division also responded to comments regarding the maximum offering amount suggested by Mr. Schroder and his request that the proposal include a safe harbor for funding portals.<sup>6</sup> The Division recommended that the Commission not adopt the changes requested by Mr. Schroder.

In addressing the Business Law Section's comments, the Division suggested several changes to the proposed ICE rules.<sup>7</sup> These changes include: (1) adopting the Business Law Section's requested changes to the proposed rules' requirements concerning financial statements; (2) changing the reporting requirements from quarterly to annually; and (3) limiting the time period for this reporting to a period of three years after an offering closes.

With these changes the Division recommended that the Commission adopt the proposed rules with the proposed revisions.

On June 19, 2015, Mr. Schroder filed a reply to the Division's Response ("Reply").<sup>8</sup> Mr. Schroder submitted additional information and argument supporting his requested changes to the proposed rules. He concluded that "[f]unding [p]ortals, not individual offerors, create, enhance and enable communities to positively affect crowdfunding efforts," and that "[w]ithout such a model, the proposed Virginia ICE rules will provide a lower than expected benefit to potential offerors and investors and may open unintended consequences from a new experimental approach that, while sounding good in theory, has no established track record."<sup>9</sup> Mr. Schroder also requested that the Commission provide a safe harbor for funding portals.<sup>10</sup> Finally, Mr. Schroder contemporaneously filed a letter with the Commission's Clerk, stating that "[t]his letter serves to amend my request in a letter to you, dated May 21, 2015, for a hearing on the above referenced matter and instead to request for oral argument on the matter," citing

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Rule 5 VAC 5-20-210 of the Commission's Rules of Practice and Procedure ("Commission Rules").<sup>11</sup>

The Business Law Section did not file a reply to the Division's response.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed amendments as recommended by the Division should be adopted.

The Commission notes that Mr. Schroder requests oral argument as permitted by 5 VAC 5-20-210 of the Commission's Rules. Pursuant to this Rule, oral argument is discretionary, not mandatory. In this instance, based on the consideration of the comments filed in this matter, we find that oral argument is not necessary in order to promulgate the ICE rules herein. The Commission has provided for initial and responsive comments to be filed in this matter, and this has given interested persons an opportunity to present all of their arguments supporting their requests. We find that the requested oral argument is neither required as a matter of law nor is it necessary to consider and rule on this matter.

The Commission has fully considered Mr. Schroder's requests and finds that, at this time, the proposed rules should not mandate the use of funding portals. Rather, we conclude that it is reasonable to allow the use of such portals to remain discretionary for the new crowdfunding business model. The Commission further observes that only four of 39 states that have decided this question mandate the use of funding portals, and only nine additional states currently have mandates pending. Moreover, without any further empirical evidence, the potential cost to issuers of a funding portal was a factor in adopting the rules without mandating such portals.

Since the rules are adopted without mandating funding portals, the Commission need not address the request for a safe harbor for said funding portals. The Commission recognizes that the initial establishment of an investor offering cap of \$2 million is consistent with the Virginia crowdfunding legislation as well as with maximum offering caps established by other states with crowdfunding legislation.<sup>12</sup>

For the foregoing reasons, we find it reasonable to adopt the proposed amended rules as recommended by the Division.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed rules are attached hereto, made a part hereof, and hereby are ADOPTED effective July 31, 2015.
- (2) AN ATTESTED COPY hereof, together with a copy of the adopted rules, shall be sent by the Division in care of Ronald W. Thomas, Director, who forthwith shall give further notice of the adopted rules by mailing or e-mailing a copy of this Order to all interested persons.
- (3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the adopted rules, to be forwarded to the Virginia Registrar

of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

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<sup>1</sup>Doc. Con. Cen. No. 150330018.

<sup>2</sup>The Business Law Section filed its comments out of time on May 27, 2015.

<sup>3</sup>Doc. Con. Cen. No. 150610007.

<sup>4</sup>Doc. Con. Cen. No. 150620051.

<sup>5</sup>Id. at 3.

<sup>6</sup>Response at 4.

<sup>7</sup>Id. at 3-4.

<sup>8</sup>Doc. Con. Cen. No. 150620368.

<sup>9</sup>Reply at 8.

<sup>10</sup>Reply at 7.

<sup>11</sup>Virginia Pilot Ass'n. v. Commonwealth, 145 Va. 757, 765 (Va. 1926).

<sup>12</sup>See, e.g., Response at 4.

## **21VAC5-20-85. Limited Canadian broker-dealer registration.**

A. A broker-dealer that is resident in Canada and has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer is registered under this section, effect transactions in securities:

1. With or for a person from Canada who is temporarily residing in or visiting the Commonwealth with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered this Commonwealth; or
2. With or for a person present in this Commonwealth whose transactions are in a Canadian self-directed tax advantaged retirement account of which the person is the holder or contributor.

B. Application for registration as a broker-dealer under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.
3. Evidence that the applicant is registered as a broker-dealer in the jurisdiction from which it is effecting the transactions.

4. Evidence that the applicant is a member of a self-regulatory organization or stock exchange in Canada.
5. Any other information the commission may require.

D. A broker-dealer registered under this section shall:

1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;
2. Provide the commission upon request with its books and records relating to its business in the Commonwealth of Virginia as a broker-dealer;
3. Immediately notify the commission of any criminal action taken against it, or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation, or similar conduct;
4. Disclose to its clients in the Commonwealth of Virginia that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

E. A broker-dealer's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew its registration, a broker-dealer registered under this section shall file with the commission at its ~~Division of Securities and Retail Franchising~~ division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principle place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.

G. A Canadian broker-dealer registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to broker-dealers except ~~21VAC5-20-280~~ the anti-fraud provisions of the Act and the requirements set out in this section.

**21VAC5-20-155. Limited Canadian broker-dealer agent registration.**

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21VAC5-20-85.

B. Application for registration as a broker-dealer agent under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of

applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.
3. Evidence that the applicant is registered as a broker-dealer agent in the jurisdiction from which it is effecting the transactions.
4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;
2. Immediately notify the commission of any criminal action taken against him, or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its ~~Division of Securities and Retail Franchising~~ division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principal place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to a broker-dealer agent except ~~21VAC5-20-280~~ the anti-fraud provisions of the Act and the requirements set out in this section.

**21VAC5-20-280. Prohibited business conduct.**

A. Every broker-dealer is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. The acts and practices described below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No broker-dealer who is registered or required to be registered shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit

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balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;

2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer. The reasonable basis to recommend any such transaction to a customer shall be based upon the risks associated with a particular security, and the information obtained through the diligence and inquiry of the broker-dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's investment objectives, financial situation, risk tolerance and needs, tax status, age, other investments, investment experience, investment time horizon, liquidity needs, and any other relevant information known by the broker-dealer or of which the broker-dealer is otherwise made aware in connection with such recommendation;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by FINRA Rule 2264;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus, ~~either by the following means:~~ (i) hard copy prospectus delivery or (ii) electronic prospectus delivery;

~~When a broker-dealer delivers a prospectus electronically, it must first allow its clients to affirmatively opt in to the program. The acknowledgment of the opt in may be by any written or electronic means, but the broker-dealer is required to acknowledge the opt in. For any client that chooses not to opt in to electronic delivery, the broker-dealer shall continue to deliver to the client a hard copy of the prospectus;~~

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive

or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

- a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
  - b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or
  - c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;
16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;
17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;
18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;
19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any

available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;
21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;
22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;
23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;
24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks;
25. In transactions subject to breakpoints, fail to:
- a. Utilize advantageous breakpoints without reasonable basis for their exclusion;
  - b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or
  - c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction; and apprise the customer of the breakpoint opportunities;
26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.
- a. The use of such certification or professional designation includes, but is not limited to, the following:

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(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law;

27. Represent that securities will be listed or that application for listing will be made on a securities exchange or the National Association of Securities Dealers Automated Quotations (NASDAQ) system or other quotation system without reasonable basis in fact for the representation;

28. Falsify or alter so as to make false or misleading any record or document or any information provided to the commission;

29. Negotiate, facilitate, or otherwise execute a transaction on behalf of an investor involving securities issued by a third party pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act unless the broker-dealer intends to report the securities owned and the value of such securities on at least a quarterly basis to the investor;

30. Offer or sell securities pursuant to a claim for exemption under subsection B of § 13.1-514 of the Act without having first verified the information relating to the securities offered or sold, which shall include, but not be limited to, ascertaining the risks associated with investing in the respective security;

31. Allow any person to represent or utilize its name as a trading platform without conspicuously disclosing the name of the registered broker-dealer in effecting or attempting to effect purchases and sales of securities; or

32. Engage in any conduct that constitutes a dishonest or unethical practice including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or material omissions or untrue statements of material facts, manipulative or deceptive practices, or fraudulent course of business.

B. Every agent is required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business. The acts and practices described below are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration or such other action authorized by the Act. No agent who is registered or required to be registered shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for

money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;
3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;
4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;
5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;
6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25, 26, 28, 30, 31, or 32 of this section;
7. Fail to comply with the continuing education requirements under 21VAC5-20-150 C; or
8. Hold oneself out as representing any person other than the broker-dealer with whom the agent is registered and, in the case of an agent whose normal place of business is not on the premises of the broker-dealer, failing to conspicuously disclose the name of the broker-dealer for whom the agent is registered when representing the dealer in effecting or attempting to effect the purchases or sales of securities.

C. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

D. The purpose of this subsection is to identify practices in the securities business that are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents who are registered or required to be registered.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.
2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any

advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. Although nothing in this subsection precludes application of the general ~~antifraud~~ anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions through f specifically apply only in connection with the solicitation of a purchase or sale of over the counter (OTC) unlisted non-NASDAQ equity securities:

a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.

c. Conducting sales contests in a particular security.

d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

7. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance

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including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the FINRA Rules or any applicable fair practice, privacy, or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained under 21VAC5-20-285, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the

preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of \$4 million as demonstrated by financial statements dated within no less than 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

## **21VAC5-40-190. Intrastate crowdfunding exemption.**

**A. In accordance with § 13.1-514 B 21 of the Act, an offer or sale of a security by an issuer is exempt from the securities, broker-dealer and agent registration requirements of the Act if the offer or sale meets all of the following requirements:**

**1. The issuer of the security is a business entity:**

**a. Formed under the laws of the Commonwealth;**

- b. Authorized to do business in the Commonwealth; and
- c. That has its principal place of business in the Commonwealth.
2. The offering is sold only to residents of the Commonwealth in compliance with the requirements for the federal exemption for intrastate offerings under § 3(a)(11) of the Securities Act of 1933, 15 USC 77c(a)(11), and SEC Rule 147, 17 CFR 230.147.
3. The securities offered and sold pursuant to this exemption are equity securities of the issuer. This exemption is not available to debt offerings.
4. The sum of all cash and other consideration to be received for all sales of the securities in reliance on this exemption does not exceed \$2 million, less the aggregate amount received for all sales of securities by the issuer within 12 months before the first offer or sale made in reliance upon this exemption, and if the offering is:
- a. [ ~~\$100,000~~ \$500,000 ] or less, if the issuer has financial statements prepared the previous year that have been certified by the principal executive officer of the issuer to be true and complete in all material respects;
  - b. More than [ ~~\$100,000~~ \$500,000 ] but less than [ ~~\$500,000~~ \$1 million ], if the issuer has undergone a financial review of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles; or
  - c. [ ~~\$500,000~~ \$1 million ] or more, if the issuer has undergone an audit of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles.
5. The issuer has not accepted more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of SEC Regulation D, 17 CFR 230.501.
6. At least 20 days before an offer of securities is made in reliance on this exemption or the use of any publicly available Internet website in connection with an offering of securities in reliance on this exemption, the issuer files with the commission in writing or in electronic form, all of the following:
- a. A notice of claim of exemption from registration on Form ICE specifying that the issuer intends to conduct an offering in reliance on this exemption, accompanied by a nonrefundable filing fee of \$250 payable to the Treasurer of Virginia.
  - b. A copy of the disclosure statement or Form ICE to be provided to prospective investors in connection with the offering. The disclosure statement or Form ICE shall contain all of the following:
- (1) A description of the issuer, including type of entity, the address and telephone number of its principal office, its formation history, and its business plan;
  - (2) A description of the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;
  - (3) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer and the amount of said securities held by such person;
  - (4) The identity of the executive officers, directors, or managing members of the issuer and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior business experience;
  - (5) The terms and conditions of the securities being offered including:
    - (a) The type and amounts of any outstanding securities of the issuer;
    - (b) The minimum and maximum amount of securities being offered, if any;
    - (c) Either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities;
    - (d) The price per share, unit, or interest of the securities being offered;
    - (e) Any restrictions on transfer of the securities being offered; and
    - (f) A disclosure of any anticipated future issuance of securities that might dilute the value of the securities being offered;
  - (6) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offer and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;
  - (7) For each person identified as required in subdivision 6 b (6) of this subsection, a description of the consideration being paid to the person for such assistance;
  - (8) A description of any litigation or legal proceedings involving the issuer or any executive officer, director, or managing member or other person occupying a similar status or performing similar functions on behalf of the issuer;

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(9) The issuer's financial statements for the three most recent fiscal years or for as much time as the issuer has been in existence, if less than three years;

(10) The name and address, including the uniform resource locator, of each Internet website that will be used by the issuer to offer or sell securities under an exemption under this section; and

(11) Any additional information material to the offering, including, if appropriate, a discussion of significant risk factors that make the offering speculative or risky. This discussion shall be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering.

c. An escrow agreement with a bank or other depository institution located in this Commonwealth, in which the purchaser funds will be deposited. At a minimum the escrow agreement shall provide that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached; however such fees shall not be deducted from purchaser funds if the target offering amount is not raised by the time stated in the disclosure statement. The issuer shall disclose in its disclosure statement or Form ICE whether any interest earned on escrowed purchaser funds will be paid to purchasers on a pro rata basis if the minimum target amount, as described above, is not raised.

7. The issuer is not, either before or as a result of the offering:

a. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, including an investment company as defined by 15 USC § 80a-3, or a hedge fund, commodity pool, or similar investment vehicle;

b. Subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC 78m and 78o(d);

c. A company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger with or acquisition of an unspecified business entity or entities, or without an allocation of proceeds to sufficiently identifiable properties or objectives; or

d. A company that is engaged in or proposes to engage in petroleum exploration or production, mining, or other extractive industries.

8. The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 AND UNDER SECTION 13.1-514 OF THE VIRGINIA SECURITIES ACT. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF VIRGINIA AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AS CONTAINED IN SUBSECTIONS (e) AND (f) OF SEC RULE 147, 17 CFR 230.147. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND THAT THEY MAY LOSE ALL OF THE INVESTMENT AND CAN AFFORD THE LOSS OF THE INVESTMENT.

IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE AUTHORITY OR REGULATORY COMMISSION NOR HAVE THESE ENTITIES CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

9. If the offer and sale of securities under this section is made through the Internet, all of the following requirements are met:

a. Any person acting as the Internet website operator shall be an issuer, a registered broker-dealer, or a funding portal that is in compliance with all commission, SEC, and FINRA requirements, including, if it is a funding portal, making any required notice filings with the commission;

b. Internet website operators shall comply with all commission, SEC, and FINRA requirements applicable to intrastate offerings through the Internet;

c. Internet website operators shall maintain records of all offers and sales of securities effected through its Internet website for five years from the close of the offering; and

d. The issuer and the Internet website operator shall keep and maintain records of the offers and sales of securities made through the Internet website for five years from the close of the offering. The issuer and the Internet website operator shall promptly provide ready access to the records to the commission on request. The commission may access, inspect, and review any Internet website described in this subdivision 9 and its records.

10. All payments for the purchase of securities are directed to and held by the depository institution subject to the provisions of subdivision 6 c of this subsection.

11. The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he is registered as a broker-dealer agent under the Act. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the agent registration requirements of the Act if he does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

12. The issuer provides a copy of Form ICE or the disclosure statement provided to the commission under subdivision 6 b of this subsection to each prospective purchaser at the time the offer of securities is made to the prospective purchaser.

13. The term of the offering does not exceed 12 months after the date of the first offer.

B. The issuer shall provide [ a quarterly an annual ] report to the issuer's purchasers [ until none of the securities issued under this section are outstanding for each of the issuer's next three fiscal years, the first of which being that fiscal year that ends following the commencement of the offering ]. All of the following apply to the [ quarterly annual ] report described in this subsection:

1. The issuer shall provide the report free of charge to the purchasers;

2. An issuer may satisfy the report requirement under this subsection by making the information available on an internet website if the information is made available within 45 days after the end of each fiscal [ quarter year ] and remains available until the next [ quarterly annual ] report is issued;

3. The issuer shall file each report with the commission and shall provide a written copy of the report to any purchaser on request; and

4. The report shall include all of the following:

a. The compensation received by each director and executive officer of the issuer, including cash

compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

b. An analysis by management of the issuer's business operations and financial condition.

C. The exemption provided in this section shall not be used in conjunction with any other exemption under the Act, except offers and sales to control persons shall not count toward the limitation in subdivision A 4 of this section.

D. The exemption described in this section shall not be available to the issuer if the issuer, any of the issuer's predecessors, any affiliate of the issuer, or any control person of the issuer:

1. Within the past 10 years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

2. Within the past 10 years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past 10 years, finding fraud or deceit in connection with the purchase or sale of any security; or

4. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past 10 years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

E. Subsection D of this section shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

3. The issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

F. An Internet website through which an offer or sale of securities under this section is made is not subject to the broker-dealer or agent registration requirements of the Act if the Internet website meets all of the following conditions:

1. It does not offer investment advice or recommendations;

2. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;

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3. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website; and

4. It does not hold, manage, possess, or otherwise handle purchaser funds or securities.

G. As used in this section, "financial review" means a limited inquiry and analytical procedure of much narrower scope than an audit, undertaken by a certified public accountant for the purpose of expressing limited assurance that financial statements are presented in accordance with generally accepted accounting principles.

H. As used in this section, "control person" means (i) an officer, director, partner, managing member, trustee, or other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; or (ii) a person that owns 10% or more of any class of the outstanding securities of the issuer.

I. As used in this section, "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to § 4(6) of the Securities Act of 1933 that does not:

1. Offer investment advice or recommendations;

2. Solicit purchases, sales, or offers to buy the securities offered or displayed on its Internet website or portal;

3. Compensate employees, agents, or other persons for such solicitation or based on the sales of securities displayed or referenced on its Internet website or portal;

4. Hold, manage, possess, or otherwise handle investor funds or securities; or

5. Engage in such other activities as the SEC, by rule, determines [ ~~appropriate~~ inappropriate ].

J. The issuer or other designated person shall be notified by letter or electronic communication when the exemption filing is effective. If, however, on or before the initial commencement date of the offering, and after timely filing the materials required by subdivision A 6 of this section with the commission, the issuer has not been notified that any one or more of the filed materials fails to conform to the requirements of this section, the proposed offering shall be deemed effective.

K. Upon completion of an offering made in reliance on this exemption, the issuer shall file a final sales report with the commission, by letter or electronic communication, no later than 30 days after the last sale in the offering that includes the following information:

1. The time period in which the offering was open;

2. The number of investors that purchased shares or units in the offering;

3. The dollar amount sold in the offering; and

4. The dollar amount, if any, returned to investors, purchasers, or subscribers.

**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 (21VAC5-40)

[Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 \(rev. 2/12\)](#)

[Intrastate Crowdfunding Exemption, Form ICE \(eff. 7/15\)](#)

**21VAC5-45-20. Offerings conducted pursuant to Rule 506 of federal Regulation D (17 CFR 230.506): Filing requirements and issuer-agent exemption.**

A. An issuer offering a security that is a covered security under § 18 (b)(4)(D) of the Securities Act of 1933 (15 USC § 77r(b)(4)(D)) shall file with the commission no later than 15 days after the first sale of such federal covered security in this Commonwealth:

1. A notice on SEC Form D (17 CFR 239.500), as filed with the SEC.

2. A filing fee of \$250 payable to the Treasurer of Virginia.

B. An amendment filing shall contain a copy of the amended SEC Form D. No fee is required for an amendment.

C. For the purpose of this chapter, SEC "Form D" is the document, as adopted by the SEC, and in effect on ~~February 27, 2012~~ September 23, 2013, entitled "Form D, Notice of Exempt Offering of Securities."

D. Pursuant to § 13.1-514 B 13 of the Act, an agent of an issuer who effects transactions in a security exempt from registration under the Securities Act of 1933 pursuant to rules and regulations promulgated under § 4(2) thereof (15 USC § 77d(2)) is exempt from the agent registration requirements of the Act.

**21VAC5-80-130. Examination/qualification.**

A. An individual applying for registration as an investment advisor representative shall be required to provide evidence of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66 and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. Any individual who ~~has been~~ meets the qualifications set forth in subsection A of this section and is registered as an investment advisor or investment advisor representative in any state jurisdiction requiring the registration and qualification of investment advisors or investment advisor

representatives within the two-year period immediately preceding the date of the filing of an application shall not be required to satisfy the examination requirements set forth in subsection A of this section, except that the commission may require additional examinations for any individual found to have violated any federal or state securities laws.

C. The examination requirements shall not apply to an individual who currently holds and is in good standing under one of the following professional designations:

1. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
5. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
6. Such other professional designation, after reasonable notice and subject to review by the commission, as the ~~Director~~ director of the ~~Division of Securities and Retail Franchising~~ division designates.

D. In lieu of meeting the examination requirement described in subsection A of this section, an applicant who meets all the qualifications set forth below may file with the commission at its ~~Division of Securities and Retail Franchising~~ division an executed Affidavit for Waiver of Examination (Form S.A.3).

1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.
2. The applicant is, and has been for at least the five years immediately preceding the date on which the application for registration is filed, actively engaged in the investment advisory business.
3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.
4. The investment advisor or advisors referred to in subdivision 3 of this subsection has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least \$40 million under management.
5. The applicant verifies that he has read and is familiar with the investment advisor and investment advisor

representative provisions of the Act and the provisions of Parts I through V of this chapter.

6. The applicant verifies that none of the questions in Item 14 (disciplinary history) on his Form U4 have been, or need be, answered in the affirmative.

**21VAC5-80-200. Dishonest or unethical practices.**

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor

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or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client, or failing to comply with any applicable privacy provision or standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

- (1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
- (2) Use of a nonexistent or self-conferred certification or professional designation;
- (3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or
- (4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:
  - (a) Is primarily engaged in the business of instruction in sales ~~and/or~~ or marketing;
  - (b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
  - (c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
  - (d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

- (1) The American National Standards Institute;
- (2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or
- (3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales ~~and/or~~ or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

- (1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

- (1) Indicates seniority within the organization; or
- (2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative who is registered or required to be registered shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the

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recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be

furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

- (i) Any analysis, report, or publication concerning securities;
- (ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;
- (iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
- (iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-146.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide

Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

- (1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
- (2) Use of a nonexistent or self-conferred certification or professional designation;
- (3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or
- (4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

- (a) Is primarily engaged in the business of instruction in sales ~~and~~ or marketing;
- (b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
- (c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
- (d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

- (1) The American National Standards Institute;
- (2) The Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or
- (3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales ~~and/or~~ or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special

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# Regulations

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certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

- (1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

- (1) Indicates seniority within the organization; or
- (2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

## **21VAC5-80-220. Performance based fees.**

A. In accordance with § 13.1-503 C of the Act, an investment advisor may enter into, extend, or renew any investment advisory contract to provide for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the following conditions of this section are satisfied.

B. Nature of the client:

1. a. The client entering into the contract subject to this section must be a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection E of this section, who immediately after entering into the contract has at least ~~\$750,000~~ \$1 million under the management of the investment advisor; or

b. A person who the registered investment advisor (and any person acting on his behalf) entering into the contract

reasonably believes, immediately prior to entering into the contract, is a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection E of this section, whose net worth at the time the contract is entered into exceeds ~~\$1,500,000~~ \$2 million. (The net worth of a natural person may include assets held jointly with such person's spouse.)

2. The term "company" as used in subdivision 1 of this subsection does not include:

- a. A private investment company, as defined in subsection E of this section;
- b. An investment company registered under the Investment Company Act of 1940; or
- c. A business development company, as defined in § 202(a)(22) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(22))

unless each of the equity owners (other than the investment advisor entering into a contract under this section) of any such company identified in ~~this~~ this subdivision 2 of this subsection, is a natural person or company described in this subsection ~~B~~.

C. Disclosure. In addition to the disclosure requirements of Form ADV, the advisor shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract permitted by this section, all material information concerning the proposed advisory arrangement including the following:

1. That the fee arrangement may create an incentive for the advisor to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;
2. Where relevant, that the advisor may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
3. The time period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee;
4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the advisor believes the index is appropriate; and
5. Where an advisor's compensation is based on the unrealized appreciation of securities for which market quotations are not readily available, how such securities will be valued and the extent to which the valuation will be independently determined.

D. Arm's-length contract. The investment advisor (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the

case of a client which is a company as defined in subsection E of this section, the person, representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer, or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection E of this section.

E. Definitions. For the purpose of this section:

The term "affiliated person" has the same meaning as in § 2 (a)(3) of the Investment Company Act of 1940 (15 USC § 80a-2(a)(3)).

The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

1. The investment advisor acting in reliance upon this section, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor, or an interested person of the investment advisor as defined in this subsection;
2. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment advisor, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor or an interested person of the investment advisor as defined in this subsection; or
3. A person with any material relationship between himself (or an affiliated person of such person) and the investment advisor (or an affiliated person of the investment advisor) that exists, or has existed at any time during the previous two years.

The term "company" has the same meaning as in § 202 (a)(5) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(5)).

The term "interested person" as used in the definition of "client's independent agent" of this section means:

1. Any member of the immediate family of any natural person who is an affiliated person of the investment advisor;
2. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment advisor or by a controlling person of the investment advisor if the beneficial or legal interest of the person in any security issued by the investment advisor or by a controlling person of the investment advisor:
  - a. Exceeds one tenth of one percent of any class of outstanding securities of the investment advisor or a controlling person of the investment advisor; or

b. Exceeds 5.0% of the total assets of the person (seeking to act as the client's independent agent); or

3. Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment advisor.

The term "private investment company" means a company which would be defined as an investment company under § 3 (a) of the Investment Company Act of 1940 (15 USC § 80a-3(a)) but for the exception provided from that definition by § 3 (c)(1) of such Act.

The term "securities for which market quotations are readily available" in subsection C of this section has the same meaning as in Rule 2a-4 (a)(1) under the Investment Company Act of 1940 (17 CFR 270.2a-4 (a)(1)).

The term "securities for which market quotations are not readily available" in subsection C of this section means securities not described in the above paragraph.

V.A.R. Doc. No. R15-4298; Filed July 21, 2015, 3:20 p.m.

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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 GAME AND INLAND FISHERIES

Copies of the following guidance documents may be viewed during regular work days from 9 a.m. until 4 p.m. in the office of the Virginia Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, or on the department's website at <http://www.dgif.virginia.gov>. Copies of most documents listed below may be obtained at no charge, and copies of larger documents may be obtained at cost as provided for under the Virginia Freedom of Information Act. Requests for copies, and questions regarding interpretation or implementation of these documents, may be directed to the attention of the agency Policy Analyst and Regulatory Coordinator at the above address, telephone (804) 367-1000. Some of the documents are available at the links provided.

### Guidance Documents:

#### Administrative - Lifetime Hunting and Fishing Licenses

Applications for Lifetime Hunting and Fishing Licenses, <http://www.dgif.virginia.gov/licenses/lifetime/>, §§ 28.2-302.10:1 and 29.1-302.1

Application for Virginia Resident Disabled Veteran's Lifetime State License to Hunt and Freshwater Fish in Inland Waters and Virginia Resident Disabled Veteran's Lifetime State License to Trap, <http://www.dgif.virginia.gov/forms/PERM/PERM-035.pdf>, §§ 29.1-302 and 29.1-309.1

Application for Resident Disabled Special Lifetime Hunting, Trapping, Freshwater, Saltwater Fishing License, <http://www.dgif.virginia.gov/forms/PERM/PERM-032.pdf>, §§ 28.2-302.10, 29.1-302.1, 29.1-302.2, and 29.1-309.1

Physician's Affidavit for a Disabled Lifetime License, May 2015, §§ 29.1-302.1 and 29.1-302.2

Application for Replacement of Resident Disabled Lifetime License or Resident Disabled Saltwater Lifetime License, <http://www.dgif.virginia.gov/forms/PERM/PERM-036.pdf>, § 29.1-334

## Game and Wildlife

Hunting and Trapping in Virginia, 2014-2015 Regulations, June 2014, §§ 29.1-103, 29.1-501 and 29.1-502

2014-2015 Virginia Migratory Waterfowl Seasons and Bag Limits, August 2014, § 29.1-103

2014-2015 Doves, Woodcock, Snipe, Rails, Falconry, September Canada Goose and September Teal (Virginia migratory game bird seasons and bag limits), July 2014, § 29.1-103

Wildlife Information Publication No. 07-1, Virginia Deer Management Plan 2006-2015, <http://www.dgif.virginia.gov/wildlife/deer/management-plan/virginia-deer-management-plan.pdf>, June 2007, § 29.1-103

Virginia 2012-2021 Black Bear Management Plan, <http://www.dgif.virginia.gov/wildlife/bear/blackbearmanagementplan.pdf>, §§ 29.1-103, 29.1-109, and 29.1-501

Deer Management Assistance Program (DMAP) Rules for Participants, <http://www.dgif.virginia.gov/wildlife/deer/dmap-rules.pdf>, § 29.1-103

DMAP Application, <http://www.dgif.virginia.gov/wildlife/deer/dmap-application.pdf>, § 29.1-103

DMAP Biologist Contact Information, <http://www.dgif.virginia.gov/wildlife/deer/dmap-map.pdf>, § 29.1-103

Wildlife Damage Control Assistance Program (DCAP) Rules, § 29.1-103

A Guide to Virginia's Wildlife Management Areas, revised July 1996, available online only, <http://www.dgif.virginia.gov/wmas/>, § 29.1-103

Rules for Wildlife Management Areas, <http://www.dgif.virginia.gov/hunting/regulations/wmarules.pdf>, § 29.1-103

Fish

Freshwater Fishing in Virginia - January 1 - December 31, 2015, §§ 29.1-103, 29.1-501 and 29.1-502

Fish Division Procedure and Criteria for Issuing Fish Stocking Authorizations and the Virginia Fish Stocking Authorization Application, <http://www.dgif.virginia.gov/forms/PERM/PERM-003.pdf><http://www.dgif.virginia.gov/forms/PERM/PERM-003.pdf>, § 29.1-103

Fish Division Delayed Harvest Trout Waters Management Guidelines, May 27, 1998, § 29.1-103

Striped Bass Fishing Tournament Application and Permit, <http://www.dgif.virginia.gov/forms/PERM/PERM-004.pdf>, §§ 29.1-501 and 29.1-502

Threatened and Endangered Species, Wildlife Diversity, and Environmental Review

Board Policy "Conservation of Endangered and Threatened Species," March 21, 2006, §§ 29.1-103, 29.1-563 through 29.1-568 and 29.1-570

Special Legal Status Faunal Species in Virginia, <http://www.dgif.virginia.gov/wildlife/virginiatescspecies.pdf>, §§ 29.1-563 through 29.1-568 and § 29.1-570

List of Native and Naturalized Fauna in Virginia, <http://www.dgif.virginia.gov/wildlife/virginianativenaturalizedspecies.pdf>, § 29.1-100

Bald Eagle Protection Guidelines for Virginia, <http://www.dgif.virginia.gov/wildlife/birds/bald-eagle-protection-guidelines.pdf>, updated May 15, 2000, §§ 29.1-563 through 29.1-568 and § 29.1-570

Plan to Provide Safe Harbor Assurances to Landowners in Virginia Who Voluntarily Agree to Enhance Habitat for the Endangered Red-Cockaded Woodpecker, April 2000, §§ 29.1-563 through 29.1-568 and § 29.1-570

Red-Cockaded Woodpecker Safe Harbor Evaluation Form for Virginia Landowners, April 2000, §§ 29.1-563 through 29.1-568 and § 29.1-570

Red-Cockaded Woodpecker Safe Harbor Cooperative Agreement for Landowners Near the Nature Conservancy's Piney Grove Preserve in Sussex County, Virginia, October 2000, §§ 29.1-563 through 29.1-568 and § 29.1-570

Appalachian Water Shrew Recovery Plan, approved March 2, 1994, §§ 29.1-563 through 29.1-568 and § 29.1-570

Canebrake Rattlesnake Recovery Plan, approved February 1, 1991, §§ 29.1-563 through 29.1-568 and § 29.1-570

Eastern Big-Eared Bat Recovery Plan, approved July 16, 1990, §§ 29.1-563 through 29.1-568 and § 29.1-570

Wilson's Plover Recovery Plan, approved May 28, 1991, §§ 29.1-563 through 29.1-568 and § 29.1-570

Standard Environmental Review Procedures, November 20, 1992, § 29.1-103

Permitting for Threatened and Endangered Species, and Scientific and Wildlife Salvage Collection, <http://www.dgif.virginia.gov/permits/wildlife-collection.asp>

Threatened/Endangered Species Permit Special Conditions, January 2003, §§ 29.1-412, 29.1-417, and 29.1-568

Scientific Collection or Salvage Permit Application and Permit Information, §§ 29.1-412, 29.1-417, 29.1-418

Scientific Collection Permit Special Conditions, January 2003, §§ 29.1-412, 29.1-417, 29.1-418

Wildlife Salvage Permit Special Conditions, January 2003, §§ 29.1-412, 29.1-417, 29.1-418

Supplemental Amendment Form for Scientific Collection or Salvage Permit, March 24, 1992, §§ 29.1-412, 29.1-417, 29.1-418

Scientific Collection, Salvage, and T&E Annual Permit Report, <http://www.dgif.virginia.gov/permits/collection-permit-user-guide.pdf>, §§ 29.1-412, 29.1-417, 29.1-418

Permitting - Generally

Animal Population Control Permit for Furbearing Animals, Application and Permit Information, September 1, 2007, § 29.1-501

Commercial Nuisance Animal Permit Application to Capture, Transport, and Release or Euthanize Wildlife, and Permit Conditions, revised September 11, 2008, §§ 29.1-103 and 29.1-501

Permit Application to Collect Snapping Turtles, Crayfish, and Hellgrammites for Sale, and Permit Conditions, revised September 22, 2008, § 29.1-412

Dog Field Trial Permit Application and Conditions, revised February 1, 2006, §§ 29.1-417 and 29.1-422

Permit Application to Exhibit Wild Animals in Virginia, and Permit Conditions, revised September 11, 2008, §§ 29.1-412 and 29.1-417

Import and Possess Certain Non-Native (Exotic) Wildlife in Virginia Permit Application and Permit Conditions, revised April 11, 2008, §§ 29.1-412, 29.1-417 and 29.1-542

Exotic Species - Import Certain Non-Native Wildlife (Tilapia, Clawed Frog) Permit Application and Permit Information, revised January 10, 2008, § 29.1-542

Exotic Species - Permit to Import Certified Triploid Grass Carp for Aquatic Vegetation Control in Private Ponds Application and Permit Information, revised May 1, 2008, § 29.1-542

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## Guidance Documents

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Falconry Permit Application, revised May 11, 2005, §§ 29.1-412 and 29.1-419

Falconry Regulations, Facilities and Equipment Examination Guidance Document, March 1, 2003, §§ 29.1-412 and 29.1-419

Permit Application to Operate a Foxhound Training Preserve and Annual Reporting Form, revised June 17, 2008, §§ 29.1-103, 29.1-412 and 29.1-417

Permit Conditions for the Operation of Foxhound Training Preserves in Virginia, revised June 17, 2008, §§ 29.1-103, 29.1-412 and 29.1-417

Permit to Deal in Furs Application and Permit Conditions, revised May 1, 2008, §§ 29.1-400 through 29.1-407

Gill Net Permit Application and Permit Conditions, revised April 9, 2008, §§ 29.1-412 and 29.1-416

Haul Seine Permit to Catch Minnows and Chubs for Sale Application and Permit Conditions, revised August 20, 2008, §§ 29.1-412 and 29.1-416

Haul Seine Permit to Take Nongame Fish for Sale Application and Permit Conditions, revised August 20, 2008, §§ 29.1-412 and 29.1-416

Haul Seine Permit to Take Fish for Personal Use Application and Permit Conditions, revised August 20, 2008, §§ 29.1-412 and 29.1-416

Permit to Hold and Sell Certain Fish, Snakes, Snapping Turtles, Crayfish, and Hellgrammites for Sale Application and Permit Conditions, revised August 18, 2008, §§ 29.1-412 and 29.1-471

Nonresident Harvester's Permit Application to Take or Catch Fish in Back Bay and its Tributaries, revised August 1, 2005, §§ 29.1-412 and 29.1-416

Permit to Possess, Propagate, Buy, and Sell Certain Wildlife in Virginia (Fisheries, Wildlife) Application and Permit Conditions, revised November 14, 2008, §§ 29.1-103, 29.1-412 and 29.1-417

Permit to Possess, Propagate, Buy, and Sell Certain Wildlife in Virginia (Raptors) Application and Permit Conditions, revised, December 9, 2008, §§ 29.1-103, 29.1-412 and 29.1-417

Raccoon Hound Field Trial Permit Application and Permit Conditions, July 1, 2003, §§ 29.1-417 and 29.1-422

Wildlife Rehabilitator Permit Application, revised December 1, 2004, §§ 29.1-412 and 29.1-417

Wildlife Rehabilitator Permit Conditions, revised October 1, 2005, §§ 29.1-412 and 29.1-417

Licensed Shooting Preserve Permit Application and Permit Conditions, revised May 1, 2008, §§ 29.1-514 and 29.1-544

Permit to Stuff and Mount Birds, Animals, or Fish and Parts of Them for Sale or Compensation Application and Taxidermy Permit General Conditions, revised June 5, 2008, §§ 29.1-412 through 29.1-415

### Boating

Virginia Boating Safety Education Compliance Requirement, <http://www.dgif.virginia.gov/boating/education/boating-safety-education-requirement.asp>, § 29.1-735.2

Virginia Freshwater Fishing and Watercraft Owner's Guide, <http://www.dgif.virginia.gov/fishing/regulations/2015-fishing-regulations.pdf>, § 29.1-701

Personal Watercraft (PWC) - Safety Brochure, <http://www.dgif.virginia.gov/boating/pwc>, revised 2005, § 29.1-701

Life Jackets, 2003, § 29.1-701

Boat Safe without Drugs or Alcohol, 2003, § 29.1-701

Reporting a Boating Accident, <http://www.dgif.virginia.gov/boating/accident.asp>, § 29.1-701

Watercraft Dealer Licensing Fact Sheet, revised 2006, § 29.1-701

### Law Enforcement

Law Enforcement Division Policy Number 40, Problem Wildlife Response, December 15, 2012

Law Enforcement Division Policy Number 41, Illegal Captive Wildlife, December 15, 2012

Permit for Persons Permanently Unable to Walk to Shoot from a Stationary Vehicle, revised December 2014, § 29.1-521.3

Sportsman's Pledge, Release of Landowner from Liability, and Landowner's Permission to Hunt Card, [http://www.dgif.virginia.gov/forms/PUBR/permission\\_to\\_hunt.pdf](http://www.dgif.virginia.gov/forms/PUBR/permission_to_hunt.pdf), §§ 29.1-103, 29.1-509 and 29.1-521

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Agriculture and Consumer Services is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each 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.

#### 2VAC5-11, Public Participation Guidelines

Agency Contact: Erin Williams, Senior Policy Analyst, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-7157, FAX (804) 371-7679, or email [erin.williams@vdacs.virginia.gov](mailto:erin.williams@vdacs.virginia.gov).

#### 2VAC5-80, Requirements Governing the Branding of Cattle in Virginia

#### 2VAC5-190, Rules and Regulations Establishing a Monitoring Program for Avian Influenza and Other Poultry Diseases

Agency Contact: Dr. Charles Broaddus, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, or email [charles.broaddus@vdacs.virginia.gov](mailto:charles.broaddus@vdacs.virginia.gov).

#### 2VAC5-240, Rules and Regulations for Enforcement of the Grain Handlers Law

Agency Contact: Randy Sanford, Grain Law Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3939, FAX (804) 371-7785, or email [randy.sanford@vdacs.virginia.gov](mailto:randy.sanford@vdacs.virginia.gov).

#### 2VAC5-270, Virginia Grade Standards for Breeder Swine

Agency Contact: Michael Carpenter, Program Manager, Livestock Marketing Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-0577, FAX (804) 371-0247, or email [mike.carpenter@vdacs.virginia.gov](mailto:mike.carpenter@vdacs.virginia.gov).

#### 2VAC5-316, Rules and Regulations for Enforcement of the Virginia Pest Law - Beach Vitex Quarantine

#### 2VAC5-350, Rules and Regulations for the Enforcement of the Virginia Commission Merchant Law

#### 2VAC5-360, Regulations for the Enforcement of the Virginia Commercial Feed Act

Agency Contact: Larry Nichols, Director, Division of Consumer Protection, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3523, FAX (804) 371-7479, or email [larry.nichols@vdacs.virginia.gov](mailto:larry.nichols@vdacs.virginia.gov).

The comment period begins August 10, 2015, and ends August 31, 2015.

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.

## AIR POLLUTION CONTROL BOARD

### State Implementation Plan Revision - General Definitions (9VAC5-10, Revision E14)

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is General Definitions, 9VAC5-10 (Revision E14).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: [30-day comment forum](#) August 10, 2015, through September 9, 2015.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

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Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: In essence, the proposed revision will consist of amendments to existing regulation provisions concerning the definition of volatile organic compound (VOC). The list of substances not considered to be VOCs in Virginia has been revised to include 2-amino-2-methyl-1-propanol, which EPA removed from the definition of VOC on March 27, 2014, (79 FR 17037) based on a demonstration that the substance is less reactive and does not affect the formation of ozone.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All comments, exhibits and documents received are part of the public record.

To review regulation documents: The proposal and supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (434) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email [karen.sabasteanski@deq.virginia.gov](mailto:karen.sabasteanski@deq.virginia.gov).

### CHARITABLE GAMING BOARD

#### 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 Charitable Gaming Board is conducting a periodic review and small business impact review of **11VAC15-13, Public Participation Guidelines**.

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 August 10, 2015, and ends August 31, 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 Michael Menefee, Program Manager, Office of Charitable and Regulatory Programs, Charitable Gaming Board, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, FAX (804) 371-7479, or email [michael.menefee@vdacs.virginia.gov](mailto:michael.menefee@vdacs.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be

posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

## **SAFETY AND HEALTH CODES BOARD**

### **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 Safety and Health Codes Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each 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.

#### **16VAC25-55, Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors**

#### **16VAC25-73, Regulation Applicable to Tree Trimming Operations**

#### **16VAC25-75, General Industry Standard for Telecommunications, General, Approach Distances**

Agency Contact: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, email [occonnor.reba@dol.gov](mailto:occonnor.reba@dol.gov).

The comment period begins August 10, 2015, and ends August 31, 2015.

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.

## **DEPARTMENT OF LABOR AND INDUSTRY**

### **Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Labor and Industry is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the

review of any issue relating to each 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.

#### **16VAC15-40, Virginia Hours of Work for Minors**

#### **16VAC15-50, Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards**

Agency Contact: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, email [occonnor.reba@dol.gov](mailto:occonnor.reba@dol.gov).

The comment period begins August 10, 2015, and ends August 31, 2015.

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

## **VIRGINIA LOTTERY**

### **Director's Orders**

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on July 21, 2015. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, VA.

#### Director's Order Number Eighty-Nine (15)

Virginia Lottery's Grocery Bag Bucks Final Rules for Operation (effective August 25, 2015)

#### Director's Order Number Ninety (15)

Virginia's Computer-Generated Game Lottery "Bank A Million" Final Rules for Game Operation (effective August 30, 2015)

#### Director's Order Number Ninety-Four (15)

Virginia's Instant Game Lottery 1555 "10X The Money" Final Rules for Game Operation (effective July 16, 2015)

#### Director's Order Number Ninety-Nine (15)

FasMart Retailer Incentive Program Promotions - Virginia Lottery Program Requirements

FasMart Stretch Your Scratcher Goal Promotion

(This Director's Order becomes effective on September 1, 2015, redacts and replaces Director's Order number 88(15),

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and shall remain in full force and effect until ninety (90) days after the conclusion of the incentive program, unless otherwise extended by the Director)

### Director's Order Number One Hundred (15)

Virginia Lottery's Lucky Lines Final Rules for Operation (effective September 22, 2015)

### Director's Order Number One Hundred One (15)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on Friday, July 24, 2015:

Game 1537	Beginner's Luck
Game 1533	Electric 8's
Game 1532	\$40,000 Jackpot
Game 1531	Triple 777
Game 1530	Double Match
Game 1529	Throwback to the 90's
Game 1528	Throwback to the 80's
Game 1526	Cash & Gas
Game 1520	Casino Nights
Game 1519	Casino Cash
Game 1496	Lucky Numbers
Game 1487	Money Multiplier
Game 1471	Winner Take All Millionaire Edition
Game 1462	Blackjack
Game 1448	Winner Take All
Game 1443	Money Bag Crossword
Game 1431	Jewel 7's
Game 1273	Right On The Money

The last day for lottery retailers to return for credit unsold tickets from any of these games will be Friday, September 4, 2015. The last day to redeem winning tickets for any of these games will be Wednesday, January 20, 2016, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of Wednesday, January 20, 2016, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia, and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto  
Executive Director  
July 16, 2015

## STATE MILK COMMISSION

### 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 Milk Commission is conducting a periodic review and small business impact review of **2VAC15-12, Public Participation Guidelines**.

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 August 10, 2015, and ends August 31, 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 Craffton Wilkes, Administrator, State Milk Commission, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 371-8700, or email [craffton.wilkes@vdacs.virginia.gov](mailto:craffton.wilkes@vdacs.virginia.gov).

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

**DEPARTMENT OF MINES, MINERALS AND ENERGY**  
**Notice of Periodic Review and Small Business Impact Review**

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each 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.

**4VAC25-11, Public Participation Guidelines**

**4VAC25-60, Rules and Regulations Governing the Installation and Use of Automated Temporary Roof Support Systems**

**4VAC25-70, Regulations Governing Disruption of Communications in Mines**

**4VAC25-101, Regulation Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells**

**4VAC25-110, Regulations Governing Blasting in Surface Mining Operations**

**4VAC25-120, Requirements for Installation and Use of Cabs and Canopies**

Agency Contact: Michael A. Skiffington, Program Support Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmmme.virginia.gov.

The comment period begins August 10, 2015, and ends August 31, 2015.

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 BOARD OF SOCIAL SERVICES**

**Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services conducted a small business impact review of **22VAC40-901, Community Services Block**

**Grant Program**, and determined that this regulation should be retained in its current form. The State Board of Social Services is publishing its report of findings dated June 19, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The regulation is necessary to provide the administrative structure for the Virginia Community Action Act, which is required to receive CSBG funds under the Community Service Block Grant Act. No complaints or comments were received during the review. The regulation does not duplicate or conflict with any federal or state law. The regulation has no impact on small business, as it does not include any language that prescribes limitations or requirements on small business. The regulation was last reviewed in 2010 and no changes in technology or other factors impact the regulation. The basis for the decision to retain the regulation with no change is as follows: there were no requests or recommendations for changes, no public comments were received, and no programmatic reasons to amend the regulation were identified.

Contact Information: Matt Fitzgerald, Community Service Program Manager, State Board of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7142, FAX (804) 726-7088, or email matt.fitzgerald@dss.virginia.gov.

**STATE WATER CONTROL BOARD**

**Opportunity for Public Comment on Proposed Regulatory Amendments to Implement 2015 Legislation**

Titles of Regulations: **9VAC25-20, Fees for Permits and Certificates (Primary Action).**

**9VAC25-31, Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.**

**9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation (Secondary Action).**

Statutory Authority: Subdivisions 6 and 10 of § 62.1-44.15 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Period: July 14, 2015, through August 14, 2015.

Purpose: The purpose of this action is the development of regulatory amendments needed to implement the provisions of Chapters 104 and 677 of the 2015 Acts of Assembly (House Bill 1364 and Senate Bill 1413) related to fees for the land application of industrial wastes and reimbursement for compliance monitoring conducted by local governments. The text of the proposed amendments is available at

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<http://www.deq.virginia.gov/programs/water/landapplicationbeneficialreuse/publicnotices.aspx>.

Chapters 677 and 104 amended and reenacted §§ 62.1-44.3; 62.1-44.16, and 62.1-44.19:3 of the Code of Virginia and added § 62.1-44.16:1 of the Code of Virginia. The legislation allows localities to adopt ordinances that provide for the testing and monitoring of the land application of solid or semisolid industrial wastes and authorizes DEQ to collect land application fees and use the fees collected to reimburse localities for testing and monitoring of the land application of solid or semisolid industrial waste and training the employees of the localities who will be responsible for testing and monitoring the land application of industrial wastes. The legislation further provides that the fee imposed on each dry ton of solid or semisolid industrial waste that is land applied pursuant to subsection E of § 62.1-44.16 of the Code of Virginia, as created by this act, shall be \$5.00 until altered, amended, or rescinded by the State Water Control Board.

The legislation provides that the State Water Control Board shall promulgate regulations to implement the provisions of the act to be effective no later than January 1, 2016.

**Participatory Approach:** The State Water Control Board's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia, except that the Department of Environmental Quality shall use a regulatory advisory panel to assist in the development of necessary regulations and shall provide an opportunity for public comment on the regulations prior to adoption.

A notice was published in the Virginia Register of Regulations on May 12, 2015, identifying the opportunity for stakeholders to express an interest in participating in a regulatory advisory panel to assist in the development of regulatory amendments relating to local monitoring of industrial waste permits and fees for land application of industrial wastes. The notice solicited persons with an interest in the amendments to participate on a regulatory advisory panel for regulation development.

A 10-member regulatory advisory panel (RAP) was selected, and the RAP met on June 19, 2015, and provided input to DEQ regarding the development of regulatory amendments.

DEQ is seeking input from the interested public regarding the substance of the regulatory amendments.

**Contact Information:** William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4019, or email [william.norris@deq.virginia.gov](mailto:william.norris@deq.virginia.gov).

### **Proposed Enforcement Action for the Chesapeake Airport Authority**

An enforcement action has been proposed for the Chesapeake Airport Authority for alleged violations of the State Water Control Law at the Chesapeake Regional Airport in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Mr. Robin Schuhmann will accept comments by email at [robin.schuhmann@deq.virginia.gov](mailto:robin.schuhmann@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from August 10, 2015, through September 9, 2015.

### **Proposed Enforcement Action for the Fairfax County Board of Supervisors**

An enforcement action has been proposed for the Fairfax County Board of Supervisors for violations in Fairfax County. The order resolves violations of State Water Control Law at the I-95 Landfill Complex. 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 August 11, 2015, through September 10, 2015.

### **Proposed Consent Order for The Four Winds Club, Inc.**

An enforcement action has been proposed for The Four Winds Club, Inc. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Four Winds Campground Sewage Treatment Plant located in Caroline County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov), FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 11, 2015, through September 10, 2015.

### **Proposed Consent Order for Pilot Travel Centers LLC**

An enforcement action has been proposed for Pilot Travel Centers LLC for violations at the Flying J #752 facility in Clearbrook, Virginia. The State Water Control Board proposes to issue a consent order to Pilot Travel Centers LLC 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). Karen Hensley will accept comments by email at [karen.hensley@deq.virginia.gov](mailto:karen.hensley@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from August 10, 2015, through September 9, 2015.

### **Total Maximum Daily Load for Bull Creek and the Tributaries Convict Hollow, Belcher Branch, Deel Fork, and Cove Hollow in Buchanan County**

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Bull Creek and the tributaries Convict Hollow, Belcher Branch, Deel Fork, and Cove Hollow in Buchanan County. These streams are listed on the 2012 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for aquatic life.

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

The impaired segments include: 28.45 miles of the mainstem of Bull Creek and the tributaries of Convict Hollow, Belcher Branch, Deel Fork, and Cove Hollow.

This is a public meeting to discuss the combination of the Phase I TMDL report and Phase II TMDL report into a single document. The Phase I TMDL was completed and approved by EPA in 2011 and is available at [http://www.deq.virginia.gov/portals/0/DEQ/water/TMDL/app\\_tmdls/tenbigvr/bullcrbc.pdf](http://www.deq.virginia.gov/portals/0/DEQ/water/TMDL/app_tmdls/tenbigvr/bullcrbc.pdf). The Phase II TMDL was completed in 2013 after additional sampling and water quality modeling refinement and is available at [http://www.deq.virginia.gov/portals/0/DEQ/water/TMDL/draft\\_tmdls/bullphase2.pdf](http://www.deq.virginia.gov/portals/0/DEQ/water/TMDL/draft_tmdls/bullphase2.pdf). The meeting on the development of the TMDLs to address the impairments for these segments will be held on August 11, 2015, from 6 p.m. to 8 p.m. at the Riverview Elementary/Middle School at 27382 Riverside Drive, Grundy, VA 24614.

The public comment period will begin August 11, 2015, and ends September 11, 2015.

A component of a TMDL is the wasteload allocations (WLAs); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL's associated WLAs. Information on the development of the TMDLs for these impairments is available upon request.

Questions or information requests should be addressed to Martha Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street,

Abingdon, VA 24210, telephone (276) 676-4800, or email [martha.chapman@deq.virginia.gov](mailto:martha.chapman@deq.virginia.gov).

### **Total Maximum Daily Load for the South Fork Holston River, Bishop Branch, Grosses Creek, and Slemp Creek in Washington and Smyth Counties**

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for the South Fork Holston River, Bishop Branch, Grosses Creek, and Slemp Creek in Washington and Smyth Counties. These streams are listed on the 2012 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for bacteria.

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

The impaired segments include: 36.7 miles of the South Fork Holston River from the headwaters downstream to the backwaters of South Holston; 0.48 miles of Bishop Branch from the confluence with the South Fork Holston River upstream to the confluence with Parker Branch; 4.00 miles of Grosses Creek from the headwaters downstream to the confluence with the South Fork Holston River; 3.85 miles of Slemp Creek from the headwaters downstream to the confluence with the South Fork Holston River.

The final public meeting on the development of the TMDL to address the bacteria impairments for these segments will be held on August 27, 2015, from 6 p.m. to 8 p.m. at the Chilhowie Town Hall, 325 East Lee Highway, Chilhowie, VA 24319.

The public comment period will begin August 27, 2015, and ends September 28, 2015.

A component of a TMDL is the wasteload allocations (WLAs); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL's associated WLAs. Information on the development of the TMDLs for these impairments is available upon request.

Questions or information requests should be addressed to Martha Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, or email [martha.chapman@deq.virginia.gov](mailto:martha.chapman@deq.virginia.gov).

## **VIRGINIA CODE COMMISSION**

### **Notice to State Agencies**

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th

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Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

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

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

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