



# VIRGINIA

## REGISTER OF REGULATIONS

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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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### September 2015 through October 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
33:1	August 17, 2016	September 5, 2016
33:2	August 31, 2016	September 19, 2016
33:3	September 14, 2016	October 3, 2016
33:4	September 28, 2016	October 17, 2016
33:5	October 12, 2016	October 31, 2016

\*Filing deadlines are Wednesdays unless otherwise specified.

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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 1. ADMINISTRATION

### OFFICE OF THE ATTORNEY GENERAL

#### Fast-Track Regulation

**Title of Regulation:** **1VAC45-10. Regulations Governing Disclosure of CID (Civil Investigative Demand) (amending 1VAC45-10-10 through 1VAC45-10-50, 1VAC45-10-70 through 1VAC45-10-100; repealing 1VAC45-10-20).**

**Statutory Authority:** § 59.1-9.10 of the Code of Virginia.

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

**Public Comment Deadline:** October 21, 2015.

**Effective Date:** November 5, 2015.

**Agency Contact:** Christopher J. Pitera, Assistant Attorney General and Regulatory Coordinator, Department of Law, 900 East Main Street, Richmond, VA 23219, telephone (804) 786-6576, FAX (804) 786-4839, or email cpitera@oag.state.va.us.

**Basis:** Section 59.1-9.10 of the Code of Virginia authorizes the Attorney General to promulgate rules and regulations pertaining to civil investigative demands issued pursuant to the Virginia Antitrust Act. Sections 57-59, 59.1-201.1, and 59.1-516 of the Code of Virginia incorporate the provisions of § 59.1-9.10, thereby authorizing the Attorney General to promulgate regulations pertaining to civil investigative demands issued pursuant to the Solicitation of Contributions law, the Virginia Consumer Protection Act, and the Virginia Telephone Privacy Protection Act.

**Purpose:** The proposed amendments are necessary to modernize the regulation and to expand its coverage to the statutes that incorporate the Virginia Antitrust Act's civil investigative demand provision. This action will protect the welfare of citizens by giving local law-enforcement officials, who have concurrent enforcement authority under those statutes, the ability to access evidence and information obtained by the Attorney General through civil investigative demands, thus encouraging enforcement of those laws.

**Rationale for Using Fast-Track Process:** This action is expected to be noncontroversial because it does not directly affect the public. Its direct effect is limited to those law-enforcement authorities that represent the Commonwealth, its political subdivisions, or its public agencies that are empowered to enforce the Virginia Antitrust Act and the other statutes that incorporate its civil investigative demands provision. In addition, this action is not designed to limit

those officials' access to the material the Attorney General obtains through civil investigative demands. Instead, it is designed to set up a formal, transparent process for the Attorney General to evaluate information sharing requests.

**Substance:** The proposed amendments do not add any new provisions. The only substantive changes brought about by the proposed amendments are (i) extending the coverage of the regulations to materials obtained through civil investigative demands issued under the Virginia Consumer Protection Act, the Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law; and (ii) requiring any requesting authority to show that it is subject to confidentiality requirements similar to those found in § 59.1-20 N of the Code of Virginia, as opposed to requiring the authority to show that it will comply with those confidentiality requirements, to better reflect the requirements of the statute.

**Issues:** There are no disadvantages to the public or the Commonwealth in implementing the proposed regulations. The primary advantage to the Commonwealth and the public is that the regulations will create a clear framework for information sharing with local officials, which will encourage those officials to exercise their authority to enforce those statutes.

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

Summary of the Proposed Amendments to Regulation. The Department of Law/Office of the Attorney General (OAG) proposes to update and amend for clarity its Regulations Governing Disclosure of CID (Civil Investigative Demand).

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

Estimated Economic Impact. This regulation was promulgated in 1981 and is being updated in this action. This regulation sets procedures by which local law enforcement authorities may access case evidence and information that is in the possession of the OAG. The OAG was originally authorized by Virginia Code 59.1-9.10(M) to promulgate a regulation for civil investigative demands (CIDs) pertaining to the Virginia Antitrust Act. Several pieces of legislation have been enacted since then that incorporate the mandate for CID regulations (Virginia Code 57-59(C), 59.1-201.1, and 59.1-516 incorporate the provisions of Virginia Code 59.1-9.10, thereby authorizing the Attorney General to promulgate regulations pertaining to CIDs).

The OAG now proposes to update its regulation so that CIDs initiated pursuant to investigations under the Virginia

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# Regulations

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Consumer Protection Act, Virginia Telephone Privacy Protection Act or the Solicitation of Contributions law are covered under this regulation. The OAG also proposes to amend this regulation to make it more clear that requesting local law enforcement agencies are bound to keep information given confidential with the exceptions that such material may be presented in a court of law and may be disclosed when required by the Code of Virginia or other controlling law.

No entity is likely to incur costs on account of these proposed changes. To the extent that these changes make this regulation more complete (by updating references to existing law) and more clear, readers will benefit.

**Businesses and Entities Affected.** The OAG reports that all local law enforcement entities that pursue CIDs will be affected by these regulatory changes.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This proposed regulation will likely have no effect on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This proposed regulation will likely have no effect on the use or value of private property in the Commonwealth

**Small Businesses: Costs and Other Effects.** No small business is likely to incur any costs on account of the proposed regulation.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small business is likely to incur any costs on account of the proposed regulation.

**Real Estate Development Costs.** This proposed regulation is unlikely to affect real estate development costs.

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

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

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

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

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

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

**Summary:**

*The amendments (i) extend the coverage of the chapter to materials obtained through civil investigative demands issued under the Virginia Consumer Protection Act, the Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law; (ii) require any requesting authority to establish that it is subject to confidentiality requirements similar to those in subsection N of § 59.1-9.10 of the Code of Virginia; and (iii) make stylistic and other nonsubstantive changes.*

**1VAC45-10-10. Definitions.**

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

"Law-enforcement authority" shall mean any public official, and his designees, (i) representing the Commonwealth, which includes ~~his~~ its political subdivisions ~~or his and its~~ public agencies, and (ii) empowered to bring civil actions to enforce ~~the Commonwealth's antitrust laws regulating commerce in any manner authorized by those laws~~ the Virginia Antitrust Act, Virginia Consumer Protection Act, Virginia Telephone Privacy Protection Act, or the Solicitation of Contributions law.

"Material" ~~shall include, but is not limited to, names, testimony, documents or answers to interrogatories which are~~ means any information taken, furnished, received, examined, or copied pursuant to ~~CIDs~~ civil investigative demands issued by the Attorney General pursuant to the Virginia Antitrust Act, the Virginia Consumer Protection Act, the Virginia Telephone Privacy Protection Act, or the Solicitation of

Contributions law, including, but not limited to, names, testimony, documents, or answers to interrogatories.

"Person" shall mean any natural person, corporation, trust, partnership, ~~proprietorship or~~ association ~~of any type, company, or any other legal entity.~~

"Solicitation of Contributions law" means Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia.

"Virginia Antitrust Act" means Chapter 1.1 (§ 59.1-9.1 et seq.) of Title 59.1 of the Code of Virginia.

"Virginia Consumer Protection Act" means Chapter 17 (§ 59.1-196 et seq.) of Title 59.1 of the Code of Virginia.

"Virginia Telephone Privacy Protection Act" means Chapter 44 (§ 59.1-510 et seq.) of Title 59 of the Code of Virginia.

**1VAC45-10-20. Purpose and applicability of chapter. (Repealed.)**

~~To provide a regular procedure for the sharing of material between the Attorney General and other law enforcement authorities of the Commonwealth; to ensure that material furnished is maintained subject to the confidentiality requirements of § 59.1-9.10(n) of the Code of Virginia; to facilitate the investigation of antitrust violations and full enforcement of the law in exercise of the Commonwealth's police power regulating commerce; to create penalties for violation of this chapter.~~

**1VAC45-10-30. Applicability.**

This chapter shall apply to all law-enforcement authorities that request material from the Attorney General ~~which was obtained through CIDs issued pursuant to the Virginia Antitrust Act.~~ This chapter shall not apply to federal law-enforcement authorities.

**1VAC45-10-40. Procedure for making material available.**

Any law-enforcement authority may request ~~of material from the Attorney General material obtained directly through CIDs.~~ The request shall be in writing. The request shall state with reasonable specificity the material desired, subject matter of the investigation for which material is desired, and the specific statute police powers of the Commonwealth regulating commerce that the authority is empowered to enforce under which the investigation is being conducted. All requests shall be directed to the Attorney General and signed by the chief officer of the law-enforcement authority. All requests for material shall recite that the law-enforcement authority acknowledges that, when provided, the material shall be used exclusively as delineated by statute and by ~~these regulations~~ this chapter. The request for material shall further include an affirmative showing, to the satisfaction of the Attorney General, that the law-enforcement authority ~~will comply with~~ is subject to confidentiality requirements similar to the confidentiality requirements of § 59.1-10(n) subsection N of § 59.1-9.10 of the Code of Virginia.

**1VAC45-10-50. Responses to requests for material.**

Within seven days of receipt of a request for material, the Attorney General, in his discretion, shall inform the chief

officer of the law-enforcement authority: (i) of his refusal to disclose any material; ~~or~~ (ii) that no such material exists; ~~or~~ (iii) that all or part of the material shall be made available, at the discretion of the Attorney General, for examination at the Office of the Attorney General; or (iv) that all or part of the material shall be made available, at the discretion of the Attorney General, for copying at the Office of the Attorney General. If option (iii) or (iv) is exercised, it shall be so exercised within 21 days of the receipt of the request.

**1VAC45-10-70. Restrictions on use.**

The law-enforcement authority and its custodian in receipt of material shall strictly maintain the confidentiality of ~~CID~~ the material. The law-enforcement authority shall use material provided pursuant to this chapter to conduct an investigation into violations of the ~~Commonwealth's laws regulating commerce and prohibiting restraints on trade~~ Virginia Antitrust Act, the Virginia Consumer Protection Act, the Virginia Telephone Privacy Protection Act, and the Solicitation of Contributions law or to conduct any litigation related to such violations. Nothing ~~herein in this section~~ shall preclude the use of the materials provided by this chapter before a court of law except as may otherwise be precluded by law.

**1VAC45-10-80. Restrictions on use disclosure.**

The law-enforcement authority and its custodian in receipt of materials shall not release material provided pursuant to this chapter, either directly or indirectly, to any person not employed by or assigned to the law-enforcement authority for purposes of enforcement of the ~~antitrust laws,~~ Virginia Antitrust Act, the Virginia Consumer Protection Act, the Virginia Telephone Privacy Act, or the Solicitation of Contributions law, nor to any other law-enforcement authority.

**1VAC45-10-90. Future regulations.**

The law-enforcement authority and its custodian in receipt of materials shall be bound to abide by any further regulations promulgated by the Attorney General pertaining to the safekeeping and custody of ~~civil investigative demands~~ such material.

**1VAC45-10-100. Penalties.**

~~In addition to the criminal penalties enumerated in the Virginia Antitrust Act, when applicable, any~~ Any law-enforcement authority found to have used material provided by the Attorney General in a manner inconsistent with this chapter shall be required to immediately return all ~~materials~~ material provided, as well as copies thereof, and information derived therefrom. The Attorney General may also suspend for a definite period the law-enforcement authority from receiving ~~materials~~ additional material pursuant to this chapter.

VA.R. Doc. No. R16-3843; Filed August 21, 2015, 3:23 p.m.



## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Proposed Regulation

**Title of Regulation:** 2VAC5-685. Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act (amending 2VAC5-685-10 through 2VAC5-685-60, 2VAC5-685-80, 2VAC5-685-90, 2VAC5-685-130, 2VAC5-685-170, 2VAC5-685-180).

**Statutory Authority:** § 3.2-3906 of the Code of Virginia.

**Public Hearing Information:**

December 10, 2015 - 10 a.m. - Virginia State Capitol, 1000 Bank Street, Senate Room 3 Richmond, VA 23219

**Public Comment Deadline:** December 11, 2015.

**Agency Contact:** Liza Fleeson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

**Basis:** Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code of Virginia.

Subdivision 4 of § 3.2-3906 of the Code of Virginia authorizes the board to adopt regulations to require individuals who sell, store, or apply pesticides commercially to be adequately trained to observe appropriate safety practices. This authority is discretionary.

**Purpose:** The Board of Agriculture and Consumer Services is authorized to adopt regulations to establish training, testing, and standards for certification of commercial pesticide applicators. The proposed action seeks to update the regulation and align it with current agency practices by (i) amending certain definitions; (ii) deleting the requirement that individuals who fail the certification examination must wait a prescribed number of days before retaking the examination; (iii) revising the process by which persons who cannot read pesticide labels can be certified to apply restricted use pesticides on their own property; (iv) clarifying the on-the-job training requirements for prospective applicators; (v) establishing numeric identifiers for the existing categories of registered technician and private applicator certifications; (vi) prescribing the minimum educational requirements for certified commercial applicators and registered technicians taking board-approved recertification training programs; and (vii) clarifying the requirements for the issuance of a certificate pursuant to a reciprocal agreement with another state. The proposed action is intended to ensure the competence of pesticide applicators through consistent standards of training, testing, and certification while

ultimately protecting the health, safety, and welfare of the citizens of the Commonwealth of Virginia.

**Substance:** The proposed amendments to the regulation will:

1. Amend the definition of the terms "Under the direct supervision of" and "Under the direct on-site supervision of" to clarify that the individual providing the supervision must be a certified commercial applicator. Currently, the regulation calls for the individual providing instruction and control to others who apply pesticides to be a certified applicator, omitting the qualifier "commercial."
2. Remove the requirement that individuals who fail to pass the certification examination must wait a specific number of days to retake the exam. Currently, individuals must wait 10 days to retake the exam after failing the exam for the first time and 30 days after failing the exam the second or subsequent times. The agency proposes that individuals who fail to pass the exam may, at any time, reapply to take the exam and be placed in the work queue along with other pending applications.
3. Revise the process by which persons who cannot read pesticide labels can demonstrate competence and obtain certification as private applicators to apply restricted use pesticides on their own properties. Currently, in order for an individual to obtain a waiver of the literacy requirement, a pesticide investigator must make a recommendation to the board regarding the waiver. The agency intends to propose that the individual petition the board directly for the waiver.
4. Eliminate inconsistent language regarding the period of time during which individuals seeking certification as registered technicians must receive on-the-job-training.
5. Establish the category number for registered technicians and private applicator certifications in a manner similar to the category codes already being used in other pesticide application specialties.
6. Add a statement requiring applicants who do not meet the certification requirements within two years of the date of passing the examination be reexamined. A passing score on a certification exam is only valid for two years from the date the exam was taken. Several exams may be necessary in order for an applicant to become fully certified. If the applicant does not pass all of the exams required to become certified within a two-year period, the applicant must retake all required exams.
7. Clarify that a person seeking pesticide applicator certification in Virginia on a reciprocal basis must hold current certification by the reciprocating state or federal agency.

**Issues:** The proposed regulatory action is advantageous to the public, as the amendments clarify and streamline the requirements for pesticide applicator certification while ensuring applicators' continued competence. The continued competence of pesticide applicators ensures individuals who

apply pesticides make informed decisions while on the job, reducing the chance for misapplication and potential threats to the health, safety, and welfare of citizens. These actions do not add any additional requirements to the applicator when completing the certification or recertification process nor do they affect the issuance of a certification to an applicator by the agency. There are no known disadvantages to the public or the state. The proposed regulatory action will clarify and streamline requirements and will lead to an increase in compliance through better understanding of applicable requirements.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes many clarifying, and two substantive changes to its pesticide applicator certification regulation.

Result of Analysis. For most proposed changes, benefits will likely outweigh costs. There is insufficient information to ascertain whether benefits will outweigh costs for one proposed change.

Estimated Economic Impact. Most of the changes that the Board proposes to make to this regulation are solely to make the requirements of the regulation more easily understood. For instance, the Board proposes to add language that specifies that only commercial applicators may provide supervision for technicians. Since it is already the case that only commercial applicators may provide supervision, no entity is likely to incur any costs on account of this change (or other changes like this). Regulated entities as well as other interested parties will benefit from the added clarity that changes such as these bring to the regulatory text.

Currently, this regulation requires applicants for certification who have failed the certification exam to wait 10 days after the date that they failed the exam for the first time to retake the exam. Applicants who fail the exam a second or subsequent time must currently wait 30 days to attempt to retake it. The Board now proposes to remove these limitations as they believe the failing applicant has both the responsibility to remediate their knowledge before re-taking the exam and the incentive to do so since they have to pay the exam fee (\$70) each time it has to be taken. No entity is likely to incur costs on account of this change. Both applicants for certification, and the companies that employ them, will benefit from applicants being able to retake the exam without unnecessary and artificial delay as this may allow applicants to become certified more quickly.

Current regulation requires prospective pesticide applicators seeking certification as registered technicians to take the certification exam within 90 days of being hired for, or transferred into, a position that includes duties involving the commercial application of pesticides. If they do not pass the exam initially, the regulation gives them 30 days from exam failure to retake it and pass. The regulation prohibits them

from applying pesticides, even under supervision, if they fail to retake and pass the exam within 30 days. The Board is concerned that a not inconsiderable number of individuals who are hired into positions that involve the commercial application of pesticides either 1) wait until the end of the 90-day period to take the exam and then fail to retake the exam, or 2) just never take the exam in the first place. The result of this is individuals treating their job as short term (90 to 120 day) employment where they will leave one pesticide company after the time limit to take the exam runs out only to be hired by another pesticide company, or even rehired by the same company after a period of time, where they will again work for 90 or 120 days without ever becoming certified as pesticide applicators. Board staff reports that, of the 3,286 prospective applicators who submitted applications to become registered technicians to the Board in the last 12 months, 581 failed to take the certification exam within 90 days.

The Board proposes to amend this regulation so that individuals seeking certification as registered technicians will have 90 days to take and pass the exam. Individuals who do not pass the exam within 90 days will not be able to apply pesticides, even under supervision, until they do pass it. The Board further proposes to change the rules so that individual applicants seeking certification as registered technicians will only have one 90-day period in which they may pass the exam. After that one 90-day period, prospective applicators will not be able to apply pesticides for any employer even under supervision. To the extent that requiring certification for pesticide applicators keeps the public from being harmed by pesticide application, the public will benefit from this change that stops individuals from applying pesticides while avoiding certification requirements. Individuals who have been engaging in this avoidance will incur costs as they will either have to pass the exam or find other, presumably less optimal, employment. Without knowing the extent of harm that might be avoided on account of pesticide applicator certification, Department of Planning and Budget cannot ascertain whether the benefits of this regulatory change will outweigh its costs.

Businesses and Entities Affected. Board staff reports that there are approximately 3,000 licensed pesticide businesses in the Commonwealth; the vast majority of these businesses would qualify as small businesses. Board staff also reports that the Board currently certifies 22,750 pesticide applicators and that 3,286 prospective pesticide applicators have submitted an application for examination in the last 12 months. All of these entities, as well as any individuals who might apply for certification in the future, will be affected by these proposed regulatory changes.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulation.

Projected Impact on Employment. Board staff reports that some technicians who habitually avoid the exam requirements in this regulation by working a short time (less than 90 days),

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and then quitting or switching employers, will not qualify for employment with pesticide applicators if they continue this behavior pattern under the proposed regulation. The new rules for exam time limits are, however, unlikely to change total employment in this field.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to have any impact on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small business pesticide applicator companies will likely have to hire employees from a smaller pool of applicants once these regulatory changes become effective. If applicant pools end up significantly smaller, small business employers may incur costs for higher wages needed to attract and keep qualifying employees.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative rules that the Board could have adopted that would both meet their goal of enforcing certification and result in lower costs for small businesses.

Real Estate Development Costs. Real estate development costs are unlikely to be affected by this proposed regulation.

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

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

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

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

- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

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

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

Summary:

*The proposed amendments update the regulation and align it with current agency practices by (i) amending certain definitions; (ii) deleting the requirement that individuals who fail the certification examination must wait a prescribed number of days before retaking the examination; (iii) revising the process by which persons who cannot read pesticide labels can be certified to apply restricted use pesticides on their own property; (iv) clarifying the on-the-job training requirements for prospective applicators; (v) establishing numeric identifiers for the existing categories of private applicator certification; (vi) prescribing the minimum educational requirements for certified commercial applicators and registered technicians taking board-approved recertification training programs; and (vii) clarifying the requirements for the issuance of a certificate pursuant to a reciprocal agreement with another state.*

Part I  
Definitions

**2VAC5-685-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. ~~An asterisk or double asterisk following a definition indicates that the definition has been taken from the Virginia Pesticide Control Act, Article 1 (§ 3.2-3900 et seq.) or Article 4 (§ 3.2-3935 et seq.), respectively, of Chapter 39 of Title 3.2 of the Code of Virginia.~~

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia).

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other

comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.Ⓜ

"Board" means the Board of Agriculture and Consumer Services.

"Board-approved training" means a course which includes, at a minimum, study and review of all the material contained in an edition used in Virginia of (i) a basic pesticide applicator certification training core manual and (ii) a certification training manual for each specific category pertaining to the type of pesticide application to be done.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ 3.2-3929 et seq.) of Chapter 39 of Title 3.2 of the Code of Virginia.

"Certification" or "certified" means the recognition granted by the Board of Agriculture and Consumer Services to an applicator upon satisfactory completion of board-approved requirements.Ⓜ

"Chemigation" means the application of any pesticide through an irrigation system.

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property, other than as provided in the definition of private applicator.Ⓜ

"Commercial applicator not for hire" means any commercial applicator who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Competent person" means a person having the demonstrated ability to perform the task to which he is assigned.

"Department" means the Department of Agriculture and Consumer Services.

"Drift" means the physical movement of pesticide through the air at the time of pesticide application or soon thereafter from the target site to any nontarget or off-target site. Pesticide drift will not include movement of pesticides to nontarget or off-target sites caused by erosion, migration, volatility, or windblown soil particles that occurs after application unless specifically addressed on the pesticide product label with respect to drift control requirements.

"EPA" means the United States Environmental Protection Agency.

"Fumigant" means any substance ~~which that~~ by itself or in combination with any other substance emits or liberates a gas

or gases, fumes, or vapors that will destroy vermin, rodents, insects, and other pests, and ~~are~~ is usually lethal, poisonous, noxious, or dangerous to human life.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.Ⓜ

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.Ⓜ

"Incident" means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects ~~which that~~ may be present in any environment whatsoever.Ⓜ

"Knowledge" means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.Ⓜ

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.Ⓜ

"Licensed" or "licensee" means those businesses which, when meeting the requirements established by the Board of Agriculture and Consumer Services, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.Ⓜ

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.ⓂⓂ

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances

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intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.\*

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations ~~which that~~ produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.\*

"Private applicator" means an applicator who uses or supervises the use of any pesticide ~~which that~~ is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.\*

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator.\* Every registered technician is certified in Category 60 regardless of the category or subcategory in which he is trained and applies pesticides.

"Registered technician not for hire" means any registered technician who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Repeat violation" means another violation following the first violation of the same provision of the Virginia Pesticide Control Act or the federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 et seq.), or regulations adopted pursuant thereto, committed within a three-year period commencing with the date of official notification of the first violation of the provision.

"Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted use by the administrator of the EPA under the provisions of 1947 (7 USC § 3(d)(1)(c)) of the federal Insecticide, Fungicide, and Rodenticide Act (as amended).

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.\*

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.\*\*

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified commercial applicator who is responsible for the actions of that person.\*

"Under the direct on-site supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified commercial applicator who is responsible for the actions of that person and is physically present on the property upon which the pesticide is being applied, and is in constant visual contact with the person applying the pesticide.

"Use" means the employment of a pesticide for the purposes of (i) preventing, destroying, repelling, or mitigating any pest or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include application or mixing; and shall include handling or transfer of a pesticide after the manufacturer's original seal is broken. The term "use" shall also include any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.\*

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.\*\*

## **2VAC5-685-20. General requirements for certification.**

A. The following persons must be certified as pesticide applicators:

1. Commercial applicators;
2. Registered technicians; and
3. Private applicators.

B. Commercial applicators not for hire must be certified only when using any pesticide in the following areas except as noted in subsection C of this section:

1. Areas open to the general public at daycare facilities, educational institutions, health care facilities, and convalescent facilities;
2. Areas where open food is stored, processed, or sold; and
3. Recreational lands over five acres in size.

C. Employees of local, state, and federal governmental agencies who use or supervise the use of any pesticide on any area in the performance of their official duties must be certified as either commercial applicators not for hire or registered technicians, but they are exempt from any certification fees.

D. All persons desiring certification as pesticide applicators must:

1. Complete board-approved training appropriate for the desired classification;
2. Submit a completed application to the commissioner; and
3. Pass required ~~examination(s)~~ examination or examinations. ~~a. Applicants who do not pass the examination on their first attempt are eligible to be reexamined for the same category 10 days from the date of the first examination.~~
  - ~~b. Applicants who fail on the second or subsequent attempts must wait 30 days from the date of the last examination before being reexamined in the same category.~~
  - ~~e. Applicants requesting and who request reexamination must resubmit a completed application to the commissioner or his duly authorized agent and pay the nonrefundable applicator certification fee as determined by 2VAC5-675, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.~~

E. Persons with a history of repeat violations of federal or state pesticide laws or whose certification or pesticide business license has been revoked within the two-year period immediately prior to application are not eligible for certification. Such persons may appear before the board to show why they should be granted certification as outlined under provisions of § 3.2-3940 E of the Code of Virginia.

F. Applicants for certification cannot engage in the activity for which they are requesting certification, unless participating in supervised direct on-site training, until certification has been issued by the commissioner. Commercial applicators may not apply pesticides in any category or subcategory activity until they have passed the category-specific examination and obtained the appropriate certification.

G. A commercial or private applicator or registered technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed. ~~The department shall issue a duplicate card to the applicator or technician upon payment of the costs of duplication.~~

**2VAC5-685-30. Specific certification requirements for commercial applicators.**

A. In addition to the general requirements listed in 2VAC5-685-20, applicants for commercial applicator certification shall meet the following requirements:

1. Certification as a registered technician, as well as employment as a registered technician for at least a year; or

2. One year of education, training, or experience in a pesticide related field which provides the equivalent practical knowledge of proper pesticide use required of a registered technician.

B. The application process for commercial applicators is as follows:

1. The application must be in writing to the commissioner; and
2. The application must contain:
  - a. Name;
  - b. Principal business address in the Commonwealth and elsewhere;
  - c. Qualifications and proposed operations; and
  - d. ~~Classification(s)~~ Classification or classifications desired.

Individuals seeking certification as commercial applicators must pay a fee as determined by 2VAC5-675, ~~Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.~~

C. Applicants shall, within 90 days after submitting the application and paying the fee, report to an authorized testing location and take the required examinations.

D. Applicants who do not complete the certification process within two years of the date of passing the examinations must be reexamined.

E. Aerial pesticide application applicants must meet the requirements of the Federal Aviation Agency, the Virginia Department of Aviation of the Commonwealth, and any other applicable federal or state laws or regulations to operate aerial equipment.

**2VAC5-685-40. Specific certification requirements for private applicators.**

A. Each applicant for a private applicator's certificate shall apply to the commissioner and then report to an authorized testing location within 90 days and take an examination for each certification category, specified in 2VAC5-685-80, applicable to his operation. The application shall contain the applicant's name, address and classification desired for certification.

B. Persons who cannot read or understand labels shall not be certified as private applicators unless they demonstrate competence to apply restricted use pesticides on their own properties. ~~After consulting the appropriate Virginia Cooperative Extension agent, a department pesticide investigator may recommend that the board grant a waiver of the literacy requirement.~~ Persons seeking a waiver of the literacy requirements shall petition the board. Persons certified under this waiver shall obtain certification in the categories of limited certificate or single product certification as described in 2VAC5-685-80.

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## **2VAC5-685-50. Certification procedures for registered technicians.**

A. In addition to the general requirements listed in 2VAC5-685-20, individuals seeking certification as registered technicians must:

1. Receive on-the-job training in the proper application of pesticides under the direct on-site supervision of a certified commercial applicator for at least 20 hours ~~during the six-month period prior to applying for certification;~~
2. Complete at least 20 hours of board-approved training;
3. Submit an application form with the fee established by regulations of the Board of Agriculture and Consumer Services; and
4. Take the examination within 90 days after an individual is hired or transferred into a position where duties and functions involve the commercial use of pesticides. Individuals not passing the examination on the first attempt must reapply, following the procedures outlined in 2VAC5-685-20 ~~§ 3, and retake the examination within 30 days after the first attempt.~~ Individuals failing to take and pass the exam ~~within 30 days of the initial exam~~ may not apply pesticides commercially, even under direct on-site supervision, until they pass the examination.

Individuals who have previously submitted an application form and either did not take the examination within 90 days or did not pass the examination may not apply pesticides commercially, even under direct on-site supervision, until they reapply, following the procedures outlined in 2VAC5-685-20 and pass the examination.

Applicants who do not complete the certification process within two years of the date of passing the examination must be reexamined.

B. Before registered technicians begin working in any application category or subcategory that is different from the category in which they received their original training, they shall receive additional training from a commercial applicator in the following aspects of pesticide application as it relates to the proposed category or subcategory of work:

1. Pesticides to be used, including reading and understanding the label;
2. Application equipment and techniques;
3. Pests to be controlled;
4. Personal protective equipment and clothing; and
5. Environmental concerns, including storage and disposal of pesticides applied.

The commercial applicator providing training to a registered technician shall be certified in the category or subcategory for which he is providing the training and shall provide proof to the department of such training on forms provided by the department. Such forms must be received by the department within 10 calendar days of the completion of such training.

## **2VAC5-685-60. Persons exempt from certification.**

The following persons are exempt from certification:

1. Persons conducting laboratory research involving restricted use pesticides;
2. Doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication during the course of their practice, or to control pests in corpses;
3. Persons who use or supervise the use of nonrestricted use pesticides as part of their duties only on properties owned or leased by their employers, except those persons identified in 2VAC5-685-20 B;
4. Persons who provide janitorial or cleaning services using nonrestricted use sanitizers, disinfectants, and germicides;
5. Painters who apply restricted use marine antifoulant paint under the direct supervision of a certified commercial applicator. One certified commercial applicator shall be present for every eight painters;
6. Forestry applicators standing on the ground who apply general use herbicides for forest vegetation control and tree thinning under the direct on-site supervision of a certified commercial applicator. One certified commercial applicator shall be present for every eight forestry applicators and be within voice contact of and no more than 200 feet from such applicators;
7. Individuals engaged in the training required for certification while under the direct on-site supervision of a certified commercial applicator;
8. Employees of local, state, or federal governmental agencies who from time to time make incidental use of ready-to-use pesticides that are properly registered in Virginia. For purposes of this section, "incidental use" means the use of a pesticide on an occasional, isolated, site-specific basis in order to avoid immediate personal harm from stinging or biting insects. This exemption does not include regular, routine, or maintenance applications of pesticides or any use of restricted-use pesticides;
9. Individuals who apply pesticides for the survey for gypsy moth under the authority of the department; and
10. Individuals who apply pesticides for the survey for cotton boll weevil under the authority of the department.

## **2VAC5-685-80. Categories for private applicator certification.**

Private applicators who apply or supervise the application of restricted use pesticides shall be certified in one or more of the following categories:

- ~~1. Food, fiber, forestry products, and commodity production. Includes private applicators who use or supervise the use of restricted use pesticides: in the production of agricultural crops, including fumigation and chemigation; forestry products; on animals; in places where animals are confined; for the control of vertebrate~~

pests of agricultural crops and livestock animals; in the production of agricultural commodities; and for the fumigation of agricultural products.

~~2. Ornamental production. Includes private applicators who use or supervise the use of restricted use pesticides to control pests: in tree nurseries; shrub nurseries; ornamental plant nurseries; flower nurseries; in greenhouses used for breeding and growing ornamental plants; in irrigation systems; and in ornamental production using fumigants.~~

~~3. Limited certificate single product/single use. Includes private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case by case basis.~~

~~4. Single product certification. Includes private applicator applicants who are seeking authorization to apply a single identified restricted use product, or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.~~

1. Category 86: Single product certification. Includes private applicator applicants who are seeking authorization to apply a single identified restricted use product or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.

2. Category 87: Limited certificate - single product or single use. Includes private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case-by-case basis.

3. Category 90: Agricultural commodity production - food, fiber, and forestry products, and commodity production. Includes private applicators who use or supervise the use of restricted use pesticides (i) in the production of agricultural crops, including fumigation and chemigation; (ii) on forestry products; (iii) on animals; (iv) in places where animals are confined; (v) for the control of vertebrate pests of agricultural crops and livestock animals; (vi) in the production of agricultural commodities; and (vii) for the fumigation of agricultural products.

4. Category 91: Ornamental production. Includes private applicators who use or supervise the use of restricted use pesticides to control pests in (i) tree nurseries, (ii) shrub nurseries, (iii) ornamental plant nurseries, (iv) flower nurseries, (v) greenhouses used for breeding and growing ornamental plants, (vi) irrigation systems, and (vii) ornamental production using fumigants.

## Part IV Knowledge Required for Certification of Pesticide Applicators

### **2VAC5-685-90. Determination of general knowledge and qualifications for private and commercial applicators and registered technicians.**

A. Applicants shall be tested on their knowledge and qualifications concerning the use and handling of pesticides. The examination will test the applicants' general knowledge required for all categories, and the additional knowledge specifically required for each category or subcategory in which an applicator desires to be certified.

B. All applicants for certification as private or commercial applicators or registered technicians shall demonstrate practical knowledge of the principles and practices of pest control and the safe use of pesticides, as contained in a basic pesticide applicator certification training core manual. Testing will be based on problems and situations in the following areas:

1. Federal and Commonwealth of Virginia pesticide laws and regulations;
2. Understanding and interpreting pesticide labels;
3. Handling of accidents and incidents;
4. Proper methods of storing, ~~mixing/loading~~ mixing, loading, transporting, handling, applying, and disposing of pesticides;
5. Safety and health, including proper use of personal protective equipment;
6. Potential adverse effects caused by the application of pesticides under various climatic or environmental conditions, such as drift from the target area, pesticide run-off, ~~ground-water~~ groundwater and drinking water contamination, and hazard to endangered species; and
7. Recognizing common pests and general pest biology.

## Part V Renewal of Certification and Certificates

### **2VAC5-685-130. Renewal of certification.**

A. Any certified ~~pesticide~~ private or commercial applicator or registered technician who desires to renew his certification shall do so biennially for the category or subcategory for which he is certified. ~~All applicators~~ A certified private or commercial applicator or registered technician must first attend board-approved recertification ~~course(s)~~ courses and submit proof of attendance at such courses, or be reexamined in basic pesticide safety and the categories desired for recertification. In addition to the ~~above~~ requirement in this subsection, commercial applicators and registered technicians shall also pay the biennial certificate fee and submit an application for renewal before the commissioner will renew their certification.

B. ~~Certified applicators~~ A certified commercial applicator or registered technician must complete a board-approved

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recertification course that, at a minimum, addresses the following topics:

1. Legal aspects including:

- a. A reminder to follow label directions including those on use, storage, disposal, and transportation;
- b. A review of possible consequences of violating the law;
- c. A reminder that restricted use pesticides purchased under an applicator's certificate number must be for use by certified commercial applicators only;
- d. A review of a certified commercial applicator's responsibilities in supervising the use of restricted use pesticides by noncertified applicators; and
- e. A review of recordkeeping responsibilities of certified commercial applicators for restricted use pesticide applications; and

2. Category-related training including:

- a. A review of general safety for the applicator, coworkers, and the public;
- b. A review of the environmental aspects of pesticide use, including impact on nontarget organisms, wildlife, domestic animals, groundwater, etc;
- c. A review of application techniques, including equipment, calibration, and maintenance;
- d. A review of hazards, both personal safety and environmental, unique to that specific category;
- e. A review of pertinent information regarding new chemistry or new formulations available that would be of use to applicators certified in the category;
- f. A review of integrated pest management programs applicable to the category; and
- g. A review of pests specific to category, including in-depth training on identification and control of selected specific pests. This section may be tailored to local needs.

C. A certified private applicator must complete a board-approved recertification course that, at a minimum, addresses the following topics:

- 1. General safety;
- 2. Legal update; and
- 3. Pest management and application technology including:
  - a. A review of category-specific pest management and pesticide use patterns; and
  - b. A review of category-specific pesticide application and handling technology.

D. A certified private or commercial applicator or registered technician may accumulate up to four years of credit by attending board-approved recertification courses.

E. Upon expiration of certification, the applicator's certificate of a private applicator, commercial applicator, or

registered technician shall become invalid. Any pesticide private applicator, commercial applicator, or registered technician who desires to renew his certification, but fails to do so within 60 days after its expiration, shall be reexamined.

## Part VII

### Reporting of Pesticide Accidents, Incidents, or Loss

#### **2VAC5-685-170. Reporting of pesticide accidents and incidents.**

A. ~~Commercial~~ Certified commercial or private applicators or registered technicians shall report any pesticide accident or incident in which they are involved that constitutes a threat to any person, to public health or safety, or to the environment, as a result of the use or presence of any pesticide. The accident or incident shall be reported whether or not a restricted use pesticide is involved.

B. When the accident or incident involves a discharge or spillage of a pesticide, the ~~applicator~~ certified commercial or private applicator or registered technician shall contact the department for guidance to determine whether the discharged or spilled amount is a reportable quantity.

C. The ~~applicator~~ certified commercial or private applicator or registered technician shall make the initial notification to the department's Office of Pesticide Services by telephone within a reasonable time, not to exceed 48 hours after the accident or incident occurrence, should circumstances prevent immediate notification. The ~~applicator~~ certified commercial or private applicator or registered technician shall prepare and submit a written report of the accident or incident to the Office of Pesticide Services within 10 working days after the initial notification. The report shall include the following:

- 1. Name of individuals involved in accident or incident;
- 2. Name of pesticide involved;
- 3. Quantity of pesticide spilled, and containment procedures;
- 4. Time, date, and location of accident or incident;
- 5. Mitigating actions taken; and
- 6. Name, (or description if unnamed), and location of bodies of water nearby where contamination of such bodies of water could reasonably be expected to occur due to natural or manmade actions.

## Part VIII

### Reciprocal Agreement

#### **2VAC5-685-180. Issuance of a certificate on a reciprocal basis.**

A. A person who is currently certified by another state or by a federal agency may make written application to the commissioner, or his duly authorized agent, for issuance of a certificate on a reciprocal basis without examination, in accordance with § 3.2-3934 of the Code of Virginia. Along with his written application, an applicant shall either (i) present an original certificate issued by the state of origin or issued by a federal agency or (ii) request that the state of

origin or federal agency send an attested copy of the applicant's certification directly to the commissioner or his duly authorized agent.

The applicant shall either include a document granting power of attorney to a resident of Virginia to receive process or provide proof that the applicant has appointed a registered agent under the laws of the Commonwealth. Reciprocal certification shall not be granted based on reciprocal certification issued in another state.

B. Any certificate issued on a reciprocal basis may be suspended in the same manner and on the same grounds as a Virginia certificate pursuant to the provisions of Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia. A certificate issued on a reciprocal basis may also be suspended if the nonresident's original certificate or federal certification is suspended or revoked.

VA.R. Doc. No. R15-4126; Filed August 20, 2015, 3:50 p.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

#### Final Regulation

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

**Title of Regulation:** 4VAC15-50. **Game:** Bear (amending 4VAC15-50-120).

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

**Effective Date:** September 4, 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 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 August 21, 2015, 3:18 p.m.



## TITLE 8. EDUCATION

### GEORGE MASON UNIVERSITY

#### Final Regulation

**REGISTRAR'S NOTICE:** George Mason University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

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**Title of Regulation:** **8VAC35-80. Unclaimed Personal Property (adding 8VAC35-80-10, 8VAC35-80-20, 8VAC35-80-30).**

**Statutory Authority:** §§ 23-4.2 and 23-91.29 of the Code of Virginia.

**Effective Date:** September 11, 2015.

**Agency Contact:** Elizabeth Woodley, Agency Regulatory Coordinator, 4400 University Drive, Fairfax, VA 22030, telephone (703) 993-5115 or email ewoodley@gmu.edu.

**Summary:**

*The regulatory action establishes the requirements regarding unclaimed personal property in the possession of George Mason University.*

**CHAPTER 80**

**UNCLAIMED PERSONAL PROPERTY**

**8VAC35-80-10. Scope.**

This chapter applies to (i) all George Mason University faculty, staff, students, and university contractors and (ii) the general public.

**8VAC35-80-20. Definitions.**

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

"Unclaimed personal property" refers to tangible or intangible personal property, whether lost or abandoned, in the possession of George Mason University.

**8VAC35-80-30. Requirements.**

The care, restitution, sale, destruction, and disposal of unclaimed personal property in the possession of George Mason University shall be in accordance with § 23-4.2 of the Code of Virginia and with George Mason University Policy 1136, Unclaimed Personal Property, approved April 27, 2015.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC35-80)

[Policy 1136: Unclaimed Personal Property, George Mason University, April 27, 2015](#)

VA.R. Doc. No. R15-4160; Filed September 8, 2015, 9:23 a.m.

**STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Council of Higher Education for Virginia 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 Council of Higher Education for Virginia will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **8VAC40-20. Regulations for the Senior Citizen Higher Education Program (amending 8VAC40-20-20).**

**Statutory Authority:** §§ 23-9.6:1 and 23-38.56 of the Code of Virginia.

**Effective Date:** September 21, 2015.

**Agency Contact:** Melissa Wyatt, Senior Associate for Financial Aid, State Council of Higher Education for Virginia, 101 North 14th Street, Ninth Floor, Richmond, VA 23219, telephone (804) 225-4113, FAX (804) 225-2604, or email melissacollumwyatt@schev.edu.

**Summary:**

*The amendment conforms to Chapter 146 of the 2015 Acts of Assembly by increasing the maximum state taxable income a senior citizen may have, from no more than \$15,000 to no more than \$23,850, to be eligible to have tuition waived to take higher education courses for academic credit.*

**8VAC40-20-20. Eligibility.**

A senior citizen may take courses without paying tuition or required fees, except for course materials, under certain conditions. If the senior citizen has taxable income of not more than ~~\$15,000~~ \$23,850 in the preceding year, the individual may take a course for academic credit free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees. A senior citizen, regardless of income level, may audit a course that is given for academic credit or take a noncredit course free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees.

No limit is placed on the number of terms, quarters, or semesters in which a senior citizen who is not enrolled for academic credit may register for courses, but the individual can take no more than three noncredit courses in any one term, quarter, or semester. There will be no restriction on the number of courses that may be taken for credit in any term, semester, or quarter, or on the number of terms, semesters, or quarters in which an eligible senior citizen may take courses for credit.

The two additional conditions listed below shall be met before a senior citizen may take a course under the provisions of this program:

1. The senior citizen shall meet the appropriate admission requirements of the institution in which the student plans to enroll; and
2. The senior citizen may be admitted to a course only on a space-available basis after all tuition-paying students have been accommodated. State institutions of higher education may make individual exceptions to this procedure when the senior citizen has completed 75% of the requirements for the degree.

An institution has no special obligation to offer courses specifically to meet the needs of senior citizens or to continue to provide a particular course for a senior citizen who has registered for the course if the regular enrollment in the course is not adequate to justify the offering.

Nothing in this regulation exempts a senior citizen enrolled in a course from the requirements for attendance and completion of course assignments.

VA.R. Doc. No. R16-4477; Filed August 24, 2015, 3:09 p.m.

**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Health 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 Health will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12VAC5-31. Virginia Emergency Medical Services Regulations (amending 12VAC5-31-10).

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

**Effective Date:** October 22, 2015.

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

**Summary:**

*This action revises the definitions of "emergency medical services," "emergency medical services agency," "emergency medical services personnel," "emergency medical services provider," and "emergency medical services system" to conform to changes in the Code of Virginia enacted by Chapters 502 and 503 of the 2015 Acts of Assembly.*

Part I  
General Provisions  
Article 1  
Definitions

**12VAC5-31-10. Definitions.**

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

"Abandonment" means the termination of a health care provider-patient relationship without assurance that an equal

or higher level of care meeting the assessed needs of the patient's condition is present and available.

"Accreditation" means approval granted to an entity by the Office of Emergency Medical Services (EMS) after the institution has met specific requirements enabling the institution to conduct basic or advanced life support training and education programs. There are four levels of accreditation: interim, provisional, full, and probationary.

"Accreditation cycle" means the term or cycle at the conclusion of which accreditation expires unless a full self-study is performed. Accreditation cycles are typically quinquennial (five-year) but these terms may be shorter, triennial (three-year) or biennial (two-year), if the Office of EMS deems it necessary.

"Accreditation date" means the date of the accreditation decision that is awarded to an entity following its full site visit and review.

"Accreditation decision" means the conclusion reached about an entity status after evaluation of the results of the onsite survey, recommendations of the site review team, and any other relevant information such as documentation of compliance with standards, documentation of plans to correct deficiencies, or evidence of recent improvements.

"Accreditation denied" means an accreditation decision that results when an entity has been denied accreditation. This accreditation decision becomes effective only when all available appeal procedures have been exhausted.

"Acute" means a medical condition having a rapid onset and a short duration.

"Acute care hospital" means any hospital that provides emergency medical services on a 24-hour basis.

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

"Advanced life support" or "ALS" means the provision of care by EMS personnel who are certified as an Emergency Medical Technician (EMT)-Enhanced, Advanced EMT, Intermediate, or Paramedic or equivalent as approved by the Board of Health.

Advanced life support in the air medical environment is a mission generally defined as the transport of a patient who receives care during a transport that includes an invasive medical procedure or the administration of medications, including IV infusions, in addition to any noninvasive care that is authorized by the Office of EMS.

"Advanced life support certification course" means a training program that allows a student to become eligible for a new ALS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective advanced life support curriculum. Initial certification courses include:

1. Emergency Medical Technician-Enhanced;
2. Advanced EMT;

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3. Advanced EMT to Intermediate Bridge;
4. EMT-Enhanced to Intermediate Bridge;
5. Intermediate;
6. Intermediate to Paramedic Bridge;
7. Paramedic;
8. Registered Nurse to Paramedic Bridge; and
9. Other programs approved by the Office of EMS.

"Advanced life support (~~ALS~~) coordinator" means a person who has met the criteria established by the Office of EMS to assume responsibility for conducting ALS training programs.

"Advanced life support transport" means the transportation of a patient who is receiving ALS level care.

"Affiliated" means a person who is employed by or a member of an EMS agency.

"Air medical specialist" means a person trained in the concept of flight physiology and the effects of flight on patients through documented completion of a program approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Ambulance" means, as defined by § 32.1-111.1 of the Code of Virginia, any vehicle, vessel or craft that holds a valid permit issued by the Office of EMS and that is specially constructed, equipped, maintained and operated, and intended to be used for emergency medical care and the transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless. The word "ambulance" may not appear on any vehicle, vessel or aircraft that does not hold a valid EMS vehicle permit.

"Approved locking device" means a mechanism that prevents removal or opening of a drug kit by means other than securing the drug kit by the handle only.

"Assistant director" means the Assistant Director of the Office of Emergency Medical Services.

"Attendant-in-charge" or "AIC" means the certified or licensed person who is qualified and designated to be primarily responsible for the provision of emergency medical care.

"Attendant" means a certified or licensed person qualified to assist in the provision of emergency medical care.

"Basic life support" or "BLS" means the provision of care by EMS personnel who are certified as First Responder, Emergency Medical Responder (EMR), or Emergency Medical Technician or equivalent as approved by the Board of Health.

Basic life support in the air medical environment means a mission generally defined as the transport of a patient who receives care during a transport that is commensurate with the

scope of practice of an EMT. In the Commonwealth of Virginia care that is provided in the air medical environment must be assumed at a minimum by a Virginia certified Paramedic who is a part of the regular air medical crew. (fixed wing excluded)

"BLS certification course" means a training program that allows a student to become eligible for a new BLS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective basic life support curriculum. Initial certification courses include:

1. EMS First Responder;
2. EMS First Responder Bridge to EMT;
3. Emergency Medical Responder;
4. Emergency Medical Responder Bridge to EMT;
5. Emergency Medical Technician; and
6. Other programs approved by the Office of EMS.

"Board" or "state board" means the State Board of Health.

"Candidate" means any person who is enrolled in or is taking a course leading toward initial certification.

"Candidate status" means the status awarded to a program that has made application to the Office of EMS for accreditation but that is not yet accredited.

"CDC" means the United States Centers for Disease Control and Prevention.

"Certification" means a credential issued by the Office of EMS for a specified period of time to a person who has successfully completed an approved training program.

"Certification candidate" means a person seeking EMS certification from the Office of EMS.

"Certification candidate status" means any candidate or provider who becomes eligible for certification testing but who has not yet taken the certification test using that eligibility.

"Certification examiner" means an individual designated by the Office of EMS to administer a state certification examination.

"Certification transfer" means the issuance of certification through reciprocity, legal recognition, challenge or equivalency based on prior training, certification or licensure.

"Chief executive officer" means the person authorized or designated by the agency or service as the highest in administrative rank or authority.

"Commercial mobile radio service" or "CMRS" means the same as that term is defined in §§ 3 (27) and 332 (d) of the Federal Telecommunications Act of 1996; (47 USC § 151 et seq.); and the Omnibus Budget Reconciliation Act of 1993; (Public Law 103-66, 107 USC § ~~312~~-~~4~~ 312) and includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service

or personal communications service (e.g., cellular telephone, 800/900 MHz Specialized Mobile Radio, Personal Communications Service, etc.).

"Commissioner" means the State Health Commissioner, the commissioner's duly authorized representative, or in the event of the commissioner's absence or a vacancy in the office of State Health Commissioner, the Acting Commissioner or Deputy Commissioner.

"Continuing education" or "CE" means an instructional program that enhances a particular area of knowledge or skills beyond compulsory or required initial training.

"Course" means a basic or advanced life support training program leading to certification or award of continuing education credit hours.

"Course coordinator" means the person identified on the course approval request as the coordinator who is responsible with the physician course director for all aspects of the program including but not limited to assuring adherence to the rules and regulations, office policies, and any contract components.

"Critical care" or "CC" in the air medical environment is a mission defined as an interfacility transport of a critically ill or injured patient whose condition warrants care commensurate with the scope of practice of a physician or registered nurse.

"Critical criteria" means an identified essential element of a state practical certification examination that must be properly performed to successfully pass the station.

"Defibrillation" means the discharge of an electrical current through a patient's heart for the purpose of restoring a perfusing cardiac rhythm. For the purpose of these regulations, defibrillation includes cardioversion.

"Defibrillator -- automated external" or "AED" means an automatic or semi-automatic device, or both, capable of rhythm analysis and defibrillation after electronically detecting the presence of ventricular fibrillation and ventricular tachycardia, approved by the ~~United States~~ U.S. Food and Drug Administration.

"Defibrillator -- manual" means a monitor/defibrillator that has no capability for rhythm analysis and will charge and deliver a shock only at the command of the operator. For the purpose of compliance with these regulations, a manual defibrillator must be capable of synchronized cardioversion and noninvasive external pacing. A manual defibrillator must be approved by the ~~United States~~ U.S. Food and Drug Administration.

~~"Designated infection control officer" means a liaison between the medical facility treating the source patient and the exposed employee. This person has been formally trained for this position and is knowledgeable in proper post exposure medical follow up procedures and current regulations and laws governing disease transmission.~~

"Designated emergency response agency" means an EMS agency recognized by an ordinance or a resolution of the governing body of any county, city or town as an integral part of the official public safety program of the county, city or town with a responsibility for providing emergency medical response.

"Designated infection control officer" means a liaison between the medical facility treating the source patient and the exposed employee. This person has been formally trained for this position and is knowledgeable in proper post exposure medical follow up procedures and current regulations and laws governing disease transmission.

"Director" means the Director of the Office of Emergency Medical Services.

"Diversion" means a change in the normal or established pattern of patient transport at the direction of a medical care facility.

~~"Emergency medical services" or "EMS" means the health care, public health, and public safety services used in responding to an individual's the medical response to the real or perceived needs need for immediate medical assessment, care, or transportation and preventive care or transportation in order to prevent loss of life or aggravation of physiological or psychological illness or injury including any or all of the services that could be described as first response, basic life support, advanced life support, neonatal life support, communications, training and medical control.~~

"EMS Advisory Board" means the Emergency Medical Services Advisory Board as appointed by the Governor.

"EMS agency status report" means a report submitted on forms specified by the Office of EMS that documents the operational capabilities of an EMS agency including data on personnel, vehicles and other related resources.

"EMS education coordinator" means any EMS provider, registered nurse, physician assistant, doctor of osteopathic medicine, or doctor of medicine who possesses Virginia certification as an EMS education coordinator. Such certification does not confer authorization to practice EMS.

~~"Emergency medical services agency" or "EMS agency" means a any person licensed by the Office of EMS to engage engaged in the business, service, or regular activity, whether or not for profit, of transporting or rendering immediate medical care and providing transportation to persons who are sick, injured, or otherwise incapacitated or helpless and that holds a valid license as an emergency medical services agency issued by the commissioner in accordance with § 32.1-111.6 of the Code of Virginia.~~

~~"EMS agency status report" means a report submitted on forms specified by the Office of EMS that documents the operational capabilities of an EMS agency including data on personnel, vehicles and other related resources.~~

~~"Emergency medical services personnel" or "EMS personnel" means a person, affiliated with an EMS agency,~~

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~~responsible for the provision of individuals who are employed by or members of an emergency medical services agency and who provide emergency medical services including any or all persons who could be described as an attendant, attendant in charge, operator or pursuant to an emergency medical services agency license issued to that agency by the commissioner and in accordance with the authorization of that agency's operational medical director.~~

"Emergency medical services physician" or "EMS physician" means a physician who holds current endorsement from the Office of EMS and may serve as an EMS agency operational medical director or training program physician course director.

"Emergency medical services provider" or "EMS provider" means ~~a~~ any person who holds a valid certification certificate as an emergency medical services provider issued by the Office of EMS commissioner.

"Emergency medical services system" or "EMS system" means ~~the system that provides for the arrangement of personnel, facilities, equipment, and other system components for the effective and coordinated of emergency medical services agencies, vehicles, equipment, and personnel; health care facilities; other health care and emergency services providers; and other components engaged in the planning, coordination, and delivery of emergency medical services in an appropriate geographical area that may be local, regional, state or national~~ the Commonwealth, including individuals and facilities providing communications and other services necessary to facilitate the delivery of emergency medical services in the Commonwealth.

"Emergency medical services vehicle" or "EMS vehicle" means any vehicle, vessel, aircraft, or ambulance that holds a valid emergency medical services vehicle permit issued by the Office of EMS that is equipped, maintained or operated to provide emergency medical care or transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless.

"Emergency medical services vehicle permit" means an authorization issued by the Office of EMS for any vehicle, vessel or aircraft meeting the standards and criteria established by regulation for emergency medical services vehicles.

"Emergency medical technician instructor" means an EMS provider who holds a valid certification issued by the Office of EMS to announce and coordinate BLS programs.

"Emergency vehicle operator's course" or "EVO" means an approved course of instruction for EMS vehicle operators that includes safe driving skills, knowledge of the state motor vehicle code affecting emergency vehicles, and driving skills necessary for operation of emergency vehicles during response to an incident or transport of a patient to a health care facility. This course must include classroom and driving range skill instruction. An approved course of instruction includes the course objectives as identified within the U.S.

Department of Transportation Emergency Vehicle Operator curriculum or as approved by ~~OEMS~~ the Office of EMS.

"Exam series" means a sequence of opportunities to complete a certification examination with any allowed retest.

"FAA" means the U.S. Federal Aviation Administration.

"FAR" means Federal Aviation Regulations.

"FCC" means the U.S. Federal Communications Commission.

"Financial Assistance Review Committee" or "FARC" means the committee appointed by the EMS Advisory Board to administer the Rescue Squad Assistance Fund.

"Full accreditation" means an accreditation decision awarded to an entity that demonstrates satisfactory compliance with applicable Virginia standards in all performance areas.

"Fund" means the Virginia Rescue Squad Assistance Fund.

"Institutional self study" means a document whereby training programs seeking accreditation answer questions about their program for the purpose of determining their level of preparation to conduct initial EMS training programs.

"Instructor" means the teacher for a specific class or lesson of an EMS training program.

"Instructor aide" means providers certified at or above the level of instruction.

"Interfacility transport" in the air medical environment means as a mission for whom an admitted patient (or patients) ~~was were~~ transported from a hospital or care giving facility (clinic, nursing home, etc.) to a receiving facility or airport.

"Interim accreditation" means an accreditation decision that results when a previously unaccredited EMS entity has been granted approval to operate one training program, for a period not to exceed 120 days, during which its application is being considered and before a provisional or full accreditation is issued, providing the following conditions are satisfied: (i) a complete application for accreditation is received by the Office of EMS and (ii) a complete institutional self study is submitted to the Office of EMS. Students attending a program with interim accreditation will not be eligible to sit for state testing until the entity achieves official notification of accreditation at the provisional or full level.

"Invasive procedure" means a medical procedure that involves entry into the living body, as by incision or by insertion of an instrument.

"License" means an authorization issued by the Office of EMS to provide emergency medical services in the state as an EMS agency.

"Local EMS resource" means a person recognized by the Office of EMS to perform specified functions for a designated geographic area. This person may be designated to perform one or more of the functions otherwise provided by regional EMS councils.

"Local EMS response plan" means a written document that details the primary service area and responding interval standards as approved by the local government and the operational medical director.

"Local governing body" or "governing body" means members of the governing body of a city, county, or town in the Commonwealth who are elected to that position or their designee.

"Major medical emergency" means an emergency that cannot be managed through the use of locally available emergency medical resources and that requires implementation of special procedures to ensure the best outcome for the greatest number of patients as determined by the EMS provider in charge or incident commander on the scene. This event includes local emergencies declared by the locality's government and states of emergency declared by the Governor.

"Medical care facility" means ~~(as, as~~ defined by § 32.1-102.1 of the Code of ~~Virginia)~~ Virginia, any institution, place, building or agency, whether licensed or required to be licensed by the board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical.

"Medical control" means the direction and advice provided through a communications device (on-line) to on-site and in-transit EMS personnel from a designated medical care facility staffed by appropriate personnel and operating under physician supervision.

"Medical direction" means the direction and supervision of EMS personnel by the Operational Medical Director of the EMS agency with which he is affiliated.

"Medical emergency" means the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Medical practitioner" means a physician, dentist, podiatrist, licensed nurse practitioner, licensed physician's assistant, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

"Mutual aid agreement" means a written document specifying a formal understanding to lend aid to an EMS agency.

"Neonatal" or "neonate" means, for the purpose of interfacility transportation, any infant who is deemed a newborn within a hospital, has not been discharged since the birthing process, and is currently receiving medical care under a physician.

"Nonprofit" means without the intention of financial gain, advantage, or benefit as defined by federal tax law.

"OSHA" means the U.S. Occupational Safety and Health Administration or Virginia Occupational Safety and Health, the state agency designated to perform its functions in Virginia.

"Office of EMS" means the Office of Emergency Medical Services within the Virginia Department of Health.

"Operational medical director" or "OMD" means an EMS physician, currently licensed to practice medicine or osteopathic medicine in the Commonwealth, who is formally recognized and responsible for providing medical direction, oversight and quality improvement to an EMS agency and personnel.

"Operator" means a person qualified and designated to drive or pilot a specified class of permitted EMS vehicle.

"Patient" means a person who needs immediate medical attention or transport, or both, whose physical or mental condition is such that he is in danger of loss of life or health impairment, or who may be incapacitated or helpless as a result of physical or mental condition or a person who requires medical attention during transport from one medical care facility to another.

"Person" means ~~(as, as~~ defined in the Code of ~~Virginia)~~ Virginia, any person, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose or organization of any kind, including any government agency other than an agency of the United States government.

"Physician" means an individual who holds a valid, unrestricted license to practice medicine or osteopathy in the Commonwealth.

"Physician assistant" means an individual who holds a valid, unrestricted license to practice as a physician assistant in the Commonwealth.

"Physician course director" or "PCD" means an EMS physician who is responsible for the clinical aspects of emergency medical care training programs, including the clinical and field actions of enrolled students.

"Prehospital patient care report" or "PPCR" means a document used to summarize the facts and events of an EMS incident and includes, but is not limited to, the type of medical emergency or nature of the call, the response time, the treatment provided and other minimum data items as

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prescribed by the board. "PPCR" includes any supplements, addenda, or other related attachments that document patient information or care provided.

"Prehospital scene" means, in the air medical environment, the direct response to the scene of incident or injury, such as a roadway, etc.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Primary retest status" means any candidate or provider who failed his primary certification attempt. Primary retest status expires 90 days after the primary test date.

"Primary service area" means the specific geographic area designated or prescribed by a locality (county, city or town) in which an EMS agency provides prehospital emergency medical care or transportation. This designated or prescribed geographic area served must include all locations for which the EMS agency is principally dispatched (i.e., first due response agency).

"Private Mobile Radio Service" or "PMRS" means the same as that term is defined in § 20.3 of the Federal Communications Commission's Rules, 47 CFR 20.3. (For purposes of this definition, PMRS includes "industrial" and "public safety" radio services authorized under Part 90 of the Federal Communications Commission's Rules, 47 CFR 90.1 et seq., with the exception of certain for-profit commercial paging services and 800/900 MHz Specialized Mobile Radio Services that are interconnected to the public switched telephone network and are therefore classified as CMRS.)

"Probationary status" means the Office of EMS will place an institution on publicly disclosed probation when it has not completed a timely, thorough, and credible root cause analysis and action plan of any sentinel event occurring there. When the entity completes an acceptable root cause analysis and develops an acceptable action plan, the Office of EMS will remove the probation designation from the entity's accreditation status.

"Provisional accreditation" means an accreditation decision that results when a previously unaccredited entity has demonstrated satisfactory compliance with a subset of standards during a preliminary on-site evaluation. This decision remains in effect for a period not to exceed 365 days, until one of the other official accreditation decision categories is assigned based upon an a follow-up site visit against all applicable standards.

"Public safety answering point" or "PSAP" means a facility equipped and staffed on a 24-hour basis to receive requests for emergency medical assistance for one or more EMS agencies.

"Quality management program" or "QM" means the continuous study of and improvement of an EMS agency or system including the collection of data, the identification of deficiencies through continuous evaluation, the education of

personnel and the establishment of goals, policies and programs that improve patient outcomes in EMS systems.

"Reaccreditation date" means the date of the reaccreditation decision that is awarded to an entity following a full site visit and review.

"Recertification" means the process used by certified EMS personnel to maintain their training certifications.

"Reentry" means the process by which EMS personnel may regain a training certification that has lapsed within the last two years.

"Reentry status" means any candidate or provider whose certification has lapsed within the last two years.

"Regional EMS council" means an organization designated by the board that is authorized to receive and disburse public funds in compliance with established performance standards and whose function is to plan, develop, maintain, expand and improve an efficient and effective regional emergency medical services system within a designated geographical area pursuant to § ~~32.1-111.1~~ 32.1-111.4:2 of the Code of Virginia.

"Regional trauma triage plan" means a formal written plan developed by a regional EMS council or local EMS resource and approved by the commissioner that incorporates the region's geographic variations, trauma care capabilities and resources for the triage of trauma patients pursuant to § 32.1-111.3 of the Code of Virginia.

"Registered nurse" means a person who is licensed or holds a multistate privilege under the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing.

"Regulated medical device" means equipment or other items that may only be purchased or possessed upon the approval of a physician and that the manufacture or sale of which is regulated by the U.S. Food and Drug Administration (~~FDA~~).

"Regulated waste" means liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or potentially infectious materials and are capable of releasing these materials during handling; items dripping with liquid product; contaminated sharps; pathological and microbiological waste containing blood or other potentially infectious materials.

"Regulations" means ~~(as, as~~ defined in the Code of ~~Virginia)~~ Virginia, any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an authorized board or agency.

"Rescue" means a service that may include the search for lost persons, gaining access to persons trapped, extrication of persons from potentially dangerous situations and the rendering of other assistance to such persons.

"Rescue vehicle" means a vehicle, vessel or aircraft that is maintained and operated to assist with the location and removal of victims from a hazardous or life-threatening situation to areas of safety or treatment.

"Responding time" means the elapsed time in minutes between the time a call for emergency medical services is received by the PSAP until the appropriate emergency medical response unit arrives on the scene.

"Responding time standard" means a time standard in minutes, established by the EMS agency, the locality and OMD, in which the EMS agency will comply with 90% or greater reliability.

"Response obligation to locality" means a requirement of a designated emergency response agency to lend aid to all other designated emergency response agencies within the locality or localities in which the EMS agency is based.

"Revocation" means the permanent removal of an EMS agency license, vehicle permit, training certification, ALS coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

"Safety apparel" means personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107–2010 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear."

"Secondary certification status" means any candidate or provider who is no longer in primary retest status.

"Secondary retest status" means any candidate or provider who failed their secondary certification attempt. Secondary retest status expires 90 days after the secondary test date.

"Sentinel event" means any significant occurrence, action, or change in the operational status of the entity from the time when it either applied for candidate status or was accredited. The change in status can be based on but not limited to one or all of the events indicated below:

Entering into an agreement of sale of an accredited entity or an accreditation candidate.

Entering into an agreement to purchase or otherwise directly or indirectly acquire an accredited entity or accreditation candidate.

Financial impairment of an accredited entity or candidate for accreditation, which affects its operational performance or entity control.

Insolvency or bankruptcy filing.

Change in ownership or control greater than 25%.

Disruption of service to student body.

Discontinuance of classes or business operations.

Failure to report a change in program personnel, location, change in training level or Committee on Accreditation of

Educational Programs for the Emergency Medical Services Professions (CoAEMSP) accreditation status.

Failure to meet minimum examination scores as established by the Office of EMS.

Loss of CoAEMSP or Commission on Accreditation of Allied Health Education Programs (CAAHEP) accreditation.

Company fine or fines of greater than \$100,000 for regulatory violation, marketing or advertising practices, antitrust, or tax disputes.

"Special conditions" means a notation placed upon an EMS agency or registration, variance or exemption documents that modifies or restricts specific requirements of these regulations.

"Specialized air medical training" means a course of instruction and continuing education in the concept of flight physiology and the effects of flight on patients that has been approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Specialty care mission" in the air medical environment means the transport of a patient requiring specialty patient care by one or more medical professionals who are added to the regularly scheduled medical transport team.

"Specialty care provider" in the air medical environment means a provider of specialized medical care, to include but not limited to neonatal, pediatric, and perinatal.

"Standard of care" means the established approach to the provision of basic and advanced medical care that is considered appropriate, prudent and in the best interests of patients within a geographic area as derived by consensus among the physicians responsible for the delivery and oversight of that care. The standard of care is dynamic with changes reflective of knowledge gained by research and practice.

"Standard operating procedure" or "SOP" means preestablished written agency authorized procedures and guidelines for activities performed by affiliated EMS agency.

"Supplemented transport" means an interfacility transport for which the sending physician has determined that the medically necessary care and equipment needs of a critically injured or ill patient is beyond the scope of practice of the available EMS personnel of the EMS agency.

"Suspension" means the temporary removal of an EMS agency license, vehicle permit, training certification, ALS coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

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"Test site coordinator" means an individual designated by the Office of EMS to coordinate the logistics of a state certification examination site.

"Training officer" means an individual who is responsible for the maintenance and completion of agency personnel training records and who acts as a liaison between the agency, the operational medical director, and a participant in the agency and regional quality assurance process.

"Trauma center" means a specialized hospital facility distinguished by the immediate availability of specialized surgeons, physician specialists, anesthesiologists, nurses, and resuscitation and life support equipment on a 24-hour basis to care for severely injured patients or those at risk for severe injury. In Virginia, trauma centers are designated by the Virginia Department of Health as Level I, II or III.

"Trauma center designation" means the formal recognition by the board of a hospital as a provider of specialized services to meet the needs of the severely injured patient. This usually involves a contractual relationship based on adherence to standards.

"Triage" means the process of sorting patients to establish treatment and transportation priorities according to severity of injury and medical need.

"USDOT" means the ~~United States~~ U.S. Department of Transportation.

"Vehicle operating weight" means the combined weight of the vehicle, vessel or craft; a full complement of fuel; and all required and optional equipment and supplies.

"Virginia Statewide Trauma Registry" or "Trauma Registry" means a collection of data on patients who receive hospital care for certain types of injuries. The collection and analysis of such data is primarily intended to evaluate the quality of trauma care and outcomes in individual institutions and trauma systems. The secondary purpose is to provide useful information for the surveillance of injury morbidity and mortality.

VA.R. Doc. No. R16-4446; Filed August 31, 2015, 10:31 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PSYCHOLOGY

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Psychology 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 Board of Psychology will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-121).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3606.1 of the Code of Virginia.

**Effective Date:** October 21, 2015.

**Agency Contact:** Jaime Hoyle, Acting Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

**Summary:**

*Pursuant to Chapter 359 of the 2015 Acts of Assembly, the amendment authorizes a psychologist who completes continuing education hours in excess of the required 14 hours to carry up to seven hours of continuing education credit forward to meet the requirements for the next annual renewal cycle.*

**18VAC125-20-121. Continuing education course requirements for renewal of an active license.**

A. Licensees shall be required to have completed a minimum of 14 hours of board-approved continuing education courses each year for annual licensure renewal. A minimum of 1.5 of these hours shall be in courses that emphasize the ethics, laws, and regulations governing the profession of psychology, including the standards of practice set out in 18VAC125-20-150. A licensee who completes continuing education hours in excess of the 14 hours may carry up to seven hours of continuing education credit forward to meet the requirements for the next annual renewal cycle.

B. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the practice of psychology and is provided by a board-approved provider that meets the criteria specified in 18VAC125-20-122.

1. At least six of the required hours shall be earned in face-to-face or real-time interactive educational experiences. Real-time interactive shall include a course in which the learner has the opportunity to interact with the presenter and participants during the time of the presentation.
2. The board may approve up to four hours per renewal cycle for specific educational experiences to include:
  - a. Preparation for and presentation of a continuing education program, seminar, workshop or course offered by an approved provider and directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the presentation is given, and may not be credited toward the face-to-face requirement.
  - b. Publication of an article or book in a recognized publication directly related to the practice of psychology. Hours may only be credited one time, regardless of the

number of times the writing is published, and may not be credited toward the face-to-face requirement.

3. The board may approve up to two hours per renewal cycle for membership on a state licensing board in psychology.

C. Courses must be directly related to the scope of practice in the category of licensure held. Continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

VA.R. Doc. No. R16-4295; Filed August 28, 2015, 3:26 p.m.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

#### Final Regulation

**REGISTRAR'S NOTICE:** The Commonwealth Transportation Board 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 Commonwealth Transportation Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 24VAC30-151. Land Use Permit Regulations (amending 24VAC30-151-670).

**Statutory Authority:** § 33.2-210 of the Code of Virginia.

**Effective Date:** October 21, 2015.

**Agency Contact:** Robert W. Hofrichter, Assistant Director for Land Use, Transportation and Mobility Planning Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, FAX (804) 786-0628, or email robert.hofrichter@vdot.virginia.gov.

**Summary:**

*Pursuant to Chapter 466 of the 2015 Acts of Assembly, the amendments permit mobile food vending on state highway rights-of-way except limited access highways and allow localities to regulate the operation of such mobile food*

*vending businesses located on the state highway rights-of-way within the locality in a manner consistent with local ordinances and the board's regulations and policies.*

**24VAC30-151-670. Prohibited use of right-of-way.**

No permit shall be issued for the following uses of the right-of-way:

1. Signs. Signs not otherwise allowed in this chapter shall not be placed on the highway right-of-way or overhang the right-of-way.

2. Vendors on right-of-way. Permits will not be issued to vendors for operation of business within state rights-of-way, except as:

a. As may be allowed for waysides and rest areas under the Rules and Regulations for the Administration of Waysides and Rest Areas (see 24VAC30-151-760).

b. Vendors of newspapers and written materials enjoy constitutional protection under the First Amendment to place or operate their services within rights-of-way, provided they neither impede traffic nor impact the safety of the traveling public. Newspaper vending machine size, placement, and location shall be as directed by the district administrator's designee for that area.

c. To localities to administer mobile food vending on nonlimited access highways, where the vending operations are regulated by local ordinances, operated consistent with such ordinances, and in accordance with the Commonwealth Transportation Board's regulations and policies.

3. Dwellings. No private dwellings, garages, or similar structures shall be placed or constructed within the right-of-way, except as may be allowed under 24VAC30-151-220 and 24VAC30-151-230.

**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 (24VAC30-151)

~~Land Use Permit, Application, LUP A (rev. 3/10).~~

~~Land Use Permit, Special Provisions, Notice of Permittee Liability, LUP SP (rev. 3/10).~~

~~Land Use Permit, House Movement Application, LUP HM (rev. 3/10).~~

~~Land Use Permit, Corporate Surety Bond, LUP CSB (rev. 3/10).~~

~~Land Use Permit, Irrevocable Letter of Credit Bank Agreement, LUP LC (rev. 3/10).~~

~~Land Use Permit, Surety Bond, LUP SB (rev. 3/10).~~

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~~Land Use Permit, In Place Permit for Subdivision Street Utility, LUP-IPP (rev. 1/10).~~

~~Land Use Permit, Prior Rights Permit Application, LUP-PRP (rev. 9/09).~~

~~Land Use Permit, Special Provision, VDOT Erosion & Sediment Control Contractor Certification, LUP-ESCC (rev. 3/10).~~

~~Land Use Permit, Special Provision, VDOT Work Zone Traffic Control Certification Verification, LUP-WZTCV (rev. 3/10).~~

[Land Use Permit LUP-A, Land Use Permit Application \(rev. 9/2014\)](#)

[Land Use Permit LUP-AUA, Agricultural Use Agreement \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMA, Land Use Permit Application - Building Movement \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMI, Building Movement - Investigator's Report \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMR, Building Movement - Route Certification \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMQ, Building Movement - Prequalification Questionnaire \(rev. 8/2014\)](#)

[Land Use Permit LUP-BMV, Building Movement - VDOT Recommendation \(rev. 8/2014\)](#)

[Land Use Permit LUP-CCV, Chemical Control of Vegetation \(rev. 7/2015\)](#)

[Land Use Permit LUP-CS, Cash Surety Affidavit \(rev. 8/2014\)](#)

[Land Use Permit LUP-CSB, Corporate Surety Bond \(rev. 8/2014\)](#)

[Land Use Permit LUP-CUA, Commercial Use Agreement \(rev. 8/2014\)](#)

[Land Use Permit LUP-ESCCC, Erosion & Sediment Control Contractor Certification \(rev. 8/2014\)](#)

[Land Use Permit LUP-IPP, Land Use Permit Application - In Place Utility, New Street Acceptance \(rev. 8/2014\)](#)

[Land Use Permit LUP-LC, Bank Irrevocable Letter of Credit \(rev. 8/2014\)](#)

[Land Use Permit LUP-MFV, Local Program for the Temporary Occupation of Right-of-Way by Mobile Food Vendors, \(eff. 9/2015\)](#)

[Land Use Permit LUP-OC, Open-Cut Pavement Restoration Requirements \(rev. 8/2014\)](#)

[Land Use Permit LUP-PA, Permit Agreement for Occupation of Right-of-Way \(rev. 8/2014\)](#)

[Land Use Permit LUP-PRU, Land Use Permit Application - Prior Rights Utility \(rev. 8/2014\)](#)

[Land Use Permit LUP-SB, Surety Bond \(rev. 8/2014\)](#)

[Land Use Permit LUP-SEA, Special Events Approvals \(rev. 8/2014\)](#)

[Land Use Permit LUP-SEI, Special Event Information \(rev. 8/2014\)](#)

[Land Use Permit LUP-SPG, Special Provisions - General \(rev. 8/2014\)](#)

[Land Use Permit LUP-WZTCC, Work Zone Traffic Control Certification \(rev. 8/2014\)](#)

[Land Use Permit Resolution \(rev. 8/2014\)](#)

VA.R. Doc. No. R16-4498; Filed September 1, 2015, 8:05 a.m.

## COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

### Proposed Regulation

**Title of Regulation:** **24VAC35-60. Ignition Interlock Program Regulations (amending 24VAC35-60-20 through 24VAC35-60-110; adding 24VAC35-60-120, 24VAC35-60-130; repealing 24VAC35-60-10).**

**Statutory Authority:** §§ 18.2-270.1 and 18.2-270.2 of the Code of Virginia.

**Public Hearing Information:**

November 5, 2015 - 10 a.m. - General Assembly Building, Senate Conference Room B, 201 North 9th Street, Richmond, Virginia 23219.

**Public Comment Deadline:** November 20, 2015.

**Agency Contact:** Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email rfoy.vasap@state.va.us.

**Basis:** Section 18.2-271.2 of the Code of Virginia establishes the Commission on the Virginia Alcohol Safety Action Program (VASAP) in the legislative branch of state government. Section 18.2-270.2 directs the Executive Director of the Commission on VASAP or his designee to certify ignition interlock systems in the Commonwealth and to adopt regulations and forms for the installation, maintenance, and certification of such ignition interlock devices.

**Purpose:** Driving under the influence (DUI) continues to be the proximate cause of many traffic fatalities in Virginia. Research over the past 20 years has validated the effectiveness of ignition interlocks in preventing impaired driving and reducing DUI recidivism, thereby protecting the health, safety, and welfare of the motoring public. As a probationary tool, data obtained from ignition interlocks is used to ensure offenders comply with court orders and receive the most appropriate education/treatment intervention. Ignition interlocks enable offenders to continue to drive to work, keep appointments, and meet responsibilities at home, minimizing disruption to families and eliminating the added cost and time of securing alternate transportation. Virginia's ignition interlock regulations have not been updated in several years. The purpose of the proposed regulations is to

ensure that offenders and the public are receiving maximum benefit from the ignition interlock program by incorporating "best practices" that have been learned as a result of new technology, recent research, and several years of experience administering the Virginia ignition interlock program.

Substance: A number of requirements have been added to the regulations to conform to the latest technology in the ignition interlock industry. Major changes in the regulations include:

- The requirement that all ignition interlocks be equipped with cameras.
- The requirement that state directors and service technicians for all ignition interlock vendors pass a written test to demonstrate their knowledge of applicable state laws and regulations prior to being permitted to install ignition interlock devices in Virginia.
- The inclusion of wet bath simulators for use in the calibration of ignition interlock devices.
- The alteration of the length of time for motorists to complete a "rolling retest" when prompted.

Issues: The proposed regulations specify ignition interlock functional capabilities and standardize procedures for the installation, calibration, and removal of the devices. Minimum training and certification standards for ignition interlock service provider technicians are included. The proposed regulations will improve safety for the motoring public and enhance the customer experience for offenders. The Commonwealth of Virginia will benefit from better performance by the ignition interlock vendors, thereby reducing the amount of staff time required to train and monitor service center employees and to respond to problems. No disadvantages to the public or the Commonwealth are anticipated.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commission on Virginia Alcohol Safety Action Program (VASAP) proposes to: 1) require that all ignition interlocks be equipped with cameras, 2) require that all ignition interlock vendors' state directors and service technicians take a certification test to demonstrate their knowledge of applicable state laws and regulations prior to being permitted to install ignition interlock devices, 3) incorporate existing fees into the regulation, establish new fees, and amend certain existing fees, 4) allow wet bath simulators for use in the calibration of ignition interlock devices, and 5) require sooner but less frequent rolling tests and increase the length of time for motorists to complete the test when prompted.

Result of Analysis. The benefits likely exceed the costs for the proposed changes. However, the practice of subcontracting, which is currently prohibited by the regulation, appears to have the potential to be a viable alternative to reduce compliance costs.

Estimated Economic Impact. There are numerous proposed changes. Each substantive change is discussed below.

Cameras: One of the proposed changes will require ignition interlock service providers to install cameras with the interlock device on all vehicles except motorcycles and mopeds. All four of the interlock vendors currently serving Virginia are reported to have this capability. The camera will capture the image of the person providing the breath sample and will ensure that offenders are not circumventing legal requirements by having other persons provide breath samples to start their vehicles. Thus, new imaging capability will likely deter noncompliance.

Addition of the camera will increase the equipment cost of the overall interlock device. VASAP estimates the cost of the camera to be about \$250 and that there are approximately 9,000 interlock devices currently installed in the Commonwealth. A \$250 added cost per camera would amount to \$2,250,000 for 9,000 interlock devices. Even though ignition interlock devices are not required to be equipped with a camera by regulation currently, according to VASAP cameras are already being required by many courts in Virginia. Thus, the magnitude of total added equipment costs will likely be less than \$2,250,000.

Other costs to the providers include additional labor time for each device installation and downloading of images from the device, updating technician training, possible changes in provider computer systems to accommodate increases in required bandwidth, speed, and storage capacity due to additional image data.

The interlock device is owned by the service providers who lease the device to the offenders. If an offender is convicted of driving under the influence, he or she is required to have an ignition interlock installed in any vehicle he or she operates. Second and any subsequent offenses require an ignition interlock installed in all vehicles owned by or registered to the offender in whole or in part. Service providers are allowed to charge an installation fee and monthly monitoring fee, which are regulated. Currently, the installation fee is \$65 for a standard interlock device, and the monthly monitoring fee is \$80.<sup>1</sup> However, according to VASAP, in most cases, providers waive the installation fee to promote their services. Thus, providers that are currently waiving the installation fee may start charging for the installation fee to cover their additional costs and providers that are not currently waiving the installation fee may have to absorb the added costs since there is no change in installation and monitoring fees due to the proposed addition of cameras to the interlock device.

Certification: Another proposed change will require service provider state directors and technicians to be certified in order to perform ignition interlock services in the Commonwealth starting June 30, 2015. Existing state directors and technicians as of that day will be grandfathered in. However, VASAP may order a state director or a technician to retake the state certification exam if he or she demonstrates lack of

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knowledge or incompetence while performing services. The test will measure applicants' knowledge on technical issues, customer service, ethics, and Virginia interlock laws and regulations. VASAP anticipates this requirement will improve compliance with laws and regulations. It will also likely increase administrative costs of VASAP as it will take time to prepare the test, administer it, and evaluate the results.

Currently, there are approximately 60 state directors and technicians in the Commonwealth who will be grandfathered in. In the future, no more than 10 certification applications per year are expected. The initial test will be provided free of charge. However, if the applicant fails in his or her first try, any subsequent tests will be provided at a cost of \$250 each. Thus, depending on the outcome of the initial test, state directors and technicians may or may not incur test fees.

In addition to the test fee, applicants are likely to incur costs in terms of their time devoted to preparing for and taking the exam. VASAP estimates that it may take approximately 4 hours to study the curriculum and the test itself may take up to 2 hours to complete. Moreover, the test will be offered in Richmond. Since not all of the state directors and technicians perform their services in Richmond area, many applicants will likely incur travel and lodging expenses to obtain this certification. Furthermore, since the certification must be obtained prior to employment, it may introduce some delays and contingencies in the hiring process for providers.

**Fees:** The proposed changes will incorporate existing fees into the regulation. Currently, these fees are stated in the request for proposals for provider services but are not in regulations. Addition of the fees in the regulations will likely improve their visibility to the public and when they need to be amended in the future, afford the public an opportunity to review and provide input on such changes.

One of the unintended consequences of including fees in the regulations is the potential delay in adjusting the fees if market conditions dictate a change. A regulatory amendment may take a significant amount of time to go in effect and may introduce a delay in implementation of new fees. However, the proposed regulations address that concern by allowing VASAP to increase installation and monitoring fees up to 25% under certain conditions.

Additionally, the proposed fee changes will allow service providers to charge a higher fee for more complex interlock installations such as those on hybrid vehicles or on vehicles with a push button starter. The fee for more complex installations will be \$130. This will allow providers to charge an additional \$65 over the standard installations to cover additional technician labor and training associated with such installations. By allowing providers to charge a higher fee for more costly installations, this change is expected to better allocate cost responsibility for more costly installations.

The proposed fee changes will also allow a \$50 fee to undo a permanent lockout if the permanent lockout occurred due to the fault of the offender and a \$50 an hour fee, not to exceed

four hours, for repairs and reinstallation of the interlock if the device is tampered with. These new fees will allow providers to recoup costs for installations and repairs necessitated by the fault of offenders. By holding offenders responsible for costs due to their actions, these two new fees are expected to align incentives with desired outcomes and allocate costs in an economically efficient manner.

The proposed changes will raise the maximum allowable charge for optional ignition interlock insurance from \$6 to \$8 per month to cover cameras. Since the overall cost of the equipment will increase due to inclusion of cameras, the insurance coverage and the premium to provide a higher coverage need to be adjusted. This change will make it possible for offenders to purchase insurance coverage commensurate with the coverage they need to protect themselves from financial liability in case the camera is damaged.

Finally, the proposed changes will allow providers to charge offenders no more than 10% over the replacement cost of ignition interlock device if it is damaged or lost and there is no insurance coverage. Currently, there is no limit on what the providers may charge for a replacement system. This change will prevent providers charging a fee significantly higher than the replacement cost while allowing an additional 10% to cover other potential costs such as shipping, handling, and postage.

**Wet Bath Reference Sample:** Currently, ignition interlocks must be calibrated using a dry gas reference sample. The proposed regulations will permit vendors to use either a dry gas or wet bath reference sample when calibrating ignition interlocks. This may reduce the cost of calibration for service providers as it will permit more ignition interlock models to be used in Virginia. Some interlock devices can only be calibrated using a wet bath simulator. On the other hand, inspection of different models may add to administrative costs of VASAP.

**Rolling Test:** Currently, a rolling retest is required within the first 10-20 minutes after the vehicle is started and then again at random intervals every 20 to 40 minutes. A rolling test is a test of offender's breath sample conducted at random intervals during the operation of the vehicle. Once the test is initiated, the offender has six minutes in which to submit a breath sample before the vehicle lights and horn activate.

The proposed regulations will require an initial rolling retest within five minutes of the vehicle starting, and the subsequent random rolling retests will now be less often (every 45-60 minutes). Also, the operator will be given 15 minutes instead of six minutes to provide a breath sample before the vehicle lights and horn activate. This change will deter the incentive an offender may have to drive under the influence when traveling short distances and arriving to their destination in less than 10-20 minutes and likely reduce the chances of distracted driving. Having fewer rolling retests and permitting extra time to complete the retest will give drivers additional

time to pull to the roadside prior to submitting a breath sample.

**Businesses and Entities Affected.** These regulations primarily affect ignition interlock vendors, technicians, and offenders. There are currently four contracted vendors employing approximately 60 technicians in the Commonwealth. Also, there are approximately 9,000 offenders with interlock devices installed in their vehicles at the present time.

**Localities Particularly Affected.** The regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** The proposal to require installation of cameras is expected to increase the demand for technician labor since installations will likely require more time. The proposed certification requirement may reduce the technician labor supply as they will be required to pass a certification test. The combined effect of these changes on employment is indeterminate.

**Effects on the Use and Value of Private Property.** Permission to charge for some services that were not allowed before, increased fees for more complex installations, and allowing wet bath technology will likely increase provider revenues and have a positive impact on their asset values. On the other hand, increase in the needed working capital and labor demand to install cameras and the proposed certification fee for second and subsequent tests will add to the overall compliance costs and may offset some of the expected positive impact.

**Small Businesses: Costs and Other Effects.** The main effect of the proposed changes will be on the four contracted ignition interlock providers. According to VASAP, all four providers are large corporations and have operations in other states or even in other countries. Thus, they may not be considered as small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Under the current regulations and policy, VASAP does not allow service providers to subcontract with third parties. Every service provider is required to maintain direct control and ownership of service centers within a 50-mile radius of every residence in the Commonwealth. They are permitted to rent service bay space from existing gas stations, automobile repair shops, etc, but are required to employ their own personnel. According to one vendor, "this policy- the only one of two of its kind in the country- is unduly burdensome on the service providers, who bear the cost of directly leasing or owning space throughout the Commonwealth in order to provide this service."<sup>2</sup>

VASAP is concerned that subcontracting will compromise the integrity of the ignition interlock program. VASAP believes that protecting the chain of evidence for court testimony and evidentiary procedures would be at risk. Through consultation with interlock program administrators in other states, VASAP states that it is aware of many instances of problems associated with subcontracting. However, service providers operate under contract and have

an obligation to comply with regulatory requirements. Thus, the risks seem unlikely to increase under a contractual operation of service centers, as compared to the direct operation by the service providers.

While the hesitation of VASAP is understandable, its stand on this issue disregards provider cost concerns. Also, the fact that all fees are regulated by VASAP puts service providers at a very precarious situation because they do not have the ability to change their prices in response to changing costs.

It should be noted that subcontracting is a very common business practice across many industries including construction, manufacturing, health care, information technology, even defense, national security, and aerospace. In today's economy, very complex tasks are accomplished through subcontracting. Undoubtedly, in each case there are some concerns that need to be addressed in the subcontracting process. Given the spread of subcontracting in the nation and the fact that many complex and sensitive tasks in the presence of some serious concerns such as national security are regularly achieved by subcontracting, it is difficult to assume that the ignition interlock regulations cannot be effectively administered if service providers are allowed to subcontract.

In addition, with the proposed new certification requirement VASAP will ensure that the technicians and state directors are competent. The certification will directly measure the knowledge and skills of each technician. Upon a violation, VASAP can revoke, suspend, or terminate an individual's certification. So, there are safeguards in place to make sure the technicians are competent to provide the service and if they fail in performing their duties, a corrective action can be taken. Since the competency of individual technicians and their accountability are addressed in the regulations, it is difficult to reach the conclusion that allowing the service providers to subcontract with certified technicians will somehow compromise the integrity of the Virginia ignition interlock program.

If subcontracting is allowed in performance of interlock services, the providers will have much more flexibility and will likely have opportunities to reduce their costs and improve access to their services in a significant way. Some of the cost savings will likely be passed on to their customers in an effort to promote their products.

In short, there seems to be a potent opportunity to reduce regulatory compliance costs without compromising the integrity of the Virginia ignition interlock program by allowing providers to subcontract with third parties.

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

**Legal Mandate.**

**General:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04

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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>Of the \$80 monitoring fee, \$20 goes to local and state ASAP offices.

<sup>2</sup>See Agency Background Document, Form: TH-02, page 6.

Agency's Response to Economic Impact Analysis: In response to the Department of Planning and Budget's suggestion that subcontracting ignition interlock services in Virginia would be a viable alternative to current practice, the Commission on VASAP maintains that subcontracting would create challenges that would adversely impact both the effectiveness and integrity of the ignition interlock program in the Commonwealth as well as potentially jeopardize public safety.

VASAP receives periodic requests from the operators of service stations, towing services, audio repair shops, etc. who are seeking to increase revenues by becoming ignition interlock installers. Since the installation of ignition interlock devices would likely represent a small fraction of a

subcontractor's business, there is concern that subcontractors would lack long-term investment in the program and would be less motivated to adhere to the strict legal and regulatory requirements of the program. Since subcontractors would not be directly accountable to the Commission on VASAP, correcting performance problems would take longer and be more complicated. For example, if a subcontractor commits an illegal or unethical act, who is liable: VASAP, the interlock vendor, the subcontractor business, or the employee?

While ignition interlock installations were simple in the past, and could arguably be performed by most any garage technician with proper training, modern vehicles have become very complex. It takes considerable experience (often months) to learn how to properly install ignition interlocks on hybrid vehicles and cars with push button starters in particular. Virginia's requirement that the ignition interlock be connected to activate the vehicle's lights and horn (a requirement not found in all states) also complicates the process. It is believed that subcontractors would typically lack the in-depth knowledge of the product and service to ensure quality work on a consistent basis. During the learning curve of the current vendors, several cars were damaged by installers who did not yet possess the knowledge to properly install the devices. This resulted in the vendors having to pay offenders for expensive repairs to their vehicles. Installing ignition interlock systems on modern vehicles requires a skill set that is best performed by employees who specialize in the service. It is believed that the number of improper installations would increase if there was a reliance on subcontractors to perform this work. Even though ignition interlock installers may be private businesses, offenders do not disassociate the interlock providers from the probationary process; thus, improper installations reflect unfavorably on VASAP and the Commonwealth of Virginia.

The Commonwealth of Virginia's ignition interlock program differs from those of many other states since probationary oversight, education, and treatment are tied to the interlock program. In some states, ignition interlocks are simply installed for a given period, and then no subsequent monitoring occurs. Research has shown that ignition interlocks work very well at preventing DUI offenses, but recidivism typically continues after the devices are removed, unless the interlock requirement is coupled with education and treatment. All interlocks in Virginia are calibrated every 30 days. The data that are downloaded during each calibration are carefully monitored by ASAP case managers to ensure there are no violations. The presence of violations may result in a return to court for noncompliance and increased treatment. Since many ASAP offenders are actively involved in treatment, federal confidentiality guidelines apply. Information about ASAP offenders may not be released without the written consent of the clients. Subcontracting would expose confidential information to a greater number of employees, especially since the turnover rate of employees

may be higher at small businesses. The storing and security of confidential paperwork would be an issue as well. ASAP offenders would be comingled with customers receiving other services such as having stereos installed. Since ASAP offenders need to be trained on how to use the ignition interlock at the installation site, and have to watch an informational video, it would be difficult to protect the privacy of these probationers. Space for private viewing may be limited or nonexistent at many small subcontractor sites.

Subcontracting would also necessitate an increase of staff for the Commission on VASAP. VASAP regularly inspects all ignition interlock installation stations in the Commonwealth for compliance with state regulations. Subcontracting would likely result in more inspections and more discrepancies, since various subcontractors, as well as their employees, would be more likely to come and go. Prohibiting subcontracting provides stability to the state ignition interlock program.

Permitting subcontracting would result in the loss of employment for the current 60-70 ignition interlock employees in the Commonwealth. Since subcontractors would use existing employees at their businesses to perform ignition interlock work, the services of these 60-70, taxpaying residents would no longer be required.

The certification process for ignition interlock employees proposed by VASAP in the regulations would ensure that technicians possess only a basic understanding of the laws and regulations. It is anticipated that noncompliance with regulations would increase considerably if subcontracting were allowed. Even with the ability to revoke the certification of subcontractors, doing so would be a time consuming process, and it would reflect unfavorably on the ignition interlock program. Decertification or suspension of a subcontractor could leave a service provider void in a particular geographical area.

While VASAP recognizes that subcontracting is used effectively in many environments, there are some functions that are best performed by the government with proper regulatory oversight in place. The Commonwealth of Virginia presently has a very effective ignition interlock program that is recognized as one of the model programs in the country that other states seek to emulate. It is our belief that the significant policy change of permitting the subcontracting of ignition interlock services would compromise the integrity of the interlock program as well as public safety in Virginia.

**Summary:**

*The proposed amendments (i) require all ignition interlocks to be equipped with cameras; (ii) require state directors and service technicians of all ignition interlock vendors to pass a written test regarding applicable state laws and regulations prior to being permitted to install ignition interlock devices; (iii) incorporate existing fees, with certain amendments, and establish new fees; (iv) allow the use of wet bath simulators in the calibration of*

*ignition interlock devices; and (v) require sooner but less frequent rolling tests and increase the length of time for motorists to complete a rolling retest when prompted.*

**24VAC35-60-10. Purpose. (Repealed.)**

~~The purpose of these regulations is to establish a set of standards for the Commonwealth of Virginia's ignition interlock program. Authority to issue these regulations is granted to the Executive Director of the Commission on Virginia Alcohol Safety Action Program (VASAP) or authorized designee by § 18.2-270.2 of the Code of Virginia.~~

**24VAC35-60-20. Definitions.**

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

"Alcohol" means ethyl alcohol, also called ethanol (C<sub>2</sub>H<sub>5</sub>OH).

"Applicant" means a service provider technician or state director who applies for a Virginia Ignition Interlock Certification Letter from the commission.

"ASAP" means a local alcohol safety action program.

"BAC" or "blood alcohol concentration" means the amount of alcohol in an offender's blood or breath, as determined by chemical analysis, ~~which shall be~~ that is measured by the number of grams of alcohol per 100 milliliters of blood; or 210 liters of breath.

"Breath test" means an analysis of the breath alcohol concentration of a deep lung breath sample.

"Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

"Commission" means the Commission on Virginia Alcohol Safety Action Program (~~VASAP~~) or its designee.

"Deep lung breath sample," also known as "alveolar breath sample," means an air sample that is the last portion of a prolonged, uninterrupted exhalation and that gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the aveoli, ~~which that~~ that are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

"Device" means a breath alcohol ignition interlock device.

"Device certification" means the testing and approval process required by the Commission on Virginia Alcohol Safety Action Program (~~VASAP~~).

"DMV" means the Virginia Department of Motor Vehicles.

"Executive Finance Committee" means the advisory subcommittee of the commission composed of the Executive Director of the Commission on Virginia Alcohol Safety Program, two commission members, and such other person as the commission designates.

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"Fail point" means the ~~point level~~ point level at which the breath alcohol level of 0.02% ~~is met concentration, as established in § 18.2-270.1 of the Code of Virginia, is sufficient to prevent a motor vehicle equipped with an ignition interlock device from starting.~~

"Free restart" means the ability to start the engine again within a ~~preset two-minute~~ two-minute period of time without completion of another breath test; when the condition exists where a breath test is successfully completed and the motor vehicle is started, but then the engine stops for any reason, ~~(including stalling).~~

"Ignition interlock system" means a device that (i) connects a motor vehicle ignition system to an analyzer that measures an offender's blood alcohol concentration; (ii) prevents a motor vehicle ignition from starting if the offender's blood alcohol concentration ~~is at or above~~ reaches the fail point; and (iii) is equipped with the ability to perform a rolling retest and to electronically log the blood alcohol concentration during ignition, attempted ignition, and rolling retest.

"Interlock event" means vehicle operator activity that is recorded by the ignition interlock to include, but not ~~be~~ limited to, vehicle starts and attempted starts, rolling retests, breath tests, lockouts, ignition shutoffs, power outages, and interlock tampering.

~~"Licensing" means the process of determining that a service center meets the requirements set by the Commission on VASAP.~~

"Lockout" means the ability of the ignition interlock device to prevent a motor vehicle's engine from starting.

"Manufacturer" means the actual maker of the ignition interlock device ~~who~~ that assembles the product and distributes it to service providers.

~~"Motor vehicle" means every a motor vehicle as defined in §§ 18.2-266 and 46.2-100 of the Code of Virginia, that is self-propelled, or designed for self-propulsion, to exclude bicycles, electric power-assisted mobility devices, electric powered assisted bicycles, and mopeds.~~

"Offender" means the individual required by the court or the Department of Motor Vehicles to drive only motor vehicles that have certified ignition interlock devices installed.

"Permanent lockout" means a feature of the ignition interlock device ~~in which that prevents~~ that prevents a motor vehicle ~~will not start~~ from starting until the ignition interlock device is reset by a service provider.

"Retest" means an additional opportunity to provide a deep lung breath sample below the alcohol fail point.

"Rolling retest" means a test of the offender's blood alcohol concentration required at random intervals during operation of the motor vehicle, ~~which that~~ that triggers the sounding of the horn and flashing of lights if (i) the test indicates that the offender has a blood alcohol concentration that ~~is at or above~~ reaches the fail point or (ii) the offender fails to take the test.

"Service center" means the physical location where the service provider installs, calibrates, and removes the ignition interlock device on the offender's vehicle.

"Service provider" means an authorized supplier and installer of the approved ignition interlock devices. In some cases, the service provider may also be a manufacturer of an ignition interlock device.

"State director" means a service provider employee who provides oversight of the service provider's ignition interlock operations in the Commonwealth of Virginia.

"Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device to include providing samples other than the natural breath of the offender, starting the motor vehicle without using the ignition switch, ~~any other an~~ an act intended to start the motor vehicle without first taking and passing a breath test, or physically tampering with the device to disable or otherwise disconnect the device from its power source.

"Technician" means a service provider employee who installs, calibrates, or removes interlock devices in the Commonwealth of Virginia.

"Temporary lockout" means a feature of the ignition interlock device that will not allow the motor vehicle to start for a preset time period after a breath test result indicates a BAC ~~at or above~~ that reaches the fail point.

"Vendor certification" means the process of determining that a vendor has been approved to provide ignition interlock services in the Commonwealth of Virginia.

"Violation" means an event, such as a breath test indicating a BAC ~~at or above~~ reaching the fail point upon initial startup; a refusal to provide a rolling retest deep lung breath sample; a rolling retest with a BAC ~~at or above~~ reaching the fail point; altering, concealing, hiding, or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample; or tampering, which tampering, that breaches the guidelines for use of the interlock device.

"Violation reset" means a feature of the ignition interlock device ~~in which that activates~~ that activates a service reminder ~~is activated~~ due to a violation or failure to report for calibration within 35 days of the installation or previous calibration.

"Virginia Ignition Interlock Certification Exam" means an exam administered by the commission to service provider state directors and technicians that must be successfully completed and submitted as a component of an application for a "Virginia Ignition Interlock Certification Letter."

"Virginia Ignition Interlock Certification Letter" means a letter issued by the commission to a service provider technician or state director authorizing the technician or state director to perform ignition interlock services in the Commonwealth of Virginia.

**24VAC35-60-40. Approval of manufacturers and service providers.**

A. The commission shall issue a request for proposals (~~RFPs~~) (RFP) in compliance with the ~~state~~ Commonwealth of Virginia procurement procedures to contract with ignition interlock service providers for the services and commodities required for the implementation and maintenance of the Commonwealth's ignition interlock program. Contracts will be for ~~three years with an optional two-year renewal~~ a length of time established by the commission.

B. Integrity of the Ignition Interlock Program shall be upheld by restricting the delivery of interlock ~~elient~~ service to the actual provider of the product (i.e., authorized service provider), thereby effectively preventing the extension of subcontracts to other persons or businesses who lack long-term investment, long-term experience, or in-depth knowledge of product and service, potentially resulting in a higher likelihood of neglect of duty or illegal exchange of funds. Denial of subcontracting of the interlock service to the consumer is an integral part of protecting the chain of evidence for court testimony and evidentiary procedures.

C. ~~Each~~ A service provider seeking to contract with the commission shall submit:

1. ~~Evidence of a strong background~~ Submit evidence demonstrating successful experience in the development and maintenance of a ~~statewide~~ an ignition interlock service program and ~~evidence of operational programs in Virginia, other states, or other countries.~~ The service provider ~~must~~ shall be dedicated to the installation and maintenance of ignition interlock devices and ~~must~~ supply.

2. Supply and train staff and service center supervisors to ~~assure~~ ensure good customer service and compliance with all contract requirements. ~~Personnel hired to install, calibrate, or inspect ignition interlock devices may not have ever been convicted of any felony or a crime substantially related to the qualifications, functions, and duties associated with the installation and inspection of the devices; or within a five year period prior to hiring, been convicted of a misdemeanor potentially punishable by confinement.~~

a. ~~Personnel seeking to perform ignition interlock services or administrative duties in the Commonwealth of Virginia shall not necessarily be barred from employment due to a criminal record; however, a criminal record may be considered in conjunction with other information to determine the overall suitability of applicants for employment.~~

b. ~~The authorized service provider must be able to ensure that technicians are trained and available to testify in court if required for noncompliance hearings. shall provide expert or other required testimony in any civil, criminal, or administrative proceedings as to the method of manufacturing the device, ignition interlock~~

~~functionality, and the testing protocol by which the device is calibrated and serviced.~~

c. ~~The service provider shall provide a completed application for state certification to the commission to perform ignition interlock services for all technicians and state directors seeking to work in the Commonwealth of Virginia. The application shall be submitted at least 10 days prior to the employee performing any ignition interlock services in the Commonwealth of Virginia.~~

d. ~~The service provider shall identify all key personnel who will be providing ignition interlock services for the Commonwealth of Virginia with a means of identifying these personnel and furnish the commission with credentials on these personnel.~~

e. ~~The service provider shall notify the commission at least five business days in advance of a reduction in staffing levels of key personnel at the local or district offices serving the Commonwealth of Virginia.~~

f. ~~The service provider shall ensure that technicians and the state director are trained and available to testify in court if required by a court or Commonwealth's Attorney or upon a 10-business-day notice by the ASAP in that court's jurisdiction, regardless of whether a subpoena is issued.~~

~~2. A~~ 3. ~~Submit a description of the service provider's present or planned provisions plan to be approved by the commission, for distribution of the device in all locations of the Commonwealth of Virginia including all locations in the state where the device may be installed, serviced, repaired, calibrated, inspected, and monitored ignition interlock services will be performed. Each facility At least one physical ignition interlock service facility shall be located within a 50 mile radius of every residence in the Commonwealth of Virginia unless otherwise authorized by the commission. Interlock service facilities shall be approved inspected and certified by the Commission on VASAP commission prior to its use and meet the following criteria: the initial provision of services to offenders. Each interlock service facility shall be inspected and certified at least annually thereafter. Interlock service providers shall:~~

a. ~~Must pay an annual review fee to the Commission on VASAP.~~

b. ~~Must comply~~ a. ~~Comply with all local business license and zoning regulations, and with all federal, state, and local health, fire, and building code requirements. Prior to the jurisdictional compliance deadline, a copy of a valid business license or business license payment receipt shall be forwarded to the commission. The official valid business license and tax document are required to be posted in a conspicuous place at the service facility immediately upon receipt when applicable;~~

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~~e. Must comply~~ b. Comply with all local, state, and federal laws pertaining to the provision of physical access to persons with disabilities;

~~d. Must maintain~~ c. Maintain offender records in a manner that complies with federal confidentiality guidelines. All offender files, payment receipts, and other identifying information shall be located in locked filing cabinets in one centralized location in the Richmond, Virginia area. Electronic storage of client files shall be permissible if approved by the commission and, if approved, shall be encrypted and secured to prevent third party access;

d. Require and enforce maintenance of a drug-free workplace and have posted in a conspicuous place, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the service provider's workplace. The notice shall specify the actions that will be taken against employees for violations of the policy;

e. Replace an ignition interlock service facility within 30 days whenever the closing of an interlock service facility results in noncompliance with the requirement to possess a facility within a 50-mile radius of every residence in the Commonwealth of Virginia. The service provider is also required to notify offenders of the closure date and the address of the new interlock service facility within 15 days of the closure date;

f. Ensure that technicians maintain a professional appearance and are attired in such a manner as to be readily identifiable as service provider employees;

g. Ensure that interlock service facilities are tidy and pose no hazards to public safety; and

h. Provide the commission a minimum of 20 days notice prior to the scheduled opening date of a new location. This requirement allows the commission reasonable time to schedule an inspection of the new facility prior to opening services to ASAP offenders.

~~In addition, all services must be available statewide within a 50-mile drive to the home location of all residents of the Commonwealth.~~

~~3. Documentation of insurance covering product liability~~ 4. Submit sufficient documentation to enable the verification of adequate insurance covering liability related to ignition interlock operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of \$1 million per occurrence; and \$3 million general aggregate total. The service provider's liability insurance shall be considered primary above all other available insurance and shall so stipulate in the "other insurance" or other applicable section of the service provider's insurance contract. The service provider shall provide a signed

statement from the manufacturer holding harmless the Commonwealth of Virginia; and the commission; and its members, employees, and agents from all claims, demands, and actions; as a result of damage or injury to persons or property that may arise; directly or indirectly; out of ~~any an~~ an act or omission by the manufacturer or ~~their~~ its service provider relating to the installation, service, repair, use, ~~and/or or~~ or removal of an ignition interlock device. Coverage shall extend to any action taken or not taken by ASAPs or the commission due to verified errors in reporting of interlock activity by the service provider;

~~4. Documentation~~ 5. Submit documentation that the service provider will provide a full-time state ignition interlock ~~coordinator~~ director who will work exclusively with the Virginia interlock ~~program and reside in the Richmond, Virginia area~~ program. Among other duties, the ~~coordinator~~ state ignition interlock director will be expected to (i) respond promptly to ~~any~~ problems in the field; (ii) upon request of the commission testify in court upon request, and before applicable courts, the General Assembly of Virginia, or the commission; (iii) assist and provide training to ~~VASAP staff~~ the commission, ASAP staffs, local and statewide, and other stakeholders as requested by the commission; and (iv) be responsible for quality control reports and statistics, updates to all required documentation, and field services reporting and repairs. In the event of a state director vacancy, service providers shall submit to the commission the name of an interim state director within 10 days of the vacancy and the name of a permanent state director within 60 days of the vacancy;

6. Not discriminate against an employee or applicant for employment due to race, religion, color, sex, national origin, age, disability, or other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the service provider. The service provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Furthermore, the service provider in all solicitations or advertisements for employees placed by or on behalf of the service provider shall state that the contractor is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subdivision;

7. Not knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603; 100 Stat. 3359) during the performance of the contract for goods and services; and

8. Notify the commission in writing within 15 days of a disciplinary action taken by a state or other political entity in which the service provider conducts or has conducted

ignition interlock business. This notification shall include the reason for the disciplinary action and other information as the commission may reasonably request. This requirement applies regardless of the existence of an appeal.

D. Provided that all vendor and device certification requirements are met, the commission ~~shall~~ may contract with those manufacturers or service providers, and may approve multiple makes and models of ignition interlock devices for use in the Commonwealth of Virginia.

**24VAC35-60-50. Fees.**

A. All potential service providers desiring to conduct business in the Commonwealth of Virginia's ignition interlock program shall submit a \$250 nonrefundable application fee to the commission.

B. ~~The Commission on VASAP will establish by contract the following additional fees to~~ shall be paid by the service provider to the commission:

- ~~1. Annual~~ A \$250 annual contract review fee to the Commission on VASAP;
- ~~2. Annual~~ A \$75 annual review fee for each ignition interlock service center to the Commission on VASAP;
- ~~3. A \$250 retest fee each and every time a service provider employee is required to take a second or subsequent Virginia Ignition Interlock Certification Exam due to an unsuccessful attempt on the first exam; and~~
- ~~3. Monthly~~ 4. A \$10 monthly ignition interlock administrative fee to the Commission on VASAP for each offender with an ignition interlock installed until the device is removed for each offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the ignition interlock services were provided.

~~4. Monthly~~ C. A \$10 monthly ignition interlock administrative fee shall be paid by the service provider directly to the local servicing ASAP for each offender with an ignition interlock device installed until the device is removed offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the applicable ignition interlock services were provided.

D. Service providers may charge offenders for ignition interlock services at rates up to, but not to exceed, the following:

1. \$65 for a standard ignition interlock installation;
2. \$130 for the installation of an ignition interlock on a hybrid motor vehicle or a motor vehicle with a push button starter;

3. \$75 for a change of vehicle ignition interlock installation;

4. \$0 for an ignition interlock removal;

5. \$80 plus applicable taxes for monthly ignition interlock calibrations or monitoring, inclusive of the monthly administrative fees to be paid to the commission and servicing ASAP;

6. \$8.00 per month for optional insurance to cover theft, loss, or damage to the ignition interlock and its components;

7. An amount of 10% over the actual replacement cost of the ignition interlock and its components when theft, loss, or damage occurs and the offender has not purchased the optional insurance;

8. \$50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls;

9. \$50 for violation resets, when the violation is determined to be due to the fault of the offender;

10. \$35 for missed appointments;

11. An amount permitted by the Code of Virginia at the time for returned checks;

12. \$50 for provision of a permanent lockout code, when the lockout is determined to be due to the fault of the offender; and

13. \$50 per hour, not to exceed four total hours, for repairs and reinstallation of the ignition interlock when the commission determines that the offender illegally tampered with the device.

E. In the event of changes to the Code of Virginia mandating enhanced technological capabilities of ignition interlock devices used in the Commonwealth, the commission may increase offender installation and calibration fees up to a maximum of 25%.

~~C. F.~~ All service providers shall create and maintain an indigency fund for offenders who are eligible for a reduction in fees based upon a declaration of indigency by the court and approval by the commission. Service providers shall not deny service to any offender for whom there has been a declaration of indigency and approval by the commission.

**24VAC35-60-60. ~~Cancellation, suspension, and Suspension or revocation of manufacturers, service providers, and ignition interlock devices~~ ignition interlock device or service facility certification.**

A. ~~The commission may indefinitely cancel, suspend, or revoke certification of an ignition interlock device and/or its manufacturer and service provider or ignition interlock service facility, and the executive finance committee, for a period not to exceed 30 days, may suspend or revoke certification of an ignition interlock device or ignition interlock service facility for the following reasons:~~

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1. When there is a voluntary request by a manufacturer to cancel certification of a device-;
2. When a device is discontinued by the manufacturer-;
3. When the manufacturer's liability insurance is terminated or cancelled-;
4. When the manufacturer or service provider attempts to conceal its true ownership-;
5. When materially false or inaccurate information is provided relating to a device's performance standards-;
6. When there are defects in design, materials, or workmanship causing repeated failures of a device-;
7. When the manufacturer or service provider knowingly permits nonqualified service technicians to perform work-;
8. When a manufacturer or service provider assists users with circumventing or tampering with a device-;
9. ~~When service or the submission of required reports is not provided in a timely manner.~~
10. ~~When required fees are not paid to the commission or local programs.~~
11. ~~When there is a pattern of substandard customer service.~~
12. ~~When the manufacturer or service provider interferes with or obstructs a site review or investigation by the commission.~~
13. ~~When there are any other violations of the provisions contained in the Code of Virginia, commission regulations, or the ignition interlock contract;~~
14. ~~When a manufacturer or service provider solicits the employment of another manufacturer's or service provider's technician, facility manager, or state ignition interlock coordinator~~
15. ~~When a manufacturer or service provider solicits business outside of the VASAP, or otherwise solicits individual ASAP branches through operational incentives, gratuities, or any other personal incentives.~~
16. ~~When a manufacturer or service provider solicits business via direct influence or marketing to judicial, court, or DMV personnel.~~
9. When a service provider fails to fully correct an identified ignition interlock facility noncompliance issue within the time frame required by the Code of Virginia, the provisions of this chapter, or a service provider contract;
10. When there is a pattern of identified interlock service facility noncompliance issues;
11. When a service provider impedes, interrupts, disrupts, or negatively impacts an investigation conducted by the commission involving customer service issues, vehicle damage, or other complaint brought forward by a third party; or
12. When there is an identified public safety or client confidentiality issue at an ignition interlock service facility.

B. ~~If such cancellation, a suspension, or revocation of an ignition interlock device or service facility certification occurs, the manufacturer or service provider may request (within, within 15 days of notification) notification, a hearing with the commission to contest the decision. Should the cancellation, suspension, or a revocation of certification be upheld, the manufacturer or service provider (i) shall remain be responsible for removal of all devices from customers' motor vehicles, all vehicles in which interlocks are installed and serviced by the service provider that is subject to the revocation, and (ii) will bear the costs associated with the required removal and installation of a new approved device devices. In addition, the manufacturer or service provider subject to the revocation shall continue to provide services for these ASAP offenders for a time to be determined by the commission, but no longer than 90 days.~~

C. Service providers or manufacturers that are suspended shall continue to provide services for ASAP offenders; however, no new ignition interlock installations shall be permitted during the period of suspension.

D. If a service provider terminates the contract or goes out of business, the manufacturer or service provider shall be responsible for removal of all devices from all vehicles in which interlocks are installed and serviced by the service provider that terminates the contract or goes out of business and shall bear the costs associated with the required removal and installation of new approved devices. In addition, the manufacturer or service provider that terminates the contract or goes out of business shall continue to provide services for these ASAP offenders for 90 days from the date of the service provider's notification to the commission that they will be terminating ignition interlock services in Virginia.

## **24VAC35-60-70. Ignition interlock device specifications.**

A. All ignition interlock devices used pursuant to §§ 18.2-270.1 and 46.2-391.01 of the Code of Virginia ~~must~~ shall be approved by the commission. The commission shall maintain a list of approved ignition interlock devices.

B. ~~Each~~ A service provider seeking to contract with the commission shall submit:

1. The name and address of the ignition interlock device manufacturer-;
2. The name and model number of the ignition interlock device-; and
3. A detailed description of the device including drawings, schematics, wiring protocols, and instructions for its installation and operation.

C. The manufacturer or service provider shall provide literature promoting its device to the commission; ~~and for distribution to the local ASAPs, literature promoting its device.~~

D. The manufacturer or service provider shall provide certification from an independent laboratory that its ignition interlock device has been tested in accordance with the most

current model specifications published in the Federal Register by the National Highway Traffic Safety Administration (57 FR 11772-11787 (April 7, 1992)), Administration. The manufacturer or service provider is required to provide a certified affidavit that the ignition interlock device model complies with all applicable state standards, including written documentation, current within five years, from either a certified testing laboratory or a National Highway Traffic Safety Administration testing lab and that the ignition interlock device model for which certification is being sought meets or exceeds those specifications: the current National Highway Traffic Safety Administration's model specifications. Included with the certification report should be the name and location of the testing laboratory, the address and phone number of the testing laboratory, a description of the tests performed, copies of the data and results of the testing procedures, and the names and qualifications of the individuals performing the tests.

E. If a device is submitted for approval by a service provider other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative.

F. ~~All~~ Except where otherwise required in this chapter, all ignition interlock devices ~~will be required to~~ shall meet the model specifications for Breath Alcohol Ignition Interlock Devices (BAIID) as set forth in the most ~~recent~~ current model specifications published in the Federal Register by the National Highway Traffic Safety Administration (NHTSA) and operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards. At a minimum, the following specifications ~~will~~ shall be met:

1. The ignition interlock device shall work accurately and reliably in an unsupervised environment, at minimal inconvenience to others, and without impeding the safe operation of the motor vehicle.
2. The ignition interlock device shall be able to analyze a specimen of alveolar breath for alcohol concentration, correlate accurately with established measures of blood alcohol concentration, and be calibrated according to the manufacturer's specifications.
3. The ignition interlock device shall be alcohol specific, using an electrochemical fuel cell that reacts to and measures ethanol, minimizing positive results from ~~any~~ other ~~substance~~ substances.
4. The ignition interlock device shall indicate when a ~~sufficient sample of breath~~ 1.5 L breath sample has been collected and shall indicate this by audible or visual means. The commission may authorize service providers to adjust the breath volume requirement to as low as 1.0 L upon receipt of documentation from a licensed physician verifying the existence of an applicable medical condition. The physician's documentation shall be submitted on a commission-approved form. A medical waiver of the

ignition interlock requirement shall only be approved upon authorization of the court of jurisdiction and the commission.

5. The ignition interlock device shall detect and record a BAC that ~~is at or above~~ reaches the fail point for ~~each ignition ignitions~~, attempted ~~ignition ignitions~~, and rolling ~~retest~~ retests.
6. The results of the test shall be noted through the use of green, yellow, and red signals or similar pass/fail indicators. No digital blood alcohol concentration shall be indicated to the offender.
7. The ignition interlock device shall lock out an offender when a BAC ~~at or above~~ reaches the fail point ~~is detected~~.
8. The ignition interlock device shall have the ability to prevent the normal operation of the motor vehicle by an offender who fails to retest.
9. The ignition interlock device shall have the ability to perform a permanent lockout if the offender fails to appear for a scheduled monitoring appointment after the applicable five-day grace period. The service provider shall provide a code, smart key, or other similar unlock feature that has been approved by the commission to offenders whose interlock is in a permanent lockout status. The duration of the time period that the interlock is unlocked shall not be more than or less than three hours. The code shall only unlock the interlock device and shall not disable other interlock features. Interlock service providers shall not provide an ignition interlock code that disables the ignition interlock features to persons without first obtaining authorization from the commission.
10. The ignition interlock device shall automatically purge alcohol before allowing subsequent analyses.
11. The ignition interlock device shall issue a warning of an impending lockout.
12. The ignition interlock device shall be capable of random retesting and timed retesting.
13. The ignition interlock device shall warn the offender of upcoming service appointments for at least three days prior to the appointment. Should the offender fail to appear, the device shall ~~lock out~~ lockout on the fifth day after the scheduled appointment, and the motor vehicle shall not be operable until the service provider has reset the device.
14. The internal memory of the ignition interlock device shall be capable of recording and storing a minimum of 500 interlock events and shall enter a service reminder if the memory reaches 90% of capacity.
15. The ignition interlock device shall be designed and installed in ~~such~~ a manner as to minimize opportunities ~~to be tampered with, altered, bypassed, or circumvented for tampering, alteration, bypass, or circumvention~~. The ignition interlock device shall not spontaneously bypass the ignition system nor shall it be able to be made operational by ~~any~~ a mechanical means of providing air to

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simulate alveolar breath. ~~Any bogus~~ Bogus breath anti-circumvention features used to pass laboratory testing of the ignition interlock device shall be turned on. In addition, service providers shall connect the ignition interlock device to a constant and uninterrupted power source to further prevent an opportunity to circumvent the system.

16. The ignition interlock device shall be capable of recording and providing evidence of ~~any~~ actual or attempted tampering, alteration, bypass, or circumvention.

17. The ignition interlock device ~~must~~ shall operate accurately and reliably at temperatures between ~~-20 and 70 degrees Celsius~~ -40°C and 85°C.

18. The ignition interlock device shall operate up to altitudes of 2.5 km above sea level.

19. The readings of the ignition interlock device shall not be affected by humidity, dust, electromagnetic interference, smoke, exhaust fumes, food substance, or normal automobile vibration.

20. The operation of the ignition interlock device shall not be affected by normal fluctuations of power source voltage.

21. The ignition interlock shall be installed with a fully functional camera that is equipped to record the date, time, and photo of all persons providing breath samples to the ignition interlock device; however, this requirement shall not pertain to motorcycles and mopeds. In addition, service providers are required to present a reference photo of the offender to confirm the offender's identity.

G. All ignition interlock devices that have been approved by the commission shall have affixed a warning label with the following language: "Any person tampering with or attempting to circumvent this ignition interlock system shall be guilty of a Class 1 misdemeanor and, upon conviction, be subject to a fine or incarceration or both." The cost and supply of the warning labels to be affixed to the ignition interlock devices shall be borne by the manufacturer or service provider. The manufacturer or service provider shall submit to the commission a prototype of the warning label for approval.

H. For initial startup of the motor vehicle:

1. The ignition interlock device shall enable the ~~ignition starter~~ ignition starter relay after the successful completion of a breath alcohol test.

2. The device shall allow an operator to take up to two minutes to elapse between the time the ignition is enabled and the start of the motor vehicle after the starter relay is enabled to start the engine.

3. The ignition interlock device shall ~~allow the motor vehicle to be restarted within two minutes of the engine being stopped without requiring an additional test permit a free restart.~~

4. If the initial test results in a lockout due to the offender's BAC level, the ignition interlock device shall not allow an additional attempt for five minutes.

5. If the offender's BAC ~~is at or above~~ still reaches the fail point on the ~~second~~ first retest, the machine shall ~~lock-out~~ lockout for an additional ~~15~~ 10 minutes and shall do so thereafter for ~~each~~ subsequent failed ~~retest~~ retests. A violation reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

6. If the ignition interlock device is not reset within five days, a permanent lockout will occur.

I. A rolling retest feature is required for all ignition interlock devices. For rolling retests:

1. An ignition interlock device shall require a rolling retest within the first ~~10 to 20~~ five minutes after the start of the motor vehicle and randomly thereafter at least once every ~~20 45~~ to 40 60 minutes as long as the motor vehicle is in operation.

2. The ignition interlock device shall produce a visual and audible signal of the need to produce a breath sample for the rolling retest. The offender shall have ~~six~~ 15 minutes ~~in which~~ to provide the required rolling retest breath sample.

3. A free restart shall not apply if the ignition interlock device was awaiting a rolling retest that was not delivered.

4. ~~Any~~ A deep lung breath sample at or above the fail point or ~~any~~ a failure to provide a rolling retest deep lung breath sample within the required time, shall activate the motor vehicle's horn and cause the motor vehicle's headlights, parking lights, ~~or~~ emergency lights, or other light source approved by the commission to flash until the engine is shut off by the offender or a passing breath test is provided.

5. Once the vehicle has been turned off, all prestart requirements shall become applicable.

6. The violations reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

7. If the ignition interlock device is not reset within five days, a permanent lockout will occur.

J. Additional technical specifications for the operation and installation of the ignition interlock device may be described in the contract between the commission and the service provider.

K. The vendor shall notify the commission in writing if the approval or certification of a device that is approved or has been submitted for approval for use in Virginia is or ever has been denied, withdrawn, suspended, or revoked in another state, whether the action occurred before or after approval in Virginia. This notification shall be made in a timely manner, not to exceed 15 days after the vendor has received notice of the denial, withdrawal, suspension, or revocation of approval

or certification of the device, whether or not the action will or has been appealed.

**24VAC35-60-80. Ignition interlock device installation.**

A. No offender who has a case pending in the court system shall have an interlock installed in Virginia unless enrolled in, and monitored by, the ASAP program in the area where the case originated. Offenders subject to a DMV ignition interlock requirement shall not have an interlock installed in Virginia unless first authorized by the ASAP. Prior to installation of the device, the vendor must receive written or electronic authorization from the ASAP. This section also applies to out-of-state offenders who have a Virginia ignition interlock requirement. This enables the commission to maintain consistency in policy and use of ignition interlock devices in the Commonwealth of Virginia and allows for a consistent pattern of instruction to the service provider.

B. The ignition interlock device ~~must~~ shall be installed by a commission-approved manufacturer or authorized service provider within 30 days of the date of the court order; if not, the service provider will notify the ASAP. Once the ignition interlock has been installed, the service provider will send an authorized installation report to the ASAP, via a method established by the commission, documenting that the ignition interlock device has been installed. Once verification of an authorized installation has been received by the ASAP, DMV will be notified that the offender has successfully installed the interlock device.

C. All agreements between the service provider and the offender shall be in the form of a contract and ~~be~~ signed by the service provider and the offender. Copies of the written contract shall be retained by the service provider with a copy given to the offender ~~and the local ASAP office.~~

D. Prior to installation of the ignition interlock device, offenders ~~must~~ shall provide to the service provider:

1. Photo identification. If no photo identification is available at the time of installation, other adequate proof of identification may be accepted to avoid delay of the installation. However, photo identification must be presented prior to the first calibration appointment;
2. The name and policy number of their automobile insurance;
3. ~~The~~ A copy of the registration or title containing the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the offender; and a statement disclosing the names of all other operators of the motor vehicles owned or driven by the offender;
4. A notarized affidavit, approved by the commission, from the registered owner of the vehicle granting permission to install the device if the car is not registered to the offender. If the owner is present at installation, provides valid identification, and signs the consent to install form in the service provider technician's presence, notarization of the consent to install form is not required; and

5. Written authorization from the commission if the air volume requirement, blow pressure, or anti-circumvention features of the ignition interlock device are to be lowered or disabled in order to compensate for an offender's diminished lung capacity, when applicable.

E. Under no circumstances shall an offender; or anyone accompanying the offender be permitted to observe ~~the~~ installation of the ignition interlock device.

F. The service provider ~~must~~ shall inspect all motor vehicles prior to installation of the device to ensure that they are in acceptable mechanical and electrical condition. Under no circumstances shall staff of the authorized service provider install ~~any~~ a device until, and unless, the motor vehicle is approved following the inspection. A pre-inspection checklist of the vehicle at installation shall be completed and placed in the offender's file.

G. ~~Each~~ The installation shall include ~~all of the~~ tamper-resistant features ~~required by the service provider such as unique seals, epoxies, or resins at all openings and exposed ignition interlock electrical connections so as to make evident all attempts to circumvent or otherwise alter the normal functioning of the ignition interlock. At a minimum, the service provider shall ensure that the vehicle starter wire connected to the ignition interlock is secured with uniquely identifiable heat shrink tubing or its equivalent and that all connected wires are wrapped with uniquely labeled service provider tape.~~

H. An oral, written, or video orientation to the ignition interlock device will be developed and delivered by the service provider to the offender and other persons who may drive the motor vehicle, including information on the use and maintenance of the device as well as all service center locations, and procedures for regular and emergency servicing. A demonstration interlock will be available at ~~each~~ the installation site for use in the training of customers.

I. If, during the installation, the offender fails to pass the initial breath test, the installation ~~will~~ shall be halted and the ASAP notified.

J. The manufacturer ~~and/or~~ or service provider ~~must~~ shall maintain a toll-free 24-hour emergency phone service that may be used to request assistance in the event of failure of the ignition interlock device or motor vehicle problems related to operation of the ignition interlock device. The assistance provided by the authorized service provider shall include technical information and aid in obtaining towing or roadside service. The expense of towing and roadside service shall be borne by the offender unless it is determined by the service center technician that the ignition interlock device failed through no fault of the ~~offender, in which~~ offender. If this is the case, the manufacturer or service provider will be responsible for applicable expenses. The ignition interlock device shall be made functional within 48 hours of the call for assistance or the ignition interlock device shall be replaced.

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K. At the time of device installation, a service provider may charge an installation fee. The maximum permissible cost for installation shall be set by the ~~Commission on VASAP commission through contract~~, and service providers will not be permitted to exceed the maximum fee established by the commission. No installation fees shall be collected from the user until services have been provided. A portion of these fees shall include costs for offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device loss, theft, or damage. ~~No installation fees shall be collected from the user until such services have been provided.~~ Optional insurance shall be offered by the service provider, and a written copy of the insurance policy stating clearly the applicable coverages, coverage amounts, conditions, and exclusions shall be given to offenders who purchase the insurance. When the ignition interlock is installed on a motorcycle or moped, service providers may require offenders to provide a saddle bag or similar waterproof container in which the device components may be stored as a condition of eligibility for the optional insurance.

L. The manufacturer or the service provider ~~must~~ shall provide ~~indigent~~ service to those offenders who are eligible for a reduction in fees based upon a declaration of indigence by the court and approval by the commission.

M. No later than the first service appointment, the offender ~~must~~ shall provide to the service provider a statement from ~~every~~ the licensed ~~driver~~ drivers who will be driving the offender's motor vehicle acknowledging their understanding of the requirements of the use of the ignition interlock device.

## **24VAC35-60-90. Calibration and monitoring visit.**

A. ~~The offender must present photo identification to the service provider for all required services.~~ Only calibration units (i) found on the current National Highway Traffic Safety Administration's Conforming Products List of Calibrating Units for Breath Alcohol Testers or (ii) approved by the commission shall be used by the service provider to calibrate ignition interlock devices.

B. The service provider ~~must~~ shall:

1. Provide ~~service/monitoring~~ service and monitoring of the ignition interlock device every 30 days; the offender will be given a five-day grace period to have the device inspected. All ignition interlock calibrations shall occur at a service provider interlock service facility unless otherwise approved by the commission;
2. Calibrate the ignition interlock device at each service appointment using a dry gas or wet bath reference sample. The service provider shall ensure that dry gas and wet bath reference values are adjusted in a manner approved by the commission;
3. Calibrate the ignition interlock device for accuracy by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between .030 and .050 g/210L;

4. Expel a three-second purge from the wet bath simulator or dry gas standard prior to introducing the alcohol reference sample into the ignition interlock device;

5. Perform an accuracy check that will consist of two consecutive reference checks with the result of each individual check being within plus or minus 10% or 0.003, whichever is smaller, of the alcohol reference value introduced into the ignition interlock device. The time period between the first and second consecutive accuracy check shall not exceed five minutes;

6. Use a mercury-in-glass thermometer or digital thermometer for wet bath simulators. The thermometers shall read 34°C, plus or minus 0.2°C, during analysis and be certified annually using a National Institute of Standards and Technology traceable digital reference thermometer. In addition, the service provider shall use alcohol reference solutions prepared and tested in a laboratory with reference values traceable to the National Institute of Standards and Technology. The 500 ml bottles containing simulator solution shall be tamper proof and labeled with the lot or batch number, value of the reference sample in g/210L, and date of preparation or expiration. Alcohol reference solutions must be used prior to expiration and within one year from the date of preparation. In addition, wet bath simulator solutions shall be replaced prior to every 16th test;

7. Store dry gas alcohol standard tanks in an environment where the temperature range remains between 10°C and 40°C. The dry gas tanks shall have a label attached that contains the components and concentration of the reference value of the gas, an expiration date that shall not be longer than three years from the date of preparation, and the lot or batch number. Dry gas alcohol standards must be certified to a known reference value and be traceable to the National Institute of Standards and Technology. The reference value shall be adjusted for changes in elevation and pressure. Interlock service facilities using a dry gas standard shall possess an elevation chart used to determine the proper reference value for the elevation where the gas standard is being used and a certificate of analysis from the dry gas standard manufacturer. Dry gas tanks shall be secured in a manner as to prevent harm to the public;

~~3- 8.~~ Retrieve data from the ignition interlock device data log for the previous period and electronically submit it to the local ASAP within 24 hours of calibration-;

~~4- 9.~~ Record the odometer reading of the motor vehicle in which the ignition interlock device is installed-;

~~5- 10.~~ Check the ignition interlock device and wiring for signs of circumvention or tampering, and electronically report to the local ASAP any violation violations to ASAP within 24 hours of servicing. the required time frame established by the commission;

~~6- 11.~~ Collect the monthly monitoring fee from the offender. If an offender who has not been declared to be

indigent by the court is three or more months delinquent in payments, the service provider may, in its discretion, refuse to provide calibration services, but shall not remove the ignition interlock device without authorization from the commission;

12. Verify that the offender has a photo identification prior to calibrating the ignition interlock device if photo identification was not already presented at the time of installation; and

13. Conform to other calibration requirements established by the commission, as applicable.

C. All malfunctions of the ignition interlock device will be repaired or the ignition interlock device replaced by the service provider within 48 hours at no additional expense to the offender. If it is shown that the malfunction is due to damage to the device as a result of mistreatment by the offender or improper use, and the offender has not purchased optional insurance, then the offender will be responsible for applicable repair fees.

D. A certified technician shall be available at the service center during specified hours to answer questions and to deal with ~~any~~ mechanical concerns that may arise with a motor vehicle as a result of the ignition interlock device.

E. The ignition interlock device shall record, at a minimum, the following data:

1. The time and date of ~~each~~ failed breath ~~test~~ tests;
2. The time and date of ~~each~~ passed breath ~~test~~ tests;
3. The breath alcohol level of ~~each test~~ all tests; ~~and~~
4. The time and date of ~~any attempt~~ attempts to tamper or circumvent the ignition interlock device;
5. A photo of all persons submitting a breath test sample for analysis by the ignition interlock device; and
6. A reference photo of the offender.

F. At the time of device calibration, a service provider may charge a monthly monitoring fee. The maximum permissible cost for monitoring and calibration shall be set by the ~~Commission on VASAP~~ commission through ~~contract~~ the ignition interlock regulations, and service providers shall not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for ~~VASAP~~ administrative support and offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft or damage. Fees for the first monthly monitoring and calibration visit will be collected from the user in advance at the time of installation and monthly thereafter ~~as such~~ when services are rendered.

**24VAC35-60-100. Ignition interlock device removal.**

A. Prior to removal of the ignition interlock device, the service provider must receive written or electronic authorization from the ASAP. This requirement also applies to offenders with a Virginia ignition interlock requirement

who are receiving interlock services from a service provider in another state.

B. Offenders may not have their ignition interlock device removed or replaced by another manufacturer without written or electronic authorization from the ASAP commission. Whenever removal of an ignition interlock device was approved by the commission for the purpose of changing service providers and the authorized removal was a result of a determination that the initial service provider failed to provide a level of service meeting contract requirements, the ignition interlock regulations, or the Code of Virginia, the original service provider shall bear the costs associated with installation of the device by the new service provider.

~~C. If, at the time of removal, the service provider notices any failed tests that have not been backed up by a successful test within 10-15 minutes of the original test, the ASAP will be notified for approval before the removal is made.~~

~~D. C.~~ Once the interlock has been removed, the service provider will send an authorized removal report to the ASAP via ~~fax, email, or online database~~, a method established by the commission documenting that the ignition interlock device has been removed and that all fees have been paid. Once verification of an authorized removal has been received by the ASAP, DMV will be notified that the offender has successfully completed the interlock requirements.

~~E. D.~~ Whenever an ignition interlock device is removed, all components of the motor vehicle altered by the installation or servicing of the ignition interlock device ~~must~~ shall be restored to their original, preinstallation condition and removed in ~~such~~ a manner so as not to impair the continued safe operation of the vehicle. All severed wires ~~must~~ shall be permanently reconnected (e.g., soldered) and properly insulated ~~with heat shrink tubing or its equivalent~~. A post-inspection checklist of the vehicle shall be completed after removal of the device, documenting that the vehicle or vehicles did or did not suffer damage due to interlock services provided by the service provider. A copy of the post-inspection checklist shall be placed in the offender's file.

~~F. E.~~ No fee shall be charged to the offender for removal of the ignition interlock device.

F. No offender or person accompanying the offender shall be permitted to observe the removal of the ignition interlock device.

**24VAC35-60-110. Records and reporting.**

A. The service provider shall be subject to announced or unannounced site reviews for the purpose of inspecting the facilities and offender records. Access Upon request, access to all service provider locations, records, and financial information shall be provided to ~~any member~~ of the commission ~~staff~~ for the purpose of verifying compliance with state law, commission regulations, and the service provider agreement.

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B. In accordance with federal confidentiality guidelines, all personal and medical information provided to the service provider regarding offenders shall be kept confidential, maintained in individual offender files, and secured within a lockable filing cabinet at the offender's service center. This filing cabinet shall remain locked during ~~any period that~~ the periods when the service center is unattended by a service provider employee.

C. ~~Within 24 hours of~~ After installing an interlock, the service provider ~~will~~ shall provide the ASAP with an installation report, within 24 hours, that includes:

1. The name, address, and telephone number of the offender;
2. The owner, make, model, year, vehicle identification number, license plate number, and registration information of the motor vehicle; and
3. The serial number of the ignition interlock device installed.

D. ~~Within 24 hours after~~ After performing a ~~monitoring/calibration~~ monitoring and calibration check, the service provider shall submit to the ~~local~~ ASAP, within 24 hours, all data generated to include:

1. Name of the offender whose device was monitored;
2. Name, address, and telephone number of the monitoring official;
3. Date of ~~monitoring/calibration~~ monitoring and calibration;
4. Motor vehicle make, model, year, identification number, and odometer; reading;
5. Number of miles driven during the monitoring period;
6. Make, model, and serial number of the ignition interlock device;
7. ~~Any~~ A change out of the device (handset ~~and/or~~ or control box) and reason for the change out;
8. ~~Any data~~ Data indicating that the offender has attempted to start or drive the motor vehicle with a positive BAC at or above the fail point;
9. ~~Any attempts~~ Attempts to alter, tamper, circumvent, bypass, or otherwise remove the device;
10. ~~Any noncompliance~~ Noncompliance with conditions of the ASAP or interlock program;
11. ~~Any offender~~ Offender concerns;
12. ~~All charges~~ Charges incurred for the monitoring visit;
13. Date of next scheduled monitoring visit;
14. A photo of all persons who have attempted to provide a breath test sample on the ignition interlock device; and
15. A reference photo of the offender.

E. In addition, the service provider ~~must~~ shall have available monthly reports detailing:

1. ~~All installations~~ Installations during the period covered;

2. ~~All calibrations~~ Calibrations performed during the period, by date and offender name, detailing any unit replacements made during the monitoring period;

3. ~~All datalogger~~ Datalogger information from ~~each~~ all ignition interlock ~~device~~ devices;

4. ~~Any evidence~~ Evidence of misuse, abuse, or attempts to tamper with the ignition interlock device;

5. ~~Any device~~ Device failure due to material defect or improper installation; and

6. A summary of ~~all~~ complaints received and corrective action taken.

F. The service provider shall be responsible for purchasing and providing necessary computer hardware and software to convey all data and information requested by the commission if ~~such~~ the equipment is not already present at the commission office or ~~local~~ the ASAP.

G. ~~Reports~~ Accurate reports shall be submitted to the ~~local~~ ASAP in the format specified by the ~~Commission on~~ VASAP ~~commission~~.

## **24VAC35-60-120. General service provider requirements.**

Interlock service providers that are approved to perform ignition interlock services in the Commonwealth of Virginia shall:

1. Abide by all commission memorandums, directives, contract terms, and regulations pertaining to the statewide ignition interlock program unless prohibited by state law.

2. Resolve offender, court, DMV, ASAP, commission, and other stakeholder complaints as directed by the commission.

3. Install all ASAP authorized ignition interlock installations within the time parameters set forth by the commission. In situations where an interlock service facility or facilities become inoperable due to a large scale weather event or some other verified unforeseen circumstances, the service provider shall contact the commission within 24 hours with an action plan to mitigate the impact to customer service.

4. Resolve ignition interlock service facility compliance issues as directed by the commission.

5. Obtain approval from the commission before disseminating any training or advertising materials used in association with the Virginia interlock program.

6. Make modifications to the service provider company website that is used to review monthly calibration reports, upon reasonable request by the commission. Reasonable requests include, but are not limited to, changes due to language that is confusing, misleading, offensive, or inaccurate; changes required due to updated technology; changes to the Code of Virginia or the ignition interlock regulations; changes in workload; or changes in product enhancements.

7. Assume full liability for action taken or not taken by an ASAP or the commission due to an inaccurate or misleading report, whether electronic or hard copy, provided by the service provider.

8. Be accountable for Virginia offenders with ignition interlock devices installed by its company in another state and shall ensure that all Virginia interlock processes, regulations, request for proposal terms, contract terms, and commission requirements are met unless prohibited by state law.

9. Notify the commission within 15 days of disciplinary action received from a state where the service provider conducts or has conducted ignition interlock business. This notification shall include the reason for the disciplinary action. This requirement applies regardless of the existence of an appeal.

10. Provide information technology assistance and training, per reasonable request, to the commission when requested.

11. Report all changes to the ignition interlock device software or firmware, whether temporary or permanent, to the commission within 30 days of release in the Commonwealth of Virginia.

12. Not modify or remove an interlock device that is the subject of an investigation by the commission.

## **24VAC35-60-130. Service provider technician certification.**

A. Service provider state directors and technicians are required to possess a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia. In order to apply for a certification letter, service providers shall submit a completed application to the commission for approval of newly hired technicians and state directors. If approved by the commission, this application process may be waived for technicians and state directors providing interlock services in the Commonwealth of Virginia prior to June 30, 2015. The completed application for applicants shall include submission of:

1. A completed applicant form provided by the commission;
2. A complete local and national criminal history check;
3. A complete driver's record; and
4. Documentation issued by the commission of successful completion of the Virginia Ignition Interlock Certification Exam.

Failure to submit a completed application will result in disqualification from consideration for a Virginia Ignition Interlock Certification Letter by the commission to perform ignition interlock services in the Commonwealth of Virginia. The commission reserves the right to deny a certification letter to an interlock service provider technician or state director due to concerns identified in the application to

include, but not be limited to, criminal history background and driver's transcript issues.

B. Applicants will be required to complete a Virginia Ignition Interlock Certification Exam. Successful completion of the exam requires a score of 80% or higher. Applicants who fail to successfully complete the state certification exam on the first attempt will be allowed a second opportunity to successfully complete the exam. Applicants who fail to successfully complete the state certification exam on the second attempt will not be allowed to reapply to provide ignition interlock services for the Commonwealth of Virginia for six months from the date of the second failed exam. Service providers will be required to pay an administrative fee, as provided in 24VAC35-60-50 B 3, to the commission for all second and subsequent attempts to successfully complete the state certification exam. Applicants who successfully pass the state certification exam will receive documentation of successful completion from the commission that shall be submitted with the application for a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia.

C. The commission may revoke, suspend, or terminate a previously issued Virginia Ignition Interlock Certification Letter for a service provider technician or state director for any of the following reasons:

1. The technician or state director is convicted of a felony;
2. The technician or state director is convicted of a misdemeanor potentially punishable by confinement;
3. The technician or state director commits an unethical or dishonest act that negatively impacts the integrity of the ignition interlock program;
4. The technician or state director fails to demonstrate the ability to consistently comply with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or
5. The technician or state director fails to demonstrate possession of the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.

A service provider technician or state director whose Virginia Ignition Interlock Certification Letter has been suspended or revoked may request, within 15 days of notification, a hearing with the commission to contest the decision. In the event that the decision to suspend or revoke the Virginia Ignition Interlock Certification Letter of a service provider's technician or state director is upheld, the technician or state director shall not perform interlock services in the Commonwealth of Virginia for the entire suspension period, to include any period of contestment, or in the case of a revocation or termination, on a permanent basis. The service provider is required to return the Virginia Ignition Interlock Certification Letter to the commission within 15 days of the date that the certification was suspended, revoked, or terminated, by the commission.

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# Regulations

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D. Once the completed application has been approved by the commission and all other qualifications have been met by the applicant, a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia will be issued to the applicant by the commission. The certification letter shall contain the effective date of the letter and a certification number specific to the applicant. The certification letter will be valid for a time period specified by the commission unless otherwise suspended, revoked, or terminated but for no longer than the service provider contract end date. In the event that an applicant is not approved for a Virginia Ignition Interlock Certification Letter to perform interlock services in the Commonwealth of Virginia, the commission will notify the service provider in writing within 10 days of the determination. The Virginia Ignition Interlock Certification Letter is subject to review by the commission at its discretion during the course of the certification period.

E. An application to renew a Virginia Ignition Interlock Certification Letter for an ignition interlock technician or state director shall be submitted 30 days prior to the expiration date printed on the current certification letter. A technician or state director who has had his state certification revoked or terminated shall be ineligible to reapply for a Virginia Ignition Interlock Certification Letter unless otherwise approved by the commission.

F. Service providers are required to surrender Virginia Ignition Interlock Certification Letters for technicians and state directors who are no longer employed with their company. The surrendered certification letter is to be sent to the commission within 15 days of the date that the technician or state director is no longer employed with the service provider.

G. In addition to the successful completion of the Virginia Ignition Interlock Certification Exam required for application, the commission may order that a technician or state director performing ignition interlock services in the Commonwealth of Virginia review requirements and retake the state certification exam to demonstrate that the technician or state director possesses the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.

**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 (24VAC35-60)

[VASAP Breath Reduction Form \(rev. 9/2015\)](#)

[VASAP Internet Service Provider Applicant Form \(rev. 9/2015\)](#)

VA.R. Doc. No. R14-3946; Filed September 2, 2015, 11:48 a.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 47 (2015)

### **Establishing the Governor's Council on Youth Entrepreneurship**

#### Importance of the Initiative

Entrepreneurship and innovation are among the central pillars of Governor McAuliffe's economic development platform. The foundation for a new Virginia economy rests upon the strength of Virginia's young people. In order to stimulate future economic prosperity for all Virginians, young people must have the support and resources they need to become economically secure and successful.

In Virginia, the unemployment rate for young adults was 8.4%, double the unemployment rate for Virginians over 35. At the same time, the majority of new jobs come from startup firms (firms less than five years old), estimated at about 3 million jobs per year nationally.

Virginia is home to some of the best colleges, universities, and community colleges in the world. By investing in our young people, we can provide them the tools they need to thrive in the 21st century workforce. We can ensure that they have the foundation to become creative and innovative leaders of the new Virginia economy. In classrooms and businesses across the Commonwealth, our young people are already developing the ideas that will transform our future. We have achieved great success in supporting young entrepreneurs, but we also have an outstanding opportunity for improvement and growth. Virginia should work to strengthen the innovation infrastructure for young people by engaging with leaders in the public and private sectors, the education and business communities, and entrepreneurship ecosystems.

#### Establishment of the Governor's Council on Youth Entrepreneurship

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

#### Governor's Council on Youth Entrepreneurship

The Governor's Council on Youth Entrepreneurship (Council) shall be responsible for coordinating and implementing youth entrepreneurship initiatives and fostering the growth of the entrepreneurial ecosystem for young people in Virginia. Specifically, the Council is charged with:

- Conducting a comprehensive, statewide assessment of current programs, services, and local, state, and federal resources that support Virginia's young entrepreneurs and innovators;

- Developing a website that aggregates these resources to provide a one-stop location for young entrepreneurs, businesses and educators to easily access information;
- Connecting young entrepreneurs to assets in their communities through a series of roundtables, town halls or other collaborative events to bring together local business leaders and job creators with young entrepreneurs to help grow these ecosystems; and
- Providing additional recommendations to achieve the goals of this Council and reporting regularly to the Governor.

Additionally, the Council will address five significant priorities related to youth entrepreneurship:

1. Expand students' intellectual property (IP) rights – The Council shall work with Boards of Visitors, presidents, administration, and faculty at institutions of higher education to craft policies that give students more rights over their own research and IP. In considering possible alternatives, the Council shall consider model policies of institutions that have expanded student IP rights with the goal of strengthening innovation ecosystems and stimulating economic growth.
2. Promote the formation of collaborative spaces for entrepreneurs and students to meet – The Council shall work with partners in education and business to identify opportunities for expanded space for entrepreneurs and students to collaborate. Entrepreneurs consistently cite physical space as a priority in deciding where to start a business. The Council shall consider model collaborative spaces across Virginia and the nation.
3. Encourage schools to offer courses in entrepreneurship that are easily accessible to all students and to integrate innovation into curriculum – The Council shall research and evaluate strategies for integrating entrepreneurship into classroom environments and curricula in higher education. It shall explore best practices, such as entrepreneurs-in-residence and out-of-classroom curricular programs. It shall work to ensure that entrepreneurship courses are easily accessible and available to all students at institutions of higher education regardless of a student's concentration of study.
4. Identify ways for colleges and universities to award academic credit to students for starting a business – The Council shall work with Boards of Visitors, presidents, administrators, and faculty at institutions of higher education to determine criteria for awarding academic credit to students for starting a business. In the new Virginia economy, it is critical to recognize the important skills and training that students receive from launching a new business venture. Similar to awarding academic credit for an internship or co-op, awarding academic credit to students for starting a business provides crucial workforce

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# Governor

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development opportunities that allow students to remain in school on a graduation track while still pursuing business ventures.

5. Remove unnecessary costs for students starting a business in Virginia – The Council shall consider ways to remove regulations and fees that create unnecessary burdens or obstacles for individuals who are starting a new business.

## Composition of the Council

The Council will be led by the Secretary of Commerce and Trade and include leaders in higher education, business, innovators and entrepreneurs, and others with appropriate expertise, as appointed by the Governor. In coordination with relevant state agencies, the Council will serve as a central coordinating entity to identify opportunities and develop recommendations for improvement, including but not limited to: 1) entrepreneurship education, 2) support from the business community for young entrepreneurs, 3) strategies for keeping the "best and the brightest" young innovators in Virginia, 4) opportunities for strengthening institutional support for student creativity and innovation, and 5) the growth of entrepreneurial ecosystems across Virginia. The Council will also collaborate with other entities as appropriate and seek participation from relevant stakeholders, including the business and education communities, nonprofit groups, and advocacy organizations.

## Staffing

Staff support for the Council will be provided by the Office of the Governor, and any other Secretariats, agencies, or offices as designated by the Governor, including staff from institutions of higher education if appropriate. The Council will serve in an advisory role to the Governor, in accordance with § 2.2-2100 of the Code of Virginia. The initial report of the Council's assessments and recommendations is due to the Governor no later than December 1, 2015. Subsequent annual reports from the Council are due to the Governor on December 1st each year. In coordination with the Council, each public institution of higher education will report to the Governor on its progress towards these goals annually.

## Effective Date

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in full force and effect from its signing until superseded or rescinded.

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

/s/ Terence R. McAuliffe  
Governor

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### 2015 Annual Report, Agricultural Stewardship Act

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report of the Agricultural Stewardship Act entitled "Agricultural Stewardship Act Annual Report, April 1, 2014 – March 31, 2015." Copies of this report can be obtained by contacting, and questions regarding the report can be directed to, Joyce Knight at telephone (804) 786-3538 or email at [joyce.knight@vdacs.virginia.gov](mailto:joyce.knight@vdacs.virginia.gov). The report can also be obtained by accessing the department's website at <http://www.vdacs.virginia.gov/stewardship/index.shtml>. A written request may be sent to the address below. Copies of the report are available without charge.

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

## DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Proposed Renewal of Variances to Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115)

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS), in accordance with Part VI - Variances (12VAC35-115-220 et seq.), of the Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115), hereafter referred to as the "Human Rights Regulations," is announcing an opportunity for public comment on the applications for proposed renewal of existing variances to the Human Rights Regulations. The purpose of the regulations is to ensure and protect the legal and human rights of individuals receiving services in facilities or programs operated, licensed, or funded by DBHDS.

Each variance application references the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for a variance. Such application also describes time limits and other conditions for duration and the circumstances that will end the applicability of the variance. After considering all available information including comments, DBHDS intends to submit a written decision deferring, disapproving, modifying, or approving each variance renewal application. All variances shall be approved for a specific time period. The decision and reasons for

variance will be published in a later issue of the Virginia Register of Regulations.

Purpose of notice: DBHDS is seeking comment on the applications for proposed renewal of the following existing variances to the Human Rights Regulations at four private providers.

#### Variance to Procedures to Ensure Dignity:

12VAC35-115-50 C 7 and C 8:

In order to maintain the safety and security of residents (youth) the programs restrict communication via telephone and visitation to only those placed on a list generated at admission by the parent/legal guardian and the resident.

1. Newport News Behavioral Health Center: The visitation list is generated by the Admissions Coordinator.
2. James Barry Robinson Center
3. Kempsville Center for Behavioral Health: The Clinical Treatment Team is also involved in the creation of the list.
4. Virginia Beach Department of Human Services Residential Crisis Stabilization Program - The Recovery Center: Through the first phase of the program, individuals are limited from visits with family and friends, and phone calls are limited to five minutes per shift. There is no limitation on private communication with attorneys, judges, legislators, clergy, licensed health care practitioners, authorized representatives, advocates, the inspector general, or employees of the protection and advocacy agency.

#### Variance to Procedures for Restrictions on Freedoms of Everyday Life:

12VAC35-115-100 A 1 a and A 1 g: In order to utilize a point level system (Behavior Management Model) affecting movement of an individual within the service setting (grounds, community, purchases in program store).

1. Harbor Point Behavioral Health Center
2. Kempsville Center for Behavioral Health: Requiring an individual earn points through a level system in order to access the store.

Variance to Procedures for Use of Seclusion, Restraint, and Time Out

12VAC35-115-110 C 16: In order to utilize time out as part of the unit restriction policy.

Kempsville Center for Behavioral Health: At times deemed necessary due to unsafe behaviors, to provide additional safety and security measures by preventing movement by an individual from their assigned unit for periods longer than 30 minutes.

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## General Notices/Errata

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Variations to these regulations by the providers listed above are reviewed by the State Human Rights Committee (SHRC) at least annually, with reports to the SHRC regarding the variations as requested.

Public comment period: September 21, 2015, through October 21, 2015.

Description of proposal: The proposed variance applications for renewal must comply with the general requirements of Part VI - Variations (12VAC35-115-220 et seq.), of the Human Rights Regulations.

How to comment: DBHDS 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 DBHDS by the last day of the comment period. All information received is part of the public record.

To review a proposal: Variance applications and any supporting documentation may be obtained by contacting the DBHDS representative named below.

Contact Information: Deborah Lochart, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 East Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0032, FAX (804) 804-371-2308, or email [deb.lochart@dbhds.virginia.gov](mailto:deb.lochart@dbhds.virginia.gov).

### CEMETERY 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 Cemetery 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.

#### 18VAC47-11, Public Participation Guidelines

#### 18VAC47-20, Cemetery Board Rules and Regulations

The comment period begins September 21, 2015, and ends October 12, 2015.

Agency Contact: Christine Martine, Executive Director, Department of Professional Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone

(804) 367-8552, FAX (866) 826-8863, or email [cemetery@dpor.virginia.gov](mailto:cemetery@dpor.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.

### BOARD FOR CONTRACTORS

#### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Contractors 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.

#### 18VAC50-11, Public Participation Guidelines

#### 18VAC50-22, Board for Contractors Regulations

#### 18VAC50-30, Individual License and Certification Regulations

The comment period begins September 21, 2015, and ends October 12, 2015.

Agency Contact: Eric L. Olson, Executive Director, Department of Professional Occupational Regulation, 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).

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 ENVIRONMENTAL QUALITY

#### Notice of Intent for Solar Energy Project in Brink, Virginia

SolUnesco and its partners intend to submit the necessary documentation for a permit by rule for a small renewable

energy project (solar) in Brink, Virginia, pursuant to 9VAC15-60. SolUnesco and its partners are developing a 24.1 MW DC (76,500 315W panels) solar farm located in Brink, Virginia, Greensville County. The system will be a ground mounted array covering a plot of about 100 acres in an area approximately 2700' X 1700' and will have an assumed AC interconnection at the Brink Substation, Emporia District within the Mecklenburg Electric Cooperative service territory located approximately one mile away. SolUnesco and its partners have secured an Option to Lease for the site from the property owners and have submitted an interconnect request with Mecklenburg Electric Cooperative (request submitted on July 31, 2015). Parcel is zoned A-1 Agricultural District and rezoning will not be required, although Greensville County will require approval for a Special Use Permit. The parcel is contained within a Natural Resource Overlay District allowing for surface mining for minerals and is currently in the advanced stages of a reclamation process subsequent to these mining operations. Preliminary conversations with Greensville County Planning Director indicate strong support for Special Use Permit approval for this solar project and a potential timeline has been established for this approval by October 19, 2015.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **2016 Citizen Water Quality Monitoring Grant Program Request for Proposals**

Purpose: The purpose of the Citizen Water Quality Monitoring Grant Program is to generate scientifically accurate, citizen-collected, water quality data. The program helps to guide and support citizen water quality monitoring and stewardship activities. Funded projects may focus on any or all of the following five categories:

1. List and delist impaired waters on the § 303(d) Impaired Waters List and assess overall water quality.
2. Identify sources of pollution that may help in total maximum daily load (TMDL) development.
3. Track progress of TMDLs or other restoration activities.
4. Identify waters for future monitoring by the Department of Environmental Quality (DEQ).
5. Educating the community on local impacts to water quality and land use activities.

Background: The Citizen Water Quality Monitoring Grant Program was established by a budget amendment in the 1999 Virginia General Assembly Session. The General Assembly based this budget amendment on the Citizen Water Quality Monitoring Grant Report submitted by DEQ regarding the feasibility of a grant to fund citizen monitoring activities. In 2015, the General Assembly allocated general funds for

eligible activities by citizen monitoring organizations in Virginia.

General Eligibility: Funds are available to assist in the development and growth of citizen based water quality monitoring activities. Any community or watershed based environmental or conservation organization, secondary school, college, or university who use volunteers to monitor Virginia waters may apply for these funds. The maximum possible grant award is \$10,000. Only one grant may be awarded per grantee per grant year. Grants are awarded on a competitive basis. Because of the limited funds available, partial funding may be awarded to maximize the effectiveness of the program. No match is required to receive the grant, but funding from other sources is encouraged. Grant awardees must be able to provide DEQ with a Federal Tax Identification Number. Nonprofit organizations are encouraged to register at no charge with the Virginia e-Procurement Portal eVA. Visit [www.eva.virginia.gov](http://www.eva.virginia.gov) to register. Grant funds cannot be used for office space. Funded activities can begin as soon as January 1, 2016, and must be completed by December 31, 2016.

Eligible Activities: Eligible activities include but are not limited to:

- Water monitoring equipment expenses such as field test kits, probes, nets, sample containers, and manuals. Funded projects must monitor in areas representative of the sampled waters such as:

1. Sampling occurs at or near the main area of flow of the waterbody.
2. Sampling occurs just below the water surface or at deeper depths.
3. Sample site is well away from DEQ permitted discharge pipes and mixing zones such as those found at wastewater treatment plants.

- Certain administrative costs such as printing of newsletters, educational materials, and related items.
- Staff costs to cover direct volunteer coordination and training shall not exceed 20% of the total grant award.
- If seeking funds to cover mileage reimbursement for volunteer sample collection and sample transport, the IRS rate of \$0.14 per mile for charitable organizations is used. Mileage reimbursement shall not exceed 20% of the total grant request.
- Contractual services such as laboratory analysis and specialized services. The contractor is otherwise not a paid employee of the organization receiving the grant funds.

Any water quality sampling should occur at safe, publically accessible locations such as at bridge crossings or boat ramps. If sampling occurs on private property, landowner permission must be obtained.

# General Notices/Errata

Evaluation Criteria: Proposals must be complete and responsive to all applicable sections of the request for proposal (RFP). Proposals that do not fulfill all required solicitation requirements for the grant for which they are applying or omit any of the requested contents may receive a reduced evaluation score. Proposals will be grouped based on the type of award being sought and ranked accordingly (mini-grant to mini-grant, regular grant to regular grant, etc.) Proposals shall be evaluated by a DEQ appointed committee using the following criteria:

	Point Value
1. Part 1: General Project Description (for mini, regular, and coordination grants): Project goals and scope, certification that volunteers will be used, budget, history and future plans of the project, completing Attachments A and B. (This part will be evaluated and scored on Part 1 only, with a maximum score of 70)	70
2. Part 2: Site Selection and Quality Assurance (for regular and coordination grants only): Location of proposed sample sites and relation to other monitoring activities, training needs of volunteers and quality assurance documentation. (This part will be evaluated and scored with Part 1 resulting in a combined maximum score of 140)	70
3. Part 3: Special Conditions (for coordination grants only): Number of sub-organizations, geographic area of coverage, proportion of monitoring in unmonitored waters and future plans of project improvement. (This part will be evaluated and scored with Parts 1, and 2, with a maximum score of 200)	60
4. Penalty if not meeting prior grant conditions during the past five years. Applied to the final score total	Up to -50

TOTAL: Up to 200

## Application Procedures:

**Electronic Submission:** Electronic submission of the application is preferred. To submit the application electronically, please email a completed application and attachments to [charles.torbeck@deq.virginia.gov](mailto:charles.torbeck@deq.virginia.gov). In the subject line of the email, please include the name of the applying organization and the type of grant being sought. Electronic submissions are due no later than 2 p.m. on Friday, October 16, 2015.

**Standard Mail Delivery:** If delivering by postal mail, an original and four copies of the application and attachments must be received no later than 2 p.m. on Friday, October 16, 2015. Mail applications to:

<b>Mail Delivery:</b> Stuart Torbeck Department of Environmental Quality Water Quality Monitoring P.O. Box 1105 Richmond, VA 23218	<b>Street Delivery:</b> Stuart Torbeck Department of Environmental Quality Water Quality Monitoring 629 East Main Street Richmond, VA 23218
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No exceptions can be made to the above deadline. Notification of awards will be made in December 2015. Funds will be available when a contract has been signed and returned to DEQ. 100% of the award may be distributed when the signed contract and a written request for payment are returned. For groups who do not have a quality assurance project plan (QAPP) and who will collect water quality samples, a QAPP must be submitted for DEQ approval by the deadline listed below. If a QAPP is not developed and approved by DEQ, future grant applications from the organization may be disqualified.

**Contractual Agreements:** All work to be accomplished through the Citizen Monitoring Grant Program must be legally embodied in a contract with the grant proposal. This contract will serve as a memorandum of agreement in accordance with § 62.1-44.19:11 of the Code of Virginia. This contract will be between the grantee (or designee) and DEQ. Upon submission of both a signed contract agreement and a written request for payment, grant funds will be made available to the grantee. If at any time the grantee organization cannot fulfill the requirements of the contract, the remainder of the grant funds and any equipment purchased through the grant must be returned to the DEQ Citizen Monitoring Grant Program for redistribution.

**Report Requirements:** Progress reports providing updates on the project are required according to the schedule below:

**Draft QAPP:** February 1 2016 (draft due to DEQ for review if a QAPP is required)

**Final QAPP:** April 1, 2016 (if applicable)

**Interim Report:** August 1, 2016 (status of grant funds spent, paragraph summary of work completed)

**Final Report:** February 15, 2017 (all monitoring data must be uploaded to the online DEQ database at [www.deq.virginia.gov/easi/](http://www.deq.virginia.gov/easi/). No other submissions of raw data will be accepted.)

In an effort to conserve paper, electronic submission of the final report is encouraged. These reports can be submitted by either a CD or DVD R/RW or by email to [charles.torbeck@deq.virginia.gov](mailto:charles.torbeck@deq.virginia.gov). Final reports should consist of the following.\*

1. Report summarizing the project and recorded observations along with a summary budget.

2. If applicable, copies of publications, list of workshops, and related material that utilized grant funds.

\*If necessary, a hardcopy of these items can be sent to the mailing address listed below.

All water quality data collected using grant funds must be entered on the DEQ online database at [www.deq.virginia.gov/easi/](http://www.deq.virginia.gov/easi/). Instructions on how to upload this data will be provided when grant awards are announced in the winter of 2015. The database will allow grant recipients to upload water quality data collected during the course of the project. The public can view this data by accessing the website.

If the organization does not continue monitoring beyond the grant period, any equipment, such as meters or unopened reagents purchased with grant funds must be returned to DEQ at the address listed below to be redistributed or used for future training sessions.

Contact Information: Stuart Torbeck, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, or email [charles.torbeck@deq.virginia.gov](mailto:charles.torbeck@deq.virginia.gov).

### VIRGINIA LOTTERY

#### Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on September 2, 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 Ninety-Six (15)

Virginia's Computer-Generated Game Lottery Powerball® Final Rules for Game Operation (This Director's Order becomes effective August 11, 2015, fully replaces any and all prior Virginia Lottery "Powerball" game rules, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

#### Director's Order Number One Hundred Four (15)

Virginia's Instant Game Lottery 1588 "Redskins Champions Club" Final Rules for Game Operation (effective August 4, 2015)

#### Director's Order Number One Hundred Five (15)

Virginia's Instant Game Lottery 1574 "Lucky Streak" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Six (15)

Virginia's Instant Game Lottery 1590 "Grocery Bag Bucks" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Eight (15)

Virginia's Instant Game Lottery 1584 "\$1,000 Frenzy" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Nine (15)

Virginia's Instant Game Lottery 1589 "Lucky Lines" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Ten (15)

Virginia's Instant Game Lottery 1559 "Double Dollar Fortune" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Thirteen (15)

Virginia's Instant Game Lottery 1592 "\$40,000 Payday" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Fourteen (15)

Virginia's Instant Game Lottery 1571 "Cash Blast" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Fifteen (15)

Virginia's Instant Game Lottery 1557 "20X The Money" Final Rules for Game Operation (effective August 11, 2015)

#### Director's Order Number One Hundred Seventeen (15)

Virginia's Instant Game Lottery 1591 "Spooktacular Fast \$50's" Final Rules for Game Operation (effective August 18, 2015)

#### Director's Order Number One Hundred Eighteen (15)

Virginia Lottery's "We're Game Honorary Pit Crew Promotion" Final Rules for Operation (This Director's Order becomes effective on Thursday, August 20, 2015, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

#### Director's Order Number One Hundred Nineteen (15)

Virginia's Instant Game Lottery 1593 "Turkey Tripler" Final Rules for Game Operation (effective August 18, 2015)

#### Director's Order Number One Hundred Thirty-One (15)

Virginia Lottery's "Bank A Million How To Play Coupon" Final Rules for Operation (effective September 1, 2015)

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# General Notices/Errata

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## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### 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 Professional and Occupational Regulation is conducting a periodic review and small business impact review of 18VAC120-30, Regulations Governing Polygraph Examiners.

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 economic 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 September 21, 2015, and ends October 12, 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 Eric L. Olson, Executive Director, Department of Professional Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-7226, FAX (866) 430-1033, or email [polygraph@dpor.virginia.gov](mailto:polygraph@dpor.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.

### BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

#### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Waste Management Facility Operators 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.

### 18VAC155-11, Public Participation Guidelines 18VAC150-20, Waste Management Facility Operators Regulations

The comment period begins September 21, 2015, and ends October 12, 2015.

Agency Contact: Eric L. Olson, Executive Director, Department of Professional Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8511, FAX (866) 430-1033, or email [wastemgt@dpor.virginia.gov](mailto:wastemgt@dpor.virginia.gov).

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

## STATE WATER CONTROL BOARD

### Proposed Consent Order for Chesterfield County Department of Public Utilities

An enforcement action has been proposed for Chesterfield County Department of Public Utilities. The consent order describes a settlement to resolve a violation of State Water Control Law associated with an unauthorized discharge to Proctors Creek below the Route 1 Bridge in Chesterfield County. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Frank Lupini will accept comments by email at [frank.lupini@deq.virginia.gov](mailto:frank.lupini@deq.virginia.gov), FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from September 21, 2015, to October 22, 2015.

### Notice of Technical Advisory Committee Meeting

The Department of Environmental Quality (DEQ) seeks participation and input on draft source assessment information for development of a total maximum daily load (TMDL) study for the Lower Chickahominy River and Tributaries in New Kent, Charles City, and James City Counties. Several waterbodies are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for bacteria for the

recreation use (see below). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires the DEQ to develop TMDLs for pollutants responsible for each impaired waterbody. The presentation from the public meeting held in July is available at: <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DocumentationforSelectTMDLs.aspx#LoChx>.

The intent to establish an advisory committee was publicly noticed in June 2015 and during the public meeting. Technical advisory committee (TAC) participation has since been encouraged in subsequent phone and email correspondence. The TAC meeting will be held Wednesday, October 7, 2015, at 10 a.m. at the Charles City County Social Center located at 8320 Ruthville Road, Providence Forge, VA 23140. Meeting minutes will be taken and posted on the DEQ website for future reference.

Waterbodies identified for bacteria TMDL development include the following:

Stream	Impairment	Location
Beaverdam Creek	Recreation Use (bacteria)	New Kent County
XAH-Beaverdam Creek, UT		
Diascund Creek		New Kent and James City Counties
Mill Creek		James City County
Barrows Creek		Charles City County
Chickahominy River		Charles City, James City, New Kent Counties
Gordon Creek		James City County

The purpose of the TAC meeting will be to review the draft source assessment information. "Source assessment" is a process that involves classifying, identifying, and quantifying bacteria source types throughout the watershed. The source assessment information will be used to inform the TMDL model. Information on the development of the TMDLs is available upon request. Questions or information requests should be addressed to Margaret Smigo, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, or email [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov).

**Public Meeting and Public Comment Period for a TMDL Implementation Plan Chuckatuck Creek and Brewers Creek in the City of Suffolk and Isle of Wight County**

A public meeting to discuss a water quality improvement plan for Chuckatuck and Brewers Creeks will be held on

Thursday, September 24, 2015, at the CE&H Ruritan Hall located at 8881 Eclipse Drive, Suffolk, Virginia from 6 p.m. to 8 p.m.

Chuckatuck Creek and Brewers Creek were identified in Virginia's Water Quality Assessment Integrated Report as impaired for violations of the fecal coliform criteria for shellfish waters. Shellfish harvest from these waters is restricted as shellfish may be unsafe for consumption. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's Water Quality Standard for Bacteria. Bacteria sources identified that may contribute to this impairment include failing septic systems, discharges of untreated human waste, pets, and agricultural practices in the area.

The meeting will review the final implementation plan for the impaired waters. The Plan has included an outline of corrective actions that could be used to reduce the sources of bacteria, their associated costs and benefits, along with measurable goals, and a timeline. Management options include replacing failing septic systems, removing discharge of untreated human waste to streams, reducing pollutant loads from agricultural, urban, and residential areas, and a pet waste disposal and education program.

The public comment period on materials presented at this meeting will extend from September 25, 2015, to October 26, 2015. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23463, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov). The implementation plan can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx>.

**VIRGINIA CODE COMMISSION**

**Notice of Public Comment Period on Proposed Regulations**

The Virginia Code Commission seeks comment on proposed revisions to the Regulations of the Virginia Code Commission for Implementing the Virginia Register Act. The purpose of the regulation is to direct and assist state agencies in filing and publishing regulatory actions and in complying with the Virginia Register Act and the provisions of the Administrative Process Act related to the publication of the Virginia Register of Regulations and the Virginia Administrative Code.

The Code Commission has the responsibility of publishing and maintaining the Virginia Administrative Code and publishing the Virginia Register of Regulations as provided for in § 2.2-4031 of the Code of Virginia. The Code Commission's specific authority to adopt regulations is found

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# General Notices/Errata

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in § 2.2-4104 of the Code of Virginia, which exempts the regulations from the Administrative Process Act.

The purpose of the action is to update the regulations to reflect changes to the Code of Virginia and current practices for filing and publishing regulatory actions.

The Code Commission approved the proposed amendments on August 19, 2015, for the purpose of soliciting comments from state agencies and other interested parties.

A summary of the proposed changes and the text of the proposed regulations with drafting notes are posted on the Code Commission's website at <http://codecommission.dls.virginia.gov/>.

Public comment may be submitted through October 13, 2015, to Karen Perrine, Assistant Registrar, Division of Legislative Services, 201 North Ninth Street, Richmond, VA 23219, telephone (804) 786-3591 x261, or email [codes@dls.virginia.gov](mailto:codes@dls.virginia.gov).

## Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

## ERRATA

### STATE BOARD OF EDUCATION

**Title of Regulation:** **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia.**

**Publication:** 31:26 VA.R. 2453-2471 August 24, 2015.

**Correction to Fast-Track Regulation:**

Page 2471, 8VAC20-131-360, subsections D through the end of the section text should read:

~~"D. Accreditation ratings prescribed in 8VAC20-131-300 C 1 a shall become effective with tests administered in 2010-2011 and 2011-2012 for ratings awarded in 2011-2012 and 2012-2013.~~

~~E. D.~~ Accreditation ratings prescribed in ~~8VAC20-121-300 C 1 a~~ 8VAC20-131-300 C 1 a shall become effective with tests administered in 2012-2013 for ratings awarded in 2013-2014 and beyond.

~~F. E.~~ The Academic and Career Plan prescribed in 8VAC20-131-140 shall become effective in 2013-2014.

~~G. F.~~ Unless otherwise specified, the remainder of these regulations shall be effective beginning with the 2011-2012 academic year.

G. The revision of the graduation rate formula, for purposes of the Standards of Accreditation, as described in 8VAC20-131-280 is effective as of July 1, 2016."

VA.R. Doc. No. R15-4464; Filed September 2, 2015, 1:11 p.m.

### REAL ESTATE BOARD

**Title of Regulation:** **18VAC135-20. Virginia Real Estate Board Licensing Regulations.**

**Publication:** 32:1 VA.R. 242 September 7, 2015.

**Correction to Erratum:**

Page 242, second correction should read:

"Page 2611, 18VAC135-20-140 B, table, second row, column 1 should read as follows: "Salesperson's or ~~associate~~ broker's license as a business entity""

VA.R. Doc. No. R12-3250; Filed September 2, 2015, 2:53 p.m.