



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 32 ISS. 3

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

OCTOBER 5, 2015

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Virginia Code Commission

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

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$246.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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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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### October 2015 through October 2016

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law**. The purpose of the proposed action is to update the regulation and align it with current agency practices and federal requirements by, among other items, (i) changing the title and format to be consistent with other pesticide-related regulations; (ii) amending the language to reflect the current agency policy regarding requirements for submission of pesticide labels; (iii) clarifying the registration requirements involving mixtures of pesticides and fertilizers or other pesticides; (iv) amending language and adding definitions to align the regulation with federal requirements; (v) amending language to more closely align the regulation with the Virginia Pesticide Control Act; (vi) removing duplicative registration requirements; (vii) amending and clarifying regulatory label requirements and warning or caution statements to more closely align with federal requirements and minimize confusion; (viii) amending ingredient statement requirements for consistency throughout the regulation; and (ix) amending the handling and storage requirements.

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

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

Public Comment Deadline: November 4, 2015.

Agency Contact: Laura Hare, Policy Analyst, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1908, FAX (804) 255-2666, or email [laura.hare@vdacs.virginia.gov](mailto:laura.hare@vdacs.virginia.gov).

VA.R. Doc. No. R16-4505; Filed September 8, 2015, 12:36 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending **2VAC5-680, Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act**. The purpose of the proposed action is to update the regulation and align it with current agency practices and federal requirements, to include (i) adding the definition of the term "operating in Virginia" and amending the definition of the term "pesticide business location" in order to address current industry practices; (ii) adding the definition of the term "limited household use" in order to clarify the requirements for merchants who are exempt from pesticide business licenses under the Virginia Pesticide

Control Act; (iii) adding the definition of the term "multiple violations"; (iv) clarifying the current requirements for the application for a pesticide business license in order to decrease regulators' confusion and encourage compliance; (v) clarifying the current requirement regarding evidence of financial responsibility in order to decrease regulators' confusion and encourage compliance; (vi) amending the language of the recordkeeping requirements to be consistent with other pesticide labeling requirements in the regulation; and (vii) revising the recordkeeping sections to reflect the changes previously mentioned.

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

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

Public Comment Deadline: November 4, 2015.

Agency Contact: Laura Hare, Policy Analyst, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1908, FAX (804) 255-2666, or email [laura.hare@vdacs.virginia.gov](mailto:laura.hare@vdacs.virginia.gov).

VA.R. Doc. No. R16-4506; Filed September 8, 2015, 12:39 p.m.

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## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services has WITHDRAWN the Notice of Intended Regulatory Action for **12VAC35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services**, which was published in [26:25 VA.R. 2815-2816 August 16, 2010](#).

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 786-8623, or email [ruthanne.walker@dbhds.virginia.gov](mailto:ruthanne.walker@dbhds.virginia.gov).

VA.R. Doc. No. R10-2275; Filed September 9, 2015, 12:28 p.m.

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# Notices of Intended Regulatory Action

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## TITLE 17. LIBRARIES AND CULTURAL RESOURCES

### BOARD OF HISTORIC RESOURCES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Historic Resources intends to consider amending **17VAC5-30, Evaluation Criteria and Procedures for Designations By the Board of Historic Resources**. The purpose of the proposed action is to address the owner objection process to properties nominated for designation by the Board of Historic Resources for inclusion in the Virginia Landmarks Register. The amendments will add clarifying language that written notification of the nomination and written notification of the public hearing will be sent to property owners as shown on current real estate tax assessments books. In addition, property owners who wish to object to a designation must submit their formal objection seven business days prior to the board meeting. The amendments also add that in addition to the letter being notarized, it must be attested and reference the property by address or parcel number, or both. Also, in order to be counted by the director as a property owner, if the objecting party was not listed on the real estate tax assessment list, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the attested and notarized statement. Lastly, formal designations may be reconsidered at a subsequent board meeting if the director receives, at least 30 days prior to the next scheduled board meeting, written, attested, and notarized statements stating that there is no longer an objection.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Public Comment Deadline: November 4, 2015.

Agency Contact: Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085, FAX (804) 367-2391, or email [jennifer.pullen@dhr.virginia.gov](mailto:jennifer.pullen@dhr.virginia.gov).

VA.R. Doc. No. R16-4259; Filed September 14, 2015, 12:52 p.m.

### DEPARTMENT OF HISTORIC RESOURCES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Historic Resources intends to consider amending **17VAC10-20, Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark**. The purpose of the proposed action is to address the owner objection process to properties nominated for designation by the State Review Board for inclusion in the National Register of Historic Places or

designation as a National Historic Landmark. The amendments will add clarifying language that written notification of the nomination and written notification of the public hearing will be sent to property owners as shown on current real estate tax assessments books. In addition, property owners who wish to object to a designation must submit their formal objection seven business days prior to the board meeting. The amendments also add that in addition to the letter being notarized, it must be attested and reference the property by address or parcel number, or both. Also, in order to be counted by the director as a property owner, if the objecting party was not listed on the real estate tax assessment list, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the attested and notarized statement.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 10.1-2202 of the Code of Virginia.

Public Comment Deadline: November 4, 2015.

Agency Contact: Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085, or email [jennifer.pullen@dhr.virginia.gov](mailto:jennifer.pullen@dhr.virginia.gov).

VA.R. Doc. No. R16-4260; Filed September 14, 2015, 12:54 p.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-325, Fraud Reduction/Elimination Effort**. The purpose of the proposed action is to more clearly define local funding allocation and reimbursement practices related to local fraud control administrative activities.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 63.2-217 and 63.2-526 of the Code of Virginia.

Public Comment Deadline: November 4, 2015.

Agency Contact: Toni Blue Washington, Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7662, FAX (804) 726-7669, or email [toni.washington@dss.virginia.gov](mailto:toni.washington@dss.virginia.gov).

VA.R. Doc. No. R16-4195; Filed September 14, 2015, 4:25 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Fast-Track Regulation

**Title of Regulation:** 2VAC5-30. Rules and Regulations Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia (amending 2VAC5-30-20; adding 2VAC5-30-30; repealing 2VAC5-30-10).

**Statutory Authority:** §§ 3.2-6001 and 3.2-6002 of the Code of Virginia.

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

**Public Comment Deadline:** November 4, 2015.

**Effective Date:** November 19, 2015.

**Agency Contact:** Charles Broaddus, D.V.M., Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@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. Section 3.2-6001 of the Code of Virginia authorizes the board and the State Veterinarian to protect livestock and poultry from contagious and infectious disease. Section 3.2-6002 of the Code of Virginia authorizes the board to adopt regulations to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases.

**Purpose:** The current regulations concerning the reporting of animal diseases in Virginia need minor revisions to align them with the current priorities and methodology of state, federal, and international animal disease and marketing programs. The proposed regulation will bring Virginia in line with current federal animal disease reporting requirements, protecting the continued viability of Virginia's animal industries. These animal disease reporting requirements are designed to quickly recognize a significant animal disease in Virginia thus allowing the rapid response that will be necessary to control the disease. This quick recognition and rapid response are essential in order to protect public health from potentially zoonotic disease as well as to protect the economic interests of animal agriculture producers in

Virginia, who could be affected by high levels of sickness or death loss of their animals without this regulation in place.

**Rationale for Using Fast-Track Process:** The proposed amendments are noncontroversial changes that are not expected to be opposed by any stakeholders. Veterinarians have questioned the likelihood of being penalized for not complying with the reporting requirement for "normal reporting," and there is widespread agreement among veterinarians that the normal reporting could be accomplished better outside of the regulatory mechanism.

**Substance:** The "normal reporting" requirement is proposed to be removed. This section of the current regulation requires a laboratory or veterinarian to report diseases of interest to the State Veterinarian monthly. While the Virginia Department of Agriculture and Consumer Services (VDACS) continues to be interested in these diseases, it is impractical to require reporting of them through the regulatory process.

Language is updated to clarify that when diseases are reported, they may be reported in person, by phone, or by email within 24 hours to the State Veterinarian or a veterinarian in the employ of VDACS.

The proposed amendments include a new section that lists the reportable diseases. Currently, the list appears in a form that is referenced in the regulation. The agency determined that this list should be included in the provisions of the regulation.

The board also proposes to bring the list of reportable diseases in line with the U.S. National List of Reportable Animal Diseases; it is anticipated that this uniform list will enhance disease reporting compliance.

**Issues:** The primary advantages of the proposed revisions are to increase compliance with the regulation by simplifying it and placing focus on areas that are most effective in mitigating animal disease introduction and resultant losses. Veterinarians in the Commonwealth will have less burdensome requirements with the "normal reporting" removed. The removal of the "normal reporting" requirement will also allow the agency to focus additional resources on monitoring animal diseases of consequence. Thus, both the public and the agency benefit from the proposed changes. The proposed revisions pose no disadvantages to the public or the Commonwealth.

**Small Business Impact Review Report of Findings:** This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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# Regulations

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

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to: 1) no longer require laboratories and veterinarians to report diseases that are of interest, but not of immediate and widespread consequence, to the State Veterinarian monthly, 2) include the list of reportable diseases in the text of the regulation, 3) update the list of reportable diseases to be in line with the U.S. Department of Agriculture's U.S. National List of Reportable Animal Diseases, and 4) amend language for clarity.

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

Estimated Economic Impact. Virginia has long had regulations in place requiring the reporting of certain animal diseases of consequence. Diseases of consequence are those not present in the United States or are those with a high sickness rate or death rate and are those diseases that are typically responded to with quarantine and related measures as needed to prevent the spread of the disease. Often, it is important to quickly control these diseases in order to retain the ability to export animal products to foreign countries. According to the Virginia Department of Agriculture and Consumer Services (VDACS) reporting compliance with diseases of consequence such as avian influenza, tuberculosis, or brucellosis has been good, and this requirement is an important tool with respect to ensuring these diseases are reported promptly so that appropriate action can be taken.

There are also diseases of interest, but not of immediate and widespread consequence, that are currently required to be reported by this regulation. These are diseases that are also described in some documents as "monitored" diseases and are required to be reported under the "normal reporting" section of the regulation. Due to the impracticality of enforcing a requirement to report these "monitored" diseases, the Board proposes that the "normal reporting" requirement be removed from the regulation. There is very little active reporting of these diseases and no action is taken when reports are received. Thus the proposed elimination of the "normal reporting" requirement will be beneficial in that it will eliminate time spent on reporting information that is not acted upon.

VDACS is still interested in these diseases and intends to continue to monitor for their presence outside of the regulatory mechanism. As such, under this proposal it would no longer be a regulatory requirement to report diseases such as Johnes, Bovine Viral Diarrhea, Leukosis, Salmonellosis, or Giardia. Instead, VDACS will continue to work with veterinarians and laboratories to monitor the presence of these "non-regulatory" diseases.

Currently the list of reportable diseases is kept on a form that is referenced in the regulation. The Board proposes to incorporate the list into the regulation. This will be beneficial

in that it will be easier for the public to find and be aware of the specific diseases that are reportable.

The Board also proposes to bring the list of reportable diseases in line with the U.S. Department of Agriculture's U.S. National List of Reportable Animal Diseases, which is a suggested list of reportable diseases. The agency anticipates that this uniform list will enhance disease reporting compliance.

Businesses and Entities Affected. VDACS estimates that 5-10 laboratories within the Commonwealth (including the 5 VDACS laboratories) and the approximately 2,000 licensed veterinarians in the state will be affected. Most of these affected entities are small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

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

Effects on the Use and Value of Private Property. The proposal to eliminate the reporting requirement for diseases that do not have immediate and widespread consequence will save some staff time for veterinary practices.

Small Businesses: Costs and Other Effects. The proposed amendments will not increase costs for small businesses. The proposal to eliminate the reporting requirement for diseases that do not have immediate and widespread consequence will save some staff time for small veterinary practices

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

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

Legal Mandate.

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

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

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

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

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

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

Summary:

*The amendments (i) eliminate the requirement that laboratories and veterinarians report diseases that are of interest, but not of immediate and widespread consequence, to the State Veterinarian monthly; (ii) set out the list of reportable diseases in the text of the regulation; and (iii) update the list of reportable diseases to be in line with the U.S. Department of Agriculture's U.S. National List of Reportable Animal Diseases.*

**2VAC5-30-10. Normal reporting: (Repealed.)**

~~Any person practicing veterinary medicine, any person or firm operating a laboratory for the diagnosis of livestock or poultry diseases, and any other reporting entity designated by the State Veterinarian within the Commonwealth of Virginia shall, between the first and tenth day of each month for the month preceding, report to the State Veterinarian the existence of those contagious or infectious diseases among livestock and poultry known to him listed on Schedule B of form VDACS 03016 (8/87), "Reportable Diseases of Virginia Livestock and Poultry." Reports may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.~~

**2VAC5-30-20. Special reporting Reporting requirements.**

Any person practicing veterinary medicine, any person or firm operating a laboratory for the diagnosis of livestock or poultry diseases, and any other reporting entity designated by the State Veterinarian within the Commonwealth of Virginia shall report within 24 hours ~~by telephone~~ to the State Veterinarian: ~~(i)~~ or a veterinarian in the employ of the

Virginia Department of Agriculture and Consumer Services (VDACS) the existence of ~~anthrax, glanders, or any vesicular or exotic disease~~ an emerging disease of livestock or poultry or any other disease of livestock or poultry known to him listed ~~on Schedule A of form VDACS 03016 (8/87), "Reportable Diseases of Virginia Livestock and Poultry"; and (ii) the existence of any disease of poultry listed on Schedule A of form VDACS 03016 (8/87), "Reportable Diseases of Virginia Livestock and Poultry."~~ If for any reason the State Veterinarian is not immediately available by telephone, such report shall be made directly to any veterinarian in the employ of the Commonwealth of Virginia in 2VAC5-30-30. Reports may be filed electronically in a manner specified by VDACS, including, but not limited to, electronic mail or by completing any forms provided online by VDACS.

**2VAC5-30-30. Reportable disease list.**

A. The Board of Agriculture and Consumer Services declares suspected or confirmed cases of the following multiple-species diseases to be reportable by the persons enumerated in 2VAC5-30-20. Conditions identified by an asterisk (\*) are foreign animal diseases.

- \*Akabane
- Anthrax
- Aujeszky's disease (Pseudorabies, PRV)
- Bluetongue (nonendemic)
- Brucellosis (Brucella abortus)
- Brucellosis (Brucella melitensis)
- Brucellosis (Brucella suis)
- \*Camelpox
- Chronic wasting disease
- \*Crimean-Congo hemorrhagic fever
- Epizootic hemorrhagic disease (EHD)
- Equine encephalomyelitis (Eastern)
- Equine encephalomyelitis (Venezuelan)
- \*Foot-and-mouth disease
- \*Glanders (Burkholderia mallei)
- \*Heartwater
- \*Japanese encephalitis
- \*Leishmaniosis
- \*Melioidosis (Burkholderia pseudomallei)
- \*New and Old World screwworms
- Rabies
- \*Rift Valley fever
- \*Rinderpest
- \*Surra (Trypanosoma evansi)
- Tuberculosis (M. bovis, M. tuberculosis)
- Vesicular stomatitis
- West Nile fever/virus

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B. The Board of Agriculture and Consumer Services declares suspected or confirmed cases of the following cattle diseases to be reportable by the persons enumerated in 2VAC5-30-20. Conditions identified by an asterisk (\*) are foreign animal diseases.

- \*Bovine babesiosis
- \*Bovine spongiform encephalopathy
- \*Contagious bovine pleuropneumonia
- \*Hemorrhagic septicemia
- \*Lumpy skin disease
- \*Theileriosis (East Coast fever)
- Trichomoniasis
- \*Trypanosomosis (tsetse transmitted)

C. The Board of Agriculture and Consumer Services declares suspected or confirmed cases of the following swine diseases to be reportable by the persons enumerated in 2VAC5-30-20. Conditions identified by an asterisk (\*) are foreign animal diseases.

- \*African swine fever
- \*Classical swine fever
- \*Nipah virus
- Swine vesicular disease
- Vesicular exanthema
- Porcine enteric coronavirus disease

D. The Board of Agriculture and Consumer Services declares suspected or confirmed cases of the following sheep and goat diseases to be reportable by the persons enumerated in 2VAC5-30-20. Conditions identified by an asterisk (\*) are foreign animal diseases.

- \*Contagious caprine pleuropneumonia
- \*Nairobi sheep disease
- \*Peste des petites ruminants
- Scabies
- Scrapie
- \*Sheep pox and goat pox

E. The Board of Agriculture and Consumer Services declares suspected or confirmed cases of the following equine diseases to be reportable by the persons enumerated in 2VAC5-30-20. Conditions identified by an asterisk (\*) are foreign animal diseases.

- \*African horse sickness
- \*Contagious equine metritis
- \*Dourine
- Equine encephalomyelitis (Western)
- Equine infectious anemia (EIA)
- Equine piroplasmiasis
- Equine herpesvirus-1 myeloencephalopathy (EHV1-EHM)

\*Hendra

F. The Board of Agriculture and Consumer Services declares suspected or confirmed cases of the following avian diseases to be reportable by the persons enumerated in 2VAC5-30-20. Conditions identified by an asterisk (\*) are foreign animal diseases.

- \*Duck viral hepatitis
- \*Exotic (virulent) Newcastle disease as defined in Chapter 10.9, Terrestrial Animal Health Code, effective July 20, 2015
- Fowl typhoid (Salmonella gallinarum)
- \*Highly pathogenic Avian Influenza as defined in Chapter 10.4, Terrestrial Animal Health Code, effective July 20, 2015

Low pathogenic Avian Influenza in poultry as defined in Chapter 10.4, Terrestrial Animal Health Code, effective July 20, 2015

Pullorum disease (Salmonella pullorum)

Turkey rhinotracheitis

**FORMS (2VAC5-30)**

~~Reportable Diseases of Virginia Livestock and Poultry (Foreign and Domestic), Form VDACS-03016, eff. 8/87.~~

**DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-30)**

[Terrestrial Animal Health Code, 24th edition, effective July 20, 2015, World Organisation for Animal Health \(OIE\), <http://www.oie.int/en/>](#)

VA.R. Doc. No. R16-4211; Filed September 16, 2015, 9:58 a.m.

## **Fast-Track Regulation**

**Title of Regulation: 2VAC5-50. Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Cattle in Virginia (repealing 2VAC5-50-10 through 2VAC5-50-110).**

**Statutory Authority:** §§ 3.2-6001, 3.2-6002, and 3.2-6004 of the Code of Virginia.

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

**Public Comment Deadline:** November 4, 2015.

**Effective Date:** November 19, 2015.

**Agency Contact:** Charles Broaddus, D.V.M., Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email [charles.broaddus@vdacs.virginia.gov](mailto:charles.broaddus@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. Section 3.2-6001 of the Code of Virginia authorizes the board

and the State Veterinarian to protect livestock and poultry from contagious and infectious disease. Section 3.2-6002 of the Code of Virginia authorizes the board to adopt regulations to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases.

Purpose: The existing regulation provides the framework for the eradication of brucellosis in Virginia cattle. Brucellosis is an infectious disease of cattle that can also affect humans and was common in cattle in much of the 20th century. Through a structured and effective program, brucellosis was eradicated from cattle in all of the United States except around the Greater Yellowstone Area, where it remains in wildlife such as elk and bison and occasionally in cattle exposed to the wildlife. Through the testing of cattle and removal of those found to be positive for brucellosis, as required in the regulation, brucellosis was eradicated from Virginia, with the last known case occurring in the 1980s.

This regulation was developed and used during the successful eradication effort for brucellosis in cattle. The regulation is now outdated. The tests and programs included in the regulation have not been utilized in at least 15 years. As such, this regulation is no longer needed. If brucellosis returns to Virginia, the agency has the ability to manage disease outbreaks and quarantine animals under statutory authority. Brucellosis no longer provides a threat to the public health, safety, or welfare in Virginia.

Rationale for Using Fast-Track Process: As brucellosis has not been detected in cattle in Virginia since the 1980s, there is no longer a need for this regulation. The agency is not aware of any stakeholders suggesting that the regulation be retained or that the regulation is of any benefit to them.

Substance: Due to the eradication of brucellosis in Virginia, this regulation is no longer needed. Therefore, the agency proposes to repeal the regulation.

Issues: The primary advantage to the public in repealing the regulation is that there would no longer be an outdated regulation that specifies actions that are no longer taken. The agency and Commonwealth will no longer be in a position of having an outdated regulation that is not enforced. This action is part of good governance in that an outdated, unnecessary regulation will be eliminated. There are no disadvantages to the public or the Commonwealth associated with repealing the regulation.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to repeal this regulation.

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

Estimated Economic Impact. The existing regulation provides the framework for the eradication of brucellosis in Virginia cattle. Brucellosis is an infectious disease of cattle that can also affect humans and was common in cattle in much of the 20th century. Through a structured and effective program, brucellosis was eradicated from cattle in all of the United States except around the Greater Yellowstone Area, where it remains in wildlife such as elk and bison and occasionally in cattle exposed to the wildlife. Through the testing of cattle and removal of those found to be positive for brucellosis, as required in the regulation, brucellosis was eradicated from Virginia, with the last known case occurring in the 1980s. According to the Virginia Department of Agriculture and Consumer Services (VDACS), since brucellosis in cattle was eradicated the tests and programs included in the regulation have not been utilized in at least 15 years. If brucellosis returns to the Commonwealth, VDACS has the ability to manage disease outbreaks and quarantine animals under statutory authority.<sup>1</sup> Thus, repealing this regulation will have no impact beyond the benefit of decreasing the chance that readers of the regulation would be misled concerning current requirements. Therefore the proposed repeal of the regulation will produce a small net benefit.

Businesses and Entities Affected. Repealing this regulation will have no impact beyond decreasing the likelihood that readers of the regulation would be misled concerning current requirements. When the regulation was utilized, it affected cattle ranches, stockyards, and slaughterhouses.

Localities Particularly Affected. The proposed repeal of this regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal of this regulation does not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of this regulation does not significantly affect private property.

Small Businesses: Costs and Other Effects. The proposed repeal of this regulation does not significantly affect costs for small businesses.

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

Real Estate Development Costs. The proposed amendments are unlikely to 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

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proposed amendments. Further the report should include but not be limited to:

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

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

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

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

<sup>1</sup>Source: Virginia Department of Agriculture and Consumer Services.

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

## Summary:

*The regulatory action repeals the regulation, which is outdated and no longer necessary as brucellosis has been eradicated from Virginia.*

VA.R. Doc. No. R16-4284; Filed September 8, 2015, 11:58 a.m.

## **Fast-Track Regulation**

Title of Regulation: **2VAC5-141. Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia (amending 2VAC5-141-10 through 2VAC5-141-40, 2VAC5-141-60 through 2VAC5-141-100, 2VAC5-141-120, 2VAC5-141-130).**

Statutory Authority: §§ 3.2-5902 and 3.2-6002 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 4, 2015.

Effective Date: November 19, 2015.

Agency Contact: Charles C. Broaddus, D.V.M., Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

Basis: Section 3.2-5902 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to establish the health of certain pet animals imported into Virginia.

Section 3.2-6001 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations in coordination with other states and the U.S. Department of Agriculture (USDA) to protect the livestock and poultry of Virginia.

Section 3.2-6002 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to prevent, control, or eradicate infectious or contagious diseases in livestock and poultry in Virginia.

Purpose: The current regulations concerning the importation of animals into Virginia need minor revisions to align them with the current priorities and methodology of state, federal, and international animal disease and marketing programs. The amendments will bring Virginia current with federal and other state animal movement requirements, both ensuring that Virginia animal producers and owners are not placed at a disadvantage in interstate trade and protecting the continued viability of Virginia's animal industries. As Virginia is a net exporter of agricultural animals, these entry requirements are designed to minimize the risk of disease introduction, allow rapid response and control should such occur, and concurrently promote unimpeded commerce.

Rationale for Using Fast-Track Process: The amendments are noncontroversial changes that are the consensus of many stakeholder organizations. These changes have been discussed with and are supported by the leaders of Virginia's animal agriculture industries. The revision is not significant, but rather for clarification and minor update.

Substance: Definitions: Several definitions are modified to make the definitions consistent with definitions used by USDA and with the board's proposed livestock dealers and markets regulation.

Vesicular stomatitis restrictions: Addition of restrictions placed on the importation of livestock in the event of an outbreak of vesicular stomatitis (VS) in another state. VS occurs sporadically every several years, typically in the

American Southwest, and unaffected states, including Virginia, place import restrictions to ensure that steps are taken to minimize the chance of importing an affected animal. In the past, this has been addressed through a proclamation issued by the State Veterinarian; however, including the language in this regulation will address the situation in a timelier manner.

Avian influenza testing requirements: Currently, there is a stand-alone avian influenza proclamation issued by the State Veterinarian that addresses the specific avian influenza testing requirements for imported poultry. The amendments include these same requirements and are intended to simplify and unify the two sets of requirements under the same standard.

Tuberculosis testing requirement removed for cattle, sheep, and goats: Due to USDA's requirement for official identification for cattle in interstate transit, removal of the requirement for tuberculosis testing is proposed. Focus will be placed on adequate traceability of susceptible animals rather than individual testing of imported animals. This will improve the capability to minimize losses associated with introduction of the disease and better facilitate open trade.

Pseudorabies and brucellosis testing requirements for swine: The testing requirements are maintained for swine coming from herds or regions not considered free of the disease, but the distinction between commercial and noncommercial swine is removed. Therefore, as is currently the case for commercial swine, pseudorabies and brucellosis testing would not be required for noncommercial swine from regions considered free of the disease. The proposed revision does require testing for those swine that are or have come into contact with free roaming swine.

Issues: The primary advantages of the proposed revisions are to increase compliance with the regulation by simplifying it and placing focus on areas that are most effective in mitigating animal disease introduction and resultant losses. Thus, both the public and the agency benefit from the proposed changes. This proposed regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to 1) eliminate tuberculosis testing for imported cattle, sheep, and goats, 2) eliminate pseudorabies and brucellosis testing for non-commercial swine from regions considered free of these diseases, 3) allow importation of primates pending tuberculosis test results, and 4) make a number of clarifying changes to the regulatory language.

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

Estimated Economic Impact. One of the proposed changes will eliminate tuberculosis testing for imported cattle, sheep,

and goats. Due to United States Department of Agriculture's (USDA) requirement for official identification for cattle in interstate transit, the Board will place its focus on adequate traceability of susceptible animals rather than individual testing of imported animals. The Board staff estimates that approximately 4,837 cattle over 18 months of age, 517 sheep, and 716 goats have been imported to Virginia in the last year. The tuberculosis test is performed by the out-of-state exporters and is estimated to cost about \$10 per animal on average. Thus, the animal exporters are expected to save approximately \$60,700 per year. Some of these cost savings may be passed on to Virginia importers via better prices. Another change will eliminate pseudorabies and brucellosis testing for non-commercial swine from regions considered free of these diseases. The cost of testing for these diseases is also estimated to be roughly about \$10 per animal. The Board staff estimates that about 374 noncommercial swine may be imported into Virginia per year. Thus, exporters are likely to save approximately \$3,740 per year due to elimination of pseudorabies and brucellosis testing for non-commercial swine. Some of these cost savings may also be passed on to Virginia importers via better prices. The Board also proposes to allow importation of primates pending tuberculosis test results. Primates generally have to be sedated for transportation as well as for testing. Under the current regulations, they are sedated once to be tested for tuberculosis and one more time when they are being transported into Virginia. The proposed change will allow importation of primates pending the test results. With this change, an exporter would be able to perform the test while the animal sedated for transportation. Approximately 48 primates were imported into Virginia last year. The Board staff does not anticipate significant cost savings due to this change as most primates are cared for by in-house veterinarians at zoos, but expect an improvement in primates' welfare since there will be one less incidence of sedation. The remaining changes update definitions to be consistent with other regulations and definitions used by USDA and incorporate requirements that are already enforced under the Proclamation of the State Veterinarian. None of these changes are expected to create a significant economic impact other than improving the clarity of the regulations.

Businesses and Entities Affected. The proposed changes will reduce disease testing or sedation costs for individuals or businesses exporting cattle, sheep, goats, non-commercial swine, and primates. Last year approximately 4,837 cattle over 18 months of age, 517 sheep, 716 goats, 374 non-commercial swine, and 48 primates were imported into the Commonwealth. However, the numbers of exporters and importers are not available.

Localities Particularly Affected. The regulation applies throughout the Commonwealth. However, importation of affected animals is probably more prevalent in areas close to the state borders.

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

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

**Small Businesses: Costs and Other Effects.** The proposed amendments are not expected to have a direct impact on small businesses in Virginia.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No adverse economic impact is expected on small businesses.

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

**Legal Mandate. General:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

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

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

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

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

for the purposes of public review and comment on the proposed regulation.

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

Summary:

*The amendments (i) update definitions; (ii) add vesicular stomatitis restrictions; (iii) incorporate avian influenza testing requirements; (iv) remove the requirement for tuberculosis testing for cattle, goats, and sheep and adjust the requirement for tuberculosis testing for primates; and (v) simplify the pseudorabies and brucellosis testing requirements for swine.*

**2VAC5-141-10. Definitions.**

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

"Agricultural animals" means livestock and poultry.

~~"Approved livestock market" means a livestock market approved by the United States Department of Agriculture in accordance with 9 CFR 71.20 and under inspection by the State Veterinarian.~~

"Avian" means all domestic and wild members of the class Aves.

"Cats" means all domestic and wild members of the family Felidae.

"Cattle" means all domestic and wild members of the genera ~~bos~~ Bos, ~~bison~~ Bison, and ~~bubalus~~ Bubalus to include domestic cattle, yak, bison, and water buffalo.

"Certificate of veterinary inspection" means an official ~~health certificate endorsed by a state, federal, or international government~~ document, which may be in an electronic format, issued by a federal, state, tribal, or accredited veterinarian certifying the inspection of animals.

~~"Commercial swine" means swine that are continuously managed; are intended for the production of meat or breeding for such purposes; and have adequate facilities and practices to prevent exposure to feral swine, captive feral swine, or other swine that may have been exposed to feral or captive feral swine.~~

"Companion animal" means any vertebrate animal excluding ornamental fish not otherwise defined herein as avian, cattle, goat, horse, other ruminant, sheep, swine, or primate.

"Dairy type" means all cattle of<sub>1</sub> or primarily of<sub>2</sub> a dairy or dual-purpose breed of cattle including but not limited to cattle of the Ayrshire, Brown Swiss, Guernsey, Holstein, Jersey, Milking Shorthorn, or similar breeds to include castrated males of such breeds.

"Dairying purposes" means the production of milk or milk products, or the production of breeding stock whose progeny are to be used for the production of milk, milk products, or breeding stock.

"Dogs" means all domestic and wild members of the family Canidae.

~~"Exhibition purposes" means display at a scheduled event. Exhibition purposes shall not include rodeos and similar events where cattle, goats, sheep, and other ruminants are congregated for entertainment purposes.~~

"Free roaming swine" means swine that are not contained within an enclosure by their owner or custodian.

"Goat" means all domestic and wild members of the genus *Capra*.

"Hatching eggs" means all poultry eggs that are intended to be hatched.

"Horse" means all domestic and wild members of the family Equidae to include, but not be limited to, (horses, asses, zebras, and any hybrids of horses, asses, or zebras).

~~"Noncommercial swine" means all swine not otherwise herein defined as commercial or slaughter swine, including but not limited to wild hogs, feral swine, exhibition swine, or swine kept as pets.~~

"Livestock" means all cattle, sheep, swine, goats, horses, donkeys, mules, camels, llamas, and alpacas.

"Marketing facility" means a livestock market; stockyard; buying station; auction, consignment, or other sale venue; or other premises including those operating video, web-based, telephone, or other types of electronic sales methods, where livestock from multiple owners are comingled and assembled for sale or exchange in Virginia.

"Official identification" means a unique identification number issued by a state or federal program or other forms of identification approved by the State Veterinarian.

"Other ruminants" means all members of the order Artiodactyla not otherwise defined herein as cattle, goats, sheep, or swine to include camelidae and cervidae.

"Permit" means an official document issued for and prior to the interstate shipment of certain classes of livestock, poultry, companion animals, and other animals or birds into Virginia. This permit is issued at the discretion of the State Veterinarian.

"Poultry" means all domestic fowl, ratites, and game birds raised in captivity to include, but not be limited to, chickens, turkeys, ducks, geese, ratites, and game birds such as quail or partridge.

"Primate" means all nonhuman members of the order Primates.

"Region" means any ~~premise, premises;~~ political subdivision of a state, country; or other defined geographic area.

"Sheep" means all domestic and wild members of the genus ~~ovis~~ *Ovis*.

"Slaughter establishment" means a livestock slaughter facility that is under inspection by the USDA or the Virginia Department of Agriculture and Consumer Services.

~~"Slaughter swine" means all swine brought into Virginia solely for the purpose of slaughter.~~

"State Veterinarian" means the State Veterinarian of the Commonwealth of Virginia or his designee.

"Swine" means all domestic and wild members of the family Suidae.

"USDA" means the United States Department of Agriculture.

~~"USDA approved market" means a livestock market approved by the United States Department of Agriculture where livestock sold only for slaughter purposes can be identified and segregated in accordance with applicable state and federal regulations, and from which no such livestock intended for slaughter may be released except directly to another approved USDA market, or to a recognized slaughter establishment for immediate slaughter.~~

## **2VAC5-141-20. Certificates of veterinary inspection.**

A. No agricultural animals, companion animals, or any other animals or birds of any species that are affected with or that have been exposed to any infectious or contagious disease shall be imported into Virginia except by special written permit of the State Veterinarian.

B. All agricultural animals, companion animals, or any other animals or birds of any species imported into Virginia, except as otherwise exempted by this chapter, shall be accompanied by a certificate of veterinary inspection; or alternative movement documentation approved by the State Veterinarian that shall be attached to the bill of lading or shall be in the possession of the person in charge of such animals or birds, and a copy of such certificate shall be forwarded promptly to the State Veterinarian.

C. A certificate of veterinary inspection shall be a written record meeting the requirements of Virginia and executed on an approved form of the state of origin. It shall contain the names and street addresses or premise identification numbers of the consignor and consignee, and premises of origin and destination if different. It shall indicate the health status of the animals or birds, and include the dates and results of all required tests.

D. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 30 days before the date of entry for cattle, goats, horses, other ruminants, poultry, sheep, and swine.

E. After physical examination of the animal and completion of all required tests, the certificate of veterinary inspection shall be issued within 10 days before the date of entry for avian species not considered poultry, companion animals, and primates.

F. The certificate shall be issued by an accredited veterinarian approved by the animal health official of the state of origin; a veterinarian in the employ of the state of origin; or a veterinarian in the employ of the Veterinary Services

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Division, Animal and Plant Health Inspection Services, United States Department of Agriculture.

G. All testing required by this chapter shall be considered official if conducted by ~~an~~ a state, federal, tribal, or accredited veterinarian or collected by ~~an~~ a state, federal, tribal, or accredited veterinarian and conducted by an official animal health laboratory approved by a state or federal animal health agency as dictated by testing protocol.

## **2VAC5-141-30. Animal identification.**

A. All shipments of poultry and hatching eggs entering Virginia must be accompanied by an approval number issued by the State Veterinarian.

B. Official identification for cattle can be:

1. Ear tag or other permanently affixed device bearing a unique identification number issued by an official state or federal program;
2. USDA back tag only for cattle consigned directly to slaughter; or
3. Other forms of identification approved by the State Veterinarian.

C. Official identification for goats and sheep can be:

1. Official ear tags that are approved by the USDA for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program;
2. For goats exempt from identification required by the Scrapie Eradication Program, an ear tag or other affixed device bearing a unique identification number issued by an official state or federal program, or a USDA back tag only for such goats consigned directly to slaughter;
3. Legible For goats, a legible official registry tattoo if accompanied by a registration certificate; and
4. Other forms of identification approved by the State Veterinarian.

D. Official identification for horses can be:

1. A thorough written or photographic record of the horse's appearance directly noted on or affixed to the ~~official health~~ certificate of veterinary inspection and endorsed by the issuing veterinarian;
2. Legible breed association tattoo number;
3. Affixed or implanted device bearing a unique identification number issued by a state or federal program, or a breed or performance association that allows the State Veterinarian access to records; and
4. Other forms of identification considered official by the USDA or the State Veterinarian.

E. Official identification for swine can be:

1. Ear tag, ~~ear notch~~, or tattoo recorded by a purebred registry;

2. Ear tag or other affixed device bearing a unique individual or group identification number issued by an official state or federal program;

3. Official premise identification tattoo including state of origin; and

4. Other forms of identification considered official by the USDA or the State Veterinarian.

## **2VAC5-141-40. Entry by permit only and import restrictions.**

A. When the State Veterinarian is informed of any unusual or serious outbreak of disease among livestock or poultry in any other region that, in his opinion, constitutes a threat to livestock and poultry in Virginia, he shall by proclamation prohibit the entrance of any livestock or poultry that originate either directly or indirectly from that region at his discretion, except by permit. He may also prohibit the entrance of any products as defined in the meat or poultry inspection regulations of the USDA, ~~or~~ in the Virginia Meat and Poultry Products Inspection Act, ~~the Virginia Milk and Cream Law,~~ or in any other applicable or related Virginia statutes and regulations, except by permit. Specific classes of animals as listed in this chapter also require a permit for entry into Virginia.

B. Agricultural animals, companion animals, or any other animals or birds of any species imported into Virginia for bona fide scientific research by a recognized agricultural institution or institution licensed by the USDA, and for which compliance with the requirements of this chapter would be a detriment to the research, may be excused from the requirements at the discretion of the State Veterinarian by the issuance of a permit.

C. No person shall transport through or import into Virginia any livestock from a point of origin located within a 10-mile radius of any place in which the disease vesicular stomatitis has been found to exist during the 30-day period prior to the entry of said animal into Virginia.

D. No person shall transport through or import into Virginia any livestock originating in a state in which the disease vesicular stomatitis has been found to exist during the 30-day period prior to the entry of said animal into Virginia unless the animal has been examined and found to be free from vesicular stomatitis and is accompanied by a certificate of veterinary inspection, a copy of which has been mailed to the State Veterinarian, bearing the following or similar statement from the issuing state, federal, tribal, or accredited veterinarian: "All animals identified on this health certificate have been examined and found to be free from vesicular stomatitis and, to the best of my knowledge and belief, during the past 30 days these animals have neither been exposed to said disease nor held at a location within 10 miles of any place in which said disease has been found to exist."

~~C. E.~~ All requests for permits must be directed to the State Veterinarian in writing and must give all information as he may require.

**2VAC5-141-60. Avian entry requirements.**

~~A. All entry of birds into Virginia must be in compliance with the testing and all other requirements of the State Veterinarian's Avian Influenza (H5 and H7) Proclamation dated January 18, 2012, unless temporarily superseded by a valid proclamation issued pursuant to § 3.2-6010 of the Code of Virginia, published in the Virginia Register of Regulations, and posted on the Virginia Regulatory Town Hall. Certificates of veterinary inspection or reports issued by a laboratory approved by any state or federal animal health authority must be dated in accordance with said proclamation.~~

~~B. A.~~ All birds in commerce not classified as poultry must be accompanied by a ~~health~~ certificate of veterinary inspection issued within 10 days prior to entry into Virginia. Any poultry in commerce that by its nature is fit only as a pet must be accompanied by ~~an official health~~ a certificate of veterinary inspection issued within 10 days prior to entry into Virginia.

~~C. Approval~~ B. For all other poultry, excepting poultry for immediate slaughter and going directly to a slaughter establishment, approval numbers are required for shipments of poultry and hatching eggs.

1. Each shipper of poultry or hatching eggs shall first secure an approval number from the State Veterinarian. This approval number must appear on each shipment of poultry or hatching eggs shipped into Virginia.
2. Applications for approval numbers must be made on forms provided by the State Veterinarian. Each application shall require the following information on each premises from which the poultry or hatching eggs originate:
  - a. The name and address of each premises owner;
  - b. The species and the number of birds for each on each premise, or for hatcheries hatching capacity;
  - c. For chickens and turkeys, and the parent flock of the hatching eggs of chickens and turkeys, the date of the most recent Pullorum-typhoid test, the total number or the percentage of positive reactions to said test, and the Pullorum-typhoid status attained; and
  - d. Any additional information the State Veterinarian may require.
3. Applications, when completed, must be forwarded to the official state agency, the state livestock health official, or other competent and recognized authority of the state of origin for verification, approval, and signature and then forwarded to the State Veterinarian for final approval.
4. Poultry and hatching eggs shall not be shipped into Virginia until final approval has been granted and the approval number is received.

~~D. C.~~ Chickens, turkeys, and hatching eggs of chickens and turkeys shall not be imported into Virginia unless originating exclusively from flocks or hatcheries participating in the National Poultry Improvement Plan (NPIP) or issued a permit and negative to a Pullorum-typhoid test within 30 days prior to entry.

D. Poultry shall not be imported into Virginia unless the following conditions are met concerning avian influenza (H5 and H7):

1. Requirements governing hatching eggs and certain day-old birds:

a. Hatching eggs shall originate from a breeder flock that participates in and meets the requirements of the "U.S. Avian Influenza Clean" program for chickens or "U.S. H5/H7 Avian Influenza Clean" program for turkeys of the National Poultry Improvement Plan.

b. Day-old chickens, day-old game birds, and day-old turkeys shall originate from a hatchery that only handles hatching eggs that originate breeding flocks that participate in and meet the requirements of the "U.S. Avian Influenza Clean" or "U.S. H5/H7 Avian Influenza Clean" programs of the National Poultry Improvement Plan.

c. A statement certifying that the breeder flock shipping hatching eggs and all breeder flocks supplying eggs to the hatchery shipping day-old chickens, day-old game birds, or day-old turkeys participates in and meets the requirements of the "U.S. Avian Influenza Clean" or "U.S. H5/H7 Avian Influenza Clean" programs of the National Poultry Improvement Plan shall be provided.

2. Requirements governing all other poultry:

a. The poultry is tested and found negative for avian influenza (H5 and H7) within 14 days prior to entry into Virginia or comes from a flock that has first been tested with negative results within 14 days prior to entry in Virginia as follows:

(1) Breeding chickens and turkeys: 20 birds per house minimum, or for flocks of 500 or fewer, 20 birds minimum as long as all houses and pens on the premises are represented.

(2) Grow out turkeys for immediate slaughter at a slaughter establishment: 10 birds per house minimum for multi-stage farms and 10 birds per farm, with at least five birds per house, on single-stage farms.

(3) Broiler chickens less than or equal to 70 days of age for immediate slaughter at a slaughter establishment: 11 birds per premises with at least one per house.

b. The results of the tests for avian influenza are recorded and signed by an accredited veterinarian in the state of origin or are recorded on a report issued by a laboratory approved by any state or federal animal authority. Only agar gel immunodiffusion (AGID), enzyme-linked immunosorbent assay (ELISA), polymerase chain

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reaction (PCR), virus isolation, or other avian influenza test methods approved by the state veterinarian and conducted in a laboratory approved by a state or federal animal health authority will be permitted.

~~E. Exemptions for hatching eggs and poultry, providing the hatching eggs or poultry remain subject to the State Veterinarian's Avian Influenza (H5 and H7) Proclamation dated January 18, 2012, unless temporarily superseded by a valid proclamation issued pursuant to § 3.2-6010 of the Code of Virginia, published in the Virginia Register of Regulations, and posted on the Virginia Regulatory Town Hall.~~

~~1. This chapter shall not apply to hatching eggs or poultry passing directly through the Commonwealth of Virginia in interstate commerce.~~

~~2. This chapter shall not apply to poultry imported into the Commonwealth of Virginia for immediate slaughter and consigned directly to a poultry processing establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services.~~

~~F. E. Exemptions for birds other than poultry, providing the birds remain subject to the State Veterinarian's Avian Influenza (H5 and H7) Proclamation dated January 18, 2012, unless temporarily superseded by a valid proclamation issued pursuant to § 3.2-6010 of the Code of Virginia, published in the Virginia Register of Regulations, and posted on the Virginia Regulatory Town Hall.~~

~~1. This chapter shall not apply to birds other than poultry that are passing directly through Virginia to another state in interstate commerce.~~

~~2. This chapter shall not apply to birds other than poultry when the birds are kept properly under control by their owner or custodian when passing through Virginia to another state.~~

~~3. This chapter shall not apply to birds other than poultry brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into the Commonwealth Virginia with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.~~

~~4. This chapter shall not apply to birds other than poultry brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.~~

~~G. F. This chapter shall not be construed to (i) permit the entry into Virginia of any avian species otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.~~

## **2VAC5-141-70. Cattle entry requirements.**

A. All cattle entering Virginia must bear official identification, and the official identification number must be noted on the certificate of veterinary inspection or other movement document if approved by the State Veterinarian. If

multiple cattle of similar breed, age, and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized. This requirement shall not apply to cattle 18 months of age or younger provided such cattle are not of a dairy type and are imported into Virginia for feeding purposes only.

B. All cattle ~~18 months of age or older that originated in or have transited through a foreign country, or are intended to be used for rodeo or other entertainment purposes,~~ require a negative caudal fold or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to: cattle consigned directly from a USDA accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection. Entertainment purposes shall not include the display of cattle at a scheduled agricultural fair, show, or sale.

~~1. Cattle consigned directly from an accredited tuberculosis free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection;~~

~~2. Cattle that originate from a region considered free of tuberculosis for cattle by the USDA and consigned directly to a slaughter establishment or to a USDA approved market and from there directly to a slaughter establishment; or~~

~~3. Cattle entering Virginia for a period of 10 days or less for exhibition purposes provided they originate from a region considered free of tuberculosis for cattle by the USDA and no change of ownership occurs.~~

C. All cattle originating from a region not considered free of tuberculosis for cattle by the USDA require a permit and a negative caudal or comparative cervical tuberculin test within 60 days prior to entry into Virginia. This requirement shall not apply to:

1. Cattle consigned directly from an accredited tuberculosis-free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection; and

2. Cattle consigned directly to a slaughter establishment.

D. All sexually intact cattle originating from a region not considered free of brucellosis by the USDA require a permit and an individual brucellosis test within 30 days prior to entry into Virginia. Animals allowed entry under a permit will be quarantined on the premises of the consignee until retested at the consignee's expense and found negative to brucellosis no less than 45 days and no more than 120 days after entry as indicated by the permit. This requirement shall not apply to:

1. Cattle consigned directly from a certified brucellosis-free herd provided the certification number and date of the last herd test are listed on the ~~official health~~ certificate of veterinary inspection; and

2. Cattle consigned directly to a slaughter establishment.

E. Cattle may be imported for immediate slaughter into Virginia without a certificate of veterinary inspection provided they are consigned directly to a slaughter establishment. Official identification for all cattle under this subsection must be listed on the waybill.

F. Cattle from a region considered free of tuberculosis and brucellosis for cattle by the USDA may enter Virginia for the purpose of sale at ~~an approved~~ a livestock market marketing facility without a certificate of veterinary inspection ~~and without tuberculosis testing~~ if otherwise required provided:

1. All cattle offered for sale at the ~~approved~~ livestock market marketing facility excepting cattle 18 months of age or younger not of a dairy type and intended for feeding purposes bear official ~~individual~~ identification upon entry to the ~~approved~~ livestock market marketing facility or have such applied at the ~~approved~~ livestock market marketing facility; and
2. The ~~approved~~ livestock market marketing facility maintains for at least five years and makes available to the State Veterinarian a record of the consignor of the cattle, the identification numbers as required of the cattle he consigns, and the buyer of the cattle.

#### **2VAC5-141-80. Companion animal entry requirements.**

A. Companion animals must be accompanied by a certificate of veterinary inspection issued within 10 days prior to entry into Virginia.

B. No dog or cat less than eight weeks of age may be imported into Virginia unless accompanied by its dam.

C. Any dog or cat greater than four months of age entering Virginia shall be currently vaccinated for rabies.

D. Exemptions.

1. This chapter shall not apply to companion animals that are passing directly through Virginia to another state in interstate commerce.
2. This chapter shall not apply to companion animals that are kept properly under control by their owner or custodian when passing through Virginia to another state.
3. This chapter shall not apply to companion animals brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia except if brought into ~~the Commonwealth~~ Virginia with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.
4. This chapter shall not apply to companion animals brought into Virginia for less than 10 days for the purpose of hunting or legal exhibition with no change of ownership.

E. This chapter shall not be construed to (i) permit the entry into Virginia of any species of animal otherwise prohibited or restricted by any state or federal law, regulation, or directive; or (ii) contravene additional entry requirements imposed by any state or federal law, regulation, or directive.

#### **2 VAC5-141-90. Goat and sheep entry requirements.**

A. All goats and sheep entering Virginia must be officially identified and the official identification number must be noted on the certificate of veterinary inspection. If multiple goats or sheep of similar breed, age, and sex are listed on the certificate of veterinary inspection, sequential identification numbers may be summarized. The requirement shall not apply to castrated male goats that are not subject to the Scrapie Eradication Program.

B. Scrapie control.

1. No sheep or goat may be imported into Virginia that does not originate from a scrapie consistent state unless originating from a flock enrolled in the complete monitored or export monitored category of the USDA Scrapie Flock Certification Program.
2. No goat or sheep infected with scrapie, or the offspring of a goat or sheep infected with scrapie, may enter Virginia.

~~C. All goats and sheep 18 months of age or older imported into Virginia for dairying purposes shall be negative to a tuberculosis test within 60 days prior to entry. This requirement shall not apply to:~~

- ~~1. Goats and sheep 18 months of age or older imported into Virginia for dairying purposes consigned directly from an accredited tuberculosis free herd provided the accreditation number and date of the last herd test are listed on the certificate of veterinary inspection; or~~
- ~~2. Goats and sheep 18 months of age or older intended for dairying purposes entering Virginia for a period of 10 days or less for exhibition purposes provided they originate from a region considered free of tuberculosis for cattle by the USDA and no change of ownership occurs.~~

~~D. C.~~ All goats and sheep originating from a region not considered free of tuberculosis for cattle by the USDA shall be negative to a tuberculosis test within 60 days prior to entry unless consigned directly to a livestock slaughter establishment. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

~~E. D.~~ All sexually intact goats and sheep originating from a region not considered free of brucellosis for cattle by the USDA shall be negative to a brucellosis test within 30 days prior to entry unless consigned directly to a livestock slaughter establishment. This requirement shall not apply to animals less than six months of age accompanied by their tested dam.

~~F. E.~~ Goats and sheep may be imported for immediate slaughter into Virginia without a certificate of veterinary inspection provided they are consigned directly to a livestock slaughter establishment or to a ~~USDA approved~~ market marketing facility and from there directly to a livestock slaughter establishment.

~~G. F.~~ Goats and sheep from a region considered free of tuberculosis and brucellosis for cattle by the USDA may enter

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Virginia for the purpose of sale at ~~an approved livestock market~~ a marketing facility without a certificate of veterinary inspection ~~and without tuberculosis testing~~ if otherwise required provided:

1. The goats and sheep bear any required ~~individual~~ official identification upon entry to the ~~approved livestock market marketing facility~~ or have such applied at the approved ~~livestock market~~ marketing facility; and
2. The ~~approved livestock market marketing facility~~ maintains for at least five years and makes available to the State Veterinarian a record of the consignor of the goats and sheep, the identification numbers as required of the goats and sheep he consigns, and the buyer of the goats and sheep.

## **2VAC5-141-100. Horse entry requirements.**

A. All horses entering Virginia must be officially identified, and the official identification must be noted on the ~~official health certificate of veterinary inspection or official equine interstate event permit~~.

B. Equine infectious anemia testing.

1. All horses imported into Virginia shall have been officially tested and found negative for equine infectious anemia within the past 12 months and be accompanied by an official certificate stating this information.
2. Horses that originate from infected premises in other states are not eligible for entry into Virginia except by permit at the State Veterinarian's discretion.
3. Foals six months of age or under accompanying a tested negative dam are exempt from testing.

C. Contagious equine metritis control.

1. No sexually intact horse over two years of age that either originated in or has passed through premises or a country where contagious equine metritis is known to exist may enter ~~the Commonwealth of~~ into Virginia except by permit.
2. Horses that are issued a permit ~~immediately~~ will be immediately placed under quarantine and assigned a testing protocol at the consignee's expense until the State Veterinarian is satisfied that they pose no danger to the Virginia equine population.

D. Horses may enter Virginia with an official equine interstate event permit issued by another state in lieu of certificate of veterinary inspection provided the permit is not expired.

## **2VAC5-141-120. Swine entry requirements.**

A. All swine entering Virginia must bear an identification number, and the identification number must be noted on the certificate of veterinary inspection.

~~B. Commercial swine entry requirements.~~

~~1. Commercial swine~~ B. Swine originating from a herd or region that is considered free from brucellosis and pseudorabies by a federal program or a state program

approved by the State Veterinarian may enter Virginia without further testing requirements provided a statement indicating the region is considered free from brucellosis by a federal or state program or verification of herd participation in the federal or state program is indicated on the certificate of veterinary inspection and the swine have not had known contact with free roaming swine.

~~2. C. Sexually intact commercial~~ swine over four months of age not originating from a herd or region considered free of brucellosis by a federal program or a state program approved by the State Veterinarian must be negative to a brucellosis test within 30 days prior to entry into Virginia.

~~3. Commercial swine~~ D. Swine not originating from herd or region that is considered free from pseudorabies by a federal program or a state program approved by the State Veterinarian shall be individually tested and negative to a pseudorabies test within 30 days prior to entry into Virginia. Sexually intact swine shall be quarantined at the premises of destination until retested between 30 and 60 days after importation at the consignee's expense.

~~4. No commercial swine vaccinated for pseudorabies shall be imported into Virginia unless under permit for direct slaughter.~~

~~C. Noncommercial swine entry requirements.~~

~~1. Noncommercial swine originating from herds considered free from brucellosis and pseudorabies by a federal program or a state program approved by the State Veterinarian may enter Virginia without further testing requirements provided verification of herd participation in the federal or state program is indicated on the certificate of veterinary inspection and the commercial swine have not had contact with feral swine.~~

~~2. Sexually intact noncommercial swine over four months of age not from a herd considered free from brucellosis by a federal program or a state program approved by the State Veterinarian must be negative to a brucellosis test within 30 days prior to entry into Virginia.~~

~~3. Noncommercial swine not from a herd considered free from pseudorabies by a federal program or a state program approved by the State Veterinarian shall be negative to a pseudorabies test within 30 days prior to entry into Virginia. Sexually intact swine shall be quarantined at the premises of destination until retested between 30 and 60 days after importation at the consignee's expense.~~

~~4. No noncommercial swine vaccinated for pseudorabies shall be imported into Virginia unless under permit at the discretion of the State Veterinarian and subject to any restrictions he deems necessary.~~

~~D. E. Slaughter swine entry requirements. Swine may be imported for immediate slaughter into Virginia without a certificate of veterinary inspection provided they are consigned directly to a slaughter establishment.~~

~~1. No slaughter swine known to be infected with or exposed to pseudorabies and no swine vaccinated for pseudorabies may enter Virginia unless:~~

- ~~a. It is shipped directly to a slaughter establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services under permit;~~
- ~~b. It is shipped in a sealed vehicle or individually identified on the permit; and~~
- ~~c. The conveyance transporting the swine into Virginia is cleaned and disinfected after the swine is off loaded but prior to the conveyance leaving the slaughter establishment.~~

~~2. Any slaughter swine not known to be infected with or exposed to pseudorabies may enter Virginia without a certificate of veterinary inspection, but only if it is accompanied by a waybill, bill of lading, bill of sale, or other document that identifies the swine to the farm of origin and only if it is sent directly to:~~

- ~~a. A slaughter establishment that is approved and inspected by the USDA or by the Virginia Department of Agriculture and Consumer Services; or~~
- ~~b. A USDA approved market and from there directly to a recognized slaughter establishment.~~

~~E. Commercial swine~~ F. Swine intended for feeding purposes and not intended for breeding purposes from a farm of origin in a state adjoining Virginia and from a region therein considered free of pseudorabies by a federal or state program ~~approved by the State Veterinarian~~ may enter Virginia without a certificate of veterinary inspection if an alternative movement document that has been approved by the State Veterinarian is submitted as required.

G. Swine that are, or have had known contact with, free roaming swine must have tested negative for pseudorabies and brucellosis within 30 days prior to entry into Virginia.

**2VAC5-141-130. Primate entry requirements.**

A. All primates imported into Virginia require a certificate of veterinary inspection issued within 10 days prior to entry.

B. All primates imported into Virginia must be microchipped, and such microchip number must be noted on the certificate of veterinary inspection.

C. ~~The official health certificate of veterinary inspection~~ shall include a statement attesting to the fact that the veterinarian has carefully examined the oral mucosa of the primate and has found no evidence of disease lesions or inflammatory processes.

D. Tuberculosis testing requirements.

1. Primates imported into Virginia shall have a negative tuberculosis test performed by ~~an~~ a state, federal, tribal, or accredited veterinarian within 30 days prior to entry. ~~The official health certificate must indicate the kind and amount of tuberculin used, the date and hour of injection,~~

and the date and hour of reading ~~If using a tuberculosis test other than the intradermal test, it is permissible for test results to be recorded on the certificate of veterinary inspection as pending, as long as the results are reported to the State Veterinarian within three business days of entry and the animals are isolated upon arrival until the test results are reported.~~

2. Primates that have been associated with a colony where there have been other primates showing response to the tuberculin test shall not be eligible for entry into Virginia ~~unless~~ and until all primates in the colony shall have passed two consecutive tuberculosis tests not less than 30 days apart.

E. Exceptions.

1. This chapter shall not apply to primates that are passing directly through Virginia to another state in interstate commerce.

2. This chapter shall not apply to primates that are kept properly under control by their owner or custodian when passing through Virginia to another state.

3. This chapter shall not apply to primates brought into Virginia by a resident or by a resident of another state who intends to make his residence in Virginia, except if brought into ~~the Commonwealth Virginia~~ with the intent of offering it for public adoption, transfer, sale, trade, or promotional incentive.

4. This chapter shall not apply to primates brought into Virginia for less than 10 days for the purpose of legal exhibition with no change of ownership.

~~DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-141)~~

~~Avian Influenza (H5 and H7) Proclamation, eff. January 18, 2012, Department of Agriculture and Consumer Services, State Veterinarian's Office, P.O. Box 1163, Richmond, VA 23248.~~

VA.R. Doc. No. R16-3995; Filed September 8, 2015, 12:06 p.m.

**Fast-Track Regulation**

Title of Regulation: **2VAC5-180. Rules and Regulations Governing Pseudorabies in Virginia (repealing 2VAC5-180-10 through 2VAC5-180-120).**

Statutory Authority: §§ 3.2-6001, 3.2-6002, and 3.2-6004 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 4, 2015.

Effective Date: November 19, 2015.

Agency Contact: Charles Broaddus, D.V.M., Program Manager, Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

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**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. Section 3.2-6001 of the Code of Virginia authorizes the board and the State Veterinarian to protect livestock and poultry from contagious and infectious disease. Section 3.2-6002 of the Code of Virginia authorizes the board to adopt regulations to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases.

**Purpose:** This regulation was developed and used during the successful eradication efforts for pseudorabies in swine. The regulation is now outdated. The tests and programs included in the regulation have not been utilized in at least 15 years. As such, this regulation is no longer needed. If pseudorabies returns to Virginia, the agency has the ability to manage disease outbreaks and quarantine animals under statutory authority.

**Rationale for Using Fast-Track Process:** As pseudorabies has not been detected in swine in Virginia since the 1980s, a need for this regulation no longer exists. The agency is not aware of any stakeholders suggesting that the regulation be retained or that the regulation is of any benefit to them.

**Substance:** Due to the eradication of pseudorabies from commercial swine in Virginia, this regulation is no longer needed. Therefore, the agency proposes to repeal the regulation.

**Issues:** The primary advantage to the public in repealing the regulation is that there would no longer be an outdated regulation that specifies actions that are no longer taken. The agency and Commonwealth will no longer be in a position of having an outdated regulation that is not enforced. This action is part of good governance in that an outdated, unnecessary regulation will be eliminated. There are no disadvantages to the public or the Commonwealth associated with repealing the regulation.

**Small Business Impact Review Report of Findings:** This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to repeal this regulation.

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

Estimated Economic Impact. The existing regulation provides the framework for the eradication of pseudorabies in Virginia swine. Pseudorabies is an infectious disease of swine, and it can also affect other domestic animals. Pseudorabies was common in swine in much of the 20th century but through a structured and effective program it has been eradicated from

commercial swine in the United States. Through the testing of swine, removal of those swine found to be positive for pseudorabies, and vaccination of susceptible populations, as required in the regulation, pseudorabies was eradicated from Virginia, with the last known case occurring in the 1980s.

According to the Virginia Department of Agriculture and Consumer Services (VDACS), since pseudorabies in swine was eradicated the tests and programs included in the regulation have not been utilized in at least 15 years. If pseudorabies returns to the Commonwealth, VDACS has the ability to manage disease outbreaks and quarantine animals under statutory authority. Thus, repealing this regulation will have no impact beyond the benefit of decreasing the chance that readers of the regulation would be misled concerning current requirements. Therefore the proposed repeal of the regulation will produce a small net benefit.

**Businesses and Entities Affected.** Repealing this regulation will have no impact beyond decreasing the likelihood that readers of the regulation would be misled concerning current requirements. When the regulation was utilized, it affected persons, farms and firms who owned, shipped, sold, lent, leased or traded swine in Virginia.

**Localities Particularly Affected.** The proposed repeal of this regulation does not disproportionately affect particular localities.

**Projected Impact on Employment.** The proposed repeal of this regulation does not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of this regulation does not significantly affect private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of this regulation does not affect costs for small businesses.

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

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

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

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,

- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

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

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

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

Agency's Response to Economic Impact Analysis: The Board of Agriculture and Consumer Services concurs with the analysis.

Summary:

*This regulatory action repeals the regulation, which is outdated and no longer necessary due to the successful eradication of pseudorabies in commercial swine in Virginia.*

VA.R. Doc. No. R16-4285; Filed September 8, 2015; 12:12 p.m.

**Fast-Track Regulation**

Title of Regulation: **2VAC5-531. Regulations Governing Milk for Manufacturing Purposes (amending 2VAC5-531-10, 2VAC5-531-50, 2VAC5-531-70, 2VAC5-531-90, 2VAC5-531-110, 2VAC5-531-140).**

Statutory Authority: § 3.2-5206 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 4, 2015.

Effective Date: November 19, 2015.

Agency Contact: Robert Trimmer, Program Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1452, FAX (804) 371-7792, TTY (800) 828-1120, or email robert.trimmer@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 and authorizes the board to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5206 of the Code of Virginia authorizes the board to establish definitions and standards of quality and identity and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products, and those products manufactured or sold in semblance to or as substitutes for milk, milk products, market milk, or market milk products. This section also authorizes the board to adopt (i) any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application and (ii) any model ordinance or regulation issued under federal law including the Pasteurized Milk Ordinance and the U.S. Department of Agriculture's (USDA) Milk for Manufacturing Purposes and its Production and Processing Recommended Requirements.

Purpose: The proposed amendments will align the regulation with current federal standards as established by the 2013 revision of the Pasteurized Milk Ordinance and the 2011 revision of the USDA's recommended requirements for milk for manufacturing purposes and processing plant requirements and with the Virginia Regulations Governing Grade "A" Milk (2VAC5-490). The goal of these amendments is to make necessary updates to the Virginia Administrative Code to allow the agency to continue protecting the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth by ensuring the safety and wholesomeness of all milk and milk products sold or offered for sale for human consumption.

Milk is an excellent growth medium for most organisms including many pathogens. The fact that spoilage organisms and pathogens can grow in milk if they are present or introduced later by poor handling practices makes milk and milk products potentially hazardous if they are not properly processed, handled, packaged, and stored. The requirement for pasteurization or aging at specific temperatures in the case of certain cheeses as effective means of destroying pathogens in manufactured dairy products will reduce the risk of death and illness from consuming contaminated manufactured dairy products. The regulation also requires the plant to employ certain practices that prevent contamination after pasteurization or aging. The regulation is essential to ensure the safety of these products. The regulation also facilitates sales of Virginia-manufactured products by providing for the labeling of dairy products to prevent deception, establishing standards of identity, and providing a level playing field on which all persons may compete.

Rationale for Using Fast-Track Process. The proposed amendments are noncontroversial changes and will align the

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regulation with current federal standards and the testing requirements of the current Virginia Regulations Governing Grade "A" Milk. None of the revisions add any new requirements. The removal of the requirement for cryoscope testing will not affect the safety of the milk supply or the finished products.

Substance: The substantive changes are:

1. The elimination of the requirement for cryoscope testing. Cryoscope testing is used to determine whether water was added to milk and addresses a milk quality issue not a milk safety issue. The elimination of the requirement for this test brings this regulation in line with the recently revised Regulations Governing Grade "A" Milk, 2VAC5-490, which no longer requires this test.
2. The removal of specific details on well placement and requirements. References to Appendix D of the Grade "A" Pasteurized Milk Ordinance, 2013 revision have been incorporated to provide requirements regarding well placement and related issues. This change will harmonize this regulation with the recently revised Regulations Governing Grade "A" Milk, 2VAC5-490.

Issues: The primary advantage of the regulation is to aid in safely manufacturing dairy products through proven controls, testing methods, and sampling protocols. This ensures that the public is afforded the opportunity to consume a safe product. The primary advantage to the agency and Commonwealth is that the regulation ensures that the Commonwealth can adequately protect the public. The requirements will also ensure the continued intrastate and interstate sales of manufactured products, which will ultimately benefit Virginia's economy. Elimination of the cryoscope test will also allow the agency to focus on sampling and testing in areas that are food safety related.

This regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend the regulation to: 1) remove the requirement for cryoscope (added water) tests conducted on permit holder's milk for manufacturing purposes, 2) remove details on well placement and requirements and reference instead Appendix D of the Grade "A" Pasteurized Milk Ordinance, 2013 revision, for details on well placement and requirements, 3) update names, dates, and addresses, and 4) remove obsolete language.

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

Estimated Economic Impact. The Regulations Governing Milk for Manufacturing Purposes establishes minimum sanitary standards for manufactured grade raw dairy farms and dairy manufacturing plants. The standards address the

safe and sanitary construction and operation of manufacturing facilities at the farm and processing plant, construction requirements, pasteurization requirements, standards for cheese and related dairy products, manufacture of raw milk aged cheese, handling of adulterated products, permits, labeling, sample testing requirements, good manufacturing practices, and requirements for small scale cheese manufacturing plants. The current regulation is based on the United States Food and Drug Administration's (FDA) Pasteurized Milk Ordinance, and the United States Department of Agriculture's (USDA) guidance document, "Milk for Manufacturing Purposes and its Production and Processing," which establishes recommended requirements for states.

Cryoscope testing is used to determine whether water was added to milk and addresses a milk quality issue not a milk safety issue. Thus the proposal to remove the requirement for cryoscope tests will not affect the safety of the milk supply or of the milk used for manufacturing purposes. Removal of the requirement will decrease the cost to the Virginia Department of Agriculture and Consumer Services (VDACS) by approximately \$3,000 a year in laboratory costs and \$100,000 over the next three years in replacement of aging equipment. Firms are not charged for the testing; so there are no direct savings for the firms besides perhaps a small amount of time associated with gathering samples. Since this proposed amendment does not affect public safety and creates costs savings, it creates a net benefit.

The proposal to remove details on well placement and requirements and reference instead Appendix D of the Grade "A" Pasteurized Milk Ordinance, 2013 revision, for details on well placement and requirements, will produce no changes in actual requirements. Thus this proposal will not have significant impact. Updating names, dates, and addresses and removing obsolete language will improve clarity without effectively changing requirements. Thus in total these proposed changes will produce a modest net benefit.

Businesses and Entities Affected. The proposed regulation affects VDACS and the 40 firms in the Commonwealth that manufacture, package, and sell cheese, butter, and other manufactured grade dairy products at wholesale and retail. All 40 firms are small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

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

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

Small Businesses: Costs and Other Effects. The proposed amendments will not increase costs for small businesses.

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

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

Legal Mandate.

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

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

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

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

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

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

Summary:

*The amendments align the chapter with current federal standards, the U.S. Food and Drug Administration's 2013*

*revision of the Pasteurized Milk Ordinance, the 2011 revision of the U.S. Department of Agriculture's "Milk for Manufacturing Purposes and its Production and Processing," and Virginia's Regulations Governing Grade "A" Milk (2VAC5-490). The changes include (i) updating dates and other information for reference documents; (ii) removing the requirement for cryoscope tests conducted on permit holder's milk for manufacturing purposes; (iii) removing details on well placement and requirements and adding a reference to Appendix D of the Grade "A" Pasteurized Milk Ordinance, 2013 revision, in its place; and (iv) removing expired exemptions.*

**2VAC5-531-10. Definitions.**

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

"Adulterated milk" means any milk that meets one or more of the conditions specified in § 402 of the Federal Food, Drug and Cosmetic Act, as amended (21 USC § 342).

"Adulterated dairy product" means any dairy product which meets one or more of the conditions specified in § 402 of the Federal Food, Drug and Cosmetic Act, as amended (21 USC § 342).

"Asiago fresh cheese" means "asiago fresh cheese" as defined in 21 CFR 133.102.

"Asiago medium cheese" means "asiago medium cheese" as defined in 21 CFR 133.103.

"Asiago old cheese" means "asiago old cheese" as defined in 21 CFR 133.104

"Asiago soft cheese" means "asiago soft cheese" as defined in 21 CFR 133.102.

"Beta Lactam and Other Test Methods for Use Under Appendix N and Section 6 of the Grade "A" Pasteurized Milk Ordinance" means the Beta Lactam and Other Test Methods for Use Under Appendix N and Section 6 of the Grade "A" Pasteurized Milk Ordinance (PMO), M-a-85 (Revision #14), March 22, 2012, published by the Department of Health and Human Services, Public Health Service, Food and Drug Administration, Dairy and Egg Branch (HFS-316).

"Blue cheese" means "blue cheese" as defined in 21 CFR 133.106.

"Brick cheese" means "brick cheese" as defined in 21 CFR 133.108.

"Brick cheese for manufacturing" means "brick cheese for manufacturing" as defined in 21 CFR 133.109.

"Caciocavallo siciliano cheese" means "caciocavallo siciliano cheese" as defined in 21 CFR 133.111.

"Cancel" means to permanently nullify, void, or delete a permit issued by the Virginia Department of Agriculture and Consumer Services.

"CFR" means the Code of Federal Regulations.

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"Cheddar cheese" means "cheddar cheese" as defined in 21 CFR 133.113.

"Cheddar cheese for manufacturing" means "cheddar cheese for manufacturing" as defined in 21 CFR 133.114.

"Cheese" means the consolidated curd of milk, used as food.

"C-I-P" or "Cleaned-In-Place" means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation of wash, rinse, and sanitizer solutions.

"Club cheese" means "club cheese" as defined in 21 CFR 133.123.

"Colby cheese" means "colby cheese" as defined in 21 CFR 133.118.

"Colby cheese for manufacturing" means "colby cheese for manufacturing" as defined in 21 CFR 133.119.

"Cold-pack cheese" means "cold-pack cheese" as defined in 21 CFR 133.123.

"Cold-pack cheese food" means "cold-pack cheese food" as defined in 21 CFR 133.124.

"Cold-pack cheese food with fruits, vegetables, or meats" means "cold-pack cheese food with fruits, vegetables, or meats" as defined in 21 CFR 133.125.

"Cook cheese" means "cook cheese" as defined in 21 CFR 133.127.

"Cream cheese" means "cream cheese" as defined in 21 CFR 133.133.

"Cream cheese with other foods" means "cream cheese with other foods" as defined in 21 CFR 133.134.

"Dairy farm" means any premises where any cow, goat, sheep, water buffalo, or other mammal (except humans) are maintained and milked for the purpose of providing milk for manufacturing into dairy products as defined herein and intended for human consumption.

"Dairy plant" means any place, premises, or establishment where any milk or any dairy product is received or handled for processing or manufacturing or prepared for distribution.

"Dairy product" means butter, natural or processed cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated whole or skim milk, condensed whole milk and condensed plain or sweetened skim milk.

"Deny" means the Virginia Department of Agriculture and Consumer Services will not issue a permit to the applicant.

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

"Drug" means (i) any article recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (ii) any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (iii) any article other than food intended to affect the structure or any

function of the body of man or other animals; and (iv) any article intended for use as a component of any article specified in clause (i), (ii), or (iii) of this definition, but does not include devices or their components, parts, or accessories.

"Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back" means the Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back, M-1-96-10 (Revision #8), March 22, 2012, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Dairy and Egg Branch (HFS 316).

"Edam cheese" means "edam cheese" as defined in 21 CFR 133.138.

"Evaluation of milk laboratories" means the Evaluation of Milk Laboratories, ~~1995~~ 2011 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration and contains the requirements milk and dairy testing laboratories must comply with in order to be included in the Interstate Milk Shippers List—Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers. This publication is available from the Food and Drug Administration, Laboratory Quality Assurance Branch.

"Farm" means any premises where any cow, goat, sheep, water buffalo, or other mammal (except humans) are maintained and milked for the purpose of providing milk for manufacturing into dairy products as defined herein and intended for human consumption.

"Fresh" means the cheese or related dairy product (~~except Asiago Fresh Cheese~~), except asiago fresh cheese, that was: (i) made from pasteurized milk; (ii) not required to be aged by the standard of identity for the specific cheese product; (iii) not held longer than five days prior to being offered for sale; and (iv) never frozen or stored at temperatures below 35°F.

"Gammelost cheese" means "gammelost cheese" as defined in 21 CFR 133.140.

"Good manufacturing practices" means "good manufacturing practices" as defined in 21 CFR 110.

"Gorgonzola cheese" means "gorgonzola cheese" as defined in 21 CFR 133.141.

"Gouda cheese" means "gouda cheese" as defined in 21 CFR 133.142.

"Granular and stirred curd cheese" means "granular and stirred curd cheese" as defined in 21 CFR 133.144.

"Granular cheese for manufacturing" means "granular cheese for manufacturing" as defined in 21 CFR 133.145.

"Grated American cheese food" means "grated American cheese food" as defined in 21 CFR 133.147.

"Grated cheeses" means "grated cheeses" as defined in 21 CFR 133.146.

"Gruyere cheese" means "gruyere cheese" as defined in 21 CFR 133.149.

"Hard cheeses" means "hard cheeses" as defined in 21 CFR 133.150.

"Hard grating cheeses" means "hard grating cheeses" as defined in 21 CFR 133.148.

"High-moisture jack cheese" means "high-moisture jack cheese" as defined in 21 CFR 133.154.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services qualified, trained, and authorized to perform dairy farm or plant inspections.

"Koch kaese" means "koch kaese" as defined in 21 CFR 133.127.

"Limburger cheese" means "limburger cheese" as defined in 21 CFR 133.152.

"Low-moisture part-skim mozzarella and scamorza cheese" means "low-moisture part-skim mozzarella and scamorza cheese" as defined in 21 CFR 133.158.

"Low-moisture mozzarella and scamorza cheese" means "low-moisture mozzarella and scamorza cheese" as defined in 21 CFR 133.156.

"Low sodium cheddar cheese" means "low sodium cheddar cheese" as defined in 21 CFR 133.116.

"Low sodium colby cheese" means "low sodium colby cheese" as defined in 21 CFR 133.121.

"Milk" means the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption.

"Milk for manufacturing purposes" means any milk produced for processing and manufacturing into a dairy product as defined herein and intended for human consumption.

"Milkhouse" means the building or room on a dairy farm in which there is conducted (i) the cooling, handling, and storing of milk; and (ii) the washing, sanitizing, and storing of milk containers and utensils.

"Milk product" means (i) acidified lowfat milk, acidified milk, acidified milk product, acidified skim milk, acidified sour cream, acidified sour half-and-half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese, cottage cheese dry curd, cream, cultured half-and-half, cultured milk, cultured lowfat milk, cultured skim milk, cultured sour cream, dry curd cottage cheese, eggnog, eggnog-flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half-and-half, heavy cream, lactose-reduced lowfat milk, lactose-reduced milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low-sodium lowfat milk, low-sodium milk, low-sodium skim milk, milk, nonfat milk, nonfat

yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, sheep milk, skim milk, sour cream, sour half-and-half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in clause (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Nothing in this definition shall be deemed to include any evaporated milk, evaporated skim milk, condensed milk (sweetened or unsweetened), infant formula, ice cream or other dessert, dietary product, dry milk product (except as defined herein), canned eggnog in a rigid metal container, or butter or cheese, except when butter or cheese is combined with other substances to produce any pasteurized or aseptically processed food as specified in this definition.

"Misbranded dairy product" means any dairy product that: (i) satisfies any of the conditions specified in § 403 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 343); (ii) does not conform to its definition; or (iii) is not labeled in accordance with 2VAC5-531-60.

"Misbranded milk" means any milk that: (i) satisfies any of the conditions specified in § 403 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 343); (ii) does not conform to its definition; or (iii) is not labeled in accordance with 2VAC5-531-60.

"Monterey cheese and monterey jack cheese" means "monterey cheese and monterey jack cheese" as defined in 21 CFR 133.153.

"Mozzarella cheese and scamorza cheese" means "mozzarella cheese and scamorza cheese" as defined in 21 CFR 133.155.

"Muenster and munster cheese" means "muenster and munster cheese" as defined in 21 CFR 133.160.

"Muenster and munster cheese for manufacturing" means "muenster and munster cheese for manufacturing" as defined in 21 CFR 133.161.

"Neufchatel cheese" means "neufchatel cheese" as defined in 21 CFR 133.162.

"Nuworld cheese" means "nuworld cheese" as defined in 21 CFR 133.164.

"Nonstandardized cheese" means any cheese or related product which does not conform to a standard of identity for a specific cheese or related product established under 21 CFR 133. Nonstandardized cheese and related products are dairy foods manufactured in conformance with this chapter from the milk of cows, goats, sheep, water buffalo, or other mammals (except humans) by the addition of clotting agents (~~Rennet~~ rennet, clotting enzymes of mammal, plant, or microbial origin, vinegar, acid, or any other agent that causes

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the clotting of milk and the formation of curd) and other safe and suitable ingredients.

"Officially designated laboratory" means a (i) commercial laboratory authorized by the Virginia Department of Agriculture and Consumer Services to examine milk and dairy products; or (ii) milk-industry laboratory authorized by the Virginia Department of Agriculture and Consumer Services to examine samples of milk for manufacturing purposes; and the laboratory is listed in the Interstate Milk Shippers List—Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples.

"Official methods" means Official Methods of Analysis of AOAC International, ~~17th~~ 19th Edition, ~~Revision 1 (2002)~~ (2012), a publication of the Association of Official Analytical Chemists International.

"Other mammals" means any mammal except humans, cows, goats, sheep, or water buffalo.

"Parmesan and reggiano cheese" means "parmesan and reggiano cheese" as defined in 21 CFR 133.165.

"Part-skim mozzarella and scamorza cheese" means "part-skim mozzarella and scamorza cheese" as defined in 21 CFR 133.157.

"Part-skim spiced cheeses" means "part-skim spiced cheeses" as defined in 21 CFR 133.191.

"Pasteurization" or "pasteurized" means the process of heating every particle of milk, milk product, dairy product, or whey in equipment designed and operated in conformance with this chapter, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time for the equipment indicated:

Temperature	Time	Equipment
145°F*	30 minutes	Vat Pasteurization
161°F*	15 seconds	High Temperature Short Time
191°F	1.0 second	High Temperature Short Time
194°F	0.5 second	High Temperature Short Time
201°F	0.1 second	High Temperature Short Time
204°F	0.05 second	High Temperature Short Time
212°F	0.01 second	High Temperature Short Time

\*If: (i) the fat content of the milk, milk product, or dairy product is 10% or more; (ii) the milk, milk product, or dairy

product contains added sweeteners; (iii) the product is condensed milk; or (iv) the dairy product is a condensed milk product, then "pasteurization" means increasing the specified temperature by 5.0°F.

\*If the dairy product is cream for butter-making, then "pasteurization" means heating to at least 165°F and holding continuously in a vat pasteurizer for not less than 30 minutes or pasteurizing by the High Temperature Short Time method at a minimum temperature of not less than 185°F for not less than 15 seconds.

\*If the milk product is eggnog, then "pasteurization" means heating to at least the following temperatures for the corresponding time specifications:

Temperature	Time	Equipment
155°F	30 minutes	Vat Pasteurization
175°F	25 seconds	High Temperature Short Time
180°F	15 seconds	High Temperature Short Time

"Pasteurized blended cheese" means "pasteurized blended cheese" as defined in 21 CFR 133.167.

"Pasteurized blended cheese with fruits, vegetables, or meats" means "pasteurized blended cheese with fruits, vegetables, or meats" as defined in 21 CFR 133.168.

"Pasteurized cheese spread" means "pasteurized cheese spread" as defined in 21 CFR 133.175.

"Pasteurized cheese spread with fruits, vegetables, or meats" means "pasteurized cheese spread with fruits, vegetables, or meats" as defined in 21 CFR 133.176.

"Pasteurized neufchatel cheese spread with other foods" means "pasteurized neufchatel cheese spread with other foods" as defined in 21 CFR 133.178.

"Pasteurized process cheese" means "pasteurized process cheese" as defined in 21 CFR 133.169.

"Pasteurized process cheese food" means "pasteurized process cheese food" as defined in 21 CFR 133.173.

"Pasteurized process cheese food with fruits, vegetables, or meats" means "pasteurized process cheese food with fruits, vegetables, or meats" as defined in 21 CFR 133.174.

"Pasteurized process cheese spread" means "pasteurized process cheese spread" as defined in 21 CFR 133.179.

"Pasteurized process cheese spread with fruits, vegetables, or meats" means "pasteurized process cheese spread with fruits, vegetables, or meats" as defined in 21 CFR 133.180.

"Pasteurized process cheese with fruits, vegetables, or meats" means "pasteurized process cheese with fruits, vegetables, or meats" as defined in 21 CFR 133.170.

"Pasteurized process pimento cheese" means "pasteurized process pimento cheese" as defined in 21 CFR 133.171.

"Permit" means the written document issued by the Virginia Department of Agriculture and Consumer Services to the person who operates a (i) dairy farm producing milk for manufacturing purposes or (ii) dairy plant; after the Virginia Department of Agriculture and Consumer Services has inspected and approved the person's operation and determined the person's compliance with the provisions of this chapter.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, or institution.

"Pit" means any excavated or naturally occurring space below the surface of the ground.

"Plant" means any place, premises, or establishment where any milk or any dairy product is received or handled for processing or manufacturing or prepared for distribution.

"Process" means to produce, manufacture, handle, package, reprocess, repackage, or rework; and offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia.

"Producer" means any person who exercises control over the production of the milk delivered to a processing plant or receiving station, and who receives payment for this product.

"Producer/processor" means any person who manufactures dairy products on the dairy farm entirely from his own milk production, or from his own milk combined with milk from one or more other producers.

"Provolone cheese" means "provolone cheese" as defined in 21 CFR 133.181.

"Public" means any person who has the potential to be a consumer of a dairy product.

"Raw" means unpasteurized.

"Regulatory agency" means the Virginia Department of Agriculture and Consumer Services.

"Reprocess" means to obtain finished dairy products suitable for sale from unused finished dairy products previously manufactured, packaged, and made available for sale.

"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate the opportunity for any person or persons to hold a permit issued by the Virginia Department of Agriculture and Consumer Services to produce milk for manufacturing purposes or to operate a dairy plant.

"Rework" means to obtain finished dairy products suitable for sale from used, imperfect, or discarded dairy products or ingredients.

"Romano cheese" means "romano cheese" as defined in 21 CFR 133.183.

"Roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk" means "roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk" as defined in 21 CFR 133.184.

"Safe and suitable" means "safe and suitable" as defined in 21 CFR 130.3(d).

"Samsøe cheese" means "samsøe cheese" as defined in 21 CFR 133.185.

"Sanitizing treatment" means subjection of a clean surface to steam, hot water, hot air, or a sanitizing solution in compliance with 21 CFR 178.1010 for the destruction of most human pathogens and other vegetative microorganisms to a level considered safe for product production.

"Sap sago cheese" means "sap sago cheese" as defined in 21 CFR 133.186.

"Semisoft cheeses" means "semisoft cheeses" as defined in 21 CFR 133.187.

"Semisoft part-skim cheeses" means "semisoft part-skim cheeses" as defined in 21 CFR 133.188.

"Septage" means material accumulated in a pretreatment system or privy.

"Sewage" means water-carried and nonwater carried human excrement; kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Skim milk cheese for manufacturing" means "skim milk cheese for manufacturing" as defined in 21 CFR 133.189.

"Small-scale cheese plant" means any cheese plant that (i) pasteurizes milk for cheese production in one or more vat pasteurizers with a combined total processing capacity of not more than ~~fifty~~ 50 gallons of milk at one time; (ii) processes cheese from unpasteurized milk in lots not to exceed 200 gallons if the milk is from cows, buffalo, or water buffalo; or (iii) processes cheese from unpasteurized milk in lots not to exceed 50 gallons if the milk is from goats, sheep, or other mammals (except cows, buffalo, water buffalo, and humans).

"Soaked curd cheese" means "soaked curd cheese" as defined in 21 CFR 133.136.

"Soft ripened cheeses" means "soft ripened cheeses" as defined in 21 CFR 133.182.

"Spiced cheeses" means "spiced cheeses" as defined in 21 CFR 133.190.

"Spiced, flavored standardized cheeses" means "spiced, flavored standardized cheeses" as defined in 21 CFR 133.193.

"Standard methods" means Standard Methods for the Examination of Dairy Products, 17th Edition (2004), a publication of the American Public Health Association.

"Standardized cheeses and related products" means cheeses and related cheese products that have a specific standard of identity established under 21 CFR Part 133.

"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a permit issued by the Virginia Department of Agriculture and Consumer Services.

"Swiss and emmentaler cheese" means "swiss and emmentaler cheese" as defined in 21 CFR 133.195.

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"Swiss cheese for manufacturing" means "swiss cheese for manufacturing" as defined in 21 CFR 133.196.

"Uniform Methods and Rules; Bovine Tuberculosis Eradication-~~effective January 22, 1999~~ Effective January 1, 2005" means the minimum standards adopted for the maintenance of tuberculosis-free accredited herds of cattle, captive cervids, bison, and goats, and the maintenance of state status in the U.S. Department of Agriculture's tuberculosis eradication program and is available from ~~Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Maryland~~ U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Center Building, Hyattsville, Maryland 20782 or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240.

"Uniform Methods and Rules; Brucellosis Eradication-~~effective February 1, 1998~~ Effective October 1, 2003" means the minimum standards for certifying herds, classifying states and areas, and detecting, controlling, and eradicating brucellosis, as well as, minimum brucellosis requirements for the intrastate and interstate movement of cattle and bison adopted by the U.S. Department of Agriculture and is available from ~~Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Center Building, Hyattsville, Maryland~~ U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Center Building, Hyattsville, Maryland 20782 or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240.

"Washed curd cheese" means "washed curd cheese" as defined in 21 CFR 133.136.

"Washed curd cheese for manufacturing" means "washed curd cheese for manufacturing" as defined in 21 CFR 133.137.

"3-A Accepted Practices" means the accepted practices published by 3-A Sanitary Standards, Incorporated and indexed in the 3-A Sanitary Standards and 3-A Accepted Practices, effective on or before August 15, 2013.

~~"3-A Sanitary Standards" means the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association for Food Protection, the U.S. Public Health Service, and the Dairy Industry Committee and published by the International Association for Food Protection, effective as of on or November 20, 2004 published by 3-A Sanitary Standards, Incorporated and indexed in the 3-A Sanitary Standards and 3-A Accepted Practices, effective on or before August 15, 2013.~~

## **2VAC5-531-50. Permits.**

A. No person may produce, provide, sell, offer for sale, or store in the Commonwealth of Virginia, or bring, send, or receive into the Commonwealth of Virginia, any milk for manufacturing purposes unless the person possesses a permit from the Virginia Department of Agriculture and Consumer Services.

B. No person may produce, process, manufacture, handle, package, reprocess, repack, rework, offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia unless the person possesses a permit from the Virginia Department of Agriculture and Consumer Services. The requirement for a permit shall not apply to (i) any person's establishment where a manufactured dairy product is served or sold at retail, so long as the manufactured dairy product is not produced, manufactured, reprocessed or reworked at the establishment; (ii) any person who distributes and does not process manufactured dairy product; or (iii) any person producing manufactured dairy product outside the Commonwealth of Virginia.

C. The Virginia Department of Agriculture and Consumer Services may cancel, suspend, or revoke the permit of any person, or may deny to any person a permit if:

1. The permit holder fails to engage daily in the business for which the permit is issued;
2. The permit holder does not daily produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth of Virginia milk for manufacturing purposes or dairy product;
3. The permit holder fails to provide at no cost to the Virginia Department of Agriculture and Consumer Services samples of milk for manufacturing purposes or dairy product in the person's possession for testing by the Virginia Department of Agriculture and Consumer Services;
4. The permit holder fails to provide on a daily basis milk for manufacturing purposes or dairy product in the person's possession for sampling and testing by the Virginia Department of Agriculture and Consumer Services;
5. The permit holder fails to comply with any requirement of this chapter, or of §§ ~~3.1 420 through 3.1 424, §§ 3.1 530.1 through 3.1 530.10 or §§ 3.1 531.1 through 3.1 545.1~~ Article 1 (§ 3.2-5200 et seq.), Article 2 (§ 3.2-5206 et seq.), and Article 4 (§ 3.2-5218 et seq.) of Chapter 52 of Title 3.2 of the Code of Virginia;
6. A public health hazard exists that affects the permit holder's milk for manufacturing purposes or dairy product;
7. The permit holder or any agent of the permit holder has obstructed or interfered with the Virginia Department of Agriculture and Consumer Services in the performance of its duties;
8. The permit holder or any agent of the permit holder knowingly supplies false or misleading information to the

Virginia Department of Agriculture and Consumer Services: (i) in the permit holder's application for a permit; (ii) concerning the identity of the person or persons who will control the facility that is the subject of the permit; (iii) concerning the amount of milk for manufacturing purposes or dairy product which the permit holder produces, provides, manufactures, sells, offers for sale, or stores in the Commonwealth of Virginia, or brings, sends, or receives into the Commonwealth of Virginia and the distribution of the permit holder's milk for manufacturing purposes or dairy product; (iv) concerning any investigation conducted by the Virginia Department of Agriculture and Consumer Services; or (v) concerning the location of any part of the permit holder's operation that is subject to a permit;

9. The permit holder engages in fraudulent activity regarding: (i) the amount of milk for manufacturing purposes or dairy product the ~~person~~ permit holder offers to sell or sells; or (ii) the collection of samples of the ~~person's~~ permit holder's milk for manufacturing purposes or dairy product used to determine compliance with any provision of this chapter or as a basis for payment for milk for manufacturing purposes or dairy product.

10. Three of the most recent five bacteria counts, somatic cell counts, or cooling temperature determinations conducted on the permit holder's raw milk for manufacturing purposes exceed the standards specified in this chapter;

11. Three of the most recent five bacteria counts, coliform determinations, or cooling temperature determinations conducted on the permit holder's milk for manufacturing purposes or dairy product exceed the standards specified in this chapter;

~~12. Two of the most recent cryoscope tests conducted on the permit holder's milk for manufacturing purposes exceed the standards specified in this chapter and the most recent violative sample occurred within two years after the next most recent violative sample;~~

~~13.~~ 12. The most recent drug residue test on the permit holder's milk for manufacturing purposes or dairy product violates the standard specified in this chapter;

~~14.~~ 13. The most recent phosphatase test on the permit holder's dairy product violates the standard specified in this chapter;

~~15.~~ 14. The most recent chemical residue test or pesticide residue test on the permit holder's milk for manufacturing purposes or dairy product exceeds the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Parts

180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589, the tolerance level shall be deemed to be zero;

~~16.~~ 15. The permit holder fails to correct any deficiency that the Virginia Department of Agriculture and Consumer Services has cited in a written notice of intent to suspend the ~~person's~~ permit holder's permit, as a violation of this chapter;

~~17.~~ 16. The permit holder's raw milk for manufacturing purposes is warmer than 50°F two hours after the completion of the first milking or the permit holder's raw milk for manufacturing purposes is warmer than 50°F during or after any subsequent milking;

~~18.~~ 17. The dairy farm permit holder's raw milk for manufacturing purposes is older than 76 hours;

~~19.~~ 18. The permit holder's equipment is covered or partially covered by an accumulation of milk solids, ~~milk fat~~ milkfat, or other residue;

~~20.~~ 19. The permit holder sells or offers for sale milk for manufacturing purposes or dairy product which violates any requirement of this chapter;

~~21.~~ 20. The permit holder's permit is suspended three times within a 12-month period for violation of the bacteria, coliform, cooling temperature, somatic cell, ~~eryoscope~~, drug residue, maximum length of time for milk storage on the farm, phosphatase, chemical residue, pesticide residue standards, or other requirements specified in this chapter;

~~22.~~ 21. The authority in another state responsible for issuing permits has denied, suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth of Virginia;

~~23.~~ 22. The Virginia Department of Agriculture and Consumer Services has previously revoked the person's permit to produce, provide, sell, offer for sale, or store in the Commonwealth of Virginia, or bring, send, or receive into the Commonwealth of Virginia, any milk for manufacturing purposes;

~~24.~~ 23. The Virginia Department of Agriculture and Consumer Services has previously revoked the person's permit to produce, process, manufacture, handle, package, reprocess, repackage, or rework, and offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia;

~~25.~~ 24. The most recent coliform count on the permit holder's cheese violates the standard specified in this chapter; and

~~26.~~ 25. The most recent Staphylococcus aureus count on the permit holder's cheese violates the standard specified in this chapter.

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D. The Virginia Department of Agriculture and Consumer Services may summarily suspend a permit for violation of any of the following subdivisions of subsection C of this section: 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, ~~20, 21~~ 24, ~~or 25, or 26~~.

E. The Virginia Department of Agriculture and Consumer Services may suspend from sale any dairy product in violation of the requirements of this chapter processed by any dairy plant permit holder in lieu of suspending the dairy plant permit holder's permit.

F. If the Virginia Department of Agriculture and Consumer Services suspends a permit holder's permit more than three times within any 12-month period, the permit holder's permit shall not be reinstated for a period of three days on the fourth suspension within any 12-month period and six days on the fifth suspension within any 12-month period with three days being added to the required suspension period for each additional suspension thereafter.

G. If the Virginia Department of Agriculture and Consumer Services issues two written notices of intent to suspend a person's permit for failure to correct the same deficiency within any 12-month period, the Virginia Department of Agriculture and Consumer Services may issue and enforce a third written notice of intent to summarily suspend the person's permit at anytime within six months from the date of the third written notice if the same deficiency is found to exist on any inspection during the six months specified in the third written notice.

H. No permit holder may transfer any permit to another person or another location and no permit holder who has had their permit revoked by the Virginia Department of Agriculture and Consumer Services shall be eligible to hold a permit to produce milk for manufacturing purposes or a permit to operate a dairy plant at any time after the permit holder's permit is revoked.

## I. Inspection of dairy farms and dairy plants.

1. No person who operates a dairy farm or dairy plant within the Commonwealth of Virginia may hold a permit until the dairy farm or dairy plant has been inspected and approved by the Virginia Department of Agriculture and Consumer Services;

2. Pasteurization equipment may be inspected and tested by any person who has demonstrated the knowledge, skills, and abilities to perform pasteurization inspections and been approved by the Virginia Department of Agriculture and Consumer Services to conduct inspections of vat pasteurizers or high temperature short time pasteurizers or both vat pasteurizers and high temperature short time pasteurizers. The Virginia Department of Agriculture and Consumer Services shall issue to all persons approved to inspect pasteurization equipment a letter of certification which shall expire 12 months from the date of issue unless renewed. The Virginia Department of Agriculture and Consumer Services may suspend the certification of any

person who has been approved to inspect pasteurization equipment if the person fails to conduct the inspections and tests in accordance with the department's established policy and procedures for inspection of pasteurization equipment.

## J. The examination of milk and dairy products.

1. The Virginia Department of Agriculture and Consumer Services shall collect during any consecutive six months at least four samples of raw milk for manufacturing purposes from each dairy farm that holds a permit, collected in at least four different months, except when three months show a month containing two sampling dates separated by at least 20 days. In the event the milk from a permitted dairy farm is picked up and delivered to a dairy plant which is located outside the Commonwealth of Virginia more than three times in any calendar month, the permit holder's milk marketing cooperative, broker, or person purchasing the permit holder's milk, shall be responsible to ensure the appropriate number of samples and tests are performed in Interstate Milk Shipper approved laboratories and to supply the following information for each permit holder's milk samples to the Virginia Department of Agriculture and Consumer Services at no cost:

- a. The name of the producer;
- b. The patron number of the producer;
- c. The name of the sampling operator;
- d. The name of the person who collected the sample;
- e. The location where the sample was received;
- f. The date the sample was received;
- g. The date, time, and temperature of the sample at time of collection;
- h. The name of the test performed for each test result;
- i. The reported laboratory result for each test performed; and
- j. The name and address of the laboratory performing the testing.

2. The Virginia Department of Agriculture and Consumer Services shall collect samples of raw milk for manufacturing purposes for testing and analysis from each dairy farm holding a permit as it deems necessary.

3. The Virginia Department of Agriculture and Consumer Services shall collect samples of processed dairy products and ingredients for testing and analysis from each dairy plant holding a permit as it deems necessary.

K. Each permit holder operating a dairy plant shall develop a recall plan that when implemented will effectively carry out his responsibility to protect the public health and well-being from milk and dairy products that present a risk of illness, injury, gross deception, or are otherwise defective. Each permit holder operating a dairy plant shall submit his recall plan for approval to the Virginia Department of Agriculture and Consumer Services ~~by May 27, 2005, and~~ prior to the issuance of any dairy plant permit ~~thereafter~~. The Virginia

Department of Agriculture and Consumer Services shall review and approve the recall plan or require the recall plan to be modified by the permit holder operating a dairy plant. Each approved recall plan shall be reviewed annually and whenever new products are introduced by the permit holder operating a dairy plant. Each permit holder operating a dairy plant shall modify his recall plan based on his review and forward the revised plan to the Virginia Department of Agriculture and Consumer Services for approval within 60 days after the completion of any review that requires the recall plan to be modified. Each recall plan shall include provisions to provide the following information to the Virginia Department of Agriculture and Consumer Services:

1. Identity of the product involved;
2. Reason for the recall and the date and circumstances under which the product deficiency or possible deficiency was discovered;
3. Evaluation of the risk associated with the deficiency or possible deficiency;
4. Total amount of identified products produced and the time span of the production;
5. Total amount of identified products estimated to be in distribution channels;
6. Distribution information, including the number and identity of each person dairy products are sold to;
7. Draft copy of the permit holder's proposed recall communication;
8. Proposed strategy for conducting the recall; and
9. Name and telephone number of the permit holder's representative who should be contacted concerning the recall.

L. Each permit holder operating a dairy plant shall promptly notify each of its affected direct accounts about the recall and shall prepare the recall communication to:

1. Identify clearly the product, size, lot number(s), code(s) or serial number(s) and any other descriptive information to enable accurate and immediate identification of the product;
2. Explain concisely the reason for the recall and the hazard involved, if any;
3. Provide specific instructions on what should be done with respect to the recalled product;
4. Provide a ready means for the recipient of the communication to report to the recalling firm whether it has any of the product;
5. State that further distribution or use of any remaining product should cease immediately; and
6. Where appropriate, state that the direct account should in turn notify its customers who received the product about the recall.

M. Each permit holder operating a dairy plant shall provide to the Virginia Department of Agriculture and Consumer Services recall status reports as requested by the Virginia Department of Agriculture and Consumer Services until the recall is terminated. Each permit holder operating a dairy plant shall include in each recall status report the following information:

1. Number of consignees notified of the recall, and date and method of notification;
2. Number of consignees responding to the recall communication and quantity of products on hand at the time ~~the recall communication~~ the recall communication was received;
3. Number and identity of consignees that did not respond to the recall communication;
4. Number of products returned or corrected by each consignee contacted and the quantity of products accounted for;
5. Number and results of effectiveness checks that were made; and
6. Estimated time frames for completion of the recall.

N. Each permit holder operating a dairy plant shall implement his recall plan within eight hours after receipt of written notification to do so by the Virginia Department of Agriculture and Consumer Services. In the event that the permit holder operating a dairy plant fails to implement his recall plan within eight hours after being notified to do so by the Virginia Department of Agriculture and Consumer Services, the department may prepare and issue the recall communication.

O. Drug residue monitoring and farm surveillance.

1. Each permit holder operating a dairy plant shall:

a. Test all milk that the plant receives for residues of beta lactam drugs using a test from Beta Lactam and Other Test Methods for Use Under Appendix N and Section 6 of the Grade "A" Pasteurized Milk Ordinance prior to processing any of the milk. Each permit holder shall test each bulk milk shipment using a sample collected from each tank truck after its arrival at the plant and prior to any further commingling. Each permit holder shall test each compartment from tank trucks with more than one compartment separately. Each permit holder shall test milk in cans using a sample formed separately at the receiving plant for each can milk producer included in the delivery, and the milk sample shall be representative of all milk received from each producer. Each permit holder operating a dairy plant which is classified as a producer/processor shall test for residues of beta lactam drugs in all milk that the dairy plant produces or receives for processing according to the requirements for sampling and testing bulk milk shipments and milk in cans stated in this subdivision;

b. Test each shipment of milk received for processing by screening test methods which have been Association of

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Official Analytical Chemists-(AOAC)-reviewed and Food and Drug Administration-(FDA)-accepted. In the event there are no AOAC reviewed and FDA accepted screening test methods for cow's milk, goat's milk, sheep's milk, water buffalo's milk, or milk from other mammals, the permit holder shall test for residues of beta lactam drugs with a screening test kit approved by the Virginia Department of Agriculture and Consumer Services. In lieu of any test specified in this subdivision Q 1 b of this subsection a permit holder may use AOAC first-action and AOAC final-action tests methods. Nothing in this subdivision Q 1 b of this subsection shall be deemed to include individual raw milk samples collected from each dairy farm included in any shipment of bulk tank raw milk for processing if the shipment of bulk tank raw milk for processing tests negative for animal drug residues;

c. Implement a random-sampling program when the commissioner of the FDA determines that a potential problem exists with animal drug residues or other contaminants in the milk supply. Each permit holder operating a dairy plant shall analyze the samples for the contaminant by a method determined by FDA to be effective in determining compliance with actionable levels or established tolerances. Each permit holder operating a dairy plant shall continue the random-sampling program until such time that the commissioner of the FDA is reasonably assured that the problem has been corrected. The sampling program shall represent and include during any consecutive six months, at least four samples collected in at least four separate months;

d. Retain each sample found to be positive for drug residues for a period of 120 hours after the sample test result is positive for drug residues for the use of the Virginia Department of Agriculture and Consumer Services unless directed otherwise by a representative of the Virginia Department of Agriculture and Consumer Services;

e. Abstain from selling or offering for sale any dairy product processed from milk received before results of drug screening tests are available and from milk which later tests positive for drug residues. All the permit holder's milk commingled with any milk which tests positive for drug residues shall be deemed adulterated. Each permit holder operating a dairy plant shall report to the Virginia Department of Agriculture and Consumer Services instances of adulteration within one hour after testing reveals the milk is adulterated with animal drug residues;

f. Record the results of tests on samples of raw milk and retain such records for a period of 12 months, report records of all results of tests on samples of raw milk to the Virginia Department of Agriculture and Consumer Services by the fifteenth day of each month for the

preceding month, and maintain and make available to the Virginia Department of Agriculture and Consumer Services for inspection and review at the permitted facility records of results of tests on samples of raw milk. Each record of results of tests on samples of raw milk required by this subdivision shall include:

(1) The analyst's signature, date, time, and place where the test was performed;

(2) The registration identification of each pickup tanker of bulk raw milk or raw milk sampled;

(3) The test method used;

(4) The Interstate Milk Shipper Bulk Tank Unit identification number for each Grade A milk supply included on each pickup tanker of bulk raw milk tested if the milk is Grade A; and

(5) A statement whether the test results were positive or negative. If the results were positive, the permit holder shall also record:

(a) The identity of each producer contributing to the load from which the positive sample of raw milk was taken;

(b) The name of the person notified at the Virginia Department of Agriculture and Consumer Services of the positive test results;

(c) The date and time of day the person at the Virginia Department of Agriculture and Consumer Services was notified of the positive test results; and

(d) The method of notification of the Virginia Department of Agriculture and Consumer Services;

g. Immediately notify the Virginia Department of Agriculture and Consumer Services of any shipment of milk for processing when the shipment of milk is found to be positive for drug residues;

h. Test each producer sample of milk using a test from Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back to determine the farm of origin, represented by each sample of milk which tests positive for drug residues, and immediately report to the Virginia Department of Agriculture and Consumer Services the result of each producer sample representing the raw milk for manufacturing purposes found to be positive for drug residues;

i. Provide by facsimile machine or email to the Virginia Department of Agriculture and Consumer Services copies of load manifests, producer weight tickets, laboratory worksheets where the results of laboratory tests are originally recorded, and records from electronic readers documenting the results for samples tested for all positive loads; and

j. Immediately discontinue receiving shipments of raw milk from the permit holder whose milk tests positive for drug residues until subsequent tests approved by the

Virginia Department of Agriculture and Consumer Services are no longer positive for drug residues;

2. Each permit holder whose milk tests positive for drug residues shall dispose of such milk in a manner that removes it from the human food chain or in any manner approved by the Food and Drug Administration; and

3. Each permit holder operating a dairy plant that receives any milk that could require load confirmation or producer traceback as a result of a positive animal drug residue on a load of milk delivered at the plant shall provide to the Virginia Department of Agriculture and Consumer Services results of animal drug-residue tests from an officially designated laboratory. Each officially designated laboratory shall be listed in the IMS List—Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples. All laboratory results from officially designated laboratories shall be reported to the Virginia Department of Agriculture and Consumer Services within six hours of the initial presumptive positive result at the plant. ~~Existing dairy plants holding permits on January 26, 2005, shall have until July 26, 2005, to comply with the requirement of this section.~~

P. Each officially designated laboratory shall comply with the requirements for certification and listing contained in the Evaluation of Milk Laboratories, ~~1995~~ 2011 revision.

Q. Each permit holder who operates a dairy plant and each person who distributes dairy products shall furnish the Virginia Department of Agriculture and Consumer Services upon request:

1. A statement of the quantities of milk and dairy products purchased or sold by the dairy plant or distributor; and
2. A list of all sources from which the dairy plant or distributor received any milk or dairy product.

R. No person holding a permit to produce milk for manufacturing purposes may operate a dairy farm that receives on the dairy farm raw or untreated sewage or septage from any source.

S. No person holding a permit to produce milk for manufacturing purposes shall feed their lactating cows, goats, sheep, water buffalo, or other mammals any unprocessed poultry litter or other unprocessed body discharges from any animal.

T. No person holding a permit to produce milk for manufacturing purposes may place or hold in his milk storage tank any milk except that milk that was obtained from cows, goats, sheep, water buffalo, or other mammals milked at the permit holder's dairy farm; any milk that did not enter the milk storage tank through the milking and milk-handling equipment on the permit holder's dairy farm during the milking of the permit holder's cows, goats, sheep, water buffalo or other mammals; any milk that has been held

without refrigeration; or any milk that has been exposed to chemical or physical contamination.

U. No person holding a permit to produce milk for manufacturing purposes may provide their milking cows, goats, sheep, water buffalo, or other mammals any feed separately or in combination that contains an aflatoxin residue greater than 20 parts per billion.

V. No person holding a permit to produce milk for manufacturing purposes may sell or offer for sale any milk for manufacturing purposes if it contains an aflatoxin residue equal to or greater than 0.50 parts per billion.

W. No person may hold a permit to produce milk for manufacturing purposes if any part of their facilities, equipment, storage, or processing area (except toilet rooms), requiring inspection is accessed through any room used for domestic purposes or part of any room used for domestic purposes. Toilet rooms used for domestic purposes shall be approved as complying with the requirements of this chapter only if (i) the toilet room is located within 300 feet of the milking barn, milking parlor, or milk room and (ii) all labor utilized in the milkroom, milking parlor or milking barn, and animal housing areas is provided by members of the permit holder's immediate family.

X. No person may hold a permit to produce, process, manufacture, handle, package, reprocess, repackage, or rework, and offer for sale or sell any manufactured dairy product in the Commonwealth of Virginia if any part of his facilities, equipment, storage, or processing area (except toilet rooms), requiring inspection is accessed through any room used for domestic purposes or part of any room used for domestic purposes. Toilet rooms used for domestic purposes shall be approved as complying with the requirements of this chapter only if (i) the toilet room is located within 300 feet of the processing facilities and (ii) all labor utilized in the processing facilities is provided by members of the permit holder's immediate family.

Y. Each person who holds a permit to produce milk for manufacturing purposes or a permit to operate a dairy plant and who freezes and stores any milk for use in the production of any dairy product shall:

1. Cool each day's morning milking to 40°F or cooler, without freezing, within two hours after milking;
2. Abstain from freezing each day's morning milking until completion of the same day's evening milking;
3. Freeze the milk from each milking or each day separately, in single-use, food-grade, plastic bags or other suitable food grade disposable containers;
4. Identify each single-use, food-grade, plastic bag or other suitable food-grade disposable container containing any frozen milk with the date it was produced, the number of milkings, the number of containers in the lot, the permit number of the dairy farm or dairy plant, and the name of the person who packaged and froze the milk;

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5. Cool and store all frozen containers of milk at a temperature of 0°F or below until ready for use;
6. Thaw each container of frozen milk prior to use in a refrigerator adjusted to a maximum temperature of 40°F or thaw each container of frozen milk within two hours using a cool water bath;
7. Abstain from re-using any single-use, food grade, plastic bag or other suitable food-grade disposable container; and
8. Protect from contamination the frozen milk in each single-use, food-grade, plastic bag or other suitable food-grade disposable container during the thawing process.

## **2VAC5-531-70. Standards for milk and dairy products.**

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth of Virginia, or, bring, send, or receive into the Commonwealth of Virginia, any milk for manufacturing purposes or dairy products which do not comply with the following:

1. Milk for manufacturing purposes and dairy products shall be produced and processed to conform with the chemical, bacteriological, somatic cell, ~~eryoscope~~, maximum length of time for milk storage on the farm, and temperature standards as identified in this section, and with the requirements of this chapter;
2. No process or manipulation other than pasteurization or processing methods integral with pasteurization and refrigeration may be applied to milk for manufacturing purposes or dairy products for the purpose of removing or deactivating microorganisms unless alternative procedures to pasteurization are approved in writing by the FDA and the Virginia Department of Agriculture and Consumer Services;
3. Milk for manufacturing purposes shall comply with the following standards:
  - a. The temperature of milk for manufacturing purposes shall be cooled to 40°F or cooler, but not frozen, within two hours after milking and the temperature after the first or any subsequent milking shall not be warmer than 50°F;
  - b. The bacteria count of milk for manufacturing purposes shall not exceed 500,000 bacteria per milliliter prior to commingling with any other milk, and the bacteria count of milk that is commingled shall not exceed 1,000,000 bacteria per milliliter prior to pasteurization;
  - c. Milk for manufacturing purposes shall freeze at or below -0.530° Hortvet;
  - d. Milk for manufacturing purposes shall test negative for animal drug residues by any method evaluated by the FDA and found acceptable for detecting drug residues in raw milk at current safe or tolerance levels and shall have no positive drug residues by detection methods reported to the Virginia Department of Agriculture and Consumer Services by dairy plants;

e. The somatic cell count of unpasteurized cow's milk, sheep's milk, water buffalo's milk, or the milk from other mammals intended for human consumption, except goat's milk, shall not exceed 750,000 somatic cells per milliliter. The somatic cell count of raw goat's milk shall not exceed 1,000,000 somatic cells per milliliter;

f. Raw cow's milk, goat's milk, sheep's milk, water buffalo's milk, or the milk from other mammals intended for human consumption shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, or 589, the tolerance level shall be deemed to be zero; and

g. The maximum length of time any milk for manufacturing purposes may be stored on the farm prior to processing or pickup for delivery to a processing plant shall not exceed 76 hours from the end of the first milking to the time of pickup or the start of processing. Milk for manufacturing purposes that is older than 76 hours shall be deemed to be a public health hazard and shall not be offered for sale or sold;

4. Dairy products in final package form for direct human consumption shall comply with the following standards:

a. All dairy products in final package form for direct human consumption shall:

- (1) Have been pasteurized in accordance with the requirements of this chapter;
- (2) Have been made from dairy ingredients (milk or dairy products) that have all been pasteurized in accordance with the requirements of this chapter; or
- (3) In the case of cheese, the cheese has been aged above 35°F for a minimum of 60 days or the minimum number of days specified under the standards of identity for the specific variety of cheese;

b. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by (i) any phosphatase test method prescribed in the Official Methods of Analysis of AOAC International, ~~17th~~ 19th Edition, ~~Revision 1~~ ~~(2002)~~ (2012) published by the Association of Official Analytical Chemists; (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services. A phenol value greater than the maximum specified for the particular

product shall mean that the product was not properly pasteurized. A phenol value less than the maximum specified for the particular product shall not be interpreted to mean that the product was properly pasteurized, unless there is evidence of proper pasteurization equipment in conformance with this chapter and records to determine an adequate pasteurization process has been completed;

c. Dairy products shall test negative for animal drug residues by any method which has been evaluated by the FDA and found acceptable for detecting drug residues in raw milk, pasteurized milk, or dairy products in final package form intended for human consumption at current safe or tolerance levels;

d. Dairy products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Parts 180, 185, or 186 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 564, 570, 573, 589, the tolerance level shall be deemed to be zero; and

e. Dairy products shall contain no detectable level of pathogenic organisms or more than 4.6 Escherichia coli organisms per gram of dairy product; and

5. Cheese and cheese products shall comply with the following:

a. The coliform count for any cheese or cheese product made from pasteurized milk shall not exceed 100 coliform organisms per gram;

b. The coliform count for any cheese or cheese product made from unpasteurized milk shall not exceed 500 coliform organisms per gram;

c. The Staphylococcus aureus count for any cheese or cheese product made from pasteurized milk shall not exceed 100 Staphylococcus aureus organisms per gram; and

d. The Staphylococcus aureus count for any cheese or cheese product made from unpasteurized milk shall not exceed 1,000 Staphylococcus aureus organisms per gram.

B. Sanitation requirements to produce milk for manufacturing purposes. ~~1.~~ Each person who holds a permit to produce milk for manufacturing purposes shall comply with the following:

~~a.~~ 1. Abnormal milk. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Milk his cows, goats, sheep, water buffalo, or other mammals which show evidence of the secretion of abnormal milk from one or more mammary glands

(based upon bacteriological, chemical, or physical examination) last or with separate equipment and discard those lacteal secretions;

~~(2)~~ b. Milk his cows, goats, sheep, water buffalo, or other mammals treated with, or which have consumed, chemical, medicinal, or radioactive agents which are capable of being secreted by the mammary gland and which may be deleterious to human health last or with separate equipment and discard those lacteal secretions in a manner which will not pollute the environment or any human food.

~~b.~~ 2. Milking barn, stable, or parlor-construction. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Provide on the person's dairy farm a milking barn, stable, or parlor in which the animals being milked shall be housed during milking time; and

~~(2)~~ b. Provide on the permit holder's dairy farm a milking barn, stable, or parlor which shall:

~~(a)~~ (1) Have floors constructed of concrete or equally impervious material;

~~(b)~~ (2) Have walls and a ceiling which are smooth, painted, or finished in an approved manner, and in good repair and have a ceiling which is dust tight;

~~(c)~~ (3) Have separate stalls or pens for horses, calves, bulls, kids, bucks, rams, and lambs;

~~(d)~~ (4) Have natural and artificial light, well distributed for day or night milking;

~~(e)~~ (5) Have sufficient air space and air circulation to prevent condensation and excessive odors; and

~~(f)~~ (6) Not be overcrowded.

~~e.~~ 3. Milking barn, stable, or parlor-cleanliness. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Keep the interior of the milking barn, stable, or parlor clean;

~~(2)~~ b. Keep the floors, walls, windows, pipelines, and equipment in the milking barn, stable, or parlor free of filth or litter and clean;

~~(3)~~ c. Keep swine and fowl out of the milking barn, stable, and parlor;

~~(4)~~ d. Use only milk stools that are not padded and are constructed to be easily cleaned; and

~~(5)~~ e. Keep surcingles, milk stools, and antikickers clean and stored above the floor.

~~d.~~ 4. Cow yard, goat yard, sheep yard, water buffalo yard, or yard for other mammals. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Provide and maintain the cow yard, goat yard, sheep yard, water buffalo yard, or yard for other mammals, to be graded and drained, and to have no

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standing pools of water or accumulations of organic wastes;

(2) b. In the cow loafing, goat loafing, sheep loafing, water buffalo loafing, loafing area for other mammals, cattle-housing, sheep-housing, goat-housing, water buffalo-housing or area of housing for other mammals remove cow droppings, sheep droppings, goat droppings, water buffalo droppings, other ~~mammals~~ mammal droppings and remove soiled bedding or add clean bedding at sufficiently frequent intervals to prevent the soiling of the cow's, sheep's, goat's, water buffalo's or other ~~mammals'~~ mammal's udders and flanks;

(3) c. Ensure that waste feed does not accumulate in the goat yard, cow yard, sheep yard, water buffalo yard, yard for other mammals, cow loafing, sheep loafing, goat loafing, water buffalo loafing, loafing area for other mammals, cattle-housing, sheep-housing, goat-housing, water buffalo-housing or housing for other mammals area;

(4) d. Maintain any manure packs to be properly drained and to provide a reasonably firm footing; and

(5) e. Keep swine and fowl out of the cow yard, sheep yard, goat yard, water buffalo yard, yard for other mammals, cow loafing, sheep loafing, goat loafing, water buffalo loafing, loafing area for other mammals, cattle-housing, sheep-housing, goat-housing area, water buffalo-housing, or other mammal-housing area.

e. 5. Milkhouse or milkroom construction and facilities. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) a. Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted. ~~Existing farms producing and shipping milk for manufacturing purposes on July 1, 2001, shall be exempt from the requirement of this subdivision to provide a separate milkhouse or milkroom from their milking barn, stable, or parlor until July 1, 2006, or until the first permit issued after January 26, 2005, on each of these existing farms is canceled or revoked;~~

(2) b. Provide a milkhouse with a smooth floor, constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

(3) c. Dispose of in a sanitary manner all liquid waste generated in the milkhouse;

(4) d. Provide one or more floor drains in the milkhouse, which shall be accessible, and trapped if connected to a sanitary sewer system;

(5) e. Provide in the milkhouse walls and ceilings constructed of a smooth material, in good repair, well painted, or finished in an equally suitable manner;

(6) f. Provide adequate natural or artificial light and ventilation in the milkhouse;

(7) g. Use the milkhouse for no other purpose than milkhouse operations;

(8) h. Provide no direct opening from the milkhouse into any barn, stable, or into any room used for domestic purposes, other than a direct opening between the milkhouse and milking barn, stable, or parlor provided with a tight-fitting, self-closing, solid door, provided the door has been hinged to be single or double acting;

(9) i. Provide in the milkhouse water under pressure which has been piped into the milkhouse;

(10) j. Provide in the milkhouse a two-compartment wash vat and adequate hot water heating facilities;

(11) k. Provide a suitable shelter for the receipt of milk when the permit holder uses a transportation tank for the cooling and storage of milk on the permit holder's dairy farm, provided that the shelter shall be adjacent to, but not a part of, the milkroom, and shall comply with the requirements of the milkroom with respect to construction, light, drainage, insect and rodent control, and general maintenance;

(12) l. Locate the permit holder's farm bulk tank in the milkhouse or milkroom so that all areas are accessible for cleaning and servicing. The farm bulk tank shall not be located over a floor drain or under a ventilator; and

(13) m. Provide a platform or slab of sufficient size, constructed of concrete or other impervious material outside the milkhouse, properly centered under a suitable hoseport opening in the wall for making connections between the bulk milk tank and the pick-up truck. The opening of the hoseport shall be fitted with a tight, self-closing door. The driveway leading to and from the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading outside the milkhouse or milkroom.

f. 6. Milkhouse or milkroom cleanliness. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) a. Keep clean the floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, equipment, and other milkroom equipment in the milkroom;

(2) b. Place in the milkroom only those articles directly related to milkroom activities; and

(3) c. Keep the milkroom free of trash, animals, insects, and fowl.

g. 7. Toilets. Each person who holds a permit to produce raw milk for manufacturing purposes shall:

(1) a. Provide on the person's dairy farm one or more toilets, which shall be conveniently located, properly

constructed and operated, and maintained in a sanitary manner;

(2) b. Prevent the access of flies to the waste contained in or from the toilet;

(3) c. Prevent the waste contained in or from the toilet from polluting the soil surface or contaminating any water supply; and

(4) d. Assure that there is no direct opening from the toilet into any milkroom.

h. 8. Water supply. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) a. Provide water for milkhouse and milking operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, and of a safe, sanitary quality, and meet the construction standards of Appendix D of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision;

(2) Ensure that any well casing which is part of a water supply that provides water for any milkhouse or milking operation is not located closer to any source of contamination which may contaminate the water supply than is specified as follows:

(a) No permit holder may locate a well casing closer than 10 feet to a pit;

(b) No permit holder may locate a well casing closer than 10 feet to any sewer pipe, floor drain, or other pipe which may back up;

(c) No permit holder may locate a well casing closer than 50 feet to any above ground gas, oil, petroleum, or chemical storage tank;

(d) No permit holder may locate a well casing closer than 50 feet to any accumulated animal manure or allow any animal manure closer than 50 feet to a well casing;

(e) No permit holder may locate a well casing closer than 50 feet to any area to which livestock has access; or animal holding area, feedlot, or loafing area on dirt;

(f) No permit holder may locate a well casing closer than 50 feet to any pit not drained to the surface of the ground. Nothing in this requirement shall apply to a residential basement;

(g) From and after January 26, 2005, no permit holder may locate a well casing closer than 100 feet to any pit privy. Existing well casings located on farms producing and shipping milk for manufacturing purposes on July 1, 2001, shall be exempt from the 100 foot distance requirement of this subdivision until July 1, 2006, or until the first permit issued after January 26, 2005, on each of these existing farms is canceled or revoked;

(h) No permit holder may locate a well casing closer than 100 feet to any animal manure disposal area;

(i) No permit holder may locate a well casing closer than 100 feet to any cess pool;

~~(j) No permit holder may locate a well casing closer than 100 feet to any dry well;~~

~~(k) No permit holder may locate a well casing closer than 100 feet to any structure that stores animal manure;~~

~~(l) No permit holder may locate a well casing closer than 100 feet to any septic tank or drain field; and~~

~~(m) No permit holder may locate a well casing closer than 100 feet to any underground or partially buried gas, oil, petroleum, or chemical storage tank;~~

~~(3) Construct the water supply so that the well casing terminates at least two feet above the highest known flood plane for the location in which the water supply is located; and~~

~~(4) Construct the water supply so that no potable water supply pipe attached to the water supply is located closer than 10 feet measured horizontally to any sewer pipe, soil pipe, or drain.~~

b. Construct the water supply so that no cross connections between a safe water supply and any unsafe or questionable water supply or other source of pollution exists; and

c. Construct the water supply so that no submerged inlets exist through which a safe water supply may be contaminated.

i. 9. Utensils and equipment-construction. Each person who holds a permit to produce milk for manufacturing purposes shall:

(1) a. Provide multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk, which multiuse containers, equipment, and utensils; shall be made of smooth, nonabsorbent, corrosion-resistant, and nontoxic materials; constructed to be easily cleaned; and in good repair;

(2) b. Provide new or replacement multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk which comply with all applicable 3-A Sanitary Standards and 3-A Accepted Practices;

(3) c. Provide and use only new or replacement can lids of the umbrella type;

(4) d. Provide milk pails which are constructed to be seamless and of the hooded type if the permit holder does hand milking and stripping;

(5) e. Abstain from using ~~multiple use~~ multiuse woven material for straining any milk;

(6) f. Use only single-service articles which have been manufactured, packaged, transported, stored, and handled in a sanitary manner;

(7) g. Abstain from reusing any article intended for single-service use;

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~~(8)~~ h. Install and use only farm bulk tanks that meet all the requirements of 3-A Sanitary Standards for Farm Milk Cooling and Storage Systems<sub>2</sub>, Farm Milk Storage Tanks<sub>2</sub>, and 3-A Sanitary Accepted Practices for Farm Milk Cooling and Storage Systems;

~~(9)~~ i. Install and use only sanitary piping that complies with all the requirements of 3-A Accepted Practices for Design, Fabrication, and Installation of Milking and Milk Handling Equipment; and

~~(10)~~ j. Provide and use only transportation tanks which comply with all of the requirements of 3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Product Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service;

~~j.~~ 10. Utensils and equipment; cleaning. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Clean after each use the product-contact surfaces of all multiuse containers, multiuse equipment, and multiuse utensils used in the handling, storage, or transportation of any milk; and

~~(2)~~ b. Abstain from selling or offering for sale milk which has passed through any equipment, if the milk-contact surfaces of the equipment are no longer visible, or are covered or partially covered by an accumulation of milk solids, ~~milk-fat~~ milkfat, cleaning compounds, or other soils. Any milk which passes through equipment, the milk-contact surfaces of which are no longer visible or are covered or partially covered by an accumulation of milk solids, ~~milk-fat~~ milkfat, cleaning compounds, or other soils, shall be deemed adulterated.

~~k.~~ 11. Utensils and equipment; sanitization. Each person who holds a permit to produce milk for manufacturing purposes shall sanitize before each use the product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of any milk.

~~l.~~ 12. Utensils and equipment; storage. Each person who holds a permit to produce milk for manufacturing purposes shall store containers, utensils, and equipment used in the handling, storage, or transportation of any milk in a sanitizing solution, or store the containers, utensils, and equipment used in the handling, storage, or transportation of any milk to ensure complete drainage and protection from contamination prior to use. Nothing in this subdivision shall be deemed to prohibit a permit holder from storing in a milking barn or milking parlor a milk pipeline or the following pipeline milking equipment: milker claw, inflation, weigh jar, meter, milk hose, milk receiver, tubular cooler, plate cooler, or milk pump; if the milk pipeline and pipeline milking equipment specified in this subdivision is designed for mechanical cleaning; and designed, installed, and operated to protect the milk, dairy product and solution-contact surfaces from contamination at all times.

~~m.~~ 13. Milking; flanks, udders, and teats. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Milk all cows, goats, sheep, water buffalo, or other mammals in a milking barn, stable, or parlor;

~~(2)~~ b. Trim the hair from the udder and tail of all milking cows, goats, sheep, water buffalo, or other mammals to facilitate cleaning of the udder and tail;

~~(3)~~ c. Keep the flanks, udders, bellies, and tails of all milking cows, goats, sheep, water buffalo, or other mammals free of visible dirt;

~~(4)~~ d. Keep the hair on the udders of all milking cows, goats, sheep, water buffalo, or other mammals to a length that the hair on the udder of any cow, goat, sheep, water buffalo, or other mammal can not be incorporated with the teat in the inflation during milking;

~~(5)~~ e. Abstain from milking any cow, goat, sheep, water buffalo, or other mammal whose udder or teats are not clean and dry;

~~(6)~~ f. Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, goat, sheep, water buffalo, or other mammal, and dry the teats of each milking cow, goat, sheep, water buffalo, or other mammal before milking; and

~~(7)~~ g. Milk all cows, goats, sheep, water buffalo, or other mammals with dry hands.

~~n.~~ 14. Protection from contamination. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Locate and operate the milking and milkhouse operations, equipment, and facilities to prevent overcrowding and any contamination of the milk, equipment, containers, or utensils;

~~(2)~~ b. Separate pipelines and equipment used to contain or conduct milk and dairy products during processing from tanks or circuits containing cleaning or sanitizing solution, or both;

~~(3)~~ c. Discard all milk which has overflowed, leaked, been spilled or improperly handled;

~~(4)~~ d. Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;

~~(5)~~ e. Properly cover all pails, cans, and other equipment containing milk during transfer and storage;

~~(6)~~ f. Handle all containers, utensils, and equipment in such a manner to prevent the contamination of any milk-contact surface of any containers, utensils, or equipment after the containers, utensils, or equipment have been sanitized; and

~~(7)~~ g. Use air under pressure for the agitation or movement of milk, or use air under pressure that is directed at any milk contact surface that is free of oil,

dust, rust, excessive moisture, extraneous materials, or odor.

~~15.~~ 15. Drug and chemical control. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ (1) a. Ensure cleaners and sanitizers purchased in containers from the manufacturer or distributor properly identify the contents, or if bulk cleaners and sanitizers are transferred from the manufacturer's or distributor's container, that the transfer only occur into a dedicated end-use container which is specifically designed, maintained, and labeled according to the manufacturer's specifications for that specific product;

~~(2)~~ (2) b. Abstain from cleaning any equipment used to administer medicinals or drugs in the wash vats in the milkroom;

~~(3)~~ (3) c. Store any equipment used to administer medicinals or drugs so as not to contaminate any milk or milk contact surfaces of equipment;

~~(4)~~ (4) d. Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any milk or the dairy product-contact surface of any equipment, containers, or utensils;

~~(5)~~ (5) e. Abstain from using unapproved or improperly labeled medicinals or drugs to treat any dairy animal or store unapproved or improperly labeled medicinals or drugs in the milkhouse, milking barn, stable, or parlor. Except for topical antiseptics, wound dressings, vaccines, and other biologics (unless intended for direct injection into the teat), and dosage form vitamins and mineral products, a drug or medicinal is properly labeled only if the drug or medicinal is labeled with the following:

~~(a)~~ (1) For over-the-counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra-label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;

~~(b)~~ (2) Directions for use of the drug or medicinal and the prescribed holding time;

~~(c)~~ (3) Any cautionary statement for the drug or medicinal, if needed; and

~~(d)~~ (4) The active ingredient or ingredients in the drug or medicinal;

~~(6)~~ (6) f. Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, segregate all medicinals and drugs used for lactating cows, goats, sheep, water buffalo, and other mammals (except humans) from any medicinals and drugs used for nonlactating cows, goats, sheep, water buffalo, and other mammals (except humans);

~~(7)~~ (7) g. Except for topical antiseptics, wound dressings, (unless intended for direct injection into the teat)

vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals separate from those medicinals or drugs used for lactating dairy animals;

~~(8)~~ (8) h. Store topical antiseptics, wound dressings, (unless intended for direct injection into the teat) vaccines and other biologics, and dosage-form vitamins and mineral products in a manner that does not contaminate any milk or the milk-product surfaces of any containers or utensils;

~~(9)~~ (9) i. Store all drugs labeled for use in nondairy animals in the milking barn, stable, or parlor; and

~~(10)~~ (10) j. Abstain from storing any herbicides, fertilizers, pesticides, or insecticides that are not labeled for use in the milkhouse, milkroom, milking barn, stable, or parlor in the permit holder's milkhouse, milkroom, milking barn, stable, or parlor.

~~16.~~ 16. Personnel; hand-washing facilities. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ (1) a. Provide hand-washing facilities that are convenient to the milkhouse, milking barn, stable, parlor, and flush toilet; and

~~(2)~~ (2) b. Provide hand-washing facilities that include separate hot and cold running water, soap or detergent, and individual sanitary towels.

~~17.~~ 17. Personnel; cleanliness. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ (1) a. Ensure each person who milks or performs any milkhouse function washes the person's hands clean and dries the person's hands with an individual sanitary towel immediately before milking, before performing any milkhouse function, and immediately after the interruption of milking or performing any milkhouse function; and

~~(2)~~ (2) b. Ensure each person who milks or performs any milkhouse function wears clean outer garments while milking or handling any milk, milk containers, utensils, or equipment. Every person shall wear clean outer garments while handling any milk, milk containers, utensils, or equipment;

~~18.~~ 18. Raw milk cooling. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ (1) a. Cool to 40°F or cooler (but not freeze), all milk in farm bulk tanks, within two hours after the permit holder completes each milking; and ensure that the temperature of the permit holder's milk is not warmer than 50°F after the first milking or any subsequent milking. Milk for manufacturing purposes which is warmer than a temperature of 50°F two hours after the first milking or any subsequent milking shall be deemed a public health

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hazard and shall not be offered for sale, sold, or used for human consumption;

~~(2)~~ b. Agitate all milk in farm bulk tanks for not less than five minutes at least once every hour and ensure that the milk in the farm's bulk milk cooling or holding tank covers the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking. Milk which does not cover the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking shall be deemed a public health hazard and shall not be offered for sale, sold, or used for human consumption; and

~~(3)~~ c. Cool to 40°F or cooler (but not freeze), all milk in cans or other containers approved by the ~~Regulatory Agency~~ regulatory agency, within two hours after the permit holder completes milking; and ensure that the temperature of the permit holder's milk in cans or other containers approved by the regulatory agency is not warmer than 50°F at any time thereafter; or deliver the milk in cans or other containers approved by the regulatory agency to a dairy processing plant within two hours after the completion of milking. Milk in cans or other containers approved by the regulatory agency which is warmer than a temperature of 50°F two hours after the completion of milking shall be deemed a public health hazard and shall not be offered for sale ~~or~~, used for human consumption.

~~§~~ 19. Insect and rodent control. Each person who holds a permit to produce milk for manufacturing purposes shall:

~~(1)~~ a. Keep the areas surrounding the milkhous, milking barn, milking stable, milking parlor, cattle housing, sheep housing, goat housing, water buffalo housing, housing area for other mammals, cattle loafing, sheep loafing, goat loafing, water buffalo loafing, loafing area for other mammals, water supply, or other facilities on the permit holder's dairy farm neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents;

~~(2)~~ b. Maintain and manage manure packs in loafing areas, stables without stanchions, pen stables, resting barns, wandering sheds, and free-stall housing to be properly bedded and to prevent fly breeding;

~~(3)~~ c. Maintain the milkroom free of insects, rodents, and other animals;

~~(4)~~ d. Screen or otherwise protect the milkroom against the entrance of insects, rodents, vermin, or other animals;

~~(5)~~ e. Provide outer milkhous doors that are tight fitting and self-closing;

~~(6)~~ f. Provide screen doors that open outward only on any milkhous;

~~(7)~~ g. Take effective measures to prevent the contamination of any milk, containers, equipment, and utensils by insects, rodents, and other animals and by

chemicals used to control insects, rodents, and other animals;

~~(8)~~ h. Use only insecticides and rodenticides approved for use by the U.S. Environmental Protection Agency;

~~(9)~~ i. Use insecticides and rodenticides in accordance with the manufacturer's label directions and in such a manner to prevent the contamination of milk, milk containers, equipment, utensils, feed, or water;

~~(10)~~ j. Provide covered boxes, bins, or separate storage facilities for ground, chopped, or concentrated feed; and

~~(11)~~ k. Store any feed in the milking portion of the milking barn only and in such a manner as it will not attract birds, flies, insects, or rodents.

C. Sanitation requirements for dairy plants. Each person who holds a permit to manufacture dairy products shall comply with the following:

1. Premises. Each person who holds a permit to manufacture dairy products shall:

a. Maintain ~~their~~ his plant premises in a clean and orderly condition and free from strong or foul odors, smoke, or excessive air pollution;

b. Construct and maintain driveways and adjacent plant traffic areas with concrete, asphalt, or similar material to keep dust and mud to a minimum;

c. Maintain the adjacent surroundings free from refuse, rubbish, and waste materials to prevent harborage of rodents, insects, and other vermin;

d. Construct and maintain a drainage system which will allow rapid drainage of all water from plant buildings and driveways, including surface water around the plant and on the premises, and all such water shall be disposed of in such a manner to prevent a nuisance or health hazard.

2. Buildings. Each person who holds a permit to manufacture dairy products shall:

a. Provide buildings of sound construction and maintain those buildings in good repair to prevent the entrance or harboring of rodents, birds, insects, vermin, dogs, cats and other animals;

b. Provide tight metal collars for all service pipe openings through outside walls, or shall effectively seal around the openings;

c. Protect or screen against the entrance of flies and other insects, rodents, birds, dust, and dirt all openings to the outer air including doors, windows, skylights, and transoms;

d. Provide and maintain each outside door opening into a processing room in good condition, properly fitted, and tightly self-closing;

e. Ensure that each hinged, outside screen door opens outward and is self closing;

f. Maintain each door and window to be clean and in good repair;

g. Construct and maintain each outside conveyor opening and other special-type outside openings to effectively protect and prevent the entrance of flies and rodents, by the use of doors, screens, flaps, fans, or tunnels;

h. Cover outside openings for sanitary pipelines when not in use;

i. Construct each window sill to be slanted downward at a 45 degree angle;

j. Construct each wall, ceiling, partition, and post of rooms in which milk or dairy products are processed, manufactured, handled, packaged, or stored (except dry storage of packaged finished products and supplies) or in which utensils are washed and stored, to be smoothly finished with a material of light color, which is substantially impervious to moisture and kept clean; ~~and~~

k. Refinish each wall, ceiling, partition, and post of rooms in which milk or dairy products are processed, manufactured, handled, packaged, or stored (except dry storage of packaged finished products and supplies) or in which utensils are washed and stored as often as necessary to maintain a neat, clean surface;

l. Floors. Each person who holds a permit to manufacture dairy products shall:

(1) Construct the floor of each room in which milk or dairy products are processed, manufactured, packaged, or stored or in which utensils are washed with tile properly laid with impervious joint material, concrete, or other equally impervious material;

(2) Construct and maintain the floors of each room in which milk or dairy products are processed, manufactured, packaged, or stored or in which utensils are washed to be smooth, in good repair, graded to one or more drains so that there will be no pools of standing water or dairy products after flushing, and the opening to each drain shall be equipped with a trap properly constructed and kept in good repair;

(3) Not use bell-type traps on floors;

(4) Install the plumbing to prevent the backup of sewage into the drain lines and onto the floor of the plant; and

(5) Construct the floors in each room where new containers and supplies and certain packaged finished products are stored with sound, smooth, wood which shall be maintained clean;

m. Lighting and ventilation. Each person who holds a permit to manufacture dairy products shall:

(1) Provide ample light, natural, artificial, or both, of good quality and well distributed in each room and area of the building;

(2) Provide each room in which dairy products are manufactured or packaged or where utensils are washed

with at least 30 foot-candles of light intensity on all working surfaces and at least 50 foot-candles of light intensity in areas where dairy products are graded or examined for condition and quality;

(3) Provide in each room in which dairy products are not manufactured or packaged or where utensils are not washed with at least five foot-candles of light intensity when measured at a distance of 30 inches from the floor;

(4) Protect from breakage each light bulb, fluorescent tube, fixture, skylight, or other glass suspended over each product area where contamination of product by broken glass is possible;

(5) Provide adequate heating, ventilation, or air conditioning for each room and compartment to permit maintenance of sanitary conditions;

(6) Provide exhaust or inlet fans, vents, hoods, or temperature and humidity control facilities where and when needed, to minimize or eliminate undesirable room temperatures, objectionable odors, moisture condensation, or mold;

(7) Provide each inlet fan with an adequate air filtering device to eliminate dirt and dust from incoming air;

(8) Clean each ventilation system periodically as needed and maintain each ventilation system in good repair; and

(9) Screen or provide each exhaust outlet with self-closing louvers to prevent the entrance of insects when not in use;

n. Rooms and compartments. Each person who holds a permit to manufacture dairy products shall:

(1) Design, construct, and maintain each room and compartment in which any raw material, packaging, ingredient supplies, or dairy products are handled, manufactured, packaged, or stored to ensure desirable room temperatures and clean and orderly operating conditions free from objectionable odors and vapors;

(2) Separate each enclosed bulk milk receiving room from any of the processing rooms by a partition;

(3) Separate each room for receiving can milk from any of the processing rooms by a partition (partial or complete), by arrangement of equipment, or by allowing enough distance between receiving and processing operations to prevent contamination of milk or dairy products during manufacturing and handling;

(4) Maintain each processing room free from equipment and materials not regularly used;

(5) Coolers and freezers. Each person who holds a permit to manufacture dairy products shall:

(a) Maintain each cooler and freezer where dairy products are stored to be clean, reasonably dry, and maintained at the proper uniform temperature and humidity to protect the dairy products and minimize the growth of mold;

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(b) Maintain adequate circulation of air at all times in each cooler and freezer where dairy products are stored;

(c) Maintain each cooler and freezer where dairy products are stored to be free from rodents, insects, and animals;

(d) Maintain each shelf in each cooler or freezer to be clean and dry; and

(e) Install refrigeration units with provisions for collecting and disposing of condensate;

(6) Supply room. Each person who holds a permit to manufacture dairy products shall:

(a) Maintain each supply room used for storing packaging materials, containers, and miscellaneous ingredients to be clean, dry, orderly, free from insects, rodents, and mold, and in good repair;

(b) Store each item in the store room so it is protected from dust, dirt, or other extraneous matter and so arranged off the floor on racks, shelves, or pallets to permit access to the supplies and cleaning and inspection of the room; and

(c) Ensure that insecticides, rodenticides, cleaning compounds, and other nonfood products are properly labeled and segregated and stored in a separate room or cabinet away from any milk, dairy products, ingredients, or packaging supplies;

(7) Boiler and tool rooms. Each person who holds a permit to manufacture dairy products shall:

(a) Construct and provide each boiler and tool room to be separate from any room where milk or dairy products are processed, manufactured, packaged, handled, or stored; and

(b) Keep boiler and tool rooms orderly and reasonably free from dust and dirt;

(8) Toilet and dressing rooms. Each person who holds a permit to manufacture dairy products shall:

(a) Provide adequate toilet and dressing room facilities that are conveniently located;

(b) Ensure that each toilet room does not open directly into any room in which milk or dairy products are processed, manufactured, packaged, or stored;

(c) Provide self-closing doors for each toilet room;

(d) Provide each toilet room with a mechanical means of ventilation or screened openings to the outside air;

(e) Maintain each toilet room fixture so that it is clean and in good repair;

(f) Furnish each employee with a locker or other suitable facility and shall keep clean and orderly each locker and dressing room;

(g) Provide adequate hand-washing facilities with hot and cold running water and mix valve in each toilet and dressing room; and

(h) Post legible signs conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work;

(9) Laboratory. Each person who holds a permit to manufacture dairy products shall provide and maintain an adequately equipped laboratory properly staffed with qualified and trained personnel for quality control and analytical testing consistent with the size and type of plant and the volume of dairy products manufactured. A central laboratory serving more than one plant may be acceptable if conveniently located to the dairy plants and if samples and results can be transmitted without undue delay; and

(10) Starter facilities. Each person who holds a permit to manufacture dairy products shall provide adequate sanitary facilities for the handling of starter cultures;

o. Water supply. Each person who holds a permit to manufacture dairy products shall:

(1) Provide an ample supply of both hot and cold water of safe and sanitary quality, with adequate facilities for its proper distribution throughout the plant, and protection against contamination and pollution;

(2) Separate with an air gap all waterlines carrying the sanitary water supply from water to feed a boiler or condenser; and ensure the boiler or condenser equipment is so constructed and controlled to preclude contamination of product contact surfaces;

(3) Ensure that there is no cross connection between the potable water supply and any unsafe or questionable water supply, or any other source of pollution, through which contamination of the potable water supply is possible;

(4) Perform a bacteriological examination of the sanitary water supply at least twice a year and more often when follow-up sampling is needed after nonconforming results are reported to determine purity and suitability for use in manufacturing dairy products. Each bacteriological examination of the sanitary water supply shall be performed in a commercial, industry, federal, or state laboratory certified by the U.S. Environmental Protection Agency for water testing;

(5) Keep on file the results of all water tests at the plant for which the test was performed;

(6) Comply with the regulations of the Virginia Department of Health on the water supply's location, construction, and operation;

(7) Provide water from any well for dairy plant operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, ~~and~~ of a safe, sanitary quality, and meet the construction standards of Appendix D of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

~~(8) Assure that any well casing which is part of a water supply that provides water for any dairy plant operation is not located closer to any source of contamination which may contaminate the water supply than is specified as follows:~~

~~(a) No permit holder may locate a well casing closer than 10 feet to a pit;~~

~~(b) No permit holder may locate a well casing closer than 10 feet to any sewer pipe, floor drain, or other pipe which may back up;~~

~~(c) No permit holder may locate a well casing closer than 50 feet to any above ground gas, oil, petroleum, or chemical storage tank;~~

~~(d) No permit holder may locate a well casing closer than 50 feet to any accumulated animal manure;~~

~~(e) No permit holder may locate a well casing closer than 50 feet to any area to which livestock have access; or animal holding area, feedlot, or loafing area on dirt;~~

~~(f) No permit holder may locate a well casing closer than 50 feet to any pit not drained to the surface of the ground;~~

~~(g) No permit holder may locate a well casing closer than 100 feet to any pit privy;~~

~~(h) No permit holder may locate a well casing closer than 100 feet to any animal manure disposal area;~~

~~(i) No permit holder may locate a well casing closer than 100 feet to any cess pool;~~

~~(j) No permit holder may locate a well casing closer than 100 feet to any dry well;~~

~~(k) No permit holder may locate a well casing closer than 100 feet to any structure which stores animal manure;~~

~~(l) No permit holder may locate a well casing closer than 100 feet to any septic tank or drain field; and~~

~~(m) No permit holder may locate a well casing closer than 100 feet to any underground or partially buried gas, oil, petroleum, or chemical storage tank;~~

~~(9) Construct the water supply so that the well casing terminates at least two feet above the highest known flood level in the flood plane for the location in which the water supply is located;~~

~~(10) Construct the water supply so that no potable water supply pipe attached to the water supply is located closer than 10 feet measured horizontally to any sewer pipe, soil pipe, or drain.~~

(8) Construct the water supply so that no cross connections between a safe water supply and any unsafe or questionable water supply or other source of pollution exists; and

(9) Construct the water supply so that no submerged inlets exist through which a safe water supply may be contaminated;

p. Drinking water facilities. Each person who holds a permit to manufacture dairy products shall provide conveniently located drinking water facilities of a sanitary type in the plant;

q. Hand-washing facilities. Each person who holds a permit to manufacture dairy products shall:

(1) Provide convenient hand-washing facilities, including hot and cold running water, mix valve, soap or other detergents, and sanitary single-service towels or air dryers in each room where any dairy product is handled, processed, packaged or stored;

(2) Provide convenient hand-washing facilities located in or adjacent to each toilet and dressing room and also at each other place in the plant as may be essential to the cleanliness of all personnel handling milk or dairy products;

(3) Not allow employees to use vats for washing equipment or utensils as handwashing facilities; and

(4) Provide self-closing metal or plastic containers for used towels and other wastes;

r. Steam. Each person who holds a permit to manufacture dairy products shall:

(1) Supply steam in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment;

(2) Ensure that culinary steam used in direct contact with milk or dairy products is free from harmful substances or extraneous material and only nontoxic boiler compounds are used, or a secondary steam generator shall be used in which soft water is converted to steam and no boiler compounds are used;

(3) Use steam traps, strainers, and condensate traps wherever applicable to ensure a satisfactory and safe steam supply; and

(4) Use culinary steam that complies with 3-A Accepted Practices for a Method of Producing Steam of Culinary Quality;

s. Air under pressure. Each person who holds a permit to manufacture dairy products shall:

(1) Comply with the requirements contained in the 3-A Accepted Practices for Supplying Air Under Pressure in Contact with Milk, Milk Products, and Product Contact Surfaces; and

(2) Ensure that the air used at the point of application is free from volatile substances, volatiles which may impart any flavor or odor to the products, and extraneous or harmful substances; and

t. Disposal of waste. Each person who holds a permit to manufacture dairy products shall:

(1) Properly dispose of all dairy wastes from the plant and premises;

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(2) Construct the sewer system with sufficient slope and capacity to readily remove all wastes from the various processing operations;

(3) Utilize a public sewer where available, to properly dispose of all liquid wastes and effluent;

(4) Where a public sewer is not available, properly dispose of all wastes so as not to contaminate any milk equipment or to create a nuisance or public health hazard;

(5) Provide containers used for the collection and holding of wastes constructed of metal, plastic, or other equally impervious material and keep covered with tight-fitting lids and place outside the plant on a concrete slab or on a rack raised at least 12 inches. Alternatively, waste containers may be kept inside a suitably enclosed, clean and fly-proof room;

(6) Dispose of solid wastes regularly and clean all waste containers thoroughly before reuse;

(7) Ensure the accumulation of dry wastepaper and cardboard is kept to a minimum; and

(8) Ensure that any accumulation of dry wastepaper and cardboard is burned at the plant in a properly constructed incinerator, or compressed or bagged and hauled away;

3. Equipment and utensils. Each person who holds a permit to manufacture dairy products shall:

a. Use only equipment and utensils made for the processing of milk and manufacture of dairy products that are constructed to be readily de-mountable where necessary for cleaning and sanitizing;

b. Use only utensils and equipment such as holding tanks, pasteurizers, coolers, vats, agitators, pumps, sanitary piping, and fittings or any specialized equipment the product contact surfaces of which are constructed of stainless steel, or other equally corrosion-resistant material;

c. Use only nonmetallic parts, other than glass, having product contact surfaces that meet 3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment;

d. Design and install all equipment and piping to be easily accessible for cleaning, and shall keep all equipment and piping in good repair, free from cracks and corroded surfaces;

e. Install any new equipment or rearrange any existing equipment to be set away from any wall or spaced in such a manner to facilitate proper cleaning and to maintain good housekeeping;

f. Ensure that all parts or interior surfaces of equipment, pipes (except certain piping cleaned in place) or fittings, including valves and connections, are accessible for inspection;

g. Use only milk and dairy product pumps that are of a sanitary type and easily dismantled for cleaning or are designed and constructed to allow effective cleaning in place;

h. Install only C-I-P systems that comply with the 3-A Sanitary Practices for Permanently Installed Sanitary Product and Solution Pipelines and Cleaning Systems Used in Milk Product Processing Plants;

i. Use only weigh cans and receiving tanks that meet all applicable 3-A Sanitary Standards and are easily accessible for cleaning both inside and outside and are elevated above the floor and protected sufficiently with the necessary covers or baffles to prevent contamination from splash, condensate, and drippage. Where necessary, to provide easy access for cleaning of floors and adjacent wall areas, the receiving tank shall be equipped with wheels or casters to allow easy removal;

j. Use only can washers that have sufficient capacity and ability to discharge a clean, dry can and cover, and use only cans and covers that are kept tinned in accordance with the instructions of the manufacturer;

k. Install water and steam lines supplying the can washer that maintain a reasonably uniform pressure and, if necessary, are equipped with pressure regulating valves;

l. Use only storage tanks or vats that are fully enclosed or tightly covered, well insulated, and that comply with the following:

(1) The entire interior surface, agitator, and all appurtenances shall be accessible for thorough cleaning and inspection;

(2) Any opening at the top of the tank or vat including the entrance of the shaft shall be suitably protected against the entrance of dust, moisture, insects, oil, or grease;

(3) The sight glasses, if used, shall be sound, clean, and in good repair;

(4) Vats which have hinged covers shall be so designed that moisture or dust on the surface cannot enter the vat when the covers are raised;

(5) If the storage tanks or vats are equipped with air agitation, the system shall be an approved type and installed in accordance with the 3-A Accepted Practices for Supplying Air Under Pressure in Contact with Milk, Milk Products, and Product Contact Surfaces;

(6) Storage tanks or vats intended to hold product for longer than eight hours shall be equipped with adequate refrigeration or have adequate insulation, or both;

(7) Each storage tank or vat shall meet the appropriate 3-A Sanitary Standards and shall be equipped with a thermometer in good operating order;

m. Use only separators, the product contact surfaces of which are free from rust and pits, and insofar as

practicable, are constructed of stainless steel or other equally noncorrosive metal;

n. Install and use only noncoil type batch pasteurizers that comply with all requirements contained in 3-A Sanitary Standards for NonCoil Type Batch Pasteurizers for Milk and Milk Products;

o. Install and use only high-temperature, short-time pasteurizers that comply with the following:

(1) When pasteurization is intended or required, an approved timing pump or device recorder-controller, automatic flow diversion valve and holding tube or its equivalent, if not a part of the existing equipment, shall be installed on all ~~High Temperature Short Time~~ high-temperature short-time (HTST) equipment used for pasteurization to ensure complete pasteurization;

(2) The entire facility shall meet the 3-A Accepted Practices for the Sanitary Construction, Installation, Testing, and Operation of High-Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems;

(3) After the HTST unit has been tested according to the 3-A Accepted Practices, the timing pump or device and the recorder controller shall be sealed at the correct setting to ensure pasteurization;

(4) Sealing of the HTST unit shall be performed only by a representative of the Virginia Department of Agriculture and Consumer Services or a person accepted by the Virginia Department of Agriculture and Consumer Services as properly trained and experienced to be able to seal HTST units;

(5) The HTST pasteurizer shall be tested by the department or by a person certified by the department to perform pasteurizer tests initially upon installation and whenever any alteration or replacement is made which affects the proper operation of the instrument or device;

(6) When direct steam pasteurizers are used, the steam, prior to entering the milk or dairy product, shall be conducted through a steam strainer and a steam purifier equipped with a steam trap and only steam meeting all the requirements contained in 3-A Accepted Practices Method of Producing Steam of Culinary Quality, shall be used;

p. Install and use thermometers and recorders that comply with the following:

(1) Indicating thermometers. Long-stem indicating thermometers ~~which that~~ are accurate within 0.5°F, plus or minus, for the applicable temperature range shall be provided for checking the temperature of pasteurization and cooling of products in vats and checking the accuracy of recording thermometers;

(2) Short-stem indicating thermometers, ~~which that~~ are accurate within 0.5°F, plus or minus, for the applicable temperature range, shall be installed in the proper

stationary position in all HTST and dome-type pasteurizers;

(3) Storage tanks where temperature readings are required shall have thermometers ~~which that~~ are accurate within 2.0°F, plus or minus;

(4) Air-space indicating thermometers, where applicable, ~~which that~~ are accurate within 1.0°F, plus or minus, for the proper temperature range, shall also be installed above the surface of the products pasteurized in vats, to make certain that the temperature of the foam and air above the products pasteurized also received the required minimum temperature treatment;

(5) HTST recording thermometers that are accurate within 1.0°F, plus or minus, for the applicable temperature range, shall be used on each heat treating, pasteurizing, or sterilizing unit to record the heating process;

(6) Additional use of recording thermometers accurate within 2.0°F, plus or minus, may be required at the discretion of the Virginia Department of Agriculture and Consumer Services where a record of temperature or time of cooling and holding is necessary to establish compliance with the requirements of this chapter or to ensure the safety of a milk or dairy product;

q. Install and use only surface coolers that comply with the following:

(1) Surface coolers shall be equipped with hinged or removable covers for the protection of the product;

(2) The edges of the fins on all surface coolers shall be so designed to divert condensate on nonproduct contact surfaces away from product contact surfaces;

(3) All gaskets or swivel connections on surface coolers shall be leak proof;

r. Install and use only plate-type heat exchangers that comply with the following:

(1) Plate-type heat exchangers shall meet the 3-A Sanitary Standards for Plate-Type Heat Exchangers for Milk and Milk Products;

(2) All gaskets on plate-type heat exchangers shall be tight and kept in good operating order;

(3) Plates on plate-type heat exchangers shall be opened for inspection by the permit holder at least once each six months to determine if the equipment is clean and in satisfactory condition and at the direction of the Virginia Department of Agriculture and Consumer Services;

(4) A cleaning regimen for each plate-type heat exchanger shall be posted to ensure proper cleaning procedures between inspections;

s. Install and use only internal return tubular heat exchangers that comply with the 3-A Sanitary Standards for Tubular Heat Exchangers for Milk and Milk Products;

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t. Install and use only pumps used for milk and dairy products that comply with the following:

(1) All pumps used for milk and dairy products shall be of the sanitary type and constructed to meet 3-A Sanitary Standards for Centrifugal and Positive Rotary Pumps for Milk and Milk Products;

(2) Unless pumps used for milk and dairy products are specifically designed for effective cleaning in place, they shall be disassembled and thoroughly cleaned after each use;

u. Install and use only homogenizers and high pressure pumps of the plunger type that comply with the 3-A Sanitary Standards for Homogenizers and Reciprocating Pumps;

v. Install and use only equipment and replacements, including all plastic parts and rubber and rubber-like materials for parts and gaskets having product contact surfaces, that comply with 3-A Sanitary Standards. If 3-A Sanitary Standards have not been developed for the equipment, such equipment and replacements shall meet the general requirements of this subsection;

w. Install and use only a vacuum chamber for flavor control which complies with the following:

(1) Each vacuum chamber shall be made of stainless steel;

(2) Each vacuum chamber shall be constructed to facilitate cleaning and all product contact surfaces shall be accessible for inspection;

(3) Each vacuum chamber shall be equipped with a vacuum breaker and a check valve at the product discharge line;

(4) Only steam which meets the requirements for culinary steam shall be used in the vacuum chamber;

(5) The incoming steam supply for each vacuum chamber shall be regulated by an automatic solenoid valve which will cut off the steam supply in the event the flow diversion valve of the HTST pasteurizer is not in the forward flow position;

(6) Condensers when used with a vacuum chamber shall be equipped with a water level control and an automatic safety shutoff valve;

4. Personnel cleanliness. Each person who holds a permit to manufacture dairy products shall provide training and ensure that each plant employee complies with the following:

a. Each employee shall wash his hands before beginning work and immediately before returning to work after using toilet facilities, eating, smoking, or otherwise soiling his hands;

b. Each employee shall keep his hands clean and follow good hygienic practices while on duty;

c. Each employee shall be prohibited from expectorating or using tobacco in any form in each room or compartment where any milk, dairy product, or supplies are prepared, stored, or otherwise handled;

d. Each employee engaged in receiving, testing, processing, manufacturing, packaging, or handling dairy products shall wear clean white or light-colored washable outer garments and caps (paper caps or hair nets are acceptable);

5. Personnel health. Each person who holds a permit to manufacture dairy products shall ensure that each employee complies with the following:

a. No person afflicted with a communicable disease shall be permitted in any room or compartment where milk or dairy products are prepared, manufactured, or otherwise handled;

b. No person who has a discharging or infected wound, sore, or lesion on hands, arms, or other exposed portion of the body shall work in any dairy processing rooms or in any capacity resulting in contact with milk or dairy products;

c. Each employee whose work brings him in contact with the processing or handling of dairy products, containers, or equipment shall have a medical and physical examination by a Virginia licensed physician or by the local department of health at the time of employment and medical certificates attesting the fact that the employee when examined was free from communicable disease shall be kept on file at the plant office;

d. Each employee returning to work following illness from a communicable disease shall have a certificate from the attending physician establishing proof of complete recovery, and medical certificates attesting the fact that the employee when last examined was free from communicable disease shall be kept on file at the plant office;

6. Protection and transport of raw milk and cream. Each person who holds a permit to manufacture dairy products shall ensure that each employee protects and transports all raw milk and cream in compliance with the following:

a. Milk cans used in transporting milk from each dairy farm to the dairy plant shall be of seamless construction with umbrella lids, constructed to be easily cleaned, and shall be inspected, repaired, and replaced as necessary to exclude the use of cans and lids with open seams, cracks, rust, milkstone, or other unsanitary condition;

b. Each vehicle used for the transportation of can milk or cream shall be of the enclosed type, constructed and operated to protect the product from extreme temperature, dust, or other adverse conditions, and it shall be kept clean. Decking boards or racks shall be provided where more than one tier of cans ~~is~~ are carried. Cans or bulk tanks on vehicles used for the transportation

of milk from the farm to the plant shall not be used for any other purpose;

c. The exterior shell of each transport tank shall be clean and free from open seams or cracks which would permit liquid to enter the jacket. The interior shell shall be stainless steel and so constructed that it will not buckle, sag, or prevent complete drainage. All product contact surfaces shall be smooth, easily cleaned, and maintained in good repair. Each pump and hose cabinet shall be fully enclosed with ~~tight-fitting~~ tight-fitting doors and the inlet and outlet shall be provided with dust covers to give adequate protection from road dust. Each transport tank shall meet 3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Product Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service;

d. Enclosed or covered facilities shall be available for washing and sanitizing of transport tanks, piping, and accessories at all plants that receive or ship milk or dairy products in transport tanks;

e. Milk shall be transferred under sanitary conditions from farm bulk tanks through stainless steel piping or tubing approved by the Virginia Department of Agriculture and Consumer Services. The sanitary piping and tubing shall be capped when not in use;

7. Raw product storage. Each person who holds a permit to manufacture dairy products shall hold and process all milk in compliance with the following:

a. All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration;

b. Drip milk from can washers or any other source may not be used for the manufacture of dairy products;

c. Bulk milk in storage tanks within the dairy plant shall be handled in such a manner to minimize bacterial increase and shall be maintained at 45°F or lower until processing begins;

d. All bulk milk in storage tanks within the dairy plant shall be handled in such a manner to minimize bacterial increase and shall be maintained at 45°F or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices;

8. Pasteurization or sterilization. Each person who holds a permit to manufacture dairy products shall pasteurize or sterilize all milk and dairy products in compliance with the following:

a. When pasteurization or sterilization is intended or required, or when a product is designated "pasteurized" or "sterilized" every particle of the product shall be subjected to such temperatures and holding periods as will ensure proper pasteurization or sterilization of the product;

b. The heat treatment by either process shall be sufficient to ensure public health safety and to ensure adequate keeping quality, yet retain the most desirable flavor and body characteristics of the finished product;

c. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by (i) the phosphatase test method prescribed in Official Methods of Analysis of AOAC International, ~~17th~~ 19th Edition, ~~Revision 1 (2002)~~ (2012); (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services;

9. Composition and wholesomeness. Each person who holds a permit to manufacture dairy products shall ensure the composition and wholesomeness of all of their milk and dairy products by complying with the following requirements:

a. Each permit holder shall take all necessary precautions to prevent contamination or adulteration of the milk or dairy products during manufacturing;

b. Each permit holder shall allow the inspection of all substances and ingredients used in the processing or manufacturing of any dairy product, and all substances and ingredients used in the processing or manufacturing of any dairy product shall be wholesome and practically free from impurities;

c. Each permit holder's finished product shall comply with the requirements of the Federal Food, Drug, and Cosmetic Act regarding their composition and wholesomeness;

10. Cleaning and sanitizing treatment. Each person who holds a permit to manufacture dairy products shall ensure that their cleaning and sanitizing treatments are effective by complying with the following requirements:

a. Equipment and utensils. The equipment, sanitary piping, and utensils used in receiving and processing of the milk and manufacturing and handling of the product shall be maintained in a sanitary condition. Sanitary seal assemblies shall be removable on all agitators, pumps, and vats, and shall be inspected at regular intervals and kept clean. Unless other provisions are recommended in the following supplemental subsections, all equipment not designed for C-I-P cleaning shall be disassembled after each day's use for thorough cleaning. Dairy cleaners, detergents, wetting agents, sanitizing agents, or other similar materials which will not contaminate or adversely affect the milk or dairy products may be used. Steel wool or metal sponges may not be used in the cleaning of any dairy equipment or utensils. All product contact surfaces shall be subjected to an effective sanitizing treatment immediately prior to use, except where dry cleaning is permitted as determined by the

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department. Utensils and portable equipment used in processing and manufacturing operations shall be stored above the floor in clean, dry locations and in a self-draining position on racks constructed of impervious, corrosion-resistant material;

b. C-I-P cleaning, including spray-ball systems, shall be used only on equipment and pipeline systems which have been designed and engineered for that purpose. When such cleaning is used, careful attention shall be given to the proper procedures to ensure satisfactory cleaning. All C-I-P installations and cleaning procedures shall be in accordance with 3-A Accepted Practices for Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants. The established cleaning procedure shall be posted and followed. Following the circulation of the cleaning solution the equipment and lines shall be thoroughly rinsed with lukewarm water and checked for effectiveness of cleaning. All caps, plugs, special fittings, valve seats, cross ends, pumps, plates, and tee ends shall be opened or removed and brushed clean. Immediately prior to starting the product flow, the product contact surfaces shall be given bactericidal treatment;

c. Milk cans and can washers. Milk cans and lids shall be cleaned, sanitized, and dried before returning to producers. Inspection and repair or replacement of cans and lids shall be adequate to exclude from use cans and lids showing open seams, cracks, rust condition, milkstone, or any unsanitary condition;

d. Washers shall be maintained in a clean and satisfactory operating condition and kept free from accumulation of scale or debris which will adversely affect the efficiency of the washer;

e. Milk transport tanks. A covered or enclosed wash dock and cleaning and sanitizing facilities shall be available to each plant that receives or ships any milk in tanks. Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized at least once each day, after use; provided that if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given sanitizing treatment immediately before use. After being washed and sanitized, each tank shall be identified by a tag attached to the outlet valve bearing the following information: plant and specific location where cleaned, date and time of day of washing and sanitizing, and name of person who washed and name of person who sanitized the tank. The tag shall not be removed until the tank is again washed and sanitized;

f. Building. Each window, glass, partition, and skylight shall be washed as often as necessary to keep them clean. Cracked or broken glass shall be replaced promptly. The walls, ceilings, and doors shall be kept free from soil and unsightly conditions. The shelves and ledges shall be

keep free from dust and debris. The material picked up by the vacuum cleaners shall be disposed of by burning or other proper methods to destroy any insects that might be present;

11. Insect and rodent control program. Each person who holds a permit to manufacture dairy products shall initiate and maintain an insect and rodent control program that complies with the following requirements:

a. In addition to any commercial pest control service, if one is utilized, a specially designated employee shall be made responsible for the performance of a regularly scheduled insect and rodent control program;

b. Poisonous substances, insecticides, and rodenticides shall be properly labeled, and shall be handled, stored, and used in such a manner as not to create a public health hazard.

12. Plant records. Each person who holds a permit to manufacture dairy products shall create, record, and maintain plant records in compliance with the following requirements:

a. Adequate plant records shall be maintained of all required tests on all raw milk receipts;

b. All records shall be available for examination by the inspector at all reasonable times;

c. The following are the records which shall be maintained for examination at the plant or receiving station where performed:

(1) Pasteurization recorder charts: retain for 12 months;

(2) Water supply test certificate: retain current copy for six months; and

(3) Employee health certificate: retain most recent copy until employee is no longer employed by plant;

d. Any milk or dairy product shall be deemed to have not been pasteurized if records of the pasteurization process are absent or incomplete;

e. Any milk or dairy product which has not been pasteurized and pasteurization was intended by the permit holder or required by this chapter shall be deemed a public health hazard and may not be offered for sale, sold, or provided to any person for human consumption;

13. Packaging and general identification. Each person who holds a permit to manufacture dairy products shall package and identify all products in compliance with the following requirements:

a. Containers. The size, style, and type of packaging used for dairy products shall be commercially acceptable containers and packaging materials which will satisfactorily cover and protect the quality of the contents during handling, shipping, and storage in regular channels of trade and under normal conditions of handling. The weights and shape within each size or style shall be as nearly uniform as is practical;

b. Packaging materials for dairy products shall be selected which will provide sufficiently low permeability to air and vapor to prevent the formation of mold growth and surface oxidation. In addition, the wrapper shall be resistant to puncturing, tearing, cracking, or breaking under normal conditions of handling, shipping, and storage. When special-type packaging is used, the instructions of the manufacturer shall be closely followed regarding its application and method of closure;

c. Packaging and repackaging. Packaging dairy products or cutting and repackaging all styles of dairy products shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment, and packaging material shall be practically free from mold and bacterial contamination. Methods for checking the level of contamination shall be as prescribed by ~~the sixteenth edition of~~ Standard Methods For The Examination of Dairy Products, 17th Edition, 2004, published by the American Public Health Association;

d. General identification. All commercial bulk packages containing dairy products manufactured under the provisions of this subsection shall be legibly marked with the name of the product, net weight, name and address of processor or manufacturer or other assigned plant identification, lot number, and meet the requirements of 2VAC5-531-60. Dairy products in final package form intended for distribution to the final consumer shall be legibly marked with the name of the product, net weight, plant identification number if one has been assigned, name and address of packer, manufacturer, or distributor, and the requirements of 2VAC5-531-60;

14. Storage of finished dairy products. Each person who holds a permit to manufacture dairy products shall store finished dairy products in compliance with the following requirements:

a. Dry storage. The dairy product shall be stored off of the floor at least 18 inches from the wall in aisles, rows, or subsections and lots, in such a manner to be orderly and easily accessible for inspection. Each room shall be kept clean. Care shall be taken in the storage of any other product foreign to dairy products in the same room, in order to prevent impairment or damage to the dairy product from mold, absorbed odors, rodents, vermin, or insect infestation. Control of humidity and temperature shall be maintained at all times, consistent with good manufacturing practices, to prevent conditions detrimental to the product and container;

b. Refrigerated storage. The finished dairy product shall be placed on shelves, dunnage, or pallets and properly identified. It shall be stored under temperatures that will best maintain the quality of the dairy product. The dairy product may not be exposed to anything from which it might absorb any foreign odors or become contaminated;

D. Each person who holds a dairy plant permit for manufacturing, processing and packaging instant nonfat dry milk, nonfat dry milk, dry whole milk, dry buttermilk, dry whey, or other dry dairy products shall comply with all of the following requirements:

1. Rooms and compartments for dry storage of dairy product. Storage rooms for the dry storage of product shall be adequate in size; kept clean; and orderly; free from rodents, insects, and mold; and maintained in good repair. They shall be adequately lighted and ventilated. The ceilings, walls, beams, and floors shall be free from structural defects and inaccessible false areas which may harbor insects;

2. Packaging room for bulk products. A separate room or area shall be provided for filling bulk bins, drums, bags, or other bulk containers and shall be constructed in accordance with subdivisions C 2 a through n of this section. The number of control panels and switchboxes in this area shall be kept to a minimum. Control panels shall be mounted a sufficient distance from the walls to facilitate cleaning or shall be mounted in the wall and provided with tight-fitting removable doors to facilitate cleaning. An adequate exhaust system shall be provided to minimize the accumulation of dry dairy product dust within the packaging room and, where needed, a dust collector shall be provided and properly maintained to keep roofs and outside areas free of dry dairy product. Only the quantity of packaging materials that are used within one day's operation may be kept in the packaging area. These materials shall be kept on metal racks or tables at least six inches off the floor. Unnecessary fixtures, equipment, or false areas which may collect dust and harbor insects, shall not be allowed in the packaging room;

3. Hopper or dump room. A separate room shall be provided for the transfer of bulk dry dairy products from bags or drums to the hoppers and conveyors which lead to the fillers. This room shall be constructed in accordance with subdivisions C 2 a through n of this section. Areas and facilities provided for the transfer of dry dairy products from portable bulk bins will be acceptable if gasketed surfaces or direct connections are used that appreciably eliminate the escape of product into the area;

4. Repackaging room. A separate room shall be provided for the filling of small packages and shall be constructed in accordance with subdivisions C 2 a through n of this section;

5. Equipment and utensils. General construction, repair, and installation. All equipment and utensils necessary to the manufacture of dry dairy products, including pasteurizer, timing pump or timing device, flow diversion valve and recorder controller, shall meet the general requirements as outlined in subdivision C 3 of this section. In addition, for certain other equipment the following requirements shall be met:

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a. Preheaters. Each preheater shall be of stainless steel or other equally corrosion-resistant material, easily cleanable, accessible for inspection, and shall be equipped with suitable automatic temperature controls;

b. Hotwells. Each hotwell shall be enclosed or covered and equipped with indicating thermometers either in the hotwell or in the hot milk inlet line to the hotwell and, if used for holding high heat products, they shall also have recorders;

c. Evaporators or vacuum pans. Each open-type evaporator and each vacuum pan shall be equipped with an automatic condenser water level control, barometric leg, or constructed to prevent water from entering the product, and shall meet all applicable 3-A Sanitary Standards. When enclosed-type condensers are used, no special controls are needed to prevent water from entering the product;

d. Surge tanks. If surge tanks are used for hot milk and temperatures of product including foam being held in the surge tank during processing are not maintained at a minimum of 150°F, then two or more surge tanks shall be installed with cross connections to permit flushing and cleaning during operation. Covers easily removable for cleaning shall be provided and used at all times.

e. High pressure pumps and lines. High pressure lines may be cleaned in place and shall be of such construction that deadends, valves, and the high pressure pumps can be disassembled for hand cleaning. Each high pressure pump shall comply with 3-A Sanitary Standards for Homogenizers and Reciprocating Pumps;

f. Dryers. Spray dryers. Each spray dryer shall be of a continuous discharge type and all product contact surfaces shall be of stainless steel or other equally corrosion-resistant material. Each joint and seam in the product contact surface shall be welded and ground smooth. Each dryer shall be constructed to facilitate ease in cleaning and inspection. Sight glasses or ports of sufficient size shall be located at strategic positions. Each dryer shall be equipped with suitable air intake filters and with air intake and exhaust recording thermometers. The filter system shall consist of filtering media or devices that will effectively, and in accordance with good manufacturing practices, prevent the entrance of foreign substances into the drying chamber. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. In each gas-fired dryer, precautions shall be taken to ensure complete combustion. Air shall be drawn into the dryer from sources free from odors, smoke, dust, or dirt;

g. Roller dryers. The drums of each roller dryer shall be smooth, readily cleanable, and free of pits and rusts. The knives shall be maintained in such condition so as not to cause scoring of the drums. The end boards shall have an impervious surface and be readily cleanable. They shall

be provided with a means of adjustment to prevent leakage and accumulation of milk solids. The stack, hood, the drip pan inside of the hood and related shields shall be constructed of stainless steel and be readily cleanable. The lower edge of the hood shall be constructed to prevent condensate from entering the product zone. The hood shall be properly located and the stack of adequate capacity to remove the vapors. The stack shall be closed when the dryer is not in operation. The augers shall be of stainless steel or properly plated and readily cleanable. The auger troughs and related shields shall be of stainless steel and be readily cleanable. All air entering the dryer room shall be filtered to eliminate dust and dirt. The filter system shall consist of filtering media or a device that will effectively, and in accordance with good manufacturing practices, prevent the entrance of foreign substances into the drying room. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. All dryer adjustments shall be made and the dryer operating normally before food grade powder can be collected from the dryer;

h. Collectors and conveyors. Each collector shall be made of stainless steel or equally noncorrosive material and constructed to facilitate cleaning and inspection. Each filter sack collector, if used, shall be in good condition and the system shall be of such construction that all parts are accessible for cleaning and inspection. Each conveyor shall be of stainless steel or equally corrosion-resistant material and shall be constructed to facilitate thorough cleaning and inspection;

i. Dry dairy product cooling equipment. Cooling equipment shall be provided with sufficient capacity to cool the dry dairy product to 110°F or lower immediately after removal from the dryer and prior to packaging. If bulk bins are used, the dry dairy product shall be cooled to approximately 90°F but shall be not more than 110°F. A dry air supply with effective filtering shall be provided where air cooling and conveying is used;

j. Special treatment equipment. All special equipment such as instant systems, flakers, pulverizers, or hammer mills used to further process dry dairy products shall be of sanitary construction, and all parts shall be accessible for cleaning and inspection;

k. Sifters. Each sifter used for dry milk and dry dairy products shall meet all the requirements contained in 3-A Sanitary Standards for Sifters for Dry Milk and Dry Milk Products. The mesh size of sifter screen used for various dry dairy products shall be those recommended in the appendix of the 3-A Sanitary Standards for Sifters for Dry Milk and Dry Milk Products;

l. Portable and stationary bulk bins. Each bulk bin shall be constructed of stainless steel, aluminum, or other equally corrosion resistant materials, free from cracks

and seams, and must have an interior surface that is relatively smooth and easily cleanable. All product contact surfaces shall be easily accessible for cleaning;

m. Automatic sampling device. If automatic sampling devices are used, they shall be constructed in such a manner to prevent contamination of the product, and all parts must be readily accessible for cleaning;

n. Dump hoppers, screens, mixers, and conveyors. The product contact surfaces of dump hoppers, screens, mixers, and conveyors which are used in the process of transferring dry products from bulk containers to fillers for small packages or containers, shall be of stainless steel or equally corrosion-resistant material and designed to prevent contamination. All parts shall be accessible for cleaning. Each dump hopper shall be of such height above floor level to prevent foreign material or spilled product from entering the hopper;

o. Filler and packaging equipment. All filling and packaging equipment shall be of sanitary construction and all parts, including valves and filler heads, accessible for cleaning;

p. Heavy-duty vacuum cleaners. Each plant handling dry dairy products shall be equipped with a heavy-duty industrial vacuum cleaner. Regular scheduling shall be established for its use in vacuuming applicable areas;

6. Clothing and shoe covers. Clean clothing and shoe covers shall be provided exclusively for the purpose of cleaning the interior of the drier when it is necessary to enter the drier to perform the cleaning operation;

7. Operations and operating procedures.

a. Pasteurization.

(1) All milk, buttermilk, and whey used in the manufacture of dry dairy products shall be pasteurized at the plant where dried, except that condensed whey and acidified buttermilk containing 40% or more solids may be transported to another plant for drying without repasteurization. Milk or skim milk to be used in the manufacture of nonfat dry milk shall be heated prior to condensing to at least the minimum pasteurization temperature of 161°F for at least 15 seconds or its equivalent in bacterial destruction. Condensed skim milk made from pasteurized skim milk may be transported to a drying plant, provided that it shall be effectively repasteurized at the drying plant, prior to drying, at not less than 175°F for 25 seconds or its equivalent in bacterial destruction;

(2) All buttermilk or cream from which it is derived shall be pasteurized prior to condensing at a temperature of 185°F for 15 seconds or its equivalent in bacterial destruction;

(3) All cheese whey or milk from which it is derived shall be pasteurized prior to condensing at a temperature

of 161°F for 15 seconds or its equivalent in bacterial destruction;

b. Condensed surge supply. Each surge tank or balance tank used between the evaporator and dryer shall be used to hold only the minimum amount of condensed product necessary for a uniform flow to the dryer. Such tanks holding product at temperatures below 150°F shall be completely emptied and washed after each four hours of operation or less. Alternate tanks shall be provided to permit continuous operation during washing of tanks;

c. Condensed storage tanks.

(1) Excess production of condensed dairy product over that which the dryer will take continuously from the pans shall be bypassed through a cooler into a storage tank at 50°F or lower and held at this temperature until used;

(2) Dairy product cut-off points shall be made at least every 24 hours and the tank completely emptied, washed, and sanitized before reuse;

d. Drying. Each dryer should be operated at not more than the manufacturer's rated capacity for the highest-quality dry product consistent with the most efficient operation. This does not preclude the remodeling or redesigning of dryers after installation when properly engineered and designed. The dry products shall be removed from the drying chamber continuously during the drying process;

e. Cooling dry products. Prior to packaging and immediately following removal from the drying chamber the dry product shall be cooled to a temperature not exceeding 110°F;

f. Packaging, repackaging and storage.

(1) Containers. Packages or containers used for the packaging of nonfat dry milk or other dry dairy products shall be any clean, sound, commercially accepted container or packaging material which will satisfactorily protect the contents through the regular channels of trade, without significant impairment of quality with respect to flavor, wholesomeness, or moisture content under normal conditions of handling. In no instance will containers which have previously been used for nonfood items or food which would be deleterious to the dairy product be allowed to be used for the bulk handling of dairy products;

(2) Filling. Empty containers shall be protected at all times from possible contamination, and containers which are to be lined shall not be prepared more than one hour in advance of filling. Every precaution shall be taken during the filling operation to minimize product dust and spillage. When necessary a mechanical shaker shall be provided; the tapping or pounding of containers shall be prohibited. The containers shall be closed immediately after filling, and the exteriors shall be vacuumed or brushed when necessary to render them practically free

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of product remnants before being transferred from the filling room to the palleting or dry storage areas;

(3) Repackaging. The entire repackaging operation shall be conducted in a sanitary manner with all precautions taken to prevent contamination and to minimize dust. All exterior surfaces of individual containers shall be practically free of product before over-wrapping or packing in shipping containers. The flow shall be kept free of dust accumulation, waste, cartons, liners, or other refuse. Conveyors, packaging and carton-making equipment shall be vacuumed frequently during the operating day to prevent the accumulation of dust. No bottles or glass materials of any kind shall be permitted in the repackaging or hopper room. The inlet openings of all hoppers and bins shall be of minimum size, screened, and placed well above the floor level. The room and all packaging equipment shall be cleaned as often as necessary to maintain a sanitary operation. Close attention shall be given to cleaning points of equipment where residues of the dry product may accumulate. A thorough cleanup, including windows, doors, walls, light fixtures, and ledges, shall be performed as frequently as is necessary to maintain a high standard of cleanliness and sanitation. All waste dry dairy products including dribble product at the fillers shall be identified as not for human consumption and destroyed or used as animal feed;

(4) Storage.

(a) Product. All packaged dry dairy product shall be stored or so arranged in aisles, rows, or subsections and lots at least 18 inches from any wall and in such a manner to be orderly, easily accessible for inspection and for cleaning of the room. All bags and small containers of product shall be placed on pallets elevated approximately six inches from the floor. The storage room shall be kept clean and dry and all openings protected against entrance of insects and rodents;

(b) Supplies. All supplies shall be placed on dunnage or pallets and arranged in an orderly manner for accessibility and cleaning of the room. Supplies shall be kept enclosed in their original wrapping material until used. After removal of supplies from their original containers, they shall be kept in an enclosed metal cabinet, bin, or on shelving and if supplies are not enclosed they shall be protected from powder and dust or other contamination. The room shall be vacuumed and kept clean and orderly;

(5) Product adulteration. All necessary precautions shall be taken throughout the entire operation to prevent the adulteration of one product with another. The commingling of one type of liquid or dry product with another shall be considered an adulteration of that product. This does not prohibit the normal standardization of like products in accordance with good

manufacturing practices or the production of specific products for special uses, provided applicable labeling requirements are met;

(6) Checking quality. All milk, dairy products, and dry dairy products shall be subject to inspection and analysis by the dairy plant for quality and condition throughout each processing operation. Line samples shall be taken periodically as an aid to quality control in addition to the regular routine analysis made on the finished products;

(7) Requirements for instant nonfat dry milk; sampling and testing. All instant nonfat dry milk offered for sale shall be sampled and tested by the regulatory agency at least once each month to ensure that the product meets the requirements of subdivision D 7 f (8) of this section. In addition, the dry milk plant shall have each sub-lot of approximately 4,000 pounds tested and analyzed prior to being packaged or offered for sale. Instant nonfat dry milk not meeting the requirements of subdivision D 7 f (8) of this section shall not be offered as Extra Grade;

(8) Requirements for Extra Grade instant nonfat dry milk:

(a) Flavor and odor. The flavor and odor shall be sweet, pleasing, and desirable but may possess the following flavors to a slight degree: ~~Chalky~~ chalky, cooked, feed, flat;

(b) Physical appearance. The physical appearance shall possess a uniform white color to light cream color; shall be reasonably free flowing and free from lumps except those that readily break up with very slight pressure;

(c) Bacterial estimate. The standard plate count shall not be more than 10,000 per gram;

(d) Coliform count. The coliform count shall not be more than 10 per gram;

(e) Milkfat content. The milkfat shall not be more than 1.25%;

(f) Moisture count. The moisture shall not be more than 4.5%;

(g) Scorched particle content. Scorched particles shall not be more than 15 mg;

(h) Solubility index. The solubility index shall not be more than 1 ml;

(i) Titratable acidity. The titratable acidity shall not be more than 0.15%;

(j) Dispersibility. The dispersibility shall not be less than 85% by the Modified Moats-Dabbah Method;

(k) Direct microscopic clump count. The direct microscopic clump count shall not be more than 75 million per gram;

(9) Cleaning of dryers, conveyors, sifters, and storage bins. Each dryer, conveyor, sifter, and storage bin shall be cleaned as often as is necessary to maintain the equipment in a clean and sanitary condition. The kind of

cleaning procedure either wet or dry and the frequency of cleaning shall be based upon observation of actual operating results and conditions;

(10) Insect and rodent control program. In addition to any commercial pest control service, if one is utilized, a specially designated employee shall be made responsible for the performance of an effective insect and rodent control program. The insect and rodent control program shall be considered effective only if evidence of insects and rodents is absent on inspection of plant premises and facilities;

E. Each person who holds a permit to manufacture dairy products and who manufactures, processes, or packages butter and related products shall comply with the following requirements:

1. Rooms and compartments.

a. Coolers and freezers. The coolers and freezers shall be equipped with facilities for maintaining proper temperature and humidity conditions, consistent with good manufacturing practices for the applicable product, to protect the quality and condition of the products during storage or during tempering prior to further processing. Coolers and freezers shall be kept clean, orderly, free from insects, rodents, and mold, and maintained in good repair. They shall be adequately lighted and proper circulation of air shall be maintained at all times. The floors, walls, and ceilings shall be of such construction to permit thorough cleaning;

b. Churn rooms. Churn rooms in addition to proper construction and sanitation shall be so equipped that the air is kept free from odors and vapors and extreme temperatures by means of adequate ventilation and exhaust systems or air conditioning and heating facilities;

c. Print and bulk packaging rooms. Rooms used for packaging print or bulk butter and related products shall, in addition to proper construction and sanitation, provide an atmosphere relatively free from mold (no more than 10 mold colonies per cubic foot of air), dust, or other airborne contamination and be maintained at a reasonable room temperature;

~~4.~~ 2. Equipment and utensils.

~~(4)~~ a. General construction, repair, and installation. All equipment and utensils necessary to the manufacture of butter and related products shall meet the general requirements specified in subdivision C 3 of this section. In addition, for certain other equipment, the requirements of subdivisions ~~(2)~~ E 2 b through ~~(8)~~ (h) of this ~~subdivision 1-d~~ section shall be met;

~~(2)~~ b. Continuous churn. All product contact surfaces shall be of noncorrosive material. All nonmetallic product contact surfaces shall comply with 3-A Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy

Equipment and 3-A Standards for Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment. All product contact surfaces shall be readily accessible for cleaning and inspection;

~~(3)~~ c. Conventional churn. Churns shall be constructed of aluminum, stainless steel, or other equally corrosion-resistant metal, free from cracks, and in good repair. All gasket material shall be fat resistant, nontoxic, and reasonably durable. Seals around the doors shall be tight;

~~(4)~~ d. Bulk butter trucks, boats, and packers. Bulk butter trucks, boats, and packers shall be constructed of aluminum, stainless steel, or other equally corrosion-resistant metal, free from cracks and seams and must have a surface that is relatively smooth and easily cleanable;

~~(5)~~ e. Butter; or frozen or plastic cream melting machine. Shavers, shredders, or melting machines used for rapid melting of butter; or frozen or plastic cream shall be of stainless steel or other equally corrosion-resistant metal, sanitary construction, and readily cleanable;

~~(6)~~ f. Printing equipment. All printing equipment shall be designed to be readily de-mountable for cleaning of product contact surfaces. All product contact surfaces shall be aluminum, stainless steel, or other equally corrosion-resistant metal, or plastic, rubber, and rubber like material which meet 3-A Sanitary Standards, except that conveyors may be constructed of material which can be cleaned and maintained in good repair;

~~(7)~~ g. Brine tanks. Brine tanks used for the treating of parchment liners shall be constructed of noncorrosive material and have a safe and adequate means of heating the salt solution to a temperature sufficient to bring the salt solution to a boil and to maintain the boiling salt solution continuously thereafter for the treatment of the parchment liners. The brine tank shall be provided with a drainage outlet;

~~(8)~~ h. Starter vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and constructed according to applicable 3-A Sanitary Standards. The vats shall be in good repair, equipped with tight-fitting lids, and have effective temperature controls;

e. 3. Operations and operating procedures.

~~(4)~~ a. Pasteurization. The milk or cream shall be pasteurized at the plant where the milk or cream is processed into the finished product.

~~(2)~~ b. Cream for butter making.

~~(a)~~ (1) The cream for butter-making shall be pasteurized at a temperature of not less than 165°F and held continuously in a vat at such temperature for not less than 30 minutes; ~~or~~ shall be pasteurized by the HTST method at a minimum temperature of not less than 185°F for not less than 15 seconds; ~~or~~ shall be pasteurized by any other equivalent time and temperature combination.

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Additional heat treatment above the minimum pasteurization requirement is advisable to ensure improved keeping-quality characteristics;

~~(b)~~ (2) Adequate pasteurization control shall be used and the diversion valve shall be set to divert at no less than 185°F with a 15-second holding time or its equivalent in time and temperature to assure pasteurization. If the vat or holding method of pasteurization is used, vat covers shall be closed prior to the holding period to ensure temperature of air space reaching the minimum temperature before holding time starts. Covers shall also be kept closed during the holding and cooling period;

~~(3)~~ c. Cream for plastic or frozen cream. The pasteurization of cream for plastic or frozen cream shall be accomplished in the same manner as in subdivision E ~~1 (e) (2) (a)~~ 3 b 1 of this section, except, that the temperature for the vat method shall be not less than 170°F for not less than 30 minutes, or pasteurized by the HTST method at a minimum temperature of not less than 190°F for not less than 15 seconds;

~~(4)~~ d. Composition and wholesomeness. All ingredients used in the manufacture of butter and related products shall be subject to inspection and shall be wholesome and practically free from impurities. Chlorinating facilities shall be provided for butter wash water and all other necessary precautions shall be taken to prevent contamination of products. All finished products shall comply with the requirements of the Federal Food, Drug, and Cosmetic Act regarding their composition and wholesomeness;

~~(5)~~ e. Containers. Containers used for the packaging of butter and related products shall be commercially acceptable containers or packaging material that will satisfactorily protect the quality of the contents in regular channels of trade. Caps or covers which extend over the lip of the container shall be used on all cups or tubs containing two pounds or less, to protect the product from contamination during subsequent handling;

~~(6)~~ f. Liners and wrappers.

~~(a)~~ (1) Supplies of parchment liners, wrappers, and other packaging material shall be protected against dust, mold, and other possible contamination;

~~(b)~~ (2) Prior to use, parchment liners for bulk butter packages shall be completely immersed in a boiling salt solution in a suitable container constructed of stainless steel or other equally noncorrosive material. The liners shall be maintained in the solution for not less than 30 minutes. The solution should consist of at least 15 pounds of salt for every 85 pounds of water and shall be strengthened or changed as frequently as necessary to keep the solution full strength and in good condition;

~~(c)~~ (3) Other liners such as polyethylene shall be treated or handled in such a manner to prevent contamination of the liner prior to filling;

~~(7)~~ g. Filling bulk butter containers. The lined butter containers shall be protected from possible contamination prior to filling;

~~(8)~~ h. Printing and packaging. Printing and packaging of consumer size containers of butter shall be conducted under sanitary conditions;

~~(9)~~ i. General identification. Commercial bulk shipping containers shall be legibly marked with the name of the product, net weight, name and address of manufacturer, processor, or distributor or other assigned plant identification (manufacturer's lot number, churn number, etc.) and any other identification that may be required. Packages of plastic or frozen cream shall be marked with the percentage of milkfat;

~~(10)~~ j. Storage of finished product in coolers. All products shall be kept under refrigeration at temperatures of 45°F or lower after packaging and until ready for distribution or shipment. The products shall not be placed directly on floors or exposed to foreign odors or conditions, such as drippage due to condensation, which might cause package or product damage;

~~(11)~~ k. Storage of finished product in freezer.

~~(a)~~ (1) Sharp freezers. Plastic cream or frozen cream intended for storage shall be placed in quick freezer rooms immediately after packaging for rapid and complete freezing within 24 hours. The packages shall be piled or spaced in such a manner that air can freely circulate between and around the packages. The rooms shall be maintained at -10°F or lower and shall be equipped to provide sufficient high-velocity air circulation for rapid freezing. After the products have been completely frozen, they may be transferred to a freezer storage room for continued storage;

~~(b)~~ (2) Freezer storage. The room shall be maintained at a temperature of 0°F or lower. Adequate air circulation is desirable. Butter intended to be held for more than 30 days shall be placed in a freezer room within one hour after packaging. If not frozen, before being placed in the freezer, the packages shall be spaced in a manner to permit rapid freezing and re-piled, if necessary, at a later time.

F. Each person who holds a permit to manufacture dairy products and manufactures or packages any cheese shall comply with the following requirements:

1. Rooms and compartments.

a. Starter room. If starter cultures are propagated in the dairy plant separate and dedicated starter rooms or areas shall be provided that are properly equipped and maintained for the propagation and handling of starter cultures. All necessary precautions shall be taken to

prevent contamination of the starter, room, equipment, and the air therein;

b. Make room. A separate room in which the cheese is manufactured shall be provided in each dairy plant that is of adequate size with the cheese vats adequately spaced to permit movement around the cheese vats and presses for proper cleaning and satisfactory working conditions. Ventilation sufficient to prevent condensation shall be provided;

c. Drying room. If cheese is to be paraffined, a separate drying room of adequate size shall be provided in the dairy plant to accommodate the maximum possible production of cheese on any given day for the specific dairy plant. Adequate shelving and air circulation shall be provided for proper drying. Suitable temperature and humidity control facilities shall be provided;

d. Paraffining room. For rind cheese, a separate room or compartment in the dairy plant shall be provided for paraffining and boxing the cheese. The room or compartment shall be of adequate size to accommodate the maximum possible amount of cheese needing to be paraffined on any given day for the specific dairy plant and the temperature of the paraffining room shall be maintained within 5.0°F, plus or minus of the temperature of the drying room to avoid sweating of the cheese prior to paraffining;

e. Rindless block wrapping area. For rindless blocks of cheese a separate room shall be provided in the dairy plant for wrapping and boxing of the cheese. The room shall be free from dust, condensation, mold, or other conditions which may contaminate the surface of the cheese or contribute to an unsatisfactory packaging of the cheese;

f. Coolers or curing rooms. Separate curing rooms or coolers shall be provided in each dairy plant where cheese is held for curing or storage. Each cooler and curing room shall be clean and maintained at the proper uniform temperature and humidity to adequately protect the cheese. Proper circulation of air shall be maintained at all times. The rooms shall be free from rodents, insects, and pests. The shelves shall be kept clean and dry;

g. Cutting and packaging rooms. When packages of cheese are cut and wrapped, separate rooms shall be provided in the dairy plant: (i) for the cleaning and preparation of the bulk cheese; and (ii) for the cutting and wrapping operation. The rooms shall be well lighted, ventilated, and provided with filtered air. Air movement shall be outward to minimize the entrance of unfiltered air into the cutting and packaging room;

2. Equipment and utensils.

a. General construction, repair, and installation. All equipment and utensils necessary to the manufacture of

cheese and related products shall meet the same general requirements as outlined in subdivision C 3 of this section. In addition, for certain other equipment the requirements of subdivisions F 2 b through i of this ~~subdivision 2~~ section shall be met;

b. Starter vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and shall be in good repair, equipped with tight-fitting lids and have adequate temperature controls such as valves and indicating or recording thermometers, or both. All starter vats shall be constructed according to the applicable 3-A Sanitary Standards;

c. Cheese vats.

(1) The outer jacket of vats used for making cheese shall be of metal construction, smooth, corrosion-resistant, and easily cleanable with adequate jacket capacity for uniform heating. The inner liner shall be minimum ~~16-gauge~~ 16-gauge stainless steel or other equally corrosion-resistant metal, properly pitched from side to center and from rear to front for adequate drainage. The inner liner shall be smooth, free from excessive dents or creases and shall extend over the edge of the outer jacket. The outer jacket shall be constructed of stainless steel or other metal which can be kept clean and sanitary. The junction of the liner and outer jackets shall be constructed to prevent milk or cheese from entering the inner jacket;

(2) The vat shall be equipped with a sanitary outlet valve. Adjustable valves shall be provided and properly maintained to control the application of heat to the vat;

d. Mechanical agitators. The mechanical agitators shall be of sanitary construction. The carriage and track shall be constructed to prevent the dropping of dirt or grease into the vat. Metal blades, forks, or stirrers shall be constructed of stainless steel or of material approved in the 3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment or 3-A Sanitary Standards for Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment and shall be free from rough or sharp edges which might scratch the equipment or remove metal particles;

e. Curd mill and miscellaneous equipment. Knives, hand rakes, shovels, paddles, strainers, and miscellaneous equipment shall be stainless steel or of material approved in the 3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment or 3-A Sanitary Standards for Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment. The product contact surfaces of the curd mill shall be of stainless steel. All pieces of equipment shall be constructed so that they can be kept clean. The wires in the curd knives shall be stainless steel, kept tight, and kept in good repair;

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f. Hoops, forms, and followers. The hoops, forms, and followers shall be constructed of stainless steel or heavy tinned steel. If tinned, they shall be kept tinned and free from rust. All hoops, forms, and followers shall be kept in good repair. Drums or other special forms used to press and store cheese shall be clean and sanitary;

g. Press. The cheese press shall be constructed of stainless steel and all joints welded and all surfaces, seams, and openings readily cleanable. The pressure device shall be the continuous type. Press cloths shall be maintained in good repair and in a sanitary condition. Single-service press cloths shall be used only once;

h. Rindless cheese press. The press used to heat seal the wrapper applied to rindless cheese shall have square interior corners, a reasonably smooth interior surface, and ~~have~~ controls that shall provide uniform pressure and heat to all surfaces;

i. Paraffin tanks. The metal tank shall be adequate in size, have wood rather than metal racks to support the cheese, have heat controls, and have an indicating thermometer. The cheese wax shall be kept clean;

### 3. Operations and operating procedures.

#### a. Cheese from pasteurized milk.

(1) If the cheese is labeled as pasteurized, the milk from which it is made shall be pasteurized by subjecting every particle of milk to a minimum temperature of 161°F for not less than 15 seconds in HTST ~~Equipment~~ equipment or the milk shall be pasteurized by subjecting every particle of milk to a minimum temperature of 145°F for not less than 30 minutes in vat pasteurization equipment;

(2) HTST pasteurization units shall be equipped with the proper controls and equipment to assure pasteurization. If the milk is held for more than two hours between time of receipt or heat treatment and setting, it shall be cooled to 45°F or lower until time of setting;

~~(3)~~ b. Cheese from unpasteurized milk. If the cheese is labeled as "heat treated," "unpasteurized," "raw milk," or "for manufacturing," the milk may be raw or heated at temperatures below pasteurization. If the milk is held for more than two hours between time of receipt or heat treatment and setting, it shall be cooled to 45°F or lower until time of setting;

#### ~~(4)~~ c. Whey disposal.

~~(a)~~ (1) Adequate sanitary facilities shall be provided for the disposal of whey. If outside, necessary precautions shall be taken to minimize flies, insects, and development of objectionable odors;

~~(b)~~ (2) Whey or whey products intended for human food shall at all times be handled in a sanitary manner in accordance with the procedures of this chapter for handling of milk and dairy products;

~~(5)~~ d. Packaging and repackaging. Packaging rindless cheese or cutting and repackaging all styles of bulk cheese shall be conducted under sanitary conditions. The atmosphere of the packaging rooms, the equipment, and the packaging material shall be practically free from mold and bacterial contamination;

~~(6)~~ e. General identification. Each bulk cheese shall be legibly marked with the name of the product, code or date of manufacture, vat number, and officially designated code number or name and address of manufacturer. Each consumer sized container shall be plainly marked with the name and address of the manufacturer, packer, or distributor, net weight of the contents, name of product, and code or date of manufacture;

#### ~~(7)~~ f. Required records for the aging of cheese.

~~(a)~~ (1) Adequate records shall be maintained for the aging of all cheese to demonstrate that each and every unit and lot of the cheese has been held at or above 35°F for a minimum of 60 days or for the number of days specified in the standards of identity for the particular variety of cheese;

~~(b)~~ (2) Each and every unit and lot of cheese shall be identified or coded in a way to allow the traceback of the cheese from the final consumer to the dairy processor and provide a direct means of determining the conditions under which it was aged;

~~(c)~~ (3) The following records shall be maintained to document the aging of each batch or lot or unit of cheese produced:

~~(i)~~ (a) The date and time each lot of cheese is produced;

~~(ii)~~ (b) The number and size or weight of each unit of cheese made from each lot;

~~(iii)~~ (c) The production code or identification assigned for each specific lot of cheese;

~~(iv)~~ (d) The date and time for each unit and lot of cheese that the aging process was started;

~~(v)~~ (e) The date and time for each unit and lot of cheese that the aging process was ended;

~~(vi)~~ (f) The signature of the person recording each entry in the records;

~~(vii)~~ (g) The aging temperature for each cheese;

~~(viii)~~ (h) A daily log for each aging room or aging area which records the date, time, and actual temperature of the aging room or aging area a minimum of once each day;

~~(i)~~ (4) The absence of complete records documenting that the aging of any unit or lot of cheese was continuously in compliance with the time and temperature requirements for aging of the cheese shall deem the cheese to not have been properly aged;

(e) (5) Any cheese which has not been properly aged shall be deemed a public health hazard and may not be offered for sale, sold, or provided to any person for human consumption.

G. Each person who holds a permit to manufacture dairy products and manufactures, processes or packages pasteurized process cheese and related products shall comply with the following requirements:

1. Equipment and utensils.

a. General construction, repair, and installation. The equipment and utensils used for the handling and processing of cheese products shall be as specified in subdivision C 3 of this section. In addition, for certain other equipment the requirements of subdivisions G 1 b through e of this ~~subdivision 1~~ section shall be met;

b. Conveyors. Conveyors shall be constructed of material which can be properly cleaned, will not rust, or otherwise contaminate the cheese and shall be maintained in good repair;

c. Grinders or shredders. The grinders or shredders used in the preparation of the trimmed and cleaned natural cheese for the cookers shall be adequate in size. Product contact surfaces shall be of corrosion-resistant material and constructed to prevent contamination of the cheese and to allow thorough cleaning of all parts and product contact surfaces;

d. Cookers. The cookers shall be the steam jacketed or direct steam type. They shall be constructed of stainless steel or other equally corrosion-resistant material. All product contact surfaces shall be readily accessible for cleaning. Each cooker shall be equipped with an indicating thermometer and a temperature recording device. The recording thermometer stem may be placed in the cooker if satisfactory time charts are used; if satisfactory time charts are not used, the stem shall be placed in the hotwell or filler hopper. Steam check valves on direct steam type cookers shall be mounted flush with the cooker wall, constructed of stainless steel, and designed to prevent the backup of product into the steam line, or the steam line shall be constructed of stainless steel pipes and fittings which can be readily cleaned. If direct steam is applied to the product, only culinary steam shall be used;

e. Fillers. The hoppers of each filler shall be covered but the cover may have sight ports. If necessary, the hopper may have an agitator to prevent buildup on side walls. The filler valves and head shall be kept in good repair and capable of accurate measurements;

2. Operations and operating procedures.

a. Trimming and cleaning. The natural cheese shall be cleaned free of all nonedible portions. Paraffin and bandages, as well as, rind surface, mold, unclean areas,

or any other part which is unwholesome or unappetizing shall be removed;

b. Cooking the batch. Each batch of cheese within the cooker, including the optional ingredients, shall be thoroughly commingled and the contents pasteurized at a temperature of at least 158°F and held at that temperature for not less than 30 seconds. All necessary precautions shall be taken to prevent the entrance of cheese particles or ingredients after the cooker batch of cheese has reached the final heating temperature. After holding the temperature for the required period of time, the hot cheese shall be emptied from the cooker as quickly as possible;

c. Forming containers. Containers either lined or unlined shall be assembled and stored in a sanitary manner to prevent contamination. The handling of containers by filler crews shall be done with extreme care and observance of personal cleanliness. Pre-forming and assembling of pouch liners and containers shall be kept to a minimum and the supply rotated to limit the length of time exposed to possible contamination prior to filling;

d. Filling containers. Hot fluid cheese from the cookers shall be held in hot wells or hoppers to assure a constant and even supply of processed cheese to the filler or slice former. Filler valves shall effectively measure the desired amount of product into the pouch or containers in a sanitary manner and shall cut off sharply without drip or drag of cheese across the opening. An effective system shall be used to maintain accurate and precise weight control. Damaged or unsatisfactory packages shall be removed from production, and the cheese may be salvaged into sanitary containers and added back to cookers, destroyed or sold as animal feed;

H. Each person who holds a permit to manufacturer dairy products and manufactures, processes, or packages evaporated, condensed, or sterilized dairy products shall comply with the following requirements:

1. Equipment and utensils.

a. General construction, repair, and installation. The equipment and utensils used for processing and packaging evaporated, condensed, or sterilized dairy products shall be as specified in subdivision C 3 of this section. In addition, for certain other equipment, the requirements of subdivisions H 1 b through e of this ~~subdivision 1~~ section shall be met;

b. Evaporators and vacuum pans. All equipment used in the removal of moisture from milk or dairy products for the purpose of concentrating the solids shall meet the requirements of 3-A Sanitary Standards for Milk and Milk Products Evaporators and Vacuum Pans. All new or used replacements for this type of equipment shall meet the appropriate 3-A Sanitary Standards;

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c. Fillers. Both gravity and vacuum-type fillers shall be of sanitary design, and all product contact surfaces, if metal, shall be made of stainless steel or other equally corrosion-resistant material; except that certain evaporated milk fillers having brass parts may be approved if free from corroded surfaces and kept in good repair. Nonmetallic product contact surfaces shall meet the requirements for 3-A Sanitary Standards for Rubber and Rubberlike Materials or for 3-A Sanitary Standards for Multiple-Use Plastic Materials. Fillers shall be designed so that they will not contaminate or detract from the quality of the product being packaged;

d. Batch or continuous in-container sterilizers. Each batch or continuous in-container sterilizer shall be equipped with accurate temperature controls and effective valves for regulating the sterilization process. The equipment shall be maintained in such a manner to ensure control of the length of time of processing and to minimize the number of damaged containers;

e. Homogenizers. Homogenizers where applicable shall be used to reduce the size of the fat particles and to evenly disperse them in the product. Homogenizers shall meet all the applicable 3-A Sanitary Standards;

## 2. Operations and operating procedures.

a. Preheat, pasteurization. When pasteurization is intended or required by either the vat method, HTST method, or by the ~~Ultra High Temperature (UHT)~~ ultra high temperature method it shall be accomplished by systems and equipment meeting the requirements outlined in subdivision C 3 of this section;

b. Sterilization. The complete destruction of all living organisms shall be performed in one of the following methods: (i) the complete in-container method, by heating the container and contents to a range of 212°F to 280°F for a sufficient time to sterilize the dairy product; (ii) by a continuous flow ~~Ultra High Temperature Short Time~~ ultra high temperature short time (UHTST) process at temperatures of 280°F and above for a sufficient time to sterilize the dairy product, then packaged aseptically; or (iii) the product is first sterilized according to UHTST methods as in clause 2 b (ii) of this subsection, then packaged and given further heat treatment to complete the sterilization process;

## 3. Filling containers.

a. The filling of small containers with product shall be done in a sanitary manner. The containers shall not contaminate or detract from the quality of the product in any way. After filling, the container shall be hermetically sealed;

b. Bulk containers for unsterilized product shall be suitable and adequate to protect the product in storage or transit. The bulk container (including bulk tankers) shall

be cleaned and sanitized before filling and filled and closed in a sanitary manner;

4. Aseptic filling. A previously sterilized dairy product shall be filled under conditions which prevent contamination of the product by living organisms or spores. The container, prior to being filled, shall be sterilized and maintained in a sterile condition. The container shall be sealed in a manner that prevents contamination of the product; and

5. Storage. Proper facilities shall be provided for the storage and handling of finished product.

## 2VAC5-531-90. Animal health.

No person may produce, provide, manufacture, sell, offer for sale, store in the Commonwealth of Virginia, or bring, send, or receive into the Commonwealth of Virginia any milk for manufacturing purposes unless the person complies with the following requirements:

1. Milk for manufacturing purposes shall be from animals that are maintained in a healthy condition and which are properly fed and kept;

2. Cow, goat, bison, and water buffalo milk for manufacturing purposes and all cows, goats, bison, or water buffalo added to each herd the milk from which is intended to be used for manufacturing purposes shall be from a herd that complies with the Uniform Methods and Rules; Bovine Tuberculosis Eradication-effective January 22, 1999 1, 2005, 9 CFR Part 77, and each herd shall be located in a Modified Accredited Tuberculosis Area or an Area Accredited Free of Bovine Tuberculosis as defined in Uniform Methods and Rules; Tuberculosis Eradication-effective January 22, 1999 1, 2005, and certified by the U.S. Department of Agriculture or shall have passed an annual tuberculosis test;

3. Sheep milk and the milk from other mammals for manufacturing purposes shall be from a flock or group of animals that have all been individually tested and have passed an annual tuberculosis test;

4. Cow, bison, and water buffalo milk for manufacturing purposes and each cow, bison, or water buffalo added to each herd the milk from which is intended to be used for manufacturing purposes shall be from a herd that complies with Uniform Methods and Rules; Brucellosis Eradication-effective February 1, 1998 October 1, 2003, 9 CFR Part 78; and the following:

a. Each herd shall be located in a Certified Brucellosis-Free Area or a Modified Certified Brucellosis Area as defined in Uniform Methods and Rules; Brucellosis Eradication-effective February 1, 1998 October 1, 2003, and certified by the ~~United States~~ U.S. Department of Agriculture and enrolled in a testing program for the Certified Brucellosis-Free Area or the Modified Certified Brucellosis Area; ~~or~~

- b. Each herd shall meet the requirements for an individually certified herd as defined in Uniform Methods and Rules; Brucellosis Eradication-effective ~~February 1, 1998~~ October 1, 2003; or
  - c. Each herd shall participate in a milk ring testing program meeting the requirements specified in Uniform Methods and Rules; Brucellosis Eradication-effective ~~February 1, 1998~~ October 1, 2003, in a state that conducts a milk ring testing program at least twice per year at approximately equal intervals, and any herd with a positive milk ring test result shall be blood tested within 30 days after the date of the positive milk ring test; or
  - d. Each cow, bison, and water buffalo in the herd shall be individually tested by an "official" blood test as defined in Uniform Methods and Rules; Brucellosis Eradication for the detection of brucellosis annually;
5. Goat's milk, sheep's milk, and the milk from other mammals for manufacturing purposes shall:
- a. Be from a herd or flock which has passed an annual whole-herd or whole-flock brucellosis test; or
  - b. Be from a herd or flock that participates in a milk ring testing program meeting the requirements specified by the ~~United States~~ U.S. Department of Agriculture for goats, sheep, or the milk from other mammals in a state that conducts a milk ring testing program at least two times per year at approximately equal intervals, and any herd or flock with a positive milk ring test result shall be blood tested within 30 days after the date of the positive milk ring tests; and
6. For diseases of cows, sheep, goats, bison, water buffalo, or other mammals which might affect human health, other than brucellosis and tuberculosis, the Virginia Department of Agriculture and Consumer Services may require physical, chemical, or bacteriological examinations or other tests as may be deemed necessary by a licensed veterinarian or a veterinarian employed by the Virginia Department of Agriculture and Consumer Services to diagnose the disease. Each permit holder shall dispose of any diseased animals disclosed by testing in a manner which prevents the spread of the disease to other animals or humans.

**2VAC5-531-110. Dairy products which may be sold.**

~~From and after January 26, 2005, no~~ No person may produce, provide, manufacture, sell, offer for sale, expose for sale, or store in the Commonwealth of Virginia; or bring, send, or receive into the Commonwealth of Virginia any manufactured dairy product in final package form for direct human consumption unless (i) the product has been pasteurized in accordance with the requirements of this chapter; (ii) the product is made from dairy ingredients (milk, milk products, or dairy products) that have all been pasteurized in accordance with the requirements of this

chapter; or (iii) in the case of cheese, the cheese complies with a standard of identity under 21 CFR Part 133 that allows for the cheese to be aged above 35° for a minimum of 60 days or the minimum number of days specified under the standard of identity for that variety of cheese.

**2VAC5-531-140. Interpretation and enforcement.**

A. This chapter is based on the USDA Milk for Manufacturing Purposes and its Production and Processing-Recommended Requirements, effective ~~November 12, 1996~~ July 21, 2011. Except as otherwise provided in this chapter, the provisions of this chapter shall be interpreted in a manner consistent with interpretations accorded the USDA Milk for Manufacturing Purposes and its Production and Processing-Recommended Requirements, effective ~~November 12, 1996~~ July 21, 2011.

B. The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. The Virginia Department of Agriculture and Consumer Services shall comply with the following administrative procedures when summarily suspending a permit as specified in 2VAC5-531-50 D:

1. The Virginia Department of Agriculture and Consumer Services shall serve upon the permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the permit holder of the right to appear before the Virginia Department of Agriculture and Consumer Services in person, by counsel, or by other qualified representative at an informal fact-finding conference pursuant to § 2.2-4019 of the Code of Virginia for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;
2. Upon receipt of written application from any person whose permit has been summarily suspended (within 30 days after the effective date of the summary suspension), the Virginia Department of Agriculture and Consumer Services shall within seven days after the date of receipt of a written application from any person whose permit has been summarily suspended, proceed to hold an informal fact-finding conference pursuant to § 2.2-4019 of the Code of Virginia to ascertain the facts of the violations in question, and upon evidence presented at the informal fact-finding conference, shall affirm, modify, or rescind the summary suspension;
3. The Virginia Department of Agriculture and Consumer Services shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal fact-finding conferences pursuant to § 2.2-4019 of the Code of Virginia. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the Virginia Department of

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Agriculture and Consumer Services for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the department which can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose permit has been summarily suspended may be granted an informal fact-finding conference by the Virginia Department of Agriculture and Consumer Services unless the Virginia Department of Agriculture and Consumer Services receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the permit holder may request a formal hearing under § 2.2-4020 of the Code of Virginia by writing the Program Manager of the Office of Dairy and Foods within 30 days stating the request and providing the Virginia Department of Agriculture and Consumer Services with a statement of the issues in dispute. If the request for a formal hearing is denied, the Virginia Department of Agriculture and Consumer Services shall notify the permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal hearing is denied, the Virginia Department of Agriculture and Consumer Services shall notify the permit holder of the right to file an appeal in the circuit court.

**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 (2VAC5-531)

[Application for a Dairy Farm Permit, ODF-DS-100 \(rev. 6/2012\)](#)

[Application for a Permit to Receive, Process, and Handle Milk for Manufacturing Purposes, ODF-DS-101 \(rev. 5/2009\)](#)

[Dairy Farm Inspection Report, ODF-DS-102 \(rev. 2/2006\)](#)

[Dairy Manufacturing Plant Inspection Report, ODF-DS-103 \(rev. 1/2005\)](#)

## DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-531)

~~Official Methods of Analysis of AOAC International, 17th Edition, Revision 1 (2002), Association of Analytical Chemists International.~~

~~3-A Sanitary Standards, 3-A Accepted Practices & E-3-A Sanitary Standards, effective as of November 20, 2001, 3-A Sanitary Standards, Incorporated.~~

~~Standard Methods for the Examination of Dairy Products, 16th Edition, 1992, American Public Health Association.~~

~~Evaluation of Milk Laboratories, 1995 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.~~

~~Beta lactam Test Methods for Use Under Appendix N and Section 6 of the Pasteurized Milk Ordinance (PMO), M-a-85 (Revision #9), December 21, 2001, Food and Drug Administration.~~

~~Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back, M-I 96-10 (Revision #4), December 21, 2001, Food and Drug Administration.~~

~~IMS List - Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers, July 1, 2002, Food and Drug Administration~~

~~Bovine Tuberculosis Eradication - Uniform Methods and Rules, Effective January 22, 1999, U.S. Department of Agriculture, Animal and Plant Health Inspection Service.~~

~~Brucellosis Eradication - Uniform Methods and Rules, Effective February 1, 1998, U.S. Department of Agriculture, Animal and Plant Health Inspection Service.~~

[3-A Sanitary Standards and 3-A Accepted Practices, effective as of August 15, 2013, 3-A Sanitary Standards, Incorporated, 6888 Elm Street, Suite 2D, McLean Virginia 22101, \[www.3-a.org\]\(http://www.3-a.org\)](#)

[Beta Lactam and Other Test Methods for Use Under Appendix N and Section 6 of the Grade "A" Pasteurized Milk Ordinance \(PMO\), M-a-85 \(Revision #14\), March 22, 2012, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Dairy and Egg Branch \(HFS 316\), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835](#)

[Bovine Tuberculosis Eradication - Uniform Methods and Rules, APHIS 91-45-011, effective January 1, 2005, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Federal Center Building, Hyattsville, Maryland 20782 or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240](#)

[Brucellosis Eradication - Uniform Methods and Rules, APHIS 91-45-013, effective October 1, 2003, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Federal Center Building, Hyattsville, Maryland 20782 or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240](#)

[Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace](#)

[Back, M-I-96-10 \(Revision #8\), March 22, 2012, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Dairy and Egg Branch \(HFS 316\), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835](#)

[Evaluation of Milk Laboratories, 2011 Revision, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration and the National Conference on Interstate Milk Shipments, HFH-450, 6502 South Archer Road, Bedford Park, Illinois 60501](#)

[Grade "A" Pasteurized Milk Ordinance, 2013 Revision, \(HFS-626\), U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, 5100 Paint Branch Parkway, College Park, Maryland 20740-3835](#)

[Milk for Manufacturing Purposes and its Production and Processing, effective July 21, 2011, U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Programs, Stop 0225, Room 2968 – South, 1400 Independence Avenue SW, Washington, D.C. 20250-0225](#)

[Official Methods of Analysis of AOAC International, 19th Edition, 2012, AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417, www.aoac.org](#)

[Standard Methods for the Examination of Dairy Products, 17th Edition, 2004, American Public Health Association, 800 I Street, NW, Washington, D.C. 20001, http://www.apha.org](#)

VA.R. Doc. No. R16-4194; Filed September 15, 2015, 1:54 p.m.

**Final Regulation**

**Title of Regulation:** **2VAC5-610. Rules Governing the Solicitation of Contributions (amending 2VAC5-610-10 through 2VAC5-610-80; adding 2VAC5-610-35).**

**Statutory Authority:** § 57-66 of the Code of Virginia.

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

**Agency Contact:** Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3983, FAX (804) 371-7479, TTY (800) 828-1120, or email michael.menefee@vdacs.virginia.gov.

**Summary:**

*The amendments (i) update references to the names of state agencies, (ii) update language to reflect current Internal Revenue Service filing requirements, (iii) remove obsolete references to the Office of Consumer Affairs, and (iv) remove the requirement that charitable organization registration applications be notarized.*

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

Part I  
Definitions

**2VAC5-610-10. Definitions.**

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

"Agents" means one or more persons who transact some business or manage some affair for another, by the authority and on account of the latter, and who render an account of such business or affair to that other. The term "agents" shall include the term "subcontractors."

"Bona fide salaried officer or employee" means a person who is in an employer-employee relationship with a charitable organization and who is compensated exclusively by a fixed annual salary or hourly wage.

"Budget" means a financial plan of action that itemizes expected sources and amounts of income and expenses and that is ratified by the organization's ~~Board~~ board of ~~Directors~~ directors.

"Certified audited financial statements" means financial statements prepared by an independent certified public accountant with an opinion rendered in accordance with generally accepted accounting principles (GAAP). [~~See § 57-53 of the Code of Virginia, ] Records to be kept by charitable organizations, [ and 2VAC5-610-80-B ], Financial standards [ → ]~~

"Certified treasurer's report" means an income and expense statement and a balance sheet for the past fiscal year that have been prepared and signed by the organization's treasurer verifying that the report is accurate and true.

"Code" means Code of Virginia (1950), as amended.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or a member of his staff to whom he may delegate his duties [ ~~under Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia ] , including, but not limited to, staff of the Office of Consumer Affairs.~~

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

~~"File with the commissioner" and [ or "receipt by the commissioner" ] means depositing the [ original originals ] of the [ document documents ] required to be filed, along with payment of the appropriate fee and all supporting documentation, with the Office of Consumer Affairs, Washington Building, 1100 Bank Street, Richmond, Virginia 23219 department. Such [ The department shall deem such documents ] shall [ to be ] effective [ filed or received if complete (i) on the date ] deposited by hand at the stated address during regular business hours [ received by the department ]; [ or (ii) if sent by mail, on the date postmarked ]; if sent by mail [ , provided ] such [ the document is ] actually [ received by the ] Office of Consumer Affairs [ department subsequent to the mailing. ]~~

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"Foundation," as referenced in subdivision A 1 of § 57-60 of the Code of Virginia [ ~~(Exemptions)~~ ], means a secondary organization established to provide financial or program support for a primary organization with which it has an established identity.

"Gross contributions" means the total contributions received by the organization from all sources, regardless of geographic location, excluding government grants.

"Having an established identity with" means a relationship between two organizations such that if the primary organization ceased to exist, the secondary organization would also cease to exist.

"Health care institution" means any medical facility that is tax exempt under the Internal Revenue Code § 501(c)(3) and at least one of the following:

1. Licensed by the ~~State Department of Health~~ or by the ~~State Department of Mental Health, Mental Retardation and Substance Abuse Services~~ Department of Behavioral Health and Developmental Services;
2. Designated by the [ ~~Health Care Financing Administration (HCFA)~~ Centers for Medicare and Medicaid Services (CMS) ] as a federally qualified health center;
3. Certified by [ ~~HCFA~~ CMS ] as a rural health clinic; or
4. Wholly organized for the delivery of health care services without charge, including the delivery of dental, medical, or other health services where a reasonable minimum fee is charged to cover administrative costs.

"IRS" means the U.S. Department of the Treasury [ 1 ] Internal Revenue Service.

"Local civic league or association" means a not-for-profit organization operated to further the common good of the city, town, or county that it is organized to serve.

"Local service club" means a not-for-profit organization that is organized for the purpose of providing educational services, recreational services, charitable services, or social welfare services to the city, town, or county in which such organization operates.

"Past fiscal year" means the most recently completed fiscal year.

"Primary address" means the bona fide physical street address of the organization or sole proprietor.

"Primary name" means the name under which an organization is incorporated, if incorporated [ ~~or~~; ] if [ ~~not incorporated~~ unincorporated ], has been issued a certificate, by the Virginia State Corporation Commission, to transact business in Virginia, if so certified [ ~~or~~; ] if neither incorporated nor certified to transact business in Virginia, the name by which the organization is commonly known or referred to, except that such name shall not be an assumed name, or a deceptive name, as described in subsection A of 2VAC5-610-80.

"Report," "register," and "submit" mean "file with the commissioner" as that phrase is defined in this section.

"Subcontractor" means any agent, (but not an employee), of a professional solicitor who solicits under a contract or agreement on behalf of the professional solicitor for the benefit of any charitable or civic organization with which the professional solicitor has a contract or agreement.

"Trade association" means an association of business organizations having similar issues and engaged in similar fields formed for mutual protection, exchange of ideas and statistics, and for maintenance of standards within their industry.

~~"Treasurer's report" means an income and expense statement and a balance sheet for the past fiscal year, which has been prepared by the organization's treasurer and verified by him as being accurate and true.~~

"Unified Registration Statement" means the [ standardized ] form created [ ~~by a committee organized~~ ] by the National Association of Attorneys General and the National Association of State Charity Officials to consolidate the information and data requirements of all states requiring registration.

## Part II

### Rules Governing Charitable and Civic Organizations

#### **2VAC5-610-20. Initial registration.**

A. Documentation required [ for registration ]. Except as provided in subsection B of this section, every charitable organization subject to registration, pursuant to § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~), shall file [ with the commissioner ] an initial registration statement [ ~~with~~ on a form prescribed by ] the commissioner [ or the Unified Registration Statement, with all questions answered, with two signatures, and with all attachments required by Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia ]. [ ~~Such~~ The completed ] registration [ statement ] shall [ ~~not be considered complete unless accompanied by all supporting documentation as follows~~ ] include the following attachments ]:

1. ~~FEE: Fee.~~ The appropriate fee specified on Form 102, "Virginia Registration Statement for a Charitable Organization," in the amount prescribed in subsection E of § 57-49 of the Code of Virginia, made payable to "Treasurer of Virginia";

[ ~~2.~~ ] ~~FORM: [ Form. The completed Form 102, ] "Virginia [ "Registration Statement for a Charitable Organization," or the completed Unified Registration Statement, with all questions answered, with two ] notarized [ signatures on the form, as specified on the form, and with all required attachments;~~

3. 2. ] ~~FINANCIAL REPORT: Financial report.~~ A copy of one of the following:

- a. For all organizations with prior financial history:

(1) The ~~signed and~~ completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with ~~Schedule A (Form 990)~~ all schedules, as required by the IRS, except Schedule B, and with all attachments, as filed with the IRS. The form must be signed or, if the form is filed electronically with the IRS, the organization must submit a copy of the IRS [ receipt of filing e-file signature authorization ];

(2) Certified audited financial statements for the past fiscal year; or

(3) If the annual income of the organization ~~is less than \$25,000~~ qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report for the past fiscal year.

b. For a newly organized charitable organization that has no financial history, a budget for the current fiscal year shall be filed;

[ ~~4. 3.~~ ] **KEY PERSONNEL:** Key personnel. A listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names ~~and~~ addresses, and titles within the organization;

[ ~~5. 4.~~ ] **CONTRACTS:** Contracts. A signed copy of [ ~~any and~~ ] all current contracts with any professional fund-raising counsel and any professional solicitor, as required in § 57-54 of the Code of Virginia (~~Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors~~);

[ ~~6. 5.~~ ] **GOVERNING DOCUMENTS:** Governing documents. If the organization is incorporated, a copy of the certificate of incorporation, articles of incorporation, and any subsequent amendments to those documents; [ ~~—or;~~ ] if unincorporated, any [ ~~other~~ ] governing documents;

[ ~~7. 6.~~ ] **BYLAWS:** Bylaws. A copy of the organization's bylaws and any subsequent amendments to that document; and

[ ~~8. 7.~~ ] **TAX EXEMPTION:** Tax exemption. If the charitable organization is listed with the IRS as tax exempt, a copy of the IRS determination letter and any subsequent notifications of modification [ ~~—or;~~ ] if exempt status is pending, a copy of the completed IRS application form as filed with the IRS.

B. Consolidated or "joint" registration. A statewide or national charitable or civic organization may file a consolidated, or "joint," registration with the commissioner, as described in subsection B of § 57-49 B of the Code of Virginia (~~Registration of charitable organizations~~), on behalf of its local chapters, which shall not be considered complete unless accompanied by all supporting documentation specified in subsection A of this section, if:

1. The parent organization shares a group IRS exemption status with its chapters and all financial reporting is

consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements [ ~~—or~~ ] ; [ ; ] if the organization's annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report; or

2. Each chapter has its own separate IRS exemption status, but the organization's articles of incorporation or bylaws state that all financial matters are managed by the parent organization and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements [ ~~—or~~ ] ; [ ; ] if its annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report.

C. Standard of reporting contributions. [ ~~Any person required to report contributions~~ Every charitable organization subject to registration ], pursuant to § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~) [ , shall ] :

1. [ ~~Shall report Report~~ ] the gross contributions when the solicitation does not include goods or services;

2. [ ~~Shall report Report~~ ] as gross contributions the valuation of any goods or services solicited for resale. Such valuation shall be determined as prescribed in the American Institute of Certified Public Accountants [ (~~AICPA~~) ] standards for reporting donated goods and services;

3. [ ~~Shall report Report~~ ] the gross contributions when the solicitation includes the sale or donation of tickets for use by third parties, or when the goods or services sold are of nominal value; and

4. [ ~~Shall report Report~~ ] contributions, which may be for net contributions only, when received from special events including, but not limited to, dinners, dances, carnivals, raffles, and bingo games, when the goods or services offered are of more than nominal value in return for a payment higher than the direct cost of the goods or services provided.

**2VAC5-610-30. Annual registration.**

A. Documentation required [ for registration ]. Except as provided in subsection B of this section, every charitable organization subject to registration, pursuant to § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~), shall file [ with the commissioner ] an annual registration renewal [ with on a form prescribed by ] the commissioner [ or the Unified Registration Statement, with all questions answered, with two signatures, and with all attachments required by Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia, ] on or before the 15th day of the fifth calendar month following the end of the organization's fiscal year. [ ~~Such~~ The completed ] registration [ statement ] shall [ ~~not be considered complete unless accompanied by all~~ ]

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supporting documentation, as follows include the following attachments ]:

1. ~~FEE: Fee.~~ The appropriate annual fee, ~~specified on Form 102, "Virginia Registration Statement for a Charitable Organization," in the amount prescribed in subsection E of § 57-49 of the Code of Virginia, made payable to "Treasurer of Virginia";~~

~~[ 2. ] FORM: [ Form. The completed Form 102, ] "Virginia [ "Registration Statement for a Charitable Organization," or the completed Unified Registration Statement, with all questions answered, with two ] notarized [ signatures on the form, as specified on the form, and with all required attachments;~~

3. ~~2. ] FINANCIAL REPORT: Financial report.~~ A copy of one of the following:

a. The ~~signed and~~ completed IRS Form 990, Form 990-PF, or Form 990-EZ, for the past fiscal year, with ~~Schedule A (Form 990) all schedules,~~ as required ~~by the IRS, except Schedule B, and with~~ all attachments, as filed with the IRS. ~~The form must be signed [ ; ] or [ ; ] if the form is filed electronically with the IRS, the organization must submit a copy of the IRS [ receipt of filing e-file signature authorization ];~~

b. Certified audited financial statements for the past fiscal year; or

c. If the annual income of the organization ~~is less than \$25,000~~ qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report for the past fiscal year;

~~[ 4. 3. ] KEY PERSONNEL: Key personnel.~~ A listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names ~~and~~, addresses, ~~and~~ titles within the organization;

~~[ 5. 4. ] CONTRACTS: Contracts.~~ A signed copy of [ ~~any and~~ ] all current contracts with any professional fundraising counsel and any professional solicitor, as required by § 57-54 of the Code of Virginia ~~(Contracts between charitable or civic organizations and professional fundraising counsel or professional solicitors);~~

~~[ 6. 5. ] GOVERNING DOCUMENTS: Governing documents.~~ If the organization is incorporated, a copy of any certificate of incorporation, any articles of incorporation, or amendments to these documents [ ; ] not previously filed with the commissioner; ~~[ -or ] ; [ ; ]~~ if unincorporated, any amendments to the governing documents not previously filed with the commissioner;

~~[ 7. 6. ] BYLAWS: Bylaws.~~ A copy of any bylaws [ ; ] or amendments to that document [ ; ] not previously filed with the commissioner; and

~~[ 8. 7. ] TAX EXEMPTION: Tax exemption.~~ If the organization is listed with the IRS as tax exempt, a copy of any IRS determination letter or subsequent notifications of

modification [ ; ] not previously filed with the commissioner.

B. Consolidated, or "joint," registration. A statewide or national charitable or civic organization may file a consolidated, or "joint," registration with the commissioner, as described in subsection B of § 57-49 B of the Code of Virginia ~~(Registration of charitable organizations)~~, on behalf of its local chapters, which shall not be considered complete unless accompanied by all supporting documentation specified in subsection A of this section, if:

1. The parent organization shares a group IRS exemption status with its chapters and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements [ ~~,-or~~ ] ; [ ; ] if the organization's annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report; or

2. Each chapter has its own separate IRS exemption status, but the organization's articles of incorporation or bylaws state that all financial matters are managed by the parent organization and all financial reporting is consolidated in the parent organization's IRS Form 990, Form 990-PF, or Form 990-EZ, or in its certified audited financial statements [ ~~,-or~~ ] ; [ ; ] if its annual income ~~is under \$25,000~~ qualifies the organization to file Form 990-N with the IRS, in its certified treasurer's report.

C. Standard of reporting contributions. ~~[ Any person required to report contributions, Every charitable organization subject to registration, ]~~ pursuant to § 57-49 of the Code of Virginia ~~(Registration of charitable organizations) [ , shall ]:~~

1. ~~[ Shall report Report ]~~ the gross contributions when the solicitation does not include goods or services;

2. ~~[ Shall report Report ]~~ as gross contributions the valuation of any goods or services solicited for resale. Such valuation shall be determined as prescribed in the American Institute of Certified Public Accountants [ ~~(AICPA)~~ ] standards for reporting donated goods and services;

3. ~~[ Shall report Report ]~~ the gross contributions when the solicitation includes the sale or donation of tickets for use by third parties, or when the goods or services sold are of nominal value; and

4. ~~[ Shall report Report ]~~ contributions, which may be reported as the net contributions only, when received from special events including, but not limited to, dinners, dances, carnivals, raffles, and bingo games, when the goods or services offered are of more than nominal value in return for a payment higher than the direct cost of the goods or services provided.

D. Extension of time to file [ with the commissioner ]. Any charitable organization that cannot complete its registration renewal on or before the 15th day of the fifth calendar month

following the end of the organization's fiscal year, may request in writing, as provided in subsection E of § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~), an extension of time to file [with the commissioner]. Payment of fees is not required with such a request. Fees are due when the registration is filed. A charitable organization may request an extension of time to file [with the commissioner], and an extension may be granted under the following conditions:

1. The charitable organization shall send a ~~letter~~ written request to the commissioner [ ; ] stating that the organization is requesting an extension of time to file [with the commissioner] its registration renewal. If the organization has requested [ , ] from the IRS [ , ] an extension of time to file its IRS Form 990, Form 990-PF, or Form 990-EZ, the organization may send to the commissioner a copy of the IRS extension request [ ; ] in lieu of the ~~letter~~ written request.
2. If no time period is specified in the written request for extension of time to file, the commissioner shall grant an extension of time to file of 90 days.
3. If the charitable organization is unable to complete its registration renewal within the time period granted by the commissioner in the extension of time to file, the charitable organization may request an additional extension of time to file.
4. In any case, the extension or total of all extensions requested from and granted by the commissioner shall be for no longer than six months after the 15th day of the fifth calendar month following the end of the organization's fiscal year.
5. The organization's registration shall lapse if the annual renewal is not filed by the 15th day of the fifth calendar month following the end of the organization's fiscal year and no extension of time to file is requested from and granted by the commissioner, or if the annual renewal is not filed by the end of the extension period granted. If the organization's registration lapses, the organization shall file an initial registration [ ~~and~~ and ] pay the initial registration fee in addition to the annual registration [ ~~fee~~ fee ], as prescribed by 2VAC5-610-20.

**2VAC5-610-35. Disclosures required of charitable or civic organizations.**

- A. Primary name. The charitable or civic organization shall include in all solicitations the primary name under which it is registered with the commissioner.
- B. Use of another charitable or civic organization's name in an appeal by a charitable or civic organization. Pursuant to subsection C of § 57-57 of the Code of Virginia, if the charitable or civic organization uses the name of another charitable or civic organization in its own solicitation, it shall submit [ ~~Form 121, "Consent to Solicit,"~~ ] a consent to solicit

form, prescribed by the commissioner, ] for each charitable or civic organization named in its own solicitation.

C. Preprinted return addresses. Pursuant to subsection L of § 57-57 of the Code of Virginia, the preprinted address on any return envelope, prepared under the direction of the charitable or civic organization and provided to a potential donor [ , ] that is not addressed to the charitable or civic organization's own primary address [ , ] shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional fund-raising counsel or solicitor, a third party caging company or bank, a commercial [ ~~mail-receiving mail-receiving~~ ] agency, or other receiver, but [ , ] in any case [ , ] must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box [ ; ] rented from the U.S. Postal Service.

**2VAC5-610-40. Exemption from annual registration.**

A. Documentation required [ ~~for exemption application~~ ]. Any charitable or civic organization claiming exemption from annual registration, pursuant to § 57-60 of the Code of Virginia (~~Exemptions~~), shall file with the commissioner [ on a form prescribed by the commissioner, ] an application for exemption from annual registration [ ~~on Form 100, "Virginia Exemption Application for a Charitable or Civic Organization,"~~ ] indicating the category of the exemption claimed [ , with all questions answered, with required signatures, and with all attachments required by Chapter 5 (§ 57-48 et seq.) of Title 57 of the Code of Virginia ]. [ ~~Such filing~~ The completed exemption application ] shall [ ~~not be considered complete unless accompanied by all supporting documentation, as follows~~ include the following attachments ]:

1. ~~FEE:~~ A fee: A fee in the amount prescribed in subsection C of § 57-60 of the Code of Virginia, made payable to "Treasurer of Virginia";
- [ 2. ] ~~FORM:~~ [ ~~Form.~~ The completed Form 100, "Virginia Exemption Application for a Charitable or Civic Organization" and applicable attachments, with all questions answered, and with an officer's ] notarized [ signature on the form;
3. ~~2. ] FINANCIAL REPORT:~~ Financial report. A copy of one of the following:

- a. For all organizations with prior financial history:
  - (1) The ~~signed and~~ completed IRS Form 990, 990-PF, or 990-EZ, for the past fiscal year, with ~~Schedule A (Form 990)~~ all schedules, as required by the IRS, except Schedule B, and with all attachments, as filed with the

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IRS. The form must be signed [ 7 ] or [ 1 ] if the form is filed electronically with the IRS, the organization must submit a copy of the IRS [ ~~receipt of filing~~ e-file signature authorization ];

(2) Certified audited financial statements for the past fiscal year; or

(3) If the organization's annual income is ~~less than \$25,000~~ qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report for the past fiscal year;

b. For a newly organized charitable or civic organization that has no financial history, a budget for the current fiscal year shall be filed;

[ ~~4. 3.~~ ] ~~KEY PERSONNEL:~~ Key personnel. A listing for the current fiscal year of the officers, directors, trustees, and principal salaried executive staff officer, including their names ~~and~~, addresses, and titles within the organization;

[ ~~5. 4.~~ ] ~~CONTRACTS:~~ Contracts. A signed copy of all current contracts with any professional fund-raising counsel and any professional solicitor, as required in § 57-54 of the Code of Virginia (~~Contracts between charitable or civic organizations and professional fund raising counsel or professional solicitors~~);

[ ~~6. 5.~~ ] ~~GOVERNING DOCUMENTS:~~ Governing documents. Except as provided in subdivision B 2 of this section, if the organization is incorporated, a copy of the certificate of incorporation, articles of incorporation, and any subsequent amendments to those documents; [ ~~or~~ ] if unincorporated, any [ ~~other~~ ] governing documents;

[ ~~7. 6.~~ ] ~~BYLAWS:~~ Bylaws. Except as provided in subdivision B 2 of this section, a copy of the organization's bylaws and any subsequent amendments to that document; and

[ ~~8. 7.~~ ] ~~TAX EXEMPTION:~~ Tax exemption. If the organization is listed with the IRS as tax exempt, a copy of the IRS determination letter and any subsequent notifications of modification [ ~~or~~ ] ; [ 1 ] if tax exempt status is pending, a copy of the completed IRS application form, as filed with the IRS.

B. Additional documentation required for specific categories of exemption. In addition to the documentation required in subsection A of this section, the organization shall submit the following documentation for the specific exemption application category named below:

1. Category A, Educational Institutions:

a. Educational institutions that do not confine solicitations to their student body, alumni, faculty, trustees, and their families; shall provide a copy of their accreditation certificate; as proof of qualification for this exemption.

b. Any foundation having an established identity with any accredited educational institution shall provide a copy of the institution's accreditation certificate; and a letter, written by the principal, dean, or the head of the institution by whatever name known, which states that the institution recognizes and corroborates the established identity.

2. Category B, Solicitation for a Named Individual: In the absence of articles of incorporation and bylaws, the charitable organization shall file a copy of the trust agreement or similar document that includes the following information:

a. The names of the persons who control the funds and the fund account;

b. The number of signatures required to extract funds from the fund account;

c. A statement that all contributions collected, without any deductions whatsoever, shall be turned over to the named beneficiary for his use; and

d. A statement [ 1 ] in the event the named beneficiary dies [ 1 ] naming those persons to whom any funds remaining will be distributed upon dissolution of the fund account.

3. Category C, Solicitations not to Exceed \$5,000: A copy of the organization's budget for the current calendar year; and copies of the certified treasurer's reports for the three previous calendar years, or for the calendar years of the organization's existence; if less than three years.

4. Category D, Membership Solicitation Only:

a. The charitable organization shall submit documentation of the dues structure for each class of members; and

b. The charitable organization shall submit copies of any membership recruitment correspondence; for the past two mailings.

5. Category E, Solicitations by a Nonresident Charitable Organization: A complete description of all solicitations to be conducted in Virginia by the organization.

6. Category F, Solicitations Confined to Five or Fewer Contiguous Cities and Counties:

a. The organization applying for this exemption (applicant organization) shall submit a copy of each local solicitation permit with the application for exemption.

b. If the organization applying for this exemption (applicant organization) grants money to another charitable organization (grantee) that lies within the area covered by this exemption; but pays the grantee's money to the grantee's parent organization that lies outside the area covered by the exemption, then the applicant organization shall keep on file for three years a statement [ , ] prepared by the parent organization [ , ] that the grant funds are disbursed to the grantee.

7. Category G, Civic Organization: No additional documentation is required.

8. Category H, Health Care Institutions: The charitable organization shall submit a copy of one of the following in support of the category of application:

- a. The license issued by the ~~State Department of Health~~ or by the ~~State Department of Mental Health, Mental Retardation and Substance Abuse Services~~ Department of Behavioral Health and Developmental Services;
- b. Documentation to show that the health [care] institution has been designated by the [Health Care Financing Administration (HCFA) Centers for Medicare and Medicaid Services (CMS)] as a federally qualified health center;
- c. A copy of the [~~HCFA-issued~~ CMS-issued] rural health clinic certificate;
- d. A copy of the free clinic's purpose as stated in its governing documents; or
- e. If applying as a supporting organization, a copy of the health care institution's documentation (as specified in subdivision 8 a, b, c, or d of this subsection) and a letter from the health care institution's president, or head by whatever name known, acknowledging that the supporting organization exists solely to support the health care institution. If more than one health care institution is supported, supply this documentation for each health care institution.

For any year in which a [~~federally-qualified~~] health [~~center~~ care institution] fails to qualify for [~~such~~] designation [~~as a federally qualified health center~~], that health [~~center~~ care institution] shall [~~register on Form 102, "Virginia Registration Statement for a Charitable Organization,"~~ file with the commissioner a registration statement for a charitable organization, on a form prescribed by the commissioner] in accordance with § 57-49 of the Code of Virginia (~~Registration of charitable organization~~) and 2VAC5-610-20, or submit any other applicable exemption application, in accordance with § 57-60 of the Code of Virginia (~~Exemptions~~) and [~~2VAC5-610-40~~ this section].

9. Category I, Nonprofit Debt Counseling Agencies: A copy of the nonprofit debt counseling license issued by the Virginia State Corporation Commission, pursuant to § ~~6.1-363.1~~ 6.2-2001 of the Code of Virginia.

10. Category J, Area Agencies on Aging: A copy of the agreement between the charitable organization and the Virginia Department for ~~the~~ Aging and Rehabilitative Services, pursuant to subdivision A 6 of § 2.2-703-A-6 51.5-135 of the Code of Virginia, which designates the organization as an area agency on aging.

11. Category K, Trade Associations: No additional documentation required.

12. Category L, Labor Unions, Labor Associations, and Labor Organizations: No additional documentation required.

13. Category M, Virginia Area Health Education Centers: Copy of the consortium letter issued by the program.

14. Category N, Regional Emergency Medical Services Councils: Copy of the designation letter issued by the Commissioner of Health.

15. Category O, Nonprofit that Solicits Only through Grant Proposals: Copy of the IRS determination letter recognizing the organization as a § 501(c)(3) charitable organization.

C. Consolidated, or "joint," exemptions. A consolidated, or "joint," exemption from annual registration, as described in subsection C of § 57-60 ~~of the Code of Virginia (Exemptions)~~, will apply to those local chapters, branches, or affiliates ~~which that~~ belong to a network membership. In this instance, the parent membership organization shall submit the consolidated application on behalf of its local chapters, branches, or affiliates, and, if exempted, shall submit a membership roster annually to the commissioner. If the exemption category is of a local nature, such as for civic organizations, the exemption shall apply to the local chapters, but not to the parent organization, if the parent organization, in this instance, is soliciting contributions statewide. In this instance, the parent organization shall file its own application for exemption under § 57-60 of the Code of Virginia (~~Exemptions~~), if applicable, or its own annual registration under § 57-49 of the Code of Virginia (~~Registration of charitable organizations~~).

D. Primary name. The charitable or civic organization shall include in all solicitations the primary name under which it is registered with the commissioner.

E. Use of another charitable or civic organization's name in an appeal by a charitable or civic organization. Pursuant to ~~§ 57-57-C~~ of the Code of Virginia (Prohibited acts), if the charitable or civic organization uses the name of another charitable or civic organization in its own solicitation, it shall submit Form 121, "Consent to Solicit," for each charitable or civic organization named in its own solicitation.

F. Preprinted return addresses. Pursuant to ~~§ 57-57-L~~ of the Code of Virginia (Prohibited acts), the preprinted address on any return envelope, prepared under the direction of the charitable or civic organization and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
 e/o XYZ Company  
 111 Main Street (#)  
 City, ST Zip Code

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The name on line two may be the name of the professional fund raising counsel or solicitor, a third party caging company or bank, a commercial mail receiving agency, or other receiver, but in any case must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.

## 2VAC5-610-50. Discontinuance of solicitations in Virginia.

A. Ceasing solicitations. If a charitable or civic organization ceases to solicit contributions in Virginia, the charitable or civic organization shall notify the commissioner on or before the 15th day of the fifth month following the end of the organization's fiscal year; and shall submit a copy of the signed and completed IRS Form 990, 990-PF, or 990-EZ [ , ] for the past fiscal year [ , ] with ~~Schedule A (Form 990) all schedules, as required by the IRS, except Schedule B, and [ with ]~~ all attachments, as filed with the IRS, or [ with ] certified audited financial statements for the past fiscal year, or; if the organization's annual income is less than \$25,000 qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report for the past fiscal year. If the organization submits the IRS Form 990, 990-PF, or 990-EZ, the form must be signed [ ; ] or [ ; ] if the form is filed electronically [ with the IRS ], the organization must submit a copy of the IRS [ receipt of filing e-file signature authorization ].

B. Dissolution of a charitable or civic organization. Upon a charitable or civic organization's dissolution, the organization shall submit a copy of its certificate of dissolution and a statement showing the distribution of its funds. Such statement shall be a copy of the IRS Form 990, Form 990-PF, or Form 990-EZ; with ~~Schedule A (Form 990) all schedules, as required by the IRS, except Schedule B, and with all attachments, as filed with the IRS upon dissolution, or certified audited financial statements, or; if annual income is less than \$25,000 qualifies the organization to file Form 990-N with the IRS, a certified treasurer's report, showing the distribution of its funds. If the organization submits the IRS Form 990, 990-PF, or 990-EZ, the form must be signed [ ; ] or [ ; ] if the form is filed electronically [ with the IRS ], the organization must submit a copy of the IRS [ receipt of filing e-file signature authorization ]~~.

### Part III

#### Rules Governing a Professional Fund-Raising Counsel

## 2VAC5-610-60. Registration of a professional fund-raising counsel.

A. Documentation required for registration. Any professional fund-raising counsel subject to registration, pursuant to § 57-61 of the Code of Virginia (~~Registration of professional fund raising counsels and solicitors~~), shall file [ with the commissioner ] a registration statement [ with on a form prescribed by ] the commissioner [ , with all questions

answered and with an officer's notarized signature ]. [ Such The completed ] registration [ statement ] shall [ not be considered complete, unless accompanied by all supporting documentation, as follows include the following attachments ]:

1. ~~FEE: Annual fee of \$100; Fee.~~ An annual fee in the amount prescribed in subsection A of § 57-61 of the Code of Virginia, made payable to "Treasurer of Virginia"; [ and ]

[ 2. ] ~~FORM: [ Form. The completed Form 103; ] "Virginia [ "Registration Statement for a Professional ] Fund-raising [ Fundraising Counsel," with all questions answered, and with an officer's notarized signature on the form; and~~

3. ~~2. ] CONTRACTS: Contracts.~~ A signed copy of [ any and ] all current contracts with charitable or civic organizations soliciting in Virginia, as required by § 57-54 of the Code of Virginia (~~Contracts between charitable or civic organizations and professional fund-raising counsel or professional solicitors~~).

B. Preprinted return addresses. Pursuant to subsection L of § 57-57 ~~L of the Code of Virginia (Prohibited acts)~~, the preprinted address on any return envelope, prepared under the direction of the professional fund-raising counsel and provided to a potential donor [ , ] that is not addressed to the charitable or civic organization's own primary address [ ; ] shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional fund-raising counsel, a third party caging company or bank, a commercial mail-receiving agency, or other receiver, but [ ; ] in any case [ ; ] must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box [ ; ] rented from the U.S. Postal Service.

### Part IV

#### Rules Governing a Professional Solicitor

## 2VAC5-610-70. Rules governing a professional solicitor.

A. Documentation required for registration. Any professional solicitor subject to registration, pursuant to § 57-61 of the Code of Virginia (~~Registration of professional fund-raising counsel and solicitors~~), shall file [ with the commissioner ] a registration statement [ with on a form prescribed by ] the commissioner [ , with all questions answered and with an officer's notarized signature ]. In accordance with subsection A of § 57-61 A of the Code of Virginia (~~Registration of professional fund-raising counsels and solicitors~~), a professional solicitor may register for and pay a single fee on behalf of all its members, officers, agents

(including any subcontractors), and employees. For any specific campaign, any agent or subcontractor not directly under contract or agreement to the registered professional solicitor must file [with the commissioner] its own registration. ~~[Such The completed]~~ registration ~~[statement]~~ shall ~~[not be considered complete unless accompanied by all supporting documentation as follows include the following attachments ]:~~

1. ~~FEE:~~ Annual fee of \$500, and late filing fee of \$250, if applicable, Fee. An annual fee and late filing fee, if applicable, in the amount prescribed in subsection A of § 57-61 of the Code of Virginia, made payable to "Treasurer of Virginia";

~~[ 2- ] FORM:~~ ~~[Form. The completed Form 104, "Virginia [ "Registration Statement for a Professional Solicitor," with all questions answered, and with an officer's notarized signature on the form;~~

~~3. 2. ] BOND:~~ Bond. The completed ~~[ Form 105, "Professional Solicitor's Bond," in the sum professional solicitor's bond form prescribed by the commissioner as ]~~ of \$20,000 ~~[ prescribed required ]~~ in subsection B of § 57-61 of the Code of Virginia ~~[ , ]~~ with corporate surety authorized by the ~~[ Virginia ]~~ State Corporation Commission to act as a surety within the Commonwealth;

~~[ 4. 3. ] GOVERNING DOCUMENTS:~~ Governing documents. A copy of the certificate and articles of incorporation ~~[ , ]~~ if the solicitor is incorporated, and ~~[ , ]~~ if a nonresident (foreign) partnership or corporation, the certificate ~~to do of authority to transact business in Virginia, as required by the Virginia State Corporation Commission; and~~

~~[ 5. 4. ] CONTRACTS:~~ Contracts. A signed copy of ~~[ any and ]~~ all current contracts with charitable or civic organizations soliciting in Virginia, as required by § 57-54 of the Code of Virginia ~~(Contracts between charitable or civic organizations and professional fund raising counsel or professional solicitors), and all current contracts with any agents or subcontractors hired to fulfill the terms of the contracts with those charitable or civic organizations.~~

B. Written authorization from charitable organizations. No professional solicitor or subcontractor shall solicit in the name of, or on behalf of, any charitable or civic organization unless such solicitor has filed with the commissioner one copy of a written authorization from two officers of such organization, as required in subsection F of § 57-57 of the Code of Virginia ~~(Prohibited acts).~~ Such written authorization shall be submitted ~~[ on Form 121, "Consent to Solicit," or Form 120, "Solicitation Notice." Form 121, "Consent to Solicit," as a solicitation notice or consent to solicit on a form prescribed by the commissioner. The consent to solicit ]~~ shall be submitted by the professional solicitor for each agent or subcontractor authorized by the charitable or civic organization to conduct the fund-raising campaign. ~~[ Form 121, "Consent to Solicit," The consent to solicit ]~~ shall be

submitted by the professional solicitor for each charitable or civic organization named in a fund-raising campaign, in addition to the charitable or civic organization with which the professional solicitor has a contract or agreement.

C. Disclosures.

1. Pursuant to § 57-55.2 of the Code of Virginia ~~(Charitable solicitation disclosure),~~ each professional solicitor shall, in the course of an oral solicitation:

a. Identify himself by:

- (1) Disclosing his own real first name and surname;
- (2) Stating affirmatively that he is a "paid solicitor"; and
- (3) Disclosing the primary name under which the professional solicitor is registered with the commissioner or ~~[ , ]~~ if he is employed by a subcontractor, disclosing the primary name of the subcontractor as identified on ~~[ Form 121, "Consent to Solicit" the consent to solicit form prescribed by the commissioner ];~~ and

b. Identify his employing charitable or civic organization by disclosing the primary name, as registered with the commissioner, of the charitable or civic organization for which the solicitation is being made.

An example of the disclosure for a professional solicitor would be: "This is John Doe, a paid solicitor of XYZ Company. I'm calling on behalf of DEF Charity."

An example of the disclosure for a subcontractor would be: "This is John Doe, a paid solicitor of XYZ Company. I'm calling on behalf of DEF Charity."

An example of the disclosure for an employee of a subcontractor would be: "This is John Doe, a paid solicitor of ABC subcontractor. I'm calling on behalf of DEF Charity."

2. Pursuant to clause (iii) of § 57-55.2 of the Code of Virginia ~~(Charitable solicitation disclosure),~~ each professional solicitor shall, in the course of a written solicitation, include the following statement: "The professional solicitor conducting this campaign, (primary name of professional solicitor), files a financial report for each campaign it conducts. Copies of these financial reports are available from the Virginia ~~Office of Consumer Affairs~~ Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218." This statement shall be in bold typeface no smaller than 10-point with grammatically correct capitalization and ~~[ lower case lowercase ]~~ letters. The statement shall appear on the front side of the document on a portion that is retained by the potential donor.

3. Pursuant to subsection L of § 57-57 ~~L~~ of the Code of Virginia ~~(Prohibited acts),~~ the preprinted address on any return envelope, prepared under the direction of the professional solicitor and provided to a potential donor, that is not addressed to the charitable or civic organization's own primary address ~~[ , ]~~ shall include the

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name of the business located at the address on the return envelope in the following format:

ABC Charity  
c/o XYZ Company  
111 Main Street (#)  
City, ST Zip Code

The name on line two may be the name of the professional solicitor, a third party caging company or bank, a commercial mail-receiving agency, or other receiver, but [ ] in any case [ ] must be the name of the company that actually resides at the preprinted address on the return envelope. This requirement does not apply to mail addressed to a United States Post Office box, rented from the U.S. Postal Service.

#### D. Contribution collection devices.

1. Pursuant to subsections A and D and clause (i) of subsection F of § 57-61 of the Code of Virginia (~~Registration of professional fund raising counsel and solicitors~~), for a solicitation campaign employing collection devices including, but not limited to, vending machines or canisters, the professional solicitor shall maintain a record listing each establishment in which a collection device is placed including:

- a. The name of the establishment;
- b. The primary address of the establishment;
- c. The name of the person in the establishment who granted permission to place the collection device there;
- d. The date the collection device was placed in the establishment; and
- e. The date on which the collection device was removed.

2. The professional solicitor employing contribution collection devices shall comply with the disclosure provisions of subsection C of this section, and with the campaign documents provisions of subsection E of this section.

#### E. Fund-raising campaign forms.

1. The professional solicitor shall submit [ ~~Form 120, "Solicitation Notice," and Form 130, "Final Accounting Report,"~~ the solicitation notice and final accounting report, on forms prescribed by the commissioner, ] as required in subsections A and D of § 57-61 of the Code of Virginia (~~Registration of professional fund raising counsel and solicitors~~), and such forms shall not be considered as filed unless all questions are answered and contain original signatures of all required parties.

2. The professional solicitor shall submit the completed [ ~~Form 120, "Solicitation Notice,"~~ solicitation notice on a form prescribed by the commissioner ]:

- a. Prior to any fund-raising campaign; and
- b. Annually, on or before the anniversary of the contract date, for any continuous fund-raising campaign.

3. The professional solicitor shall submit an amended [ ~~Form 120, "Solicitation Notice,"~~ solicitation notice on a form prescribed by the commissioner ] within seven days of any changes to information previously submitted.

4. The professional solicitor shall submit, upon cancellation of a fund-raising campaign prior to any solicitations, a copy of the completed [ ~~Form 120, "Solicitation Notice,"~~ solicitation notice form ] previously filed, with a statement indicating that the campaign has been canceled. If a campaign is canceled after solicitations have begun, the professional solicitor shall notify the commissioner of the cancellation within seven days of the cancellation and submit [ ~~Form 130, "Final Accounting Report,"~~ the final accounting report on a form prescribed by the commissioner ] in accordance with subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund raising counsels and solicitors~~) and this section.

5. The professional solicitor shall submit [ ~~Form 130, "Final Accounting Report,"~~ the final accounting report on a form prescribed by the commissioner ]:

- a. Not later than 90 days after the completion date of the solicitation campaign, or in accordance with extensions granted pursuant to subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund raising counsels and solicitors~~), and any subsequent changes in the information submitted shall be reported every 90 days thereafter; for a fund-raising campaign of finite duration; and
- b. On an annual basis, not later than 90 days after the anniversary of the contract date, or in accordance with extensions granted pursuant to subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund raising counsels and solicitors~~), for a continuous fund-raising campaign.

[ ~~Form 130, "Final Accounting Report,"~~ 6. The final accounting report required by subdivision E 5 of this section ] shall not be considered as filed if the completed form does not contain original signatures or if any blanks are not filled in or attachments are missing. Any applicable late filing fees, pursuant to subsection E of § 57-61 E of the Code of Virginia (~~Registration of professional fund raising counsels and solicitors~~), will continue to accrue until a completed [ ~~Form 130, "Final Accounting Report,"~~ final accounting report ] is filed.

[ ~~6. 7.~~ ] The professional solicitor shall maintain during the solicitation, and for a period of three years thereafter, [ ~~written commitments, on Form 132, "Commitment for Receipt of Donated Tickets,"~~ of acknowledgment of receipt of donated tickets on a form prescribed by the commissioner from ] each person or charitable or civic organization to accept tickets and specifying the number of persons on whose behalf tickets were to be accepted. Such completed forms shall be submitted after notice from the

commissioner to produce such, pursuant to subsection M of § 57-57 of the Code of Virginia (~~Prohibited acts~~).

F. Subcontractors.

1. Filing requirements.

a. Any subcontractor operating under a contract or agreement with a registered professional solicitor shall be treated as an agent of that professional solicitor and is not required to register.

b. Any agent (but not an employee) of a subcontractor operating under a contract or agreement with that subcontractor to solicit shall register separately.

2. Authorizations to solicit.

a. Subcontractors shall operate under a written contract and such contract shall be filed with the ~~Commissioner~~ commissioner, pursuant to subdivision A [ ~~§ 4~~ ] of this section.

b. Subcontractors shall have written authorization from two officers of the charitable or civic organization to solicit on their behalf. Such authorization may be filed on [ ~~Form 121, "Consent to Solicit."~~ a consent to solicit form prescribed by the commissioner. ]

3. Subcontractors shall keep records in accordance with subsection F of § 57-61 ~~F~~ of the Code of Virginia (~~Registration of professional fundraising counsels and solicitors~~) and shall furnish either the originals or copies to the registered professional solicitor.

Part V  
General Provisions

**2VAC5-610-80. General provisions.**

A. Deceptive names. No charitable or civic organization, professional solicitor, or other person shall solicit contributions using a word, name, symbol or device, or any combination thereof, or identifying itself or its client with a word, name, symbol or device, or any combination thereof, that is likely to cause confusion, or to cause mistake, or to deceive the public by:

1. Using a name that may cause an entity to be confused with or mistaken for another previously registered or exempt entity; or
2. Using a name that may cause a professional solicitor to be confused with or mistaken for a charitable or civic organization, or mistaken for having the status of a charitable or civic organization.

B. Financial standards. Fiscal records shall be kept in accordance with the standards and practices as specified in § 57-53 of the Code of Virginia (~~Records to be kept by charitable organizations~~), or generally accepted accounting principles and reporting practices of the organization's particular field as recognized by the American Institute of Certified Public Accountants.

C. Disclosure by for-profit organizations. Every professional solicitor that solicits contributions for a for-profit

organization and every for-profit organization required to issue a written statement for contributions received shall include in the disclosure required by § 57-55.2:1 of the Code of Virginia (~~Solicitations by for-profit organizations~~) a statement that the contributors' donations are not tax-deductible on the contributors' income tax returns.

[ ~~D.~~ D. Receipt. The department shall deem completed documents to be filed or received (i) on the date received by the department or (ii) if sent by mail, on the date postmarked provided the document is received by the department subsequent to the mailing.

~~E.~~ E. ] Filing on a holiday. When the date for the annual renewal of registration of a charitable organization, professional fund-raising counsel, or professional solicitor falls on a Saturday, Sunday, or a state or federal holiday, filing shall be due on the next day that is not a Saturday, Sunday, or a state or federal holiday.

[ ~~E.~~ E. ] Change in information filed. Except as otherwise provided by the Code of Virginia or by this chapter, every registered charitable organization, professional fund-raising counsel, and professional solicitor shall report to the commissioner, in writing, any change in information previously filed with the commissioner, within seven days after the change occurs.

**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 (2VAC5-610)

~~Request for Exemption from Annual Registration, OCA 100 (eff. 3/01).~~

~~Registration Statement for a Charitable Organization, OCA 102 (rev. 3/01).~~

~~Registration Statement for a Professional Fund-raising Counsel, OCA 103 (rev. 3/01).~~

~~Registration Statement for a Professional Solicitor, OCA 104 (rev. 3/01).~~

~~Professional Solicitor's Bond, OCA 105 (rev. 3/01).~~

~~Solicitation Notice, OCA 120 (rev. 3/01).~~

~~Consent to Solicit, OCA 121 (rev. 3/01).~~

~~Final Accounting Report, OCA 130 (rev. 3/01).~~

~~Schedule A, Accounting for All Ticketing Sales, Including Solicitation for Donated Tickets, OCA 131 Schedule A (eff. 3/01).~~

~~Commitment for Receipt of Donated Tickets, OCA 132 (rev. 3/01).~~

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~~[ Remittance Form and Virginia Exemption Application for a Charitable or Civic Organization, OCRP 100 (rev. 10/13)~~

~~Remittance Form and Registration Statement for a Charitable Organization, Form 102, OCRP 102 (rev. 10/13)~~

[Remittance Form - Virginia Exemption Application for a Charitable or Civic Organization, Form 100, OCRP-100 \(rev. 11/2013\)](#)

[Remittance Form - Charitable Organization, Form 102, OCRP-102 \(rev. 6/2015\)](#) ]

[Request for Extension of Time to File Annual Registration Renewal, OCRP-102-X \(eff. 10/13\)](#)

~~[ Remittance Form and Registration Statement for a Professional Fundraising Counsel, Form 103, OCRP 103 (rev. 10/12)~~

~~Remittance Form and Registration Statement for a Professional Solicitor, Form 104, OCRP 104 (rev. 10/12)~~

[Remittance Form - Professional Fundraising Counsel, Form 103, OCRP-103 \(rev. 6/2015\)](#)

[Remittance Form - Professional Solicitor, Form 104, OCRP-104 \(rev. 6/2015\)](#) ]

[Professional Solicitor's Bond, OCRP-105 \(rev. 10/12\)](#)

[Solicitation Notice, Form 120, OCRP-120 \(rev. 8/13\)](#)

[Consent to Solicit, Form 121, OCRP-121 \(rev. 11/12\)](#)

~~[ Remittance Form - Professional Solicitor's Final Accounting Report Late Fees and Final Accounting Report, Form 130, OCRP 130 (rev. 11/12)~~

[Remittance Form - Professional Solicitor's Final Accounting Report Late Fees, Form 130, OCRP-130 \(rev. 11/2013\)](#) ]

[Schedule A - Accounting for All Ticket Sales, Including Solicitation for Donated Tickets, Form 131, OCRP-131 \(rev. 11/12\)](#)

[Commitment for Receipt of Donated Tickets, Form 132, OCRP-132 \(rev. 11/12\)](#)

V.A.R. Doc. No. R13-3701; Filed September 8, 2015, 12:17 p.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Emergency Regulation

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-15, 4VAC20-720-80).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: September 23, 2015, through October 22, 2015.

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

#### Preamble:

*This emergency action amends 4VAC20-720-15 to remove effort control measures, including the 20 days of harvest requirements to purchase the upcoming oyster hand scrape and dredge license, and amends 4VAC20-720-80 to preclude anyone from harvesting any oysters for commercial purposes unless that person obtains the required licenses and pays the oyster resource user fee.*

#### 4VAC20-720-15. Control date, effort control, and agents.

A. The commission hereby establishes July 1, 2014, as the control date for management of all public oyster fisheries in Virginia. Participation by any individual in any public oyster fishery after the control date will not be considered in the calculation or distribution of oyster fishing rights should entry limitations be established. Any individual entering the public oyster fishery after the control date will forfeit any right to future participation in the public oyster fishery should further entry limitations be established by the commission.

~~B. The sale of oyster hand scrape and oyster dredge licenses to individuals who have not previously held these licenses shall be suspended until the commission reinstates the sale of those licenses. The sale of oyster patent tong licenses to individuals who had not purchased that license during the period from July 1, 2013, through August 25, 2015, shall be suspended until the commission reinstates the sale of those licenses.~~

~~C. For any lawful open public oyster harvest season, commercial licenses for oyster hand scrape and oyster dredge shall only be sold to those registered commercial fishermen who have been determined by the commission to be eligible to purchase either of these licenses as of December 1, 2015, for license year 2016, except as described in subsection D of this section.~~

~~D. After November 30, 2015, it shall be unlawful for any registered commercial fisherman who paid an oyster resource user fee for using one or more gear types from July 1, 2013, through June 30, 2015, but during that same time period reported less than 20 days of harvest for either the oyster hand scrape or oyster dredge, in one season or averaged over two seasons, to purchase the gear license associated with less than 20 harvest days.~~

~~E. Any registered commercial fisherman with an oyster harvest status, as described in subsection D of this section, may appeal his license ineligibility to the commission if that person can document that a medical hardship, active military duty, or a substantial error in his mandatory harvest reporting records prevented him from reporting at least 20 days of oyster harvest from using oyster dredge or oyster hand scrape gear.~~

~~F. Beginning January 1, 2016, valid oyster hand scrape and oyster dredge for commercial licenses may be transferred to an immediate family member of the licensee. In cases of death or incapacitation of a licensee, these same licenses may be transferred to a registered commercial fisherman who paid a current oyster resource user fee for one or more gear types. A registered commercial fisherman who holds a current oyster resource user fee for one or more gear types and is a current oyster hand scrape or oyster dredge licensee may transfer that oyster hand scrape or oyster dredge license. All such transfers shall be documented by the commission and shall be subject to the approval of the commission.~~

~~G. B.~~ No person shall serve as an agent for any public oyster gear licensee.

**4VAC20-720-80. Quotas and harvest limits.**

A. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required by harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess ~~more than eight bushels per day~~ any oysters for commercial purposes. Any individual who possesses the valid licenses and paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 24 bushels clean cull oysters harvested from the areas described in 4VAC20-720-40 B 8 through 14.

B. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required by harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess ~~more than eight bushels per day~~ any oysters for commercial purposes. Any individual who possesses the valid licenses and paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 7 and 15, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and who have paid the oyster resource user fee multiplied by eight.

C. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 1, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and who have paid the oyster resource user fee multiplied by 12. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and hold a valid gear license required by harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess ~~more than 12 bushels~~

per day any oysters for commercial purposes. Any individual who possesses the valid licenses and paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 12 bushels per day.

D. In the Pocomoke and Tangier Sounds Rotation Area 1, no blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

VA.R. Doc. No. R16-4520; Filed September 23, 2015, 12:29 p.m.

**DEPARTMENT OF MINES, MINERALS AND ENERGY**

**Proposed Regulation**

**Title of Regulation:** 4VAC25-150. Virginia Gas and Oil Regulation (amending 4VAC25-150-10, 4VAC25-150-30, 4VAC25-150-80, 4VAC25-150-100, 4VAC25-150-110, 4VAC25-150-160, 4VAC25-150-280, 4VAC25-150-300, 4VAC25-150-340, 4VAC25-150-360, 4VAC25-150-610; adding 4VAC25-150-95, 4VAC25-150-365, 4VAC25-150-535, 4VAC25-150-615).

**Statutory Authority:** §§ 45.1-161.3, 45.1-361.4, and 45.1-361.27 of the Code of Virginia.

**Public Hearing Information:**

October 20, 2015 - 2 p.m. - Conference Center, Russell County Office Building, 139 Highland Drive, Lebanon, VA 24266

November 2, 2015 - 2 p.m. - University of Mary Washington, Dahlgren Campus, 4224 University Drive, King George, VA 22485

November 3, 2015 - 2 p.m. - Virginia State Capitol, House Room 3, 1000 Bank Street, Richmond, VA 23219

**Public Comment Deadline:** December 4, 2015.

**Agency Contact:** Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

**Basis:** Section 45.1-161.3 of the Code of Virginia grants the Department of Mines, Minerals and Energy (DMME) the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 of the Code of Virginia. Section 45.1-361.4 of the Code of Virginia grants the Director of DMME the authority to regulate gas, oil, or geophysical operations in the Commonwealth.

**Purpose:** Though hydraulic fracturing has been used safely in Virginia since the 1960s, DMME believes that expanding disclosure of ingredients used in gas well stimulation and completion is an appropriate and necessary safeguard for the citizens of the Commonwealth. The proposed regulations also appropriately reflect industry best practices such as baseline groundwater testing and monitoring, submission of emergency response plans, and measures to enhance well

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integrity. These measures help ensure protection of the environment and public health and safety.

**Substance:** Permit application requirements are updated to include disclosure of all ingredients anticipated to be used in hydraulic fracturing operations, a plan to conduct groundwater baseline sampling and analysis, and the submission of an emergency response plan. These additions support environmental protection and public health and safety.

The proposed regulations require well operators to use the FracFocus website (<http://fracfocus.org>) to disclose the chemicals used in hydraulic fracturing operations. Approximately 20 states already utilize FracFocus. Requiring chemical disclosure promotes transparency and environmental protection when combined with groundwater sampling and monitoring protocols. The proposed regulations also contain provisions that protect trade secrets from public dissemination. However, this information will be made available to first responders and local officials in the event of an emergency.

The proposed regulations establish a groundwater sampling, analysis, and monitoring program. Baseline sampling data within one-quarter-mile radius from the proposed well will be submitted with the permit application. After the well is completed, additional sampling is required. If that sampling demonstrates exceedances of applicable standards, DMME has the authority to order follow-up testing in addition to existing enforcement authority.

Well integrity is another area of emphasis in the proposed regulations. Language was added to strengthen casing and pressure testing requirements for well casings used in conventional and coalbed methane gas wells. This language will ensure the steel casings used in the drilling process are sufficiently strong to protect the surrounding formation. Language was also added related to the use of centralizers in the water protection string of casing. This will ensure the casing is centered in the hole while the well is drilled. Ensuring well integrity protects the environment and public health and safety.

With respect to potential drilling in Tidewater Virginia, the regulations require a pre-application meeting with DMME and the Department of Environmental Quality to ensure potential permit applicants understand the requirements of the environmental impact assessment required pursuant to § 62.1-195.1 of the Code of Virginia.

**Issues:** The proposed regulation requires disclosure of the ingredients used in hydraulic fracturing operations to the public while also protecting industry trade secrets except in case of an emergency. These requirements strike the appropriate balance between environmental protection and economic development required by the Virginia Gas and Oil Act, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia. Maintaining that balance is the primary advantage of the proposed regulation. The balance is further

maintained by the added requirements to ensure current industry best practices are utilized. There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy proposes to 1) require disclosure of all ingredients anticipated to be used in hydraulic fracturing operations at the application stage as well as ingredients actually used at the well completion stage; 2) require operators to submit a groundwater sampling and a monitoring plan at the application stage and an emergency response plan; require groundwater sampling before and after well construction as well as follow-up testing if needed; and expand the required groundwater sampling area; 3) incorporate industry best practices with respect to the use of centralizers, standards for casing, and pressure testing requirements; 4) require a pre-application meeting for operators wishing to drill for gas or oil in the Tidewater area; and 5) require certification from operators that the proposed operation complies with local land use ordinances.

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

Estimated Economic Impact. These regulations establish rules for the gas and oil industry in Virginia. Currently, all drilling activity in the Commonwealth occurs in seven counties in far Southwest Virginia. Approximately 85,000 acres of land have been leased for potential future drilling activity in five counties in Tidewater area. However, DMME has not yet received any applications for a permit in this area. There are approximately 8,000 existing wells and approximately 150 applications are received for new wells each year. Operators pump approximately 300 - 400 thousand gallons of water with about 1% chemical content into an average size well.

DMME proposes to update permit application and well completion report requirements. The proposed changes will require disclosure of all ingredients anticipated to be used in hydraulic fracturing operations at the application stage and disclosure of ingredients actually used in fracturing operations when the well is completed to DMME and on FracFocus.<sup>1</sup>

FracFocus is available to oil and gas operators who voluntarily disclose the chemicals they use and to those who are required to disclose such information. Approximately 20 states already require disclosure on FracFocus. Some states require full disclosure including ingredients in the mix, their proportions, trade secrets, etc. while some others require only partial disclosure. Since disclosure of trade secrets may result in an operator losing its competitive advantage, DMME proposes that trade secrets not be required on FracFocus, but be submitted to the agency with the well application and the completion reports. However, in case of an emergency,

DMME will have the authority to disclose the trade secret information to emergency responders.

The proposed disclosure requirements will help improve transparency in the hydraulic fracking operations which has been used safely in Virginia since the 1960s and address concerns associated with environmental effects. However, they will also safeguard trade secrets and allow operators to maintain the competitive advantage they may have. While the proposed disclosure requirements may introduce some additional reporting costs on operators, DMME indicates that some of the oil and gas operators already use FracFocus voluntarily and that it is a free service. Thus, additional reporting costs on regulated operators are expected to be small.

The proposed changes will also require operators to submit a groundwater sampling and monitoring plan at the application stage. DMME will also require submission of an emergency response plan. Additionally, groundwater sampling before and after well construction as well as follow-up testing if the sampling demonstrates exceedances of applicable standards will be required. While these requirements are not currently in the regulations explicitly, DMME indicates that all providers already comply with these requirements. However, DMME proposes to expand the sampling area which is used to establish the groundwater quality before and after drilling a well from 500 feet radius to one-quarter mile radius. DMME believes that the cost of groundwater sampling for the currently required area is in the range of \$1,000 to \$2,000 and that the increase in the cost of sampling due to a larger area will be less than double the current costs. In addition, sampling from a larger area will allow more accurate comparison of before and after groundwater quality reducing the operators' liability somewhat compared to their liability that may result from statistically less reliable comparison.

The proposed changes will also amend the regulation to reflect industry best practices with respect to use of centralizers, standards for casing, and pressure testing requirements that enhance well integrity. For example these changes include a requirement for using steel casings in the drilling process to be sufficiently strong to protect the surrounding formation; and a requirement to use centralizers in the water protection string of casing to make sure the casing is centered in the hole while the well is drilled. DMME states that all operators already maintain high standards to ensure well integrity and are in compliance with the proposed changes. Thus, no additional costs are expected from this change other than clarification of the well integrity standards in the regulation.

The proposed changes also require a pre-application meeting jointly conducted by DMME and the Department of Environmental Quality (DEQ) for operators wishing to drill for gas or oil in Tidewater, Virginia. This area of the Commonwealth requires special consideration due to its potential impact on the Chesapeake Bay's sensitive

environmental balance and the lack of information on the potential impact of drilling on this balance since any gas or oil drilling has yet to be performed in this area. The pre-application meeting will give a chance to DMME and DEQ to address the requirements of the environmental impact assessment required pursuant to Code of Virginia Section 62.1-195.1 and 9VAC15-20 and help prevent any potential unintended consequences.

Finally, the proposed changes will require certification that the proposed operation complies with local land use ordinances to ensure compliance with them.

In summary, the proposed changes are expected to introduce small administrative costs due to the proposed disclosure requirements, additional reports and plans, additional meetings, and less than two thousand dollars for groundwater testing of an enlarged area. Additional administrative costs are anticipated to be minimal as the proposed application and reporting requirements are contained within the existing electronic permitting and reporting systems. DMME expects to incur negligible, one-time costs to update its electronic permitting system to reflect the changes in the proposed regulation. On the other hand, the main benefits of the proposed changes include enhancement of the groundwater protection as well as of the public health and safety.

**Businesses and Entities Affected.** There are about 20 operators and approximately 200 contractors and subcontractors in the Commonwealth's gas and oil industry with a heavy focus on natural gas. Majority of the drilling is conducted by a few very large operators. Remaining operators, all of the contractors and subcontractors are believed to be small businesses.

**Localities Particularly Affected.** The proposed changes particularly affect Lee, Wise, Dickenson, Buchanan, Scott, Russell, and Tazewell counties as all of the current drilling activity occurs in these counties. The proposed changes may also affect Essex, Caroline, King and Queen, Westmoreland, and King George counties as gas and oil drilling activity may start there in the future.

**Projected Impact on Employment.** The proposed amendments are anticipated to increase the demand for labor from operators and DMME in terms of filing of additional reports, plans, attending meetings, but are unlikely to significantly affect employment.

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

**Small Businesses: Costs and Other Effects.** The proposed amendments are anticipated to introduce additional small administrative and sampling costs for the gas and oil operators. Though there are only a few large operators, they perform the majority of the drilling in the Commonwealth. The costs and other effects on small business operators are the same as discussed above.

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Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that would have a smaller impact and accomplish the same goals as the proposed changes.

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

Legal Mandate.

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

- the projected number of businesses or other entities to whom the proposed 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> FracFocus is a chemical disclosure registry maintained by the Ground Water Protection Council and the Interstate Oil & Gas Compact Commission. The registry offers its disclosure services free of charge to oil and natural gas industry.

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the

economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*The Department of Mines, Minerals and Energy (DMME) proposes to (i) amend permit application requirements to include disclosure of all ingredients anticipated to be used in hydraulic fracturing operations, certification that the proposed operation complies with local land use ordinances, inclusion of a groundwater sampling and monitoring plan, and submission of an emergency response plan; (ii) require a pre-application meeting jointly conducted by the DMME and the Department of Environmental Quality before an operator drills for gas or oil in Tidewater Virginia; (iii) require well operators to use FracFocus, the national hydraulic fracturing chemical registry website, to disclose the chemicals used in hydraulic fracturing operations; (iv) establish a groundwater sampling, analysis, and monitoring program before and after well construction; (v) add language related to the use of centralizers in the water protection string of the casing; (vi) strengthen casing and pressure testing requirements for well casings used in conventional and coalbed methane gas wells; and (vii) provide protection for trade secrets from public dissemination while allowing this information to be made available to first responders and local officials in the event of an emergency.*

Part I

Standards of General Applicability

Article 1

General Information

**4VAC25-150-10. Definitions.**

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

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections.

"Applicant" means any person or business who files an application with the Division of Gas and Oil.

"Approved" means accepted as suitable for its intended purpose when included in a permit issued by the director or determined to be suitable in writing by the director.

"Berm" means a ridge of soil or other material constructed along an active earthen fill to divert runoff away from the unprotected slope of the fill to a stabilized outlet or sediment trapping facility.

"Board" means the Virginia Gas and Oil Board.

"Bridge plug" means an obstruction intentionally placed in a well at a specified depth.

"CAS number" means the unique number identifier for a chemical substance assigned by the Chemical Abstracts Service.

"Cased completion" means a technique used to make a well capable of production in which production casing is set through the productive zones.

"Cased/open hole completion" means a technique used to make a well capable of production in which at least one zone is completed through casing and at least one zone is completed open hole.

"Casing" means all pipe set in wells except conductor pipe and tubing.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Cement" means hydraulic cement properly mixed with water.

"Cement bond log" means an acoustic survey or sonic-logging method that records the quality or hardness of the cement used in the annulus to bond the casing and the formation.

"Centralizer" means a device secured around the casing at regular intervals to center it in the hole.

"Channel" means a natural stream or man-made waterway.

"Chemical Disclosure Registry" means the chemical registry website known as FracFocus.org developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Coal-protection string" means a casing designed to protect a coal seam by excluding all fluids, oil, gas, or gas pressure from the seam, except such as may be found in the coal seam itself.

"Cofferdam" means a temporary structure in a river, lake, or other waterway for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, pipelines, etc., may be constructed.

"Completion" means the process ~~which~~ that results in a well being capable of producing gas or oil.

"Conductor pipe" means the short, large diameter string used primarily to control caving and washing out of unconsolidated surface formations.

"Corehole" means any hole drilled solely for the purpose of obtaining rock samples or other information to be used in the exploration for coal, gas, or oil. The term shall not include a borehole used solely for the placement of an explosive charge or other energy source for generating seismic waves.

"Days" means calendar days.

"Denuded area" means land that has been cleared of vegetative cover.

"Department" means the Department of Mines, Minerals and Energy.

"Detention basin" means a stormwater management facility which temporarily impounds and discharges runoff through an outlet to a downstream channel. Infiltration is negligible when compared to the outlet structure discharge rates. The facility is normally dry during periods of no rainfall.

"Dike" means an earthen embankment constructed to confine or control fluids.

"Directional survey" means a well survey that measures the degree of deviation of a hole from true vertical, and the distance and direction of points in the hole from vertical.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Diversion" means a channel constructed for the purpose of intercepting surface runoff.

"Diverter" or "diverter system" means an assembly of valves and piping attached to a gas or oil well's casing for controlling flow and pressure from a well.

"Division" means the Division of Gas and Oil of the Department of Mines, Minerals and Energy.

"Emergency response plan" means the document that details the steps to prevent, control, and provide adequate countermeasures for a petroleum product discharge not covered by the spill prevention, control, and countermeasures plan or for a non-petroleum product discharge.

"Erosion and sediment control plan" means a document containing a description of materials and methods to be used for the conservation of soil and the protection of water resources in or on a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain a record of all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Expanding cement" means any cement approved by the director ~~which~~ that expands during the hardening process, including but not limited to regular oil field cements with the proper additives.

"Firewall" means an earthen dike or fire resistant structure built around a tank or tank battery to contain the oil in the event a tank ruptures or catches fire.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Flyrock" means any material propelled by a blast that would be actually or potentially hazardous to persons or property.

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"Form prescribed by the director" means a form issued by the division, or an equivalent facsimile, for use in meeting the requirements of the Act or this chapter.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Gob well" means a coalbed methane gas well ~~which that~~ is capable of producing coalbed methane gas from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Groundwater" means all water under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, which has the potential for being used for domestic, industrial, commercial, or agricultural use or otherwise affects the public welfare.

"Highway" means any public street, public alley, or public road.

"Hydraulic fracturing" means the treatment of a well by the application of hydraulic fracturing fluid under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil or natural gas.

"Hydraulic fracturing fluid" means the fluid, including the applicable base fluid and all additives, used to perform hydraulic fracturing treatment.

"Inclination survey" means a survey taken inside a wellbore that measures the degree of deviation of the point of the survey from true vertical.

"Inhabited building" means a building, regularly occupied in whole or in part by human beings, including, but not limited to, a private residence, church, school, store, public building or other structure where people are accustomed to assemble except for a building being used on a temporary basis, on a permitted site, for gas, oil, or geophysical operations.

"Intermediate string" means a string of casing that prevents caving, shuts off connate water in strata below the water-protection string, and protects strata from exposure to lower zone pressures.

"Live watercourse" means a definite channel with bed and banks within which water flows continuously.

"Mcf" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

"Mud" means a mixture of materials that creates a weighted fluid to be circulated downhole during drilling operations for the purpose of lubricating and cooling the bit, removing cuttings, and controlling formation pressures and fluid.

"Natural channel" or "natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the

year; and are characterized as being irregular in cross section with a meandering course.

"Nonerodible" means a material such as riprap, concrete, or plastic that will not experience surface wear due to natural forces.

"Oil well" means any well ~~which that~~ produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Open hole completion" means a technique used to make a well capable of production in which no production casing is set through the productive zones.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Plug" means the sealing of, or a device or material used for the sealing of, a gas or oil wellbore or casing to prevent the migration of water, gas, or oil from one stratum to another.

"Pre-development" means the land use and site conditions that exist at the time that the operations plan is submitted to the division.

"Produced waters" means water or fluids produced from a gas well, oil well, coalbed methane gas well, or gob well as a byproduct of producing gas, oil, or coalbed methane gas.

"Producer" means a permittee operating a well in Virginia that is producing or is capable of producing gas or oil.

"Production string" means a string of casing or tubing through which the well is completed and may be produced and controlled.

"Red shales" means the undifferentiated shaley portion of the Bluestone formation normally found above the Pride Shale Member of the formation, and extending upward to the base of the Pennsylvanian strata, which red shales are predominantly red and green in color but may occasionally be gray, grayish green, and grayish red.

"Red zone" is a zone in or contiguous to a permitted area that could have potential hazards to workers or to the public.

"Retention basin" means a stormwater management facility ~~which that~~, similar to a detention basin, temporarily impounds runoff and discharges its outflow through an outlet to a downstream channel. A retention basin is a permanent impoundment.

"Sediment basin" means a depression formed from the construction of a barrier or dam built to retain sediment and debris.

"Sheet flow," ~~also called or~~ "overland flow," means shallow, unconcentrated and irregular flow down a slope. The length of strip for sheet flow usually does not exceed 200 feet under natural conditions.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope.

"Special diligence" means the activity and skill exercised by a good businessperson in a particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case; not merely the diligence of an ordinary person or nonspecialist.

"Spill prevention, control, and countermeasure plan" or "SPCC plan" means the document that details the steps to prevent, control, and provide adequate countermeasures to certain petroleum product discharges.

"Stabilized" means able to withstand normal exposure to air and water flows without incurring erosion damage.

"Stemming" means the inert material placed in a borehole after an explosive charge for the purpose of confining the explosion gases in the borehole or the inert material used to separate the explosive charges (decks) in decked holes.

"Stimulate" means any action taken by a gas or oil operator to increase the inherent productivity of a gas or oil well, including, but not limited to, fracturing, shooting, or acidizing, but excluding (i) cleaning out, bailing, or workover operations and (ii) the use of surface-tension reducing agents, emulsion breakers, paraffin solvents, and other agents that affect the gas or oil being produced, as distinguished from the producing formation.

"Storm sewer inlet" means any structure through which stormwater is introduced into an underground conveyance system.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff, including but not limited to, the quantity, quality, the period of release, or the velocity of flow.

"String of pipe" or "string" means the total footage of pipe of uniform size set in a well. The term embraces conductor pipe, casing, and tubing. When the casing consists of segments of different size, each segment constitutes a separate string. A string may serve more than one purpose.

"Sulfide stress cracking" means embrittlement of the steel grain structure to reduce ductility and cause extreme brittleness or cracking by hydrogen sulfide.

"Surface mine" means an area containing an open pit excavation, surface operations incident to an underground mine, or associated activities adjacent to the excavation or surface operations, from which coal or other minerals are produced for sale, exchange, or commercial use; and includes all buildings and equipment above the surface of the ground used in connection with such mining.

"Target formation" means the geologic gas or oil formation identified by the well operator in his application for a gas, oil or geophysical drilling permit.

"Temporary stream crossing" means a temporary span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Tidewater Virginia" means the region defined in § 62.1-44.15:68 of the Code of Virginia.

"Trade secret" means the term defined in § 59.1-336 of the Code of Virginia.

"Tubing" means the small diameter string set after the well has been drilled from the surface to the total depth and through which the gas or oil or other substance is produced or injected.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used only for the safety purpose of removing gas from the underlying coal seam and the adjacent strata, thus, removing the gas that would normally be in the mine ventilation system.

"Water bar" means a small obstruction constructed across the surface of a road, pipeline right-of-way, or other area of ground disturbance in order to interrupt and divert the flow of water on a grade for the purpose of controlling erosion and sediment migration.

"Water-protection string" means a string of casing designed to protect groundwater-bearing strata.

**4VAC25-150-30. Other laws and regulations, and ordinances.**

Nothing in this chapter shall relieve a permittee of the duty to comply with other laws ~~and~~ regulations, and local land use ordinances.

Article 2  
Permitting

**4VAC25-150-80. Application for a permit.**

A. Applicability.

1. Persons required in § 45.1-361.29 of the Code of Virginia to obtain a permit or permit modification shall apply to the division on the forms prescribed by the director. All lands on which gas, oil, or geophysical operations are to be conducted shall be included in a permit application.

2. In addition to specific requirements for variances in other sections of this chapter, any applicant for a variance shall, in writing, document the need for the variance and describe the alternate measures or practices to be used.

3. Prior to accepting an application for a permit to drill for gas or oil in Tidewater Virginia, the department shall convene a pre-application meeting within the locality

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where the operation is proposed. The pre-application meeting shall ensure those who desire to submit an application are aware of the requirements established in § 62.1-195.1 of the Code of Virginia and 9VAC15-20. The department, in conjunction with the Department of Environmental Quality, shall conduct the meeting. The meeting shall be open to the public and the department shall notify the locality in which the meeting is to take place. No application for a permit to drill for gas or oil in Tidewater Virginia shall be accepted until the meeting is completed.

B. The application for a permit shall, as applicable, be accompanied by the fee in accordance with § 45.1-361.29 of the Code of Virginia, the bond in accordance with § 45.1-361.31 of the Code of Virginia, and the fee for the Orphaned Well Fund in accordance with § 45.1-361.40 of the Code of Virginia.

C. Each application for a permit shall include information on all activities, including those involving associated facilities, to be conducted on the permitted site. This shall include the following:

1. The name and address of:
  - a. The gas, oil, or geophysical applicant;
  - b. The agent required to be designated under § 45.1-361.37 of the Code of Virginia; and
  - c. Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;
2. The certifications required in § 45.1-361.29 E of the Code of Virginia;
3. Certification from the applicant that the proposed operation complies with all local land use ordinances;
- ~~3.~~ 4. The proof of notice to affected parties required in § 45.1-361.29 E of the Code of Virginia, which shall be:
  - a. A copy of a signed receipt or electronic return receipt of delivery of notice by certified mail;
  - b. A copy of a signed receipt acknowledging delivery of notice by hand; or
  - c. If all copies of receipt of delivery of notice by certified mail have not been signed and returned within 15 days of mailing, a copy of the mailing log or other proof of the date the notice was sent by certified mail, return receipt requested;
- ~~4.~~ 5. If the application is for a permit modification, proof of notice to affected parties, as specified in subdivision C ~~3~~ 4 of this section;
- ~~5.~~ 6. Identification of the type of well or other gas, oil, or geophysical operation being proposed;
7. A list of ingredients anticipated to be used in any hydraulic fracturing operations;
8. The groundwater baseline sampling, analysis, and monitoring plan in accordance with 4VAC25-150-95;

~~6.~~ 9. The plat in accordance with 4VAC25-150-90;

~~7.~~ 10. The operations plan in accordance with 4VAC25-150-100;

~~8.~~ 11. The information required for operations involving hydrogen sulfide in accordance with 4VAC25-150-350;

~~9.~~ 12. The location where the Spill Prevention Control and Countermeasure spill prevention, control, and countermeasure (SPCC) plan is available, if one is required;

13. The emergency response plan;

~~10.~~ 14. The Department of Mines, Minerals and Energy, Division of Mined Land Reclamation's permit number for any area included in a Division of Mined Land Reclamation permit on which a proposed gas, oil, or geophysical operation is to be located;

~~11.~~ 15. For an application for a conventional well, the information required in 4VAC25-150-500;

~~12.~~ 16. For an application for a coalbed methane gas well, the information required in 4VAC25-150-560;

~~13.~~ 17. For an application for a geophysical operation, the information required in 4VAC25-150-670; and

~~14.~~ 18. For an application for a permit to drill for gas or oil in Tidewater Virginia, the environmental impact assessment meeting the requirements of § 62.1-195.1 B of the Code of Virginia and 9VAC15-20.

D. ~~After July 1, 2009, all~~ All permit applications and plats submitted to the division shall be in electronic form or a format prescribed by the director.

## **4VAC25-150-95. Groundwater baseline sampling, analysis, and monitoring plan.**

A. Each application for a permit shall include a groundwater baseline sampling, analysis, and monitoring plan. The groundwater monitoring program will consist of initial baseline groundwater sampling and testing followed by subsequent sampling and testing after setting the production casing or liner.

B. If four or fewer available groundwater sources are present within a one-quarter-mile radius of the location of a proposed oil or gas well, or department-approved monitoring well, the operator shall collect a sample from each available groundwater source.

C. If more than four available groundwater sources are present within the one-quarter-mile radius, the operator shall submit a plan for approval to the director for selecting the available groundwater sources based on all of the following criteria:

1. Available groundwater sources closest to the location of the (i) proposed oil or gas well, (ii) department-approved monitoring well, or (iii) multi-well pad are preferred.

2. Sample locations shall be chosen in a radial pattern around the permitted location.

3. Where available groundwater sources are present in different aquifers, a sample shall be collected from each aquifer. Where multiple available groundwater sources are present in a single aquifer, an operator shall give adequate consideration to vertical separation and aquifer zones in selecting available groundwater sources for sampling.

4. If groundwater flow direction is known or reasonably can be inferred, samples from both upgradient and downgradient available groundwater sources are required, if available.

D. The initial sampling and testing shall be conducted within the 12-month period prior to drilling the well or the first well on a multi-well pad. Subsequent sampling and testing shall be conducted between six and 12 months after setting the production casing or liner. An operator shall make a reasonable attempt to conduct all sampling during the same month of the year. An operator may request in writing approval from the director to deviate from these sampling and testing timeframes in its permit application based on site specific geologic and hydrologic conditions (e.g., flow rate and direction). Previously sampled groundwater sources, including samples obtained by other operators, may be used if collection of the sample or samples meets all of the requirements of this section and are approved by the director.

E. All samples collected pursuant to this section shall be analyzed and tested by a laboratory certified or accredited under the Virginia Environmental Laboratory Accreditation Program established in 1VAC30-45 and 1VAC30-46.

F. Copies of all final laboratory analytical results and spatial coordinates of the available water source shall be provided by the operator or its representative to the department and water source owner within three months of sample collection. All analytical results and spatial coordinates of the available water source shall be made available to the public by the department.

G. The initial and subsequent sampling and testing described in this section shall, at a minimum, include the following items:

1. Chlorides;
2. Total dissolved solids;
3. Dissolved gases (methane, ethane, propane);
4. Hardness;
5. Iron;
6. Manganese;
7. pH;
8. Sodium; and
9. Sulfate.

Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. Handheld detection devices shall be sufficient for testing for methane.

H. If free gas or a dissolved methane concentration greater than 10.0 milligrams per liter (mg/L) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – 12C, 13C, 1H, and 2H) shall be performed to determine gas type.

I. The operator shall provide verbal and written notification to the director and groundwater source owner within 24 hours if test results indicate:

1. The presence of thermogenic or a mixture of thermogenic and biogenic gas;
2. The methane concentration increases by more than 5.0 mg/L between sampling periods;
3. The methane concentration is detected at or above 10.0 mg/L; or
4. Exceedances of the parameters listed in 9VAC25-280-70.

J. Upon receiving notification pursuant to this subsection, the director shall have the authority to order an additional sampling test to be completed within six months of the test that resulted in the notification. This authority is in addition to enforcement actions the director may utilize pursuant to 4VAC25-150-170.

#### **4VAC25-150-100. Operations plans.**

A. Each application for a permit or permit modification shall include an operations plan, in a format approved by or on a form prescribed by the director. The operations plan and accompanying maps or drawings shall become part of the terms and conditions of any permit which is issued.

B. The operations plan shall describe the specifications for the use of centralizers to ensure casing is centered in the hole. The specifications shall include, at a minimum, one centralizer within 50 feet of the water protection string seat and then in intervals no greater than every 150 feet above the first centralizer and are subject to the approval of the director.

~~B.~~ C. The applicant shall indicate how risks to the public safety or to the site and adjacent lands are to be managed, consistent with the requirements of § 45.1-361.27 B of the Code of Virginia, and shall provide a short narrative, if pertinent. The operations plan shall identify red zone areas.

#### **4VAC25-150-110. Permit supplements and permit modifications.**

A. Permit supplements.

1. Standard permit supplements. A permittee shall be allowed to submit a permit supplement when work being performed:

- a. Does not change the disturbance area as described in the original permit; and
- b. Involves activities previously permitted.

The permittee shall submit written documentation of the changes made to the permitted area no later than 30 days after completing the change. All other changes to the

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permit shall require a permit modification in accordance with § 45.1-361.29 of the Code of Virginia.

2. Permit supplements for disclosure of ingredients used in hydraulic fracturing. Prior to completion of a well, the permittee shall submit a permit supplement when the ingredients used or expected to be used in the hydraulic fracturing process differ in any way from that which was submitted pursuant to subdivision C 7 of 4VAC25-150-80.

~~2.~~ 3. Emergency permit supplements. If a change must be implemented immediately for an area off the disturbance area as described in the original permit, or for an activity not previously permitted due to actual or threatened imminent danger to the public safety or to the environment, the permittee shall:

- a. Take immediate action to minimize the danger to the public or to the environment;
- b. Notify the director as soon as possible of actions taken to minimize the danger and, if the director determines an emergency still exists and grants oral approval, commence additional changes if necessary; and
- c. Submit a supplement to the permit within seven working days of notifying the director with a written description of the emergency and action taken. An incident report may also be required as provided for in 4VAC25-150-380.

Any changes to the permit are to be temporary and restricted to those that are absolutely necessary to minimize danger. Any permanent changes to the permit shall require a permit modification as provided for in subsection B of this section.

## B. Permit modifications.

1. Applicability. All changes to the permit which do not fit the description contained in subsection A of this section shall require a permit modification in accordance with § 45.1-361.29 of the Code of Virginia.

2. Notice and fees. Notice of a permit modification shall be given in accordance with § 45.1-361.30 of the Code of Virginia. The application for a permit modification shall be accompanied, as applicable, by the fee in accordance with § 45.1-361.29 of the Code of Virginia and the bond in accordance with § 45.1-361.31 of the Code of Virginia.

3. Waiver of right to object. Upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit modification. The department shall be entitled to rely upon the waiver to approve the permit modification.

4. Permit modification. The permittee shall submit a written application for a permit modification on a form prescribed by the director. The permittee may not undertake the proposed work until the permit modification has been issued. As appropriate, the application shall include, but not be limited to:

a. The name and address of:

(1) The permittee; and

(2) Each person whom the applicant must notify under § 45.1-361.30 of the Code of Virginia;

b. The certifications required in § 45.1-361.29 E of the Code of Virginia;

c. The proof of notice required in § 45.1-361.29 E of the Code of Virginia, as provided for in 4VAC25-150-80 C ~~3~~ 4;

d. Identification of the type of work for which a permit modification is requested;

e. The plat in accordance with 4VAC25-150-90;

f. All data, maps, plats and plans in accordance with 4VAC25-150-100 necessary to describe the activity proposed to be undertaken;

g. When the permit modification includes abandoning a gas or oil well as a water well, a description of the plugging to be completed up to the water-bearing formation and a copy of the permit issued for the water well by the Virginia Department of Health;

h. The information required for operations involving hydrogen sulfide in accordance with 4VAC25-150-350 if applicable to the proposed operations;

i. ~~The location where the Spill Prevention Control and Countermeasure~~ spill prevention, control, and countermeasure (SPCC) plan is available, if one has been developed for the site of the proposed operations, or the emergency response plan;

j. The Department of Mines, Minerals and Energy, Division of Mined Land Reclamation's permit number for any area included in a Division of Mined Land Reclamation permit; and

k. The information, as appropriate, required in 4VAC25-150-500, 4VAC25-150-560, 4VAC25-150-670, or 4VAC25-150-720.

5. Upon receipt of an application for a permit modification for a well in Tidewater Virginia, the director may require additional documentation to supplement information submitted to the department pursuant to subsection B of § 62.1-195.1 of the Code of Virginia. If additional documentation is required, the operator shall submit that documentation to the director and the Department of Environmental Quality.

## **4VAC25-150-160. Approval of permits and permit modifications.**

A. Permits, permit modifications, permit renewals, and transfer of permit rights shall be granted in writing by the director.

B. The director may not issue a permit, permit renewal, or permit modification prior to the end of the time period for filing objections pursuant to § 45.1-361.35 of the Code of

Virginia unless, upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit application or permit modification application. The director shall be entitled to rely upon the waiver to approve the permit application or permit modification.

C. The director may not issue a permit to drill for gas or oil or approve a permit modification for a well where additional documentation is required pursuant to subdivision B 5 of 4VAC25-150-110 in Tidewater Virginia until he has ~~considered the findings and recommendations of the~~ collaborated with the Department of Environmental Quality, as provided for in § 62.1-195.1 of the Code of Virginia and, where appropriate, has required changes in the permitted activity based on to ensure permit conditions accurately reflect the results from the Department of Environmental Quality's recommendations coordinated review of the environmental impact assessment required pursuant to § 62.1-195.1 of the Code of Virginia.

D. The provisions of any order of the Virginia Gas and Oil Board that govern a gas or oil well permitted by the director shall become conditions of the permit.

**4VAC25-150-280. Logs and surveys.**

A. Each permittee drilling a well or corehole shall complete a driller's log, a gamma ray log, or other log showing the top and bottom points of geologic formations and any other log required under this section. The driller's log shall state, at a minimum, the character, depth, and thickness of geological formations encountered, including groundwater-bearing strata, coal seams, mineral beds, and gas-bearing or oil-bearing formations.

B. When a permittee or the director identifies that a well or corehole is to be drilled or deepened in an area of the Commonwealth which that is known to be underlain by coal seams, the following shall be required:

1. The vertical location of coal seams in the well or corehole shall be determined and shown in the driller's log and gamma ray log or other log.
2. The horizontal location of the well or corehole in coal seams shall be determined through an inclination survey from the surface to the lowest known coal seam. Each inclination survey shall be conducted as follows:
  - a. The first survey point shall be taken at a depth not greater than the most shallow coal seam; and
  - b. Thereafter shot points shall be taken at each coal seam or at intervals of 200 feet, whichever is less, to the lowest known coal seam.
3. Prior to drilling any well or corehole within 500 feet of a coal seam in which there are active workings, the permittee shall conduct an inclination survey to determine whether the deviation of the well or corehole exceeds one degree from true vertical. If the well or corehole is found to exceed one degree from vertical, then the permittee shall:

- a. Immediately cease operations;
- b. Immediately notify the coal owner and the division;
- c. Conduct a directional survey to drilled depth to determine both horizontal and vertical location of the well or corehole; and
- d. Unless granted a variance by the director, correct the well or corehole to within one degree of true vertical.

4. Except as provided for in subdivision B 3 of this section, if the deviation of the well or corehole exceeds one degree from true vertical at any point between the surface and the lowest known coal seam, then the permittee shall:

- a. Correct the well or corehole to within one degree of true vertical; or
- b. Conduct a directional survey to the lowest known coal seam and notify the coal owner of the actual well or corehole location.

5. The director may grant a variance to the requirements of subdivisions B 3 and B 4 of this section only after the permittee and coal owners have jointly submitted a written request for a variance stating that a directional survey or correction to the well or corehole is not needed to protect the safety of any person engaged in active coal mining or to the environment.

6. If the director finds that the lack of assurance of the horizontal location of the well or corehole to a known coal seam poses a danger to persons engaged in active coal mining or the lack of assurance poses a risk to the public safety or the environment, the director may, until 30 days after a permittee has filed the completion report required in 4VAC25-150-360, require that a directional survey be conducted by the permittee.

7. The driller's log shall be updated on a daily basis. The driller's log and results of any other required survey shall be kept at the site until drilling and casing or plugging a dry hole or corehole are completed.

C. Each permittee completing a well shall complete a cement bond log for the water protection string.

**4VAC25-150-300. Pits.**

A. General requirements.

1. Pits are to be temporary in nature and are to be reclaimed when the operations using the pit are complete. All pits shall be reclaimed within 180 days unless a variance is requested and granted by the field inspector.
2. Pits may not be used as erosion and sediment control structures or stormwater management structures, and surface drainage may not be directed into a pit.
3. Pits shall have a properly installed and maintained liner or liners made of 10 mil or thicker high-density polyethylene or its equivalent.
4. Pits shall be constructed of sufficient size and shape to contain all fluids and maintain a two-foot freeboard.

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5. Pits shall be enclosed by adequate fencing to secure the site from access by the public and wildlife.

## B. Operational requirements.

1. The integrity of lined pits ~~must~~ and their enclosures shall be maintained until the pits are reclaimed or otherwise closed. Upon failure of the lining or pit, the operation shall be shut down until the liner and pit are repaired or rebuilt. The permittee shall notify the division, by the quickest available means, of any pit leak.

2. Motor oil and, to the extent practicable, crude oil shall be kept out of the pit. Oil shall be collected and disposed of properly. Litter and other solid waste shall be collected and disposed of properly and not thrown into the pit.

3. At the conclusion of drilling and completion operations or after a dry hole, well, or corehole has been plugged, the pit shall be drained in a controlled manner and the fluids disposed of in accordance with 4VAC25-150-420. If the pit is to be used for disposal of solids, then the standards of 4VAC25-150-430 shall be met.

## 4VAC25-150-340. Drilling fluids.

A. Operations plan requirements. Applicants for a permit shall provide, prior to commencing drilling, documentation that the water meets the requirements of subsection B of this section, and a general description of the additives and muds to be used in all stages of drilling. Providing that the requirement in ~~4VAC25-150-340~~ subsection C of this section is met, variations necessary because of field conditions may be made with prior approval of the director and shall be documented in the driller's log.

## B. Water quality in drilling.

1. Before the water-protection string is set, permittees shall use one of the following sources of water in drilling:

a. Water that is from a water well or spring located on the drilling site; or

b. Conduct an analysis of groundwater within ~~500 feet~~ a one-quarter-mile radius of the drilling location, and use:

(1) Water which is of equal or better quality than the groundwater; or

(2) Water which can be treated to be of equal or better quality than the groundwater. A treatment plan must be included with the application if water is to be treated.

(3) If, after a diligent search, a groundwater source (such as a well or spring) cannot be found within ~~500 feet~~ a one-quarter-mile radius of the drilling location, the applicant may use water meeting the parameters listed in the Department of Environmental Quality's "Ground water criteria," 9VAC25-280-70. The analysis shall include, but is not limited to, the following items:

(~~4~~) (a) Chlorides;

(~~2~~) (b) Total dissolved solids;

(~~3~~) (c) Hardness;

(~~4~~) (d) Iron;

(~~5~~) (e) Manganese;

(~~6~~) (f) PH;

(~~7~~) (g) Sodium; and

(~~8~~) (h) Sulfate.

(4) Drilling water analysis shall be taken within a one-year period preceding the drilling application.

2. After the water-protection string is set, permittees may use waters that do not meet the standards of subdivision B 1 of this section.

C. Drilling muds. No permittee may use an oil-based drilling fluid or other fluid which has the potential to cause acute or chronic adverse health effects on living organisms unless a variance has been approved by the director. Permittees must explain the need to use such materials and provide the material data safety sheets. In reviewing the request for the variance, the director shall consider the concentration of the material, the measures to be taken to control the risks, and the need to use the material. Permittees shall also identify what actions will be taken to ensure use of the additives will not cause a lessening of groundwater quality.

## 4VAC25-150-360. Drilling, completion, and other reports.

A. Each permittee conducting drilling shall file, electronically or on a form prescribed by the director, a drilling report within 90 days after a well reaches total depth.

B. Each permittee drilling a well shall file, electronically or on a form prescribed by the director, a completion report within 90 days after the well is completed. All completion reports shall include the cement bond log required in subsection C of 4VAC25-150-280. Subject to the approval of the director, permittees may submit alternative documentation that demonstrates effective bond between the casing and the formation.

C. The permittee shall file the driller's log, the results of any other log or survey required to be run in accordance with this chapter or by the director, and the plat showing the actual location of the well with the drilling report, unless they have been filed earlier.

D. The permittee shall, within 90 days of reaching total depth, file with the division the results of any gamma ray, density, neutron ~~and~~, induction, and cement bond logs, or their equivalent, that have been conducted on the wellbore in the normal course of activities that have not previously been required to be filed.

## 4VAC25-150-365. Disclosure of well stimulation fluids.

A. In addition to other requirements that may be prescribed by the director, each completion report required in 4VAC25-150-360 shall also contain the following disclosures:

The operator of the well shall complete the Chemical Disclosure Registry form and upload the form on the Chemical Disclosure Registry, including:

- a. The operator name;
- b. The date of completion of the hydraulic fracturing treatment or treatments;
- c. The county in which the well is located;
- d. The American Petroleum Institute (API) number for the well;
- e. The well name and number;
- f. The longitude and latitude of the wellhead;
- g. The total vertical depth of the well;
- h. The total volume of water used in the hydraulic fracturing treatment or treatments of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment or treatments, if something other than water;
- i. Each additive used in the hydraulic fracturing treatments and the trade name, supplier, and a brief description of the intended use or function of each additive in the hydraulic fracturing treatment or treatments;
- j. Each chemical ingredient used in the hydraulic fracturing treatment or treatments of the well that is subject to the requirements of 29 CFR 1910.1200(g)(2), as provided by the chemical supplier or service company or by the operator, if the operator provides its own chemical ingredients;
- k. The actual or maximum concentration of each chemical ingredient listed under subdivision j of this subsection in percent by mass;
- l. The CAS number for each chemical ingredient listed, if applicable; and
- m. A supplemental list of all chemicals, their respective CAS numbers, and the proportions thereof not subject to the requirements of 29 CFR 1910.1200(g)(2), that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatments for the well.

B. If the Chemical Disclosure Registry is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment or treatments were performed shall supply the department with the required information and upload the information on the registry when it is again operable. The information required shall also be filed as an attachment to the completion report for the well, which shall be posted, along with all attachments, on the department's website, except that information determined to be subject to trade secret protection shall not be posted.

C. All information related to the specific identity or CAS number or amount of any additive or chemical ingredient used in hydraulic fracturing shall be submitted to the department and shall be available to the public unless the department determines that information supplied by the operator and claimed to be a trade secret is entitled to such protection. All information claimed as a trade secret shall be

identified as such at the time of submission of the appropriate report. The department shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on such forms and filings as is required under this chapter. Should the department determine that information is protected as a trade secret, the operator of the well shall indicate on the Chemical Disclosure Registry or the supplemental list that the additive or chemical ingredient or their amounts are entitled to trade secret protection. If a chemical ingredient name or CAS number is entitled to trade secret protection, the chemical family or other similar description associated with such chemical ingredient shall be provided. The operator of the well on which hydraulic fracturing was performed shall provide the contact information, including the name, authorized representative, mailing address, and phone number of the business organization for which trade secret protection exists. Unless the information is entitled to protection as a trade secret, information submitted to the department or uploaded on the Chemical Disclosure Registry is public information.

D. The operator understands that the director may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to additional department staff to the extent that such disclosure is necessary to assist the department in responding to an emergency resulting in an order pursuant to subsection D of § 45.1-361.27 of the Code of Virginia provided that such individuals shall not disseminate the information further. In addition, the director may disclose such information to any relevant state or local government official to assist in responding to the emergency. Any information so disclosed shall at all times be considered confidential and shall not be construed as publicly available.

E. An operator may not withhold information related to chemical ingredients used in hydraulic fracturing, including information identified as a trade secret, from any health professional or emergency responder who needs the information for diagnostic, treatment, or other emergency response purposes subject to procedures set forth in 29 CFR 1910.1200(i). An operator shall provide directly to a health professional or emergency responder, all information in the person's possession that is required by the health professional or emergency responder, whether or not the information may qualify for trade secret protection under this section. The person disclosing information to a health professional or emergency responder shall include with the disclosure, as soon as circumstances permit, a statement of the health professional's confidentiality obligation. In an emergency situation, the operator shall provide the information immediately upon request to the person who determines that the information is necessary for emergency response or treatment. The disclosures required by this subsection shall be made in accordance with the procedures in 29 CFR 1910 with

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respect to a written statement of need and confidentiality agreements, as applicable.

## **4VAC25-150-535. Pressure testing requirements for production casing in conventional gas or oil wells.**

A. The operator shall install casing that can withstand the effects of tension and can prevent leaks, burst, and collapse during (i) the casing's installation and cementing and (ii) subsequent drilling and producing operations.

B. Except as provided in subsection C of this section, all casing must be a string of new pipe with an internal pressure rating that is at least 20% greater than the anticipated maximum pressure to which the casing will be exposed.

C. Used casing may be approved for use as surface, intermediate, or production casing but shall be pressure tested after cementing and before completion. A passing pressure test is holding the anticipated maximum pressure to which it will be exposed for 30 minutes with not more than a 10% decrease in pressure.

D. New or used plain end casing, except when being used as conductor pipe, that is welded together for use must meet the following requirements:

1. The casing must pass a pressure test by holding the anticipated maximum pressure to which the casing will be exposed for 30 minutes with not more than a 10% decrease in pressure. The operator shall notify the department at least 24 hours before conducting the test. The test results shall be entered on the drilling report.

2. The casing shall be welded using at least three passes with the joint cleaned between each pass.

## **4VAC25-150-610. Casing requirements for coalbed methane gas wells.**

A. Water protection string.

1. Except as provided in subdivision A 5 of this section, the permittee shall set a water-protection string set to a point at least 300 feet below the surface or 50 feet below the deepest known groundwater horizon, whichever is deeper, circulated and cemented to the surface. If cement does not return to the surface, every reasonable effort shall be made to fill the annular space by introducing cement from the surface.

2. The operator shall test or require the cementing company to test the cement mixing water for pH and temperature prior to mixing the cement and to record the results on the cementing ticket.

3. After the cement is placed, the operator shall wait a minimum of eight hours and allow the cement to achieve a calculated compressive strength of 500 psi before drilling, unless the director approves a shorter period of time. The wait-on-cement (WOC) time shall be recorded within the records kept at the drilling rig while drilling is taking place.

4. When requested by the director, the operator shall submit copies of cement tickets or other documents that indicate the above specifications have been followed.

5. A coal-protection string may also serve as a water protection string only for gob wells.

B. Coal protection strings.

1. When any well penetrates coal seams that have not been mined out, the permittee shall, except as provided in subdivisions B 2 and B 3 of this section, set a coal-protection string. The coal-protection string shall exclude all fluids, oil, gas, and gas pressure, except that which is naturally present in each coal seam. The coal-protection string shall also exclude all injected material or disposed waste from the coal seams or the wellbore. The string of casing shall be set to a point at least 50 feet below the lowest coal seam, or as provided in subdivision B 3 of this section, and shall be circulated and cemented from that point to the surface, or to a point not less than 50 feet into the water-protection string or strings which are cemented to the surface.

2. For good cause shown, either before or after the permit is issued, when the procedure specified in subdivision B 1 of this section is demonstrated by the permittee as not practical, the director may approve a casing program involving:

- a. The cementing of a coal-protection string in multiple stages;
- b. The cementing of two or more coal-protection strings; or
- c. The use of other alternative casing procedures.

3. The director may approve the program, provided he is satisfied that the result will be operationally equivalent to compliance with the provisions of subdivision B 1 of this section for the purpose of permitting the subsequent safe mining through the well or otherwise protecting the coal seams as required by this section. In the use of multiple coal-protection strings, each string below the topmost string shall be cemented at least 50 feet into the next higher string or strings that are cemented to the surface and be verified by a cement top log.

4. Depth of coal-protection strings.

- a. A coal-protection string shall be set to the top of the red shales in any area underlain by them unless, on a showing by the permittee in the permit application, the director has approved the casing point of the coal-protection string at some depth less than the top of the red shales. In such event, the permittee shall conduct a gamma-ray/density log survey on an expanded scale to verify whether the well penetrates any coal seam in the uncased interval between the bottom of the coal-protection string as approved and the top of the red shales.

b. If an unanticipated coal seam or seams are discovered in the uncased interval, the permittee shall report the discovery in writing to the director. The permittee shall cement the next string of casing, whether a part of the intermediate string or the production string, in the applicable manner provided in this section for coal-protection strings, from a point at least 50 feet below the lowest coal seam so discovered to a point at least 50 feet above the highest coal seam so discovered.

c. The gamma-ray/density log survey shall be filed with the director at the same time the driller's log is filed under 4VAC25-150-360.

d. When the director believes, after reviewing documentation submitted by the permittee, that the total drilling in any particular area has verified the deepest coal seam higher than the red shales, so that further gamma-ray/density logs on an expanded scale are superfluous for the area, he may waive the constructing of a coal-protection string or the conducting of such surveys deeper than 100 feet below the verified depth of the deepest coal seam.

C. Coal-protection strings of wells drilled prior to July 1, 1982. In the case of wells drilled prior to July 1, 1982, through coal seams without coal-protection strings as prescribed in subsection B of this section, the permittee shall retain such coal-protection strings as were set. During the life of the well, the permittee shall, consistent with a plan approved by the director, keep the annular spaces between the various strings of casing adjacent to coal seams open to the extent possible, and the top ends of all such strings shall be provided with casing heads, or such other approved devices as will permit the free passage of gas or oil and prevent filling of the annular spaces with dirt or debris.

D. Producing from more than one stratum. The casing program for any well designed or completed to produce from more than one stratum shall be designed in accordance with the appropriate standard practices of the industry.

E. Casing through voids.

1. When a well is drilled through a void, the hole shall be drilled at least 30 feet below the void. The annular space shall be cemented from the base of the casing up to the void, and every reasonable attempt shall be made to fill up the annular space from the top of the void to the surface; or it shall be cemented at least 50 feet into the next higher string or strings of casing that are cemented to the surface, and shall be verified by a cement top log.

2. For good cause shown, the director may approve alternate casing procedures proposed by the permittee, provided that the director is satisfied that the alternative casing procedures are operationally equivalent to the requirements imposed by subdivision E 1 of this section.

3. For good cause shown, the director may impose special requirements on the permittee to prevent communication between two or more voids.

F. A well penetrating a mine other than a coal mine. In the event that a permittee has requested to drill a well in such a location that it would penetrate any active mine other than a coal mine, the director shall approve the safety precautions to be followed by the permittee prior to the commencement of activity.

G. Production casing.

1. Unless otherwise granted in a variance from the director:

a. For coalbed methane gas wells with cased completions and cased/open hole completions, production casing shall be set and cemented from the bottom of the casing to the surface or to a point not less than 50 feet into the lowest coal-protection or water-protection string or strings which are cemented to the surface.

b. For coalbed methane gas wells with open hole completions, the base of the casing shall be set to not more than 100 feet above the uppermost coalbed which is to be completed open hole. The casing shall be cemented from the bottom of the casing to the surface or to a point not less than 50 feet into the lowest coal-protection or water-protection string or strings which are cemented to the surface.

2. A coal-protection string may also serve as production casing.

H. Reporting of lost circulation zones. The permittee shall report to the director as soon as possible when an unanticipated void or groundwater horizon is encountered that results in lost circulation during drilling. The permittee shall take every necessary action to protect the lost circulation zone.

**4VAC25-150-615. Pressure testing requirements for production casing in coalbed methane gas wells.**

A. The operator shall install casing that can withstand the effects of tension and can prevent leaks, burst, and collapse during (i) the casing's installation and cementing and (ii) subsequent drilling and producing operations.

B. Except as provided in subsection C of this section, all casing must be a string of new pipe with an internal pressure rating that is at least 20% greater than the anticipated maximum pressure to which the casing will be exposed.

C. Used casing may be approved for use as surface, intermediate, or production casing but shall be pressure tested after cementing and before completion. A passing pressure test is holding the anticipated maximum pressure to which it will be exposed for 30 minutes with not more than a 10% decrease in pressure.

D. New or used plain end casing, except when being used as conductor pipe, that is welded together for use must meet the following requirements:

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1. The casing must pass a pressure test by holding the anticipated maximum pressure to which the casing will be exposed for 30 minutes with not more than a 10% decrease in pressure. The operator shall notify the department at least 24 hours before conducting the test. The test results shall be entered on the drilling report.

2. The casing shall be welded using at least three passes with the joint cleaned between each pass.

E. The provisions of this section shall not apply to gob wells.

V.A.R. Doc. No. R14-3940; Filed September 14, 2015, 8:51 a.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### CRIMINAL JUSTICE SERVICES BOARD

#### Fast-Track Regulation

Title of Regulation: **6VAC20-80. Rules Relating to Certification of Criminal Justice Instructors (amending 6VAC20-80-20).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 4, 2015.

Effective Date: December 1, 2015.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email [barbara.peterson-wilson@dcjs.virginia.gov](mailto:barbara.peterson-wilson@dcjs.virginia.gov).

Basis: Subdivision 5 of § 9.1-102 of the Code of Virginia instructs the Department of Criminal Justice Services to "establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools." Subdivision 5 of § 9.1-102 also instructs the department to "(i) establish compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § 46.2-882." The Criminal Justice Services Board approved these recommendations on September 18, 2014.

Purpose: The purpose of this intended regulatory action is to revise and update the currently regulations governing speed measurement instructor certification officers. The requested revisions are essential to protect the safety and welfare of citizens to ensure that law-enforcement instructors are receiving the correct training and correct information, as the regulation is out of date.

The goal of this proposal is to bring the training current by removing the word "radar" and replacing that with "speed measurement" so that it will include both radar and lidar speed measurements.

Rationale for Using Fast-Track Process: The rationale for using the fast-track rulemaking process is due to the necessity of the change and the lack of controversy surrounding the change. Overall, contacts were eager for the change to be implemented.

Substance: The suggested revisions will amend the regulations relating to the certification of criminal justice instructors to replace the term "radar" with "speed measurement" to include both lidar and radar operations.

Issues: The primary advantage of the public and the Commonwealth will be a standard level of speed measurement training for those serving as criminal justice instructors. This will increase the professionalism of the field by ensuring that all officers are receiving viable up-to-date training. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to amend its Rules Relating to Certification of Criminal Justice Instructors to reflect that law-enforcement entities in the Commonwealth now may use either Radio Detecting and Ranging (radar) or Light Detection And Ranging (lidar) for speed measurement. Specifically, the Board proposes to change three instances of the phrase "radar detection" to "speed measurement" to make section 20 of this regulation consistent with the rest of the regulation that was amended in 2008 (see <http://townhall.virginia.gov/L/ViewAction.cfm?actionid=1813> for details of this action).

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

Estimated Economic Impact. Currently section 20 of this regulation requires that individuals who will provide speed measurement instruction have two years experience in radar operation and also requires that they complete radar instructor school. The rest of this regulation was amended in 2008 to change phrases referencing radar and radar detection to the more general term speed measurement to reflect the advent of new lidar detection technology that was being used by police departments. The Board now proposes to change the remaining references to radar to speed measurement not only to make section 20 consistent with language in the rest of the regulation but also to remove any confusion that the current language might cause (since individuals must be trained in, and show competency with, all speed measurement technologies in which they provide instruction). No entities are likely to incur costs on account of these regulatory changes. To the extent that these changes make requirements more clear, affected entities will benefit.

**Businesses and Entities Affected.** This proposed regulation will affect all speed measurement instructors in the Commonwealth as well as any individuals who may want to provide speed measurement instruction in the future. All of these entities are likely to be employed by public law-enforcement agencies.

**Localities Particularly Affected.** No localities will likely be disproportionately affected by this proposed regulatory change.

**Projected Impact on Employment.** This regulatory action will likely have little impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This regulatory action will likely have no impact on the use or value of private property.

**Small Businesses: Costs and Other Effects.** No small businesses are likely to be affected by this proposed regulation.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No small businesses are likely to be affected by this proposed regulation.

**Real Estate Development Costs.** This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**Legal Mandate.**

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

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis of the Department of Planning and Budget.

Summary:

*The amendments update the regulation by changing "radar" to "speed measurement" so that both radio detecting and ranging (radar) and light detection and ranging (lidar) are included.*

**6VAC20-80-20. Compulsory minimum standards for instructors.**

Individuals instructing mandated training shall possess one of the following certifications authorized by the department, excluding those enumerated in 6VAC20-80-50:

A. Provisional instructor certification. For the individual who has not previously met the requirements for instructor certification, this certification:

1. Requires a high school diploma or high school equivalency certificate (GED);
2. Requires that the individual has met the compulsory minimum training standards for the primary function for which employed by a criminal justice agency, if applicable;
3. Does not authorize an individual to instruct or qualify others in mandated firearms, defensive tactics, driver training, or ~~radar~~ speed measurement courses; and
4. Is valid for not more than two years and is not renewable. An individual may apply for instructor certification upon meeting the requirements of ~~6VAC20-80-20~~ this section and 6VAC20-80-60.

B. General instructor certification. For individuals who have professional or proficiency skills in a field directly related to criminal justice, this certification:

1. Requires a high school diploma or high school equivalency certificate (GED);
2. Requires the applicant to be a sworn officer or an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for a general instructor certification

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provided that they only conduct training in their particular areas of expertise;

3. Requires a minimum of two years' experience in a criminal justice agency or two years of experience in the subject area the individual will instruct;

4. Requires the applicant to have successfully completed an instructor development course ~~which~~ that meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;

5. Is valid for not more than three years, but may be renewed;

6. Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship. This documentation shall be maintained at the certified academy at which certification is obtained;

7. Does not authorize an individual to instruct or qualify others in mandated firearms, defensive tactics, driver training, or ~~radar~~ speed measurement operator courses; and

8. Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

C. Firearms instructor certification. For the individual who has had extensive firearms training and experience, this certification:

1. Requires a high school diploma or high school equivalency certificate (GED);

2. Requires the applicant to be a sworn officer or an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for general instructor certification provided that they only conduct training in their particular area of expertise;

3. Requires a minimum of two years' experience in a criminal justice agency;

4. Requires the applicant to have attended and successfully completed an instructor development course ~~which~~ that meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;

5. Requires the applicant also to have successfully completed a firearms instructors course ~~which~~ that meets or exceeds the standards of the firearms instructors course approved by the department;

6. Is valid for not more than three years, but may be renewed;

7. Requires prequalification on a department "Modified Double Action Course or Virginia Tactical Qualification Course" with a minimum score of 90%;

8. Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor

until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship. This documentation shall be maintained at the certified academy at which certification is obtained;

9. Authorizes an individual to instruct mandated firearms training courses and to conduct annual firearms qualifications only; and

10. Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

D. Defensive tactics certification. For the individual who has had extensive training and experience in the area of defensive tactics, this certification:

1. Requires a high school diploma or a high school equivalency certificate (GED);

2. Requires the applicant to be a sworn officer or an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for general instructor certification provided that they only conduct training in their particular area of expertise;

3. Requires a minimum of two years experience in a criminal justice agency;

4. Requires the applicant to have attended and successfully completed an instructor development course ~~which~~ that meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30.

5. Requires the applicant also to have successfully completed a defensive tactics instructors course ~~which~~ that meets or exceeds the standards of the defensive tactics instructors course approved by the department;

6. Is valid for not more than three years, but may be renewed;

7. Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship. This documentation shall be maintained at the certified academy at which certification is obtained;

8. Authorizes the individual to instruct defensive tactics subjects only; and

9. Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

E. Driver training instructor certification. For the individual who has had extensive training and experience in the area of driver training, this certification:

1. Requires a high school diploma or a high school equivalency certificate (GED);

2. Requires the applicant to be a sworn officer or an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for general instructor certification provided that they only conduct training in their areas of expertise;
3. Requires a minimum of two years experience in a criminal justice agency;
4. Requires the applicant to have attended and successfully completed an instructor development course ~~which that~~ meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;
5. Requires the applicant also to have successfully completed a driver training instructors course ~~which that~~ meets or exceeds the standards of the driver training instructors course approved by the department;
6. Is valid for not more than three years, but may be renewed;
7. Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until they can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship. This documentation shall be maintained at the certified academy at which certification is obtained;
8. Authorizes the individual to instruct driver training subjects only; and
9. Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

F. Speed measurement instructor certification. This certification:

1. Requires a high school diploma or high school equivalency certificate (GED);
2. Requires the applicant to be a sworn officer or an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for general instructor certification provided that they only conduct training in their particular area of expertise;
3. Requires a minimum of two years experience in a criminal justice agency, including two years experience in ~~radar operation~~ speed measurement;
4. Requires the applicant to have attended and successfully completed an instructor development course ~~which that~~ meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;
5. Requires the applicant to have attended and successfully completed a ~~radar~~ speed measurement instructor school ~~which that~~ meets or exceeds the standards established by the department;

6. This provision applies to all new personnel employed after July 1, 2007;
7. Is valid for not more than three years, but may be renewed;
8. Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship. This documentation shall be maintained at the certified academy at which certification is obtained;
9. Authorizes an individual to instruct ~~radar~~ speed measurement subjects only; and
10. Certification becomes null and void when the certified instructor is no longer employed by an agency that comes under the purview of the department.

VA.R. Doc. No. R16-4164; Filed September 15, 2015; 4:14 p.m.

**Proposed Regulation**

**Title of Regulation:** **6VAC20-120. Regulations Relating to Criminal History Record Information Use and Security (amending 6VAC20-120-20 through, 6VAC20-120-80, 6VAC20-120-100 through 6VAC20-120-140, 6VAC20-120-160; repealing 6VAC20-120-10).**

**Statutory Authority:** §§ 9.1-102 and 9.1-131 of the Code of Virginia.

**Public Hearing Information:**

October 21, 2015 - 10 a.m. - Washington Building, 1100 Bank Street, Room B27, Richmond, VA 23219. Note: Individuals wishing to attend must present a photo ID at the security desk when entering the building.

**Public Comment Deadline:** December 4, 2015.

**Agency Contact:** Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 225-3853, or email [barbara.peterson-wilson@dcjs.virginia.gov](mailto:barbara.peterson-wilson@dcjs.virginia.gov).

**Basis:** Subdivision 24 of § 9.1-102 of the Code of Virginia instructs the Department of Criminal Justice Services to "adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders." Section 9.1-131 instructs that "the Board shall ensure that annual audits are conducted of a representative sample of state and local criminal justice agencies to ensure compliance with this article and Board regulations. The Board shall adopt such regulations as may be necessary for the conduct of audits, the retention of records to facilitate such audits, the determination of necessary corrective actions, and the reporting of corrective actions taken." The Criminal Justice

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Services Board approved these recommendations December 12, 2013.

**Purpose:** The board and department are required by § 9.1-102 of the Code of Virginia to establish regulations regarding the use and security of criminal history record information and by § 9.1-131 of the Code of Virginia to conduct annual audits. The proposed revisions to these regulations address the security and dissemination of criminal history record information. These revisions are intended to protect the public safety and welfare by protecting citizens from the unlawful dissemination of their criminal history record information. These regulations have not been revised since 1997.

**Substance:**

6VAC20-120-20 – Definitions. Definitions have been added to define terms used within the document and amended based on terminology related to criminal history record information use and security.

6VAC20-120-30 – Applicability. The amendments to this section came from an official opinion from the Office of the Attorney General.

6VAC20-120-40 – Collection. The amendments reflect the current practices according to Central Criminal Records Exchange requirements and current practices of state, local, and criminal justice agencies in the Commonwealth with access to criminal history record information.

6VAC20-120-50 - Dissemination. The amendments reflect the requirements of the Central Criminal Records Exchange in reference to the query and dissemination of criminal history record information. Additional changes relating to "noncriminal justice agencies" were removed due to an official opinion from the Office of the Attorney General.

6VAC20-120-60 - Access and review. The amendments reflect the current practices according to the Central Criminal Records Exchange and the Virginia Criminal Information Network.

6VAC20-120-70 – Challenge. The amendments reflect the current procedures in accordance with the Central Criminal Records Exchange.

6VAC20-120-80 – Expungement and sealing. The amendments reflect the current requirements in accordance with § 19.2-392.1 of the Code of Virginia in relation to expunged records, as well as current court requirements when using imaged case records.

**Issues:** The primary advantage to the public and the Commonwealth will be a standard regulatory process for how personal criminal history record information is handled amongst state and local law enforcement agencies within the Commonwealth. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board proposes to clarify regulations relating to criminal history records.

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

Estimated Economic Impact. The proposed changes will clarify the current language relating to criminal history records. Clarification of existing language is expected to benefit all affected entities. However, there is no change in the regulatory requirements. Thus, no significant economic impact is expected as a result of this proposed action.

Businesses and Entities Affected. These regulations apply to state and local criminal justice agencies which include the Commonwealth's Attorneys, courts, corrections, emergency operators, fire marshals, local agencies, magistrates, police departments, state agencies, sheriff's offices, state police, and federal agencies. According to the Department of Criminal Justice Services, there are approximately 650 such entities in Virginia.

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

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. The proposed regulations do not impose costs and other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations do not have adverse impact on small businesses.

Real Estate Development Costs. No impact on real estate development costs is expected.

Legal Mandate.

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

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

- the impact on the use and value of private property.

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

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

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

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis of the Department of Planning and Budget.

Summary:

*The proposed amendments (i) update definitions, (ii) clarify that the department does not have the authority to audit noncriminal justice agencies or individuals, (iii) update provisions relating to the Central Criminal Records Exchange (CCRE), (iv) clarify that agencies are not authorized to query CCRE at the request of an individual, (iv) reflect statutory provisions relating to expunged records and court requirements when using imaged case records, and (v) make technical or corrective changes.*

**Part I  
General**

**6VAC20-120-10. Purpose. (Repealed.)**

~~Pursuant to the provisions of §§ 9-170-1, 9-170-15, 9-170-16, 9-170-17, 9-170-21 and §§ 9-184 through 9-196 of the Code of Virginia, the Criminal Justice Services Board hereby promulgates the following regulations relating to Criminal History Record Information Use and Security.~~

~~The purpose of these regulations is to assure that state and local criminal justice agencies maintaining criminal history record information establish required record keeping procedures to ensure that criminal history record information is accurate, complete, timely, electronically and physically secure, and disseminated only in accordance with federal and~~

~~state legislation and regulations. Agencies may implement specific procedures appropriate to their particular systems, but at a minimum shall abide by the requirements outlined herein.~~

**Part I  
General**

**6VAC20-120-20. Definitions.**

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

"Access" means the ability to obtain, directly or through an intermediary, criminal history record information contained in manual or automated files.

"Board" means the Criminal Justice Services Board, as defined in § ~~9-168~~ 9.1-108 of the Code of Virginia.

"Central Criminal Records Exchange (~~CCRE~~)" or "CCRE" means the repository in this Commonwealth ~~which that~~ receives, identifies, maintains, and disseminates individual criminal history records, in accordance with § ~~9-170-22~~ Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 of the Code of Virginia.

"Challenge" means an individual's objection to his criminal history record information.

"Conviction data" means information in the custody of any criminal justice agency relating to a ~~judgement~~ judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, ~~informations~~ information, or other formal charges and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by ~~Chapter 11~~ (§ ~~16.1-226 et seq.~~), of ~~Title 16.1~~ §§ 16.1-299 and 19.2-389.1 of the Code of Virginia, criminal justice investigative information, or correctional status information.

"Criminal history record information area" means any office, room, or space in which criminal history record information is regularly collected, processed, stored, or disseminated to an authorized user. This area includes computer rooms, computer terminal workstations, file rooms, and any other rooms or space in which ~~the above~~ those activities are carried out.

"Criminal intelligence information" means ~~information on~~ information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible data that has been evaluated and

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determined to be relevant to the identification and criminal activity of individuals or organizations that are reasonably suspected of involvement in criminal activity. Criminal intelligence information shall not include criminal investigative files.

"Criminal investigative information" means information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

"Criminal justice agency" means a court or any other governmental agency or subunit thereof ~~which that~~ as its principal function performs the administration of criminal justice and any other agency or subunit thereof ~~which that~~ performs criminal justice activities.

"Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, ~~which that~~ is used for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

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

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and a right to know the information.

"Expunge" means to remove, in accordance with a court order, a criminal history record, or a portion of a record, from public inspection or normal access.

"Modify" means to add or delete information from a record to accurately reflect the reported facts of an individual's criminal history record. (See ~~§ 19.2-389~~ 9.1-132 of the Code of Virginia.) This includes eradicating, supplementing, updating, and correcting inaccurate and erroneous information.

"Noncriminal justice agencies or individuals" means those agencies or individuals authorized to receive limited criminal history record information pursuant to a specific agreement with a criminal justice agency under the provisions of subsection A of § 19.2-389 of the Code of Virginia.

"Originating agency identifier" or "ORI" means a unique nine-character designation used to identify the agency that places records in the Virginia Criminal Information Network (VCIN).

"Seal" means to physically prevent access to a criminal history record, or portion of a criminal history record.

"Superintendent" means the chief administrative officer of the Virginia Department of State Police.

## Part II

### Criminal History Record Information Use

#### **6VAC20-120-30. Applicability.**

~~These regulations govern~~ A. This chapter governs originals and copies of manual or automated criminal history record information ~~which that~~ are used, collected, stored, or disseminated by a state or local criminal justice agencies or other agencies receiving criminal history record information in the Commonwealth. ~~The regulations~~ This chapter also ~~set~~ sets forth the required procedures that ensure the proper processing of the expungement of criminal history record information. The provisions of this chapter apply to the following groups, agencies, and individuals:

1. State and local criminal justice agencies and subunits of these agencies in the Commonwealth; and
2. The United States Government or the government of another state or its political subdivisions ~~which that~~ that exchange such information with criminal justice agencies in the Commonwealth, but only to the extent of that exchange;
3. ~~Noncriminal justice agencies or individuals who are eligible under the provisions of § 19.2-389 of the Code of Virginia to receive limited criminal history record information.~~

B. The provisions of this chapter do not apply to: (i) original or copied records of entry, such as police blotters maintained by a criminal justice agency on a chronological basis and permitted to be made public, but only if such records are not indexed or accessible by name; (ii) offense and dispatch records maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name or do not contain criminal history record information; (iii) court records of public criminal proceedings, including opinions and published compilations thereof; (iv) records of traffic offenses disseminated to or maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses; (v) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable; (vi) announcements of executive clemency; (vii) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; and (viii) criminal justice intelligence information; or criminal justice investigative information.

C. Nothing in this chapter shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation; the apprehension, arrest, release or prosecution of an individual; the adjudication of charges; or the correctional status of an

individual, which is related to the offense for which the individual is currently within the criminal justice system.

**6VAC20-120-40. Collection.**

A. Responsibility. Responsibility for collecting and updating criminal history record information rests with:

1. State officials and criminal justice agencies having the power to arrest, detain, or hold convicted persons in correctional facilities;
2. Sheriffs of cities or counties;
3. Police officials of cities, counties, and towns;
4. Other local law-enforcement officers or conservators of the peace who have the power to arrest for a felony (see § 19.2-390 of the Code of Virginia);
5. Clerks of court and court agencies or officers of the court; and
6. Other criminal justice agencies or agencies having criminal justice responsibilities which generate criminal history record information.

B. Reportable offenses. The ~~above~~ officials listed in subsection A of this section and their representatives are required to submit to the Central Criminal Records Exchange, on forms provided by the Central Criminal Records Exchange, a report on every arrest they complete for:

1. Treason;
2. Felonies or offenses punishable as a misdemeanor under Title ~~54.1~~ 18.2 of the Code of Virginia;
3. Class 1 and 2 misdemeanors under Title 18.2 except an arrest for a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; a violation of Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or § 18.2-119; or a violation of any similar ordinance of a county, city or town.

In addition to those offenses enumerated ~~above~~ in this subsection, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or correctional institution.

The chief of police, sheriff, or criminal justice agency head is responsible for establishing a system to ensure that arrest forms are completed and submitted in a timely and accurate fashion.

C. Timelines of submission.

1. Arrests. Arrest reports for all offenses noted ~~above~~ in subsection B of this section, except as provided in this section, and a fingerprint card for the arrested individual shall be forwarded to the Central Criminal Records Exchange in accordance with the time limits specified by the Department of State Police. A copy of the Central Criminal Records Exchange arrest form shall also be sent to the local court (a copy of the form is provided for the courts) at the same time.

The link between the arrest report and the fingerprint card shall be established according to Central Criminal Records Exchange requirements. Arrests that occur simultaneously for multiple offenses need only be accompanied by one fingerprint card.

~~2. Nonconvictions. For arrests except as noted in subdivision 3a below, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days from the date the order is entered by the presiding judge.~~

~~3. 2. Convictions. a.~~ For persons arrested and released on summonses under § 19.2-74 of the Code of Virginia, the chief law-enforcement officer or his designee, who may be the arresting officer, shall furnish a fingerprint cards card and a completed copy of the Central Criminal Records Exchange form to the Central Criminal Records Exchange. The form shall be completed immediately upon conviction unless an appeal is noted. In the case of an appeal, officials responsible for reporting the disposition of charges shall report the conviction within 30 days after final action of the case.

~~b. For arrests except as noted in subdivision 3 a above, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days after occurrence of the disposition.~~

~~4. 3.~~ Final disposition. State correctional officials shall submit to the Central Criminal Records Exchange the release status of an inmate of the state correctional system within 20 days of the release.

D. Updating and accuracy.

1. Arresting officers and court clerks noted ~~above~~ in subsection A of this section are responsible for notifying the Central Criminal Records Exchange in a timely ~~fashion~~ manner, and always within 30 days, of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated. In the case of correctional status or release information, correctional officials are responsible for notifying the Central Criminal Records Exchange within the same time limits of updates or changes in correctional status information. Forms for updating and correcting information are provided by the Central Criminal Records Exchange.

2. Each criminal justice agency is required to supply timely corrections of criminal history record information the agency has provided to a criminal justice or a noncriminal justice agency for a period of two years after the date of dissemination.

E. Locally maintained and nonreportable offenses. Criminal history record information generated by a criminal justice agency and maintained in a locally used and maintained file,

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including criminal history record information on offenses not required to be reported to the Central Criminal Records Exchange but maintained in local files, as well as criminal history record information maintained by the Central Criminal Records Exchange, shall adhere to the standards of collection, timeliness, updating, and accuracy as required by ~~these regulations~~ this chapter. Arrests shall be noted and convictions or adjudications recorded within 30 days of court action or the elapse of time to appeal.

F. Except as provided in §§ 15.2-1722, 16.1-299, and 19.2-390 of the Code of Virginia, nothing contained in this article shall be construed as requiring any criminal justice agency to collect, maintain, or update criminal history record information, as defined in § 9.1-101 of the Code of Virginia, when such information is already available and readily accessible from another criminal justice agency.

## **6VAC20-120-50. Dissemination.**

### A. Authorization.

1. No criminal justice agency or individual shall confirm or deny the existence or nonexistence of a criminal history record to persons or agencies that would not be eligible to receive the information. No dissemination of a criminal history record is to be made to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.

2. Criminal history record information or portions of an individual's record both maintained and used by criminal justice agencies and eligible recipients, maintained either at the Central Criminal Records Exchange, or by the originating criminal justice agency, or both, shall only be disseminated as provided by § 19.2-389 of the Code of Virginia.

3. Upon receipt of a request for criminal history record information, by personal contact, mail, or electronic means from an agency or individual claiming to be authorized to obtain such information, the person responding to the request shall determine whether the requesting agency or individual is authorized to receive criminal history record information.

4. Criminal justice agencies shall determine what positions in their agency require regular access to criminal history record information as part of ~~their~~ the position's job responsibilities. These positions will be exempt from the ~~dissemination rules below~~ provisions of subsection B of this section. Use of criminal history record information by a member of a criminal justice agency not occupying a position authorized to receive criminal history record information, or for a purpose or activity other than one for which the person is authorized to receive criminal history record information, will be considered a dissemination and shall meet the provisions of this section. If the user of criminal history record information does not meet the

procedures in subsection B of this section, the use of the information will be considered an unauthorized dissemination.

5. The release of criminal history record information to an individual or entity not included in § 19.2-389 ~~of the Code of Virginia~~ is unlawful and unauthorized. An individual or criminal justice agency that releases criminal history record information to a party which does not clearly belong to one of the categories of agencies and individuals authorized to receive the information as outlined in § 19.2-389 ~~of the Code~~ is subject to being denied access to state and national criminal history record information on a temporary or permanent basis and to the administrative sanctions described in 6VAC20-120-100. Unlawful dissemination contrary to the provisions of this chapter is also a Class 2 misdemeanor (see § ~~9-195~~ 9.1-136 of the Code of Virginia).

B. Procedures for responding to requests. A criminal justice agency disseminating criminal history record information shall adhere to the following ~~regulations~~ provisions:

1. Allowable responses to requests. Local and regional criminal justice agencies may respond to requests for criminal history record information in two ways:

a. For offenses required to be reported to the Central Criminal Records Exchange (CCRE), they ~~may~~ shall refer the requester to the Central Criminal Records Exchange, which will directly provide the requester with the information, ~~or shall themselves query the Central Criminal Records Exchange to obtain the most accurate and complete information available and provide the information to the requester.~~ (See § 19.2-389 of the Code of Virginia.)

~~It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to information requests. The local law-enforcement agency may directly provide criminal history record information to the requester without making an inquiry to the Central Criminal Records Exchange or referring the requester to the Central Criminal Records Exchange if the time is of the essence and the normal response time of the exchange would exceed the necessary time period. (See § 19.2-389 of the Code of Virginia.) Under circumstances where~~ When an inquiry to the exchange is not made, the record provided by the local law-enforcement agency should be accompanied by an appropriate disclaimer indicating that the record may not be complete.

b. For nonreportable offenses (*i.e.*, those offenses not reported to the Central Criminal Records Exchange), the law-enforcement agency shall provide the information requested, following the dissemination procedures as required by ~~the regulations below~~ subdivisions 2 through 8 of this subsection.

2. Prior to dissemination. Prior to disseminating criminal history record information a criminal justice agency shall:

a. Verify requester identity.

(1) Individual requester. For an individual requesting his own record and not known to the person responding to the request, the individual shall provide proper identification, to include at least two of the following, one of which must be a photo identification: (i) a valid passport, (ii) drivers' license with photo, (iii) social security card, (iv) birth certificate, ~~or~~ (v) military identification, or (vi) state issued identification card with photo, if there is more than one name match. Fingerprints or other additional information shall be required if the disseminating criminal justice agency deems it appropriate or necessary to ensure a match of the record and the requesting subject.

(2) Criminal justice agencies. For personnel of criminal justice agencies requesting a record, the requester shall provide valid agency identification unless the disseminator recognizes the requesting individual as having previously been authorized to receive the information for the same purpose.

(3) Noncriminal justice agencies or individuals. For an individual requesting the record of another, as in the case of an attorney requesting the record of his client, the individual shall provide a sworn written request from the record subject naming the requester as a recipient, as provided in subsection A of § 19.2-389A 19.2-389 of the Code of Virginia. The written request shall include the full name, date of birth, race, and sex of the record subject. Identification of the attorney or individual shall also be required unless the attorney or individual is known to the official responding to the request.

b. Verify record subject identity. Because serious harm could come from the matching of criminal history record information to the wrong individual, verification procedures shall be carefully managed, particularly when dissemination will be to noncriminal justice recipients. ~~The following verification methods are the only acceptable methods~~ information shall be reviewed to verify the record subject's identity:

~~(1) Individual requesters. The verification requirements for individuals requesting their own records and for individual requesters with sworn requests from the subject of the information shall be the same as the requirements for noncriminal justice agencies as described below. The full name, date of birth, race, and sex of the record subject. Fingerprint identification may be required prior to dissemination if there is any doubt as to the match. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange. Only when the information supplied and the information in the~~

Central Criminal Records Exchange or local files satisfactorily match shall information be disseminated.

~~(2) Criminal justice agencies. Criminal history record information which reasonably corresponds to the name, aliases, and physical identity of the subject can be disseminated to a legitimate requester when time is of the essence or if criminal justice interests will be best served by the dissemination. This includes the dissemination of records with similar but not identical name spellings, similar physical characteristics, and similar but not identical aliases. When criminal history record information is obtained in this manner and results in an apparent match between the identity of the subject and the record, the criminal history record should be verified using fingerprint identification prior to prosecution, adjudication or sentencing of the record subject. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange.~~

~~(3) Noncriminal justice agencies. Full name, date of birth, race, and sex of the record subject must be provided by the requester for a criminal history record to be disseminated. Fingerprint identification may be required prior to dissemination if there is any doubt as to the match. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange. Information supplied by the requester and available through the Central Criminal Records Exchange (or in the local files where the request is for criminal history record information maintained only locally) must match to the satisfaction of the disseminator, or the dissemination shall not be made.~~

c. Notify requester of costs and restrictions. The official responsible for aiding the requester shall notify the requester of the costs involved and of restrictions generally imposed on use of the data, or be reasonably assured that the requester is familiar with the costs and restrictions, prior to beginning the search for the requested criminal history record information, and shall obtain the consent of the requester to pay any charges associated with the dissemination.

3. Locating and disseminating information requested. Once a request for a criminal history record has been made, and the responsible official is satisfied as to the legitimacy of the request and the identity of the subject and has informed the requester of costs and restrictions, the responsible official conducting the search for the record shall supply the information ~~after querying the Central Criminal Records Exchange. However, if time is of the essence, or the offenses in a criminal history record are not required to be reported to Central Criminal Records Exchange, the responsible official may directly supply the information contained in the local files on offenses not required to be~~

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reported to the Central Criminal records Exchange (see § 19.2-389 of the Code of Virginia).

4. Instructions regarding dissemination to requesters. The disseminated record must be accompanied by ~~one of the three following messages~~ message "UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES" in printed form, ~~whichever matches the category of the requester~~ for the following requesters:

a. Record subjects. Record subjects have a right to receive and disseminate their own criminal history record information, subject to ~~these regulations~~ this chapter and subdivision 11 of § 19.2-389(11) 19.2-389 of the Code of Virginia. If a record subject or his attorney complies with the requirements of ~~these sections~~ this section, he shall be given the requested criminal history record information. However, if an agency or individual receives a record from the record subject, that agency or individual shall not further disseminate the record. ~~The following printed message shall accompany the criminal history record information disseminated to a record subject:~~

~~"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."~~

b. Criminal justice agencies. ~~The following printed message shall accompany the criminal history record information disseminated to a criminal justice agency:~~

~~"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."~~

c. Noncriminal justice agencies and individuals other than record subjects. Even with the sworn consent of the record subject, only criminal history record information that is conviction data shall be disseminated to a noncriminal justice agency or an individual in compliance with the existing laws and shall not be disseminated further. ~~The following printed message shall accompany the criminal history record information disseminated to an individual or a noncriminal justice agency receiving criminal history record information:~~

~~"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."~~

5. Maintaining a dissemination log. A record of ~~any dissemination~~ all secondary disseminations shall be maintained at the disseminating criminal justice agency or shall be accessible electronically for a period of at least two years from the date of the dissemination.

The dissemination log must list all requests for criminal history record information. The log may be automated or manual.

Records will include the following information on each dissemination:

- a. Date of inquiry;
- b. Requesting agency name and address or the agency ORI;
- c. Identifying name and number (either FBI or state identification number of record subject, or notification of "no record found");
- d. Name of requester within the agency requesting criminal history record information; and
- e. Name of disseminator (officer or civilian who provides the criminal history record information to the requester).

6. Reporting unauthorized disseminations. While individual criminal justice agencies are not expected to audit agencies ~~who that~~ receive criminal history record information that they provide, in order to identify unauthorized releases, ~~they~~ individual criminal justice agencies shall notify the department of any violations observed of ~~the above dissemination regulations~~ this section. The department will investigate and respond to the violation in a manner deemed appropriate by the department.

A criminal justice agency ~~which that~~ knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log to ensure that disseminations are being appropriately managed.

7. Interstate dissemination. Interstate dissemination of criminal history record information shall be subject to the procedures described ~~herein~~ in this section. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and this chapter, as if the agency were within the jurisdiction of the Commonwealth.

8. Fees. Criminal justice agencies may charge a reasonable fee for search and copying time expended when dissemination of criminal history record information is requested by a noncriminal justice agency or an individual. The criminal justice agency shall post the schedule of fees to be charged, and shall obtain approval from the requester to pay such costs prior to initiating the search.

C. Limitations on use. Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purposes for which the information was given and may not be disseminated further.

## **6VAC20-120-60. Access and review.**

A. Who can review. An individual or his attorney, upon providing proper identification and in the case of an attorney representing a client, with a sworn written request from the record subject, shall have the right to inspect criminal history record information being maintained on that individual by the Central Criminal Records Exchange or other criminal justice agencies. Completing a request form ~~may~~ shall be required by the Central Criminal Records Exchange or the local criminal justice agency.

B. Review at local law-enforcement agency or central criminal records exchange.

1. An individual or his attorney may review the individual's criminal history record information arising from arrests for felonies and Class 1 and 2 misdemeanors maintained in the Central Criminal Records Exchange ~~by applying at any law enforcement agency with terminal capabilities on~~ through a request to the Virginia Criminal Information Network or to the Central Criminal Records Exchange of the Virginia Department of State Police, during normal working hours. An individual or his attorney may review the individual's criminal history record regarding offenses not required to be reported to the Central Criminal Records Exchange at the arresting law-enforcement agency.
2. The law-enforcement agency to which the request is directed shall inform the individual or his attorney of the procedures associated with the review.
3. Individuals shall be provided, at cost, one copy of their record. If no record can be found, a statement shall be furnished to this effect.

C. Timeliness and completeness.

1. An individual requesting his own record shall be advised when the record will be available. In no case shall the time between request and availability of the record exceed one week, except where fingerprint identification is required; then it shall not exceed 30 days. Criminal justice agencies should seek to provide the record as soon as reasonably possible unless there are questions of identification.
2. The criminal justice agency locating an individual's criminal history record information shall examine its own files ~~and shall contact the Central Criminal Records Exchange~~ for the most up-to-date criminal history record information, and supply ~~both~~ the criminal history record information to the requester.

D. Assistance.

1. The criminal justice agency to which the request is directed shall provide reasonable assistance to the individual or his attorney to help understand the record.
2. The official releasing the record shall also inform the individual of his right to challenge the record.

**6VAC20-120-70. Challenge.**

A. Individuals who desire to challenge their own criminal history record information must complete documentation provided by the criminal justice agency maintaining the record and forward it to the Central Criminal Records Exchange or the criminal justice agency maintaining the record. A duplicate copy of the form and the challenged record may be maintained by the individual initiating the challenge or review. The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the Central Criminal Records Exchange ~~or the criminal justice agency maintaining the record of the~~

Department of the State Police. For offenses not required to be reported to the Central Criminal Records Exchange, the challenge shall be made at the arresting law-enforcement agency or the criminal justice agency maintaining the records.

~~A challenge will be processed as described below.~~

A. Record B. A challenge to a record maintained by the Central Criminal Records Exchange: will be processed as follows:

1. Message flags. If the challenge is made of a record maintained by the Central Criminal Records Exchange, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." A challenged record shall carry this message when disseminated while under challenge.
2. Review at exchange. The Central Criminal Records Exchange shall compare the information contained in the repository files as reviewed by the individual with the original arrest or disposition form. If no error is located, the Central Criminal Records Exchange (i) shall forward a copy of the challenge form, a copy of the Central Criminal Records Exchange record, and other relevant information to the criminal justice agency or agencies which the Central Criminal Records Exchange records indicate as having originated the information under challenge; and (ii) shall request them to examine the relevant files to determine the validity of the challenge.
3. Examination. The criminal justice agency or agencies responsible for originating the challenged record shall conduct an examination of their source data, the contents of the challenge, and information supplied by the Central Criminal Records Exchange for any discrepancies or errors; and shall advise the Central Criminal Records Exchange of the results of the examination.
4. Correction. If any modification of a Central Criminal Records Exchange record is required, the Central Criminal Records Exchange shall modify the record and shall then notify the criminal justice agency in which the record was originally reviewed of its action; and supply it and other agencies involved in the review with a copy of the corrected record.
5. Notification by Central Criminal Records Exchange. The Central Criminal Records Exchange shall also provide notification of the correction to all recipients of the record within the last 24 months.
6. Notification by other criminal justice agencies. Criminal justice agencies ~~which that~~ have disseminated an erroneous or incomplete record shall in turn notify agencies ~~which that~~ have received the disseminated record or portion of the record in the last two years from the date of the Central Criminal Records Exchange modifications of the records. Notification shall consist of sending a copy of the original record; and corrections made; to the recipients of the erroneous record noted in the dissemination log for the

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two-year period prior to the date of correction by the Central Criminal Records Exchange. (See § ~~9-192-C~~ 9.1-132 of the Code of Virginia.) The criminal justice agency in which the review and challenge occurred shall notify the individual or his attorney of the action of Central Criminal Records Exchange.

7. Appeal. The record subject or his attorney, upon being told of the results of his record review, shall also be informed of his right to review and appeal those results.

~~B. Record~~ C. A challenge to a record maintained by a criminal justice agency other than the central Criminal Records Exchange ~~will be processed as follows:~~

1. Message flags. If a challenge is made of a record maintained by a criminal justice agency, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." A disseminated record shall contain this message while under challenge.

2. Examination and correction agency. If the challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the ~~validity~~ validity of the challenge. If the review demonstrates that modification is in order, the modification shall be completed and the erroneous information destroyed. If the challenged record pertains to the disposition information, the arresting agency shall compare contents of the challenge with information originally supplied by the clerk of the court.

3. Review by ~~Clerk clerk~~ of ~~Court court~~. If no error is found in the criminal justice agency's records, the arresting agency shall forward the challenge to the clerk of the court ~~that~~ who submitted the original disposition. The clerk of the court shall examine the court records pursuant to the challenge and shall, in turn, notify the arresting agency of its findings. The arresting agency shall then proceed as described in subsection ~~B C~~ 2 of this section.

4. Notification. The criminal justice agency in which the challenge occurred shall notify the individual or his attorney of the action taken; and shall notify the Central Criminal Records Exchange and other criminal justice agencies receiving the erroneous information of the necessary corrections if required, as well as the noncriminal justice agencies to which it has distributed the information in the last 24 months, as noted in its dissemination log.

5. Correction. The Central Criminal Records Exchange will correct its records; and notify agencies that received erroneous information within the past 24 months. The agencies will be requested to correct their files and to notify agencies ~~which~~ that have the disseminated information, as provided in subsection ~~A B~~ 6 of this section.

6. Appeal. The record subject or his attorney, upon receiving the results of the record review, shall be informed of the right to review and appeal.

~~C. D.~~ Administrative review of challenge results.

1. Review by criminal justice agency head. After the ~~aforementioned~~ review and challenge, in accordance with this section, concerning a record either in the Central Criminal Records Exchange or another criminal justice agency, the individual or his attorney may, within 30 days, request in writing that the head of the criminal justice agency in which the challenge was made, review the challenge if the individual is not satisfied with the results of the review and challenge.

2. Thirty-day review. The criminal justice agency head or his designated official shall review the challenge by reviewing the action taken by the agency, the Central Criminal Records Exchange, and other criminal justice agencies; and shall notify the individual or his attorney in writing of the decision within 30 days of the receipt of the written request to review the challenge. The criminal justice agency head shall also notify the individual of the option to request an administrative appeal through the department within 30 days of the postmarked date of the notification of the decision. This notification of the appeal shall include the address of the Department of Criminal Justice Services.

3. Correction and notification. If required, correction and notification shall follow the procedures outlined in subsections ~~A B~~ and ~~B C~~ of this section.

4. Notification of the department. A copy of the notice required in ~~subsection C~~ subdivision D 2 of this section shall be forwarded to the department by the criminal justice agency at the same time it is provided to the individual.

~~D. E.~~ Administrative appeal.

1. Departmental assessment. The individual or his attorney challenging his record, within 30 days of the postmark of his notification of the decision of the administrative review, may request that the Director of the Department of Criminal Justice Services review the challenge and conduct an informal hearing. The director may designate a hearing officer for this purpose.

2. Determination of merits of case. The director ~~of~~ or his designee shall contact the criminal justice agencies involved and request any and all information needed. Criminal justice agencies shall supply the information requested in a timely manner; to allow the department to respond to the individual within 30 days. The director will then rule on the merits of a hearing and notify the individual or his attorney that such hearing will or will not be held.

3. Hearing. The hearing, if held, shall be conducted within 30 days of the receipt of the request, and the decision of

the hearing officer communicated to the individual or his attorney within 30 days of the hearing.

4. Finding. If the director or the hearing officer determines that correction and modification of the records are required, correction of the record and notification of all involved parties shall proceed according to the procedures outlined in subsections A B and B C of this section.

5. Removal of a challenge designation. When records and relevant action taken by the criminal justice agencies involved are deemed to be correct, the department shall notify the affected criminal justice agencies to remove the challenge designation from their files.

~~E.~~ F. Department notification following corrections. For audit purposes, the Central Criminal Records Exchange shall annually forward the names and addresses of the agencies ~~which~~ that originated erroneous record information or received erroneous information from the exchange in that year to the Department of Criminal Justice Services.

**6VAC20-120-80. Expungement and sealing.**

A. ~~Responsibility of the Superintendent of the Virginia Department of State Police.~~ The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order. Upon receipt of a court order, petition, and other supporting documents for the expungement of a criminal history record, the superintendent, pursuant to § 19.2-392.2 of the Code of Virginia, shall by letter with an enclosed copy of the order, direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record, to remove the electronic or manual record or portion thereof from its repository and place it in a physically sealed, separate file. The file shall be properly indexed to allow for later retrieval of the record if required by court order, and the record shall be labeled with the following designation: "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."

B. Responsibility of agencies with a record to be expunged. The record named in the Virginia Department of State Police's letter shall be removed from normal access. The expunged information shall be sealed but remain available, as the courts may call for its reopening at a later date. (See § 19.2-392.3 of the Code of Virginia.) Access to the record shall be possible only through a name index of expunged records maintained either with the expunged records or in a manner that will allow subsequent retrieval of the expunged record as may be required by the court or as part of the department's audit procedures. Should the name index make reference to the expunged record, it shall be apart from normally accessed files.

C. Procedure for expungement and sealing of electronic and hard copy records.

1. The expungement and sealing of hard copy original records of entry (arrest forms) is accomplished by

physically removing them from a file, and filing them in a physically secure location elsewhere, apart from normally accessed files. This file should be used only for expunged records and should be accessible only to the manager of records.

2. If the information to be expunged is included among other information that has not been expunged on the same form or piece of paper, the expunged information shall be obliterated on the original or the original shall be retyped eliminating the expunged information. The expunged information shall then be placed in the file for expunged records, in its original or copied form, and shall be accessible only to the manager of records.

3. If the expunged information is located on a criminal history record provided by the Central Criminal Records Exchange (i.e., "RAP sheet"), the criminal history record information shall be destroyed, and a new copy, not containing the expunged data, shall be obtained when necessary.

D. Procedure for expunging automated records. Should the record to be expunged be maintained in an automated system, the Central Criminal Record Exchange or the agency known to possess such a record shall copy the automated record onto an off-line medium such as tape, disk, or hard copy printouts. The expunged record, regardless of the type of medium on which it is maintained, shall then be kept in a file used for expunged records and sealed from normal use, accessible only to the manager of records. No notification that expunged data exists shall be left in the normally accessed files.

Notwithstanding any other provisions of this section, any imaged case records maintained in any circuit court, general district court, or juvenile and domestic relations district court case imaging system operated by the Office of the Executive Secretary for the Supreme Court of Virginia that are to be expunged may be transferred to a confidential and secure area inaccessible from normal use within the case imaging system and shall be considered sealed. Access to the expunged, imaged case records shall be limited to the manager of records for the court with the exception of designated staff within the Office of the Executive Secretary who are responsible for the operation of such case imaging systems and have access to the confidential and secure area for the discrete purpose of providing the manager of the records access to the secure area. No notification that expunged data exists shall be left in the normally accessed case imaging system. Any related records that are maintained in an electronic order book shall also be deleted.

E. Department to be notified following expungement. Upon receipt of a request from the Virginia Department of State Police to expunge and seal a record, the affected agency or agencies shall perform the steps ~~above of this section~~, and notify the Virginia Department of State Police of their action in writing within ~~420~~ 60 days of their receipt of the request.

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F. Expungement order not received by department. Should a court ordered expungement be directed to a criminal justice agency other than the Virginia Department of State Police, the directed criminal justice agency shall comply as outlined ~~herein in this section~~ and advise the superintendent without delay of such order. The superintendent shall, upon receipt of such notification, obtain a copy of the order from the appropriate circuit court.

## **6VAC20-120-100. Administrative sanctions.**

Discovery of violations or failure to comply with this chapter in whole or in part will occasion the following sanctions. Additional criminal penalties and other sanctions may be invoked as provided in 6VAC20-120-50 should the violation involve an unauthorized dissemination.

### ~~A.~~ 1. Law-enforcement agencies.

~~1.~~ a. Should a law-enforcement agency fail to comply with this chapter, a letter will be forwarded by the ~~Department~~ department to either the chief of police or sheriff, citing the problem and notifying the police department or the sheriff's department that the matter will be referred to the chief official of the locality or local commonwealth's attorney, respectively, if a satisfactory result is not forthcoming. The criminal justice agency shall have 10 ~~working~~ business days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

~~2.~~ b. Should there be no satisfactory response after the 10 ~~working~~ business day period, the matter will be referred to the offices of the city, county, or town manager or the local commonwealth's attorney requesting resolution of the matter within 30 days.

~~3.~~ c. If 30 days have passed and the matter fails to be resolved to the satisfaction of the department, the matter will be referred to the Criminal Justice Services Board and the Office of the Attorney General for action.

### ~~B.~~ 2. Courts.

~~1.~~ a. Should a court or officer of the court fail to comply with ~~these regulations~~ this chapter, a letter will be forwarded by the department to the court, citing the problem and notifying the court clerk that the matter will be referred to the chief judge of the locality and the local commonwealth's attorney if a satisfactory result is not forthcoming. The court shall have 10 ~~working~~ business days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

~~2.~~ b. Should there be no satisfactory response after the 10 ~~working~~ business day period, the matter will be referred to the chief judge requesting resolution of the matter within 30 days. The Executive Secretary of the Supreme Court of Virginia will also be notified.

~~3.~~ c. If 30 days have passed and the matter fails to be resolved to the satisfaction of the department, the matter

will be referred to the Criminal Justice Services Board and the Chief Justice of Virginia.

## Part III

### Criminal History Record Information Security

#### **6VAC20-120-110. Applicability.**

~~These regulations are~~ A. This chapter is applicable to criminal justice information systems operated within the Commonwealth of Virginia. These regulations on security are not applicable to court records or other records expressly excluded by § ~~9-184~~, B 9.1-126 of the Code of Virginia.

~~These regulations establish~~ B. This part establishes a minimum set of security standards ~~which that~~ shall apply to any manual or automated recordkeeping system ~~which that~~ collects, stores, processes, or disseminates criminal history record information.

C. Where individuals or noncriminal justice agencies are authorized to have direct access to criminal history record information pursuant to a specific agreement with a criminal justice agency to provide service required for the administration of criminal justice, the service support agreement will embody the restrictions on dissemination and the security requirements contained in ~~these regulations~~ this chapter and the Code of Virginia.

#### **6VAC20-120-120. Responsibilities.**

A. In addition to those responsibilities mandated by state and federal laws, the Department of State Police shall have the responsibility for the implementation of ~~these regulations~~ this chapter in regard to the operation of the Central Criminal Records Exchange.

B. The implementation of ~~these regulations~~ this chapter, except as set forth in the ~~above paragraph~~ subsection A of this section, shall be the responsibility of the criminal justice agency as designated and authorized by the county or municipality in cases of political subdivisions. Nothing in ~~these regulations~~ this chapter shall be deemed to affect in any way the exercise of responsibility conferred on counties and municipalities of the state under Title 15.1 of the Code of Virginia. The determination of the suitability of the actual procedures instituted by the criminal justice agency will be the subject of study in any audit by the department, mandated by § ~~9-186~~ 9.1-131 of the Code of Virginia.

#### **6VAC20-120-130. Physical access.**

A. Access to areas in which criminal history record information is collected, stored, processed, or disseminated shall be limited to authorized persons. Control of access shall be ensured through the use of locks, guards, or other appropriate means. Authorized personnel shall be clearly identified.

B. Procedures shall be established to detect an unauthorized attempt or access. Furthermore, a procedure shall be established to be followed in those cases in which an attempt or unauthorized access is detected. Such procedures shall become part of the orientation of employees working in

criminal history record information ~~area(s)~~ area or areas and shall be reviewed periodically to ensure their effectiveness.

C. Criminal justice agencies shall provide direct access to criminal history record information only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

D. Criminal justice agencies shall institute, where computer processing is not utilized, procedures to ensure that an individual or agency authorized to have direct access is responsible for: (i) the physical security of criminal history record information under its control or in its custody; and (ii) the protection of such information from unauthorized access, disclosure, or dissemination.

E. Procedures shall be instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

F. For criminal justice agencies that have their criminal history files automated, it is highly recommended that "backup" copies of criminal history information be maintained, preferably off-site. Further, for larger criminal justice agencies having automated systems, it is recommended that the criminal justice agencies develop a disaster recovery plan. The plan should be available for inspection and review by the department.

G. System specifications and documentation shall be carefully controlled to prevent unauthorized access and dissemination.

**6VAC20-120-140. Personnel.**

In accordance with applicable law, ordinances, and regulations, the criminal justice agency shall:

A. 1. Screen and have the right to reject for employment, based on good cause, personnel to be authorized to have direct access to criminal history record information;

B. 2. Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to this information where these personnel violate the provisions of ~~these regulations~~ this chapter or other security requirements established for the collection, storage, or dissemination of criminal history record information; and

C. 3. Ensure that all employees working with or having access to criminal history record information shall be made familiar with the substance and intent of ~~these regulations~~ this chapter. Designated employees shall be briefed on their roles and responsibilities in protecting the information resources in the criminal justice agency. Special procedures connected with security shall be reviewed periodically to ensure their relevance and continuing effectiveness.

**6VAC20-120-160. Computer operations.**

A. Where computerized data processing is employed, effective and technologically advanced software and hardware design shall be instituted to prevent unauthorized access to this information.

B. Computer operations, whether dedicated or shared, ~~which~~ that support criminal justice information systems shall operate in accordance with procedures developed or approved by the participating criminal justice agencies.

C. Criminal history record information shall be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by noncriminal justice terminals.

D. Operational programs shall be used that will prohibit inquiry, record updates, or destruction of records, from terminals other than criminal justice system terminals ~~which~~ that are so designated.

E. The destruction of record shall be limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

F. Operational programs shall be used to detect and log all unauthorized attempts to penetrate criminal history record information systems, programs, or files.

G. Programs designed (i) for the purpose of prohibiting unauthorized inquiries, unauthorized record updates, or unauthorized destruction of records; or (ii) for the detection and logging of unauthorized attempts to penetrate criminal history record information systems shall be known only to the criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such security programs. The ~~program(s)~~ program or programs shall be kept under maximum security conditions.

H. Criminal justice agencies having automated criminal history record files ~~should~~ shall designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures.

I. The criminal justice agency shall have the right to audit, monitor, and inspect procedures established pursuant to ~~these rules and regulations~~ this chapter.

VA.R. Doc. No. R14-3370; Filed September 16, 2015, 8:42 a.m.

**Fast-Track Regulation**

Title of Regulation: **6VAC20-240. Regulations Relating to School Security Officers (amending 6VAC20-240-10, 6VAC20-240-20, 6VAC20-240-60).**

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 4, 2015.

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# Regulations

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Effective Date: December 1, 2015.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 225-3853, or email [barbara.peterson-wilson@dcjs.virginia.gov](mailto:barbara.peterson-wilson@dcjs.virginia.gov).

Basis: Subdivision 44 of § 9.1-102 of the Code of Virginia authorizes the Department of Criminal Justice Services, under the direction of the Criminal Justice Services Board, to establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School and Campus Safety pursuant to § 9.1-184 of the Code of Virginia.

Subdivision 49 of § 9.1-102 of the Code of Virginia authorizes the department, under the direction of the board, to establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers.

Purpose: The purpose of this intended regulatory action is to revise and update the currently regulations governing school security officers. These regulations establish a certification process for school security officers. The requested revisions are essential to protect the safety and welfare of citizens to ensure that school security officers are receiving the correct training and correct information as the regulation is out of date. The goal of this proposal is to bring the training current with standard business practices as sought by constituents and to update the outdated language within the regulation.

Rationale for Using Fast-Track Process: The rationale for using the fast-track rulemaking process is due to the necessity of the change and the lack of controversy surrounding the change. Upon consultation of the advisory committee, which is comprised of school security points of contacts, the department received only positive feedback regarding the proposed change. Overall, contacts were eager for the change to be implemented as it easily facilitates their duties and allows employees to begin hands-on job training sooner.

Substance: Subdivision 44 of § 9.1-102 of the Code of Virginia instructs the Department of Criminal Justice Services to establish compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School Safety pursuant to § 9.1-184 of the Code of Virginia. Such training standards shall include the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics.

The substantive amendment allows the department to establish the number of hours for training instead of specifying the number of training hours in regulation. Other amendments are clarifying and technical in nature.

Issues: The primary advantage to the public and the Commonwealth will be a standard level of training for officers serving as school security officers. This will increase the professionalism of the field by ensuring that all officers are receiving viable up-to-date training. There are no disadvantages to the public or the Commonwealth.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Criminal Justice Services (Board) proposes to remove the requirement that school security officer training must be minimum 32 hours and clarify language in two other places.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. A different design would likely yield the same benefits at lower cost for at least one proposed change.

Estimated Economic Impact. This regulation establishes a certification process for school security officers. Certification requires training on the role and responsibility of school security officers; relevant state and federal laws; school and personal liability issues; security awareness in the school environment; mediation and conflict resolution; disaster and emergency response; and student behavioral dynamics. Currently, the training to cover these subject areas is required to be at least 32 hours.

The Department of Criminal Justice Services (DCJS) reports that the 32 hours is more than what is needed to cover the curriculum. Since the training has to be 32 hours, training under current regulation is usually stretched out superfluously. The proposed change will remove the 32-hour minimum requirement, but will require that the training course be approved by DCJS. With the proposed change, it appears that the training will be covered in fewer hours. A shorter training will reduce the number of hours the instructor and the trainees spend in classroom and free up their time and the classroom itself for other purposes.

According to DCJS, all but one school division hire, train or find training for their security officers. Only one school division uses an outside company to contract their security. DCJS indicates that school security officers usually get paid by their employers for their time in training. Similarly, DCJS or local school divisions pay for the instructor's time. Thus, a reduction in the number of training hours will likely provide some cost savings to the employers of school security officers

(most of which are school divisions and only one is an outside company) as well as the employers of the instructors. However, DJCS does not have data to estimate the magnitude of such savings.

On the other hand, providing DCJS the authority to approve the number of hours for the curriculum without having to change the regulation will have the unintended consequence of preventing the regulated entities participating in determining what the appropriate number of hours for training is. If the minimum number of hours is retained in the regulation, regulated entities will have a chance to participate in the rule making process if there is a proposed change to the standard and also be given adequate notice of any such change. However in this case, DCJS is proposing to strike the specific number of minimum hours (i.e., 32) required for training under this regulation. In doing so, this number would be determined as a matter of policy by the agency and the agency could change this number at any time without notice and without an opportunity for public comment.

The proposed changes will also clarify that "Director" means the chief administrative officer of DCJS or his designee and that the director may grant exemptions from the training standards established in the regulations. These changes are clarifications of the existing language and are not expected to create any significant economic effects other than improving the clarity of the definition of the director and his or her authority to grant exemptions.

**Businesses and Entities Affected.** The proposed changes primarily affect DJCS, school divisions that employ security officers, companies that contract out school security officers to school divisions, companies that provide the training, and the individuals taking the training. According to DCJS, there are 30 school divisions that employ security officers, one company that contracts out school security officers to school divisions, one training company, and approximately 200-250 individuals newly certified as school security officers per year in the Commonwealth.

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

**Projected Impact on Employment.** The proposed changes are anticipated to reduce the amount of time instructors and trainees spend in classroom. Thus, a reduction in demand for their services and time may be expected.

**Effects on the Use and Value of Private Property.** A reduction in training hours may reduce revenues of training providers and have a negative impact on their asset values. On the other hand, a reduction in training costs may improve profitability of companies that contract out school security officers to school divisions and have a positive impact on their asset values.

**Small Businesses: Costs and Other Effects.** The provider of school security training and the company that contracts out school security officers are believed to be small businesses. The cost and other effects discussed above apply to them.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There is no known alternative to minimize the potential adverse impact on training providers due to reduced training hours while accomplishing the same goals.

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

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

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

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

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

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

**Agency Response to Economic Impact Analysis:** The Department of Criminal Justice Services concurs generally with the economic impact analysis of the Department of Planning and Budget on the proposed Regulations Relating to School Security Officers.

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## Summary:

*The amendments (i) remove the 32-hour school security officer training course requirement thereby allowing the Department of Criminal Justice Services to set the number of training hours and (ii) clarify that the director of the department may grant an exemption from the compulsory minimum training standards.*

## 6VAC20-240-10. Definitions.

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

"Approved instructor" means a person who has been approved by the department to instruct in the school security officer training course.

"Approved training" means training approved by the department to meet compulsory minimum training standards.

"Approved training session" means a training session that is approved by the department for the specific purpose of training school security officers.

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

"Certification" means a method of regulation indicating that qualified persons have met the minimum requirements as school security officers.

"Compulsory minimum training standards" means the performance outcomes and minimum hours approved by the board.

"Date of hire" means the date any employee of a school board or system is hired to provide security services for a school and whom the department must regulate.

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

"Director" means the chief administrative officer of the department or his designee.

"In-service training requirement" means the compulsory in-service training standards adopted by the board for school security officers.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

"This chapter" means the Regulations Relating to School Security Officers (6VAC20-240).

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

"Training requirement" means any entry-level or in-service training or retraining standard established by this chapter.

## 6VAC20-240-20. Initial certification and training requirements for school security officers.

A. In addition to meeting all the hiring requirements of the employing school board, all school security officers who enter upon the duties of such office on or after September 1, 2004, are required to meet the following minimum certification and training requirements. Such person shall:

1. Undergo a background investigation to include fingerprint-based criminal history record inquiry of both the Central Criminal Records Exchange (CCRE) and the Federal Bureau of Investigation (FBI). Results of such inquiries shall be examined by the employing school division within 30 days of date of hire;

2. Have a high school diploma, have passed the General Educational Development exam, or have passed the National External Diploma ~~program~~ Program;

3. Be a minimum of 21 years of age;

4. Possess a valid driver's license if required by the duties of office to operate a motor vehicle;

5. Successfully complete basic first aid training. The level and substance of such training shall be at the discretion of the employing school division;

6. Comply with compulsory minimum entry-level training requirements approved by the board:

a. Every school security officer hired on or after September 1, 2004, is required to comply with the compulsory minimum training standards within 60 days of the date of hire as a school security officer.

b. The compulsory minimum training shall consist of a ~~32-hour school~~ Department of Criminal Justice Services- ~~approved~~ security officer training course developed ~~and~~ ~~approved~~ by the department. Such training shall include but not be limited to:

- (1) The role and responsibility of school security officers;
- (2) Relevant state and federal laws;
- (3) School and personal liability issues;
- (4) Security awareness in the school environment;
- (5) Mediation and conflict resolution;
- (6) Disaster and emergency response; and
- (7) Student behavioral dynamics.

c. The compulsory minimum training shall include a test for each module approved and provided by the department with a minimum passing grade of 80% on each module; and

7. Submit to the department a properly completed and signed application for certification from the localities in a format provided by the department.

B. All costs associated with the background investigation, submission of fingerprints for criminal history record inquiries, and basic first aid training to meet the hiring requirements are the responsibility of that locality.

C. The department may grant an extension of the time limit for completion of the compulsory minimum training standards under the following documented conditions:

1. Illness or injury;
2. Military service;
3. Special duty required and performed in the public interest;
4. Administrative leave, full-time educational leave or suspension pending investigation or adjudication of a crime; or
5. Any other reasonable situation documented by the employing school division superintendent or designee.

D. The director may grant an exemption or partial exemption from the compulsory minimum training standards set forth in this chapter to a law-enforcement officer of the Commonwealth who has had previous experience and training as provided in § 9.1-114 of the Code of Virginia.

**6VAC20-240-60. Decertification and appeal procedure.**

A. The department may decertify for any of the following reasons. The school security officer has:

1. Been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in Virginia;
2. Failed to comply with or maintain compliance with compulsory minimum training requirements;
3. Refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employing school board where the positive result cannot be explained to the school board's satisfaction;
4. Violated any standard of conduct set forth in 6VAC20-240-40;
5. Violated any other school board policy; or
6. Been terminated by the employing school division.

B. Such school security officer shall not have the right to serve as a school security officer within this Commonwealth until the department has reinstated the certification.

C. The findings and the decision of the department may be appealed to the board provided that written notification is given to the attention of the Director, Department of Criminal Justice Services, ~~202 North Ninth Street~~ 1100 Bank Street, Richmond, Virginia 23219, within 30 days following the date notification of the decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

VA.R. Doc. No. R16-3927; Filed September 15, 2015, 4:27 p.m.

**TITLE 8. EDUCATION**

**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 the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: **8VAC40-90. Virginia Graduate and Undergraduate Assistance Program Regulations (repealing 8VAC40-90-10 through 8VAC40-90-60).**

Statutory Authority: § 23-38.19:1 (Repealed) of the Code of Virginia.

Effective Date: October 5, 2015.

Agency Contact: Lee Ann Rung, Manager, Executive and Council Affairs, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, or email leannrung@schev.edu.

Summary:

*This action repeals the Virginia Graduate and Undergraduate Assistance Program Regulations as unnecessary due to the repeal of the statutory authority for the program by Chapter 484 of the 2014 Acts of Assembly.*

VA.R. Doc. No. R16-4481; Filed September 16, 2015, 8:33 a.m.



**TITLE 9. ENVIRONMENT**

**STATE WATER CONTROL BOARD**

**Forms**

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

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation.**

Agency Contact: Christina Wood, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4263, or email christina.wood@deq.virginia.gov.



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## FORMS (9VAC25-32)

Virginia Pollution Abatement Permit Application, General Instructions (rev. 5/2014)

Virginia Pollution Abatement Permit Application, Form A, All Applicants (rev. 6/2014)

Virginia Pollution Abatement Permit Application, Form B, Animal Waste (rev. 10/1995)

Virginia Pollution Abatement Permit Application, Form C, Industrial Waste (rev. 10/1995)

Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids Cover Page (rev. 6/2013):

Part D-I: Land Application of Municipal Effluent (rev. 4/2009)

Part D-II: Land Application of Biosolids (rev. 10/2013)

Part D-III: Effluent Characterization Form (rev. 4/2009)

Part D-IV: Biosolids Characterization Form (rev. 6/2013)

Part D-V: Non-Hazardous Waste Declaration (rev. 6/2013)

Part D-VI: Land Application Agreement - Biosolids and Industrial Residuals (rev. 9/2012)

~~Part D-VII: Request for Extended Setback from Biosolids Land Application Field (rev. 10/11)~~

Application for Land Application Supervisor Certification (rev. 2/2011)

Application for Renewal of Land Application Supervisor Certification (rev. 2/2011)

[Request for Extended Setback from Biosolids Land Application Field \(8/2015\)](#)

Sludge Disposal Site Dedication Form, Form A-1 (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form I, Insurance Liability Endorsement (rev. 10/2013)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form II, Certificate of Liability Insurance (rev. 10/2013)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form III, Corporate Letter (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form IV, Corporate Guarantee (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form V, Letter of Credit (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VI, Trust Agreement (rev. 11/2009)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VII, Local Government Financial Test (rev. 10/2013)

Liability Requirements for Transport, Storage, and Land Application of Biosolids, Form VIII, Local Government Guarantee (rev. 10/2013)

VA.R. Doc. No. R16-4503; Filed September 4, 2015, 8:30 a.m.



## TITLE 11. GAMING

### VIRGINIA LOTTERY BOARD

#### Fast-Track Regulation

Titles of Regulations: **11VAC5-31. Licensing Regulations (amending 11VAC5-31-10, 11VAC5-31-160).**

**11VAC5-41. Lottery Game Regulations (amending 11VAC5-41-10, 11VAC5-41-60, 11VAC5-41-80, 11VAC5-41-100, 11VAC5-41-130, 11VAC5-41-320).**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 4, 2015.

Effective Date: December 21, 2015.

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

Basis: Section 58.1-4007 of the Code of Virginia authorizes the Virginia Lottery Board to adopt regulations governing the establishment and operation of a lottery, after consultation with the Director of the Virginia Lottery.

Purpose: The purpose of the regulatory action is to amend terminology or definitions in an effort to ensure terminology synchronicity between regulations, Lottery game or promotion rules, and the agency website.

Rationale for Using Fast-Track Process: The proposed changes are only amendments, do not contain new regulations, are nonsubstantive, do not require any change in the actions of lottery retailers or players, and are noncontroversial in nature.

Substance: The amendments update terminology or definitions.

Issues: The amendments provide (i) for all matters necessary or desirable for the efficient, honest, and economical operation and administration of the lottery and (ii) for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Lottery Board proposes to update regulatory terminology to be consistent with the terminology used in

practice and in the game rules, promotions, and the agency website.

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

**Estimated Economic Impact.** The Virginia Lottery Board proposes to update regulatory terminology to be consistent with the terminology used in practice and in the game rules, promotions, and the agency website. According to Virginia Lottery, none of the proposed terminology changes will have substantive effect in practice. Thus, no significant economic effect is expected from the proposed changes other than improving the consistency among the game rules, promotions, and the agency website.

**Businesses and Entities Affected.** These regulations apply to 5,100 licensed retailers. Additionally, there are approximately 2.1 million adults who play lottery in a given month.

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

**Projected Impact on Employment.** No effect on employment is expected.

**Effects on the Use and Value of Private Property.** No effect on the use and value of private property is expected.

**Small Businesses: Costs and Other Effects.** The proposed amendments do not create cost and other effects on small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments do not create adverse impact on small businesses.

**Real Estate Development Costs.** No effect on real estate development costs is expected.

**Legal Mandate.**

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

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

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

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

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

**Agency's Response to Economic Impact Analysis:** The Virginia Lottery has reviewed the economic impact analysis prepared by the Department of Planning and Budget. The Lottery is satisfied with the analysis and has no additional comments.

**Summary:**

*The amendments update terminology and definitions for consistency with the lottery game and promotion rules.*

## **11VAC5-31-10. Definitions.**

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

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

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

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

"Enterprise Series MultiMedia (ESMM) display" means a player display unit that, when connected to the lottery terminal, displays messages to the customer pertaining to lottery products, drawing messages, and other lottery-related messages.

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

"Lottery retailer," "lottery sales agent" or "retailer" means a person licensed by the director to sell and dispense lottery tickets or products and act as the agency's representative to

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collect, preserve, and account for Commonwealth of Virginia trust funds.

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

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

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

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

1. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, but excluding family-oriented businesses;
2. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;
3. The nature of the person's business is not consonant with the probity of the Commonwealth;
4. The person has committed any act of fraud, deceit, misrepresentation, moral turpitude, or illegal gambling or engaged in conduct prejudicial to public confidence in the state lottery;
5. The person falsifies or misrepresents a material fact on any application, form, document, or data submitted during the licensure process;
6. The person has an unsatisfactory prior history, record, or performance with the lottery;
7. The person's place of business represents a substantial risk for the collection, deposit, preservation, accounting, or safeguarding of Commonwealth of Virginia Trust Funds, irrespective of the bond or surety provided by the person;
8. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations or procedures; or
9. The proposed retailer's licensed location or locations ~~does~~ do not comply with the requirements of the department's Retailer Accessibility Guidelines effective January 1, 2011, as applicable.

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

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

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

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

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

F. A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

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

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

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

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

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

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

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

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

"Computer-generated game" means a game that is dependent upon the use of a terminal in direct communication with a game mainframe computer.

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

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

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

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

"Entry" means a method, whether in electronic or paper form, by which a person enters a drawing or promotion.

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

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

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

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

"Play" means one wager for a chance to win a prize. There may be multiple plays on a single ticket.

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

"Prize structure" means the number, value, and odds of winning prizes for a game and the prize tiers within a game and the chances of winning a prize in each tier in an

individual game as determined by the agency and as specified in the game rules.

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

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

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

~~"Scratch ticket~~ "Scratcher" means a printed instant win ticket with a covering coating over the play area that, when scratched off, reveals a specific result instant game play results.

"Scratch game" means a game that, when played, reveals or informs the player immediately whether he has won (i) a prize, (ii) entry into a prize drawing, (iii) prize points, or (iv) any combination thereof as specified in game rules.

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

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

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

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

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

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

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

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

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

B. Retailers may sell tickets from new ~~instant~~ scratch games upon receipt of the tickets from the agency, but shall not sell

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tickets for ~~an instant~~ a scratch game after the announced end of that game.

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

## **11VAC5-41-80. ~~Scratch ticket~~ Scratcher returns.**

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

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

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

## **11VAC5-41-100. Validation requirements.**

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

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

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

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

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

## **11VAC5-41-130. ~~Terminal-generated~~ Computer-generated winning tickets.**

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

B. The agency shall not redeem prizes for tickets that would have been winning tickets but for the fact that they have been canceled by the retailer unless specifically authorized by the director.

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

## **11VAC5-41-320. Unclaimed prizes.**

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

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

C. All claims for ~~terminal~~ computer-generated game winning tickets for which the prize is a free ticket must be mailed in an envelope bearing a postmark of the United States Postal Service or another sovereign nation or received for redemption as prescribed in this chapter within 180 days after the date of the drawing for which the ticket was purchased. In

the event the 180th day falls on a Saturday, Sunday, or legal holiday, a claimant may only redeem his winning ticket for a free ticket at a cashing retailer on or before the 180th day.

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

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

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

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

VA.R. Doc. No. R15-4278; Filed September 14, 2015, 12:48 p.m.

**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Forms**

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

**Title of Regulation:** 12VAC5-105. Rabies Regulations.

**Contact Information:** Julia M. Murphy, DVM, MS, DACVPM, State Public Health Veterinarian, Virginia Department of Health, Office of Epidemiology, 109 Governor Street, Madison Building, 4th Floor, Richmond, VA 23218, telephone (804) 864-8113.

FORMS (12VAC5-105)

~~Request for Rabies Vaccination Exemption for Licensing and Inspection Purposes (eff. 3/12)~~

[Request for Rabies Vaccination Exemption for Licensing and Inspection Purposes \(eff. 9/2015\)](#)

VA.R. Doc. No. R16-4511; Filed September 15, 2015, 1:11 p.m.

**TITLE 17. LIBRARIES AND CULTURAL RESOURCES**

**BOARD OF HISTORIC RESOURCES**

**Emergency Regulation**

**Title of Regulation:** 17VAC5-30. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources (amending 17VAC5-30-100, 17VAC5-30-110, 17VAC5-30-120, 17VAC5-30-160).

**Statutory Authority:** § 10.1-2205 of the Code of Virginia.

**Effective Dates:** September 14, 2015, through March 14, 2017.

**Agency Contact:** Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085, FAX (804) 367-2391, or email [jennifer.pullen@dhr.virginia.gov](mailto:jennifer.pullen@dhr.virginia.gov).

**Preamble:**

*The purpose of the emergency amendments is to address the owner objection process to properties nominated for designation by the Board of Historic Resources for inclusion in the Virginia Landmarks Register. An emergency exists because the process for property owners objecting to a designation to the Virginia Landmarks Register is unclear. Confusion has resulted from the current regulations about the time frames in which to operate and the amount of detail and formality necessary in owner objection letters. This confusion has negatively affected both the ability of Department of Historic Resources staff to perform their duties and the ability of property owners to exercise their rights. Staff should have clear rules, regulations, and processes to state to property owners; likewise, property owners should have a firm and detailed set of guidelines and procedures to follow in order to exercise their rights as property owners.*

*In current regulations, there is no time restriction or deadline on the director receiving formal letters of objection to a property being considered for designation on the Virginia Landmarks Register. Also, property owners are not required to state the subject property address or parcel number in a formal objection letter nor is it required that the letter be attested. Current regulations do not require a copy of the recorded deed evidencing transfer of ownership to the objecting party. Lastly, in the current regulations, there is neither a time restriction nor a deadline for the director to receive letters for reconsideration.*

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*The amendments to the existing regulations add clarifying language that written notification of the nomination and written notification of the public hearing will be sent to property owners as shown on "current" real estate tax assessments books. In addition, property owners who wish to object to a designation must submit their formal objection seven business days prior to the board meeting. The amendments also add that in addition to the letter being notarized, it must be attested and reference the property by address or parcel number, or both. Also, in order to be counted by the director as a property owner, if the objecting party was not listed on the real estate tax assessment list, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the attested and notarized statement. Lastly, formal designations may be reconsidered at a subsequent board meeting if the director receives, at least 30 days prior to the next scheduled board meeting, written, attested, and notarized statements stating that there is no longer an objection.*

## Part IV

### Public Notice and Public Hearings

#### **17VAC5-30-100. Written notice of proposed nominations.**

In any county, city, or town where the board proposes to designate property for inclusion in the Virginia Landmarks Register, the department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent (i) of property proposed to be designated as a historic landmark building, structure, object, or site, or to be included in a historic district, and ~~to the owners, or their agents,~~ (ii) of all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide. The list of such owners shall be obtained from either the official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of the proposal.

#### **17VAC5-30-110. Public hearing for historic district; notice of hearing.**

Prior to the designation by the board of a historic district, the department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the board. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than 21 days after the second

publication of the notice in such newspaper. In addition to publishing the notice, the department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent of (i) each parcel of real property to be included in the proposed historic district, and ~~to the owners, or their agents,~~ of (ii) all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide pursuant to 17VAC5-30-100. Notice required to be given to owners by this section may be given concurrently with the notice required to be given to the owners by 17VAC5-30-100. A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant. The department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

#### **17VAC5-30-120. Mailings and affidavits; concurrent state and federal notice.**

The department shall send the required notices by first class mail to the last known address of each person entitled to notice, ~~as shown on the current real estate tax assessment books~~ pursuant to 17VAC5-30-100. A representative of the department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the National Register of Historic Places pursuant to nomination by the director, the department may provide concurrent notice of and hold a single public hearing on the proposed state designation and the proposed nomination to the National Register.

#### **17VAC5-30-160. Owner objections.**

Upon receiving the notification required by 17VAC5-30-100, any owner or owners of property proposed for designation by the board shall have the opportunity to concur in or object to that designation. Property owners who wish to object to designation shall submit to the director a at least seven business days prior to the meeting of the board at which the property is considered for designation a written, attested, and notarized statement referencing the subject property by address, parcel number, or both and certifying that the objecting party is the sole or partial owner of the property, as appropriate, and objects to the designation. If an owner Any objecting party whose name did not appear on the current real estate tax assessment list official land recordation records or tax records used by the director pursuant to 17VAC5-30-120 certifies in a must submit with such written, attested, and notarized statement that an attested and notarized copy of the party is the sole or partial owner of a nominated property, such owner recorded deed evidencing transfer of ownership to such objecting party. Only upon such submission shall such objecting owner be counted by the director in determining whether a majority of the owners has objected. Such statement must be received by the director at

least seven business days prior to the meeting of the board at which the property is considered for nomination. The board shall take no formal action to designate the property or district for inclusion in the Virginia Landmarks Register if the owner of a property, or the majority of owners of a single property with multiple owners, or a majority of the owners in a district, ~~have~~ has objected to the designation. ~~These objections must be received prior to the meeting of the board at which the property is considered for designation.~~ Where formal designation at a board meeting has been prevented by owner objection, the board may reconsider the property for designation at a subsequent board meeting upon presentation to the director, at least 30 days prior to the next scheduled meeting of the board, of written, attested, and notarized statements sufficient to indicate that the owner or majority of owners no longer ~~object~~ objects to the designation. In the case of a proposed reconsideration, the notification procedures set out in Part IV (17VAC5-30-100 et seq.) shall apply.

Each owner of property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

VA.R. Doc. No. R16-4259; Filed September 14, 2015, 12:52 p.m.

## DEPARTMENT OF HISTORIC RESOURCES

### Emergency Regulation

**Title of Regulation:** 17VAC10-20. Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark (amending 17VAC10-20-130, 17VAC10-20-140, 17VAC10-20-150, 17VAC10-20-200).

**Statutory Authority:** §§ 10.1-2202 of the Code of Virginia.

**Effective Dates:** September 14, 2015, through March 14, 2017.

**Agency Contact:** Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085, or email jennifer.pullen@dhr.virginia.gov.

**Preamble:**

*The purpose of the emergency amendments is to address the owner objection process to properties nominated for designation by the State Review Board for inclusion in the National Register of Historic Places or designation as a National Historic Landmark. An emergency exists because the process for property owners objecting to a designation to the National Register of Historic Places or a designation as a National Historic Landmark is unclear. Confusion has resulted from the current regulations about the time frames in which to operate and the amount of detail and formality necessary in owner objection letters. This confusion has negatively affected both the ability of Department of Historic Resources staff to perform their duties and the ability of property owners to exercise their*

*rights. Staff should have clear rules, regulations, and processes to state to property owners; likewise, property owners should have a firm and detailed set of guidelines and procedures to follow in order to exercise their rights as property owners.*

*In current regulations, there is neither a time restriction nor a deadline for the director to receive the formal objections. In current regulations, it is not required to state the subject property address or parcel number in a formal objection letter nor is it required that the letter be attested. Lastly, current regulations do not require a copy of the recorded deed evidencing transfer of ownership to the objecting party.*

*The amendments to the existing regulations add clarifying language that written notification of the nomination and written notification of the public hearing will be sent to property owners as shown on "current" real estate tax assessments books. In addition, property owners who wish to object to a designation must submit their formal objection seven business days prior to the board meeting. The amendments also add that in addition to the letter being notarized, it must be attested and reference the property by address or parcel number, or both. Also, in order to be counted by the director as a property owner, if the objecting party was not listed on the real estate tax assessment list, then a copy of the recorded deed evidencing transfer of ownership must be submitted along with the attested and notarized statement.*

#### Part IV

#### Public Notice and Public Hearings

#### **17VAC10-20-130. Written notice of proposed nominations.**

In any county, city, or town where the director proposes to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark, the department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent of (i) property proposed to be nominated as a historic landmark building, structure, object, or site, or to be included in a historic district; and ~~to the owners, or their agents, of (ii) all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide.~~ The list of such owners shall be obtained from either the official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of the proposal. The department shall send this written notice at least 30 but not more than 75 days before the State Review Board meeting at which the nomination will be considered.

#### **17VAC10-20-140. Public hearing for historic district; notice of hearing.**

Prior to the nomination of a historic district, the department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is

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located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the director. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than 21 days after the second publication of the notice in such newspaper. In addition to publishing the notice, the department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent of (i) each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of (ii) all abutting property, and property immediately across the street or road, or across any railroad or waterway less than 300 feet wide pursuant to 17VAC10-20-130. Notice required to be given to owners by this section may be given concurrently with the notice required to be given to the owners by 17VAC10-20-130. A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant. The department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

### **17VAC10-20-150. Mailings and affidavits; concurrent state and federal notice.**

The department shall send the required notices by first class mail to the last known address of each person entitled to notice, ~~as shown on the current real estate tax assessment books~~ pursuant to 17VAC10-20-130. A representative of the department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the Virginia Landmarks Register pursuant to designation by the Virginia Board of Historic Resources, the department may provide concurrent notice of the proposed state designation and the proposed nomination to the National Register.

### **17VAC10-20-200. Owner objections.**

Upon receiving the notification required by 17VAC10-20-130, the owners of property proposed for nomination shall have the opportunity to concur in or object to the nomination. Any owner or owners of a private property who wish to object shall submit to the director a at least seven business days prior to the meeting of the board at which the property is considered for nomination a written, attested, and notarized statement of objection referencing the subject property by address, parcel number, or both and certifying that the

objecting party is the sole or partial owner of the private property, as appropriate, and objects to the listing. If an owner objecting party whose name did not appear on the current real estate tax assessment list official land recordation records or tax records used by the director pursuant to 17VAC10-20-150 certifies in a written, attested, and notarized statement that the party is the sole or partial owner of a nominated private property, such owner shall be counted by the director in determining whether a majority of the owners has objected. Such statement must be received by the director at least seven business days prior to the meeting of the board at which the property is considered for nomination. If the owner of a private property, or the majority of the owners of a single private property with multiple owners, or the majority of the owners in a district, ~~have~~ has objected to the nomination prior to the submittal of a nomination, the director shall submit the nomination to the keeper only for a determination of eligibility for the National Register. In accordance with the National Historic Preservation Act, the keeper shall determine whether the property meets the National Register criteria for evaluation, but shall not add the property to the National Register.

Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

VA.R. Doc. No. R16-4260; Filed September 14, 2015, 12:54 p.m.

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## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **CEMETERY BOARD**

#### **Fast-Track Regulation**

Title of Regulation: **18VAC47-20. Cemetery Board Rules and Regulations (amending 18VAC47-20-220).**

Statutory Authority: §§ 54.1-201 and 54.1-2313 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 4, 2015.

Effective Date: December 1, 2015.

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

Basis: Section 54.1-2313 D of the Code of Virginia states: "In addition to the general powers and duties conferred in this subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not

limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this chapter."

Section 54.1-201 A 1 of the Code of Virginia authorizes the regulatory boards to establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation. Section 54.1-201 A 5 of the Code of Virginia provides the authority for regulatory boards to promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

**Purpose:** The purpose of the planned regulatory action is to make changes to incorporate language as necessary to implement the requirements of Chapter 251 of the 2013 Acts of Assembly for developing a process whereby a consumer will be provided a current general price list and itemized statement of charges for burial services. The amendment is intended to provide protection to both consumers and cemetery companies from claims the consumer did not receive the general price list and itemized statement prior to contract execution.

**Rationale for Using Fast-Track Process:** The fast-track process is being used to implement this amendment as quickly as possible to provide better protection to both consumers and cemetery companies from claims the consumer did not receive the general price list and itemized statement prior to contract execution. This action is noncontroversial since it helps both the consumer and the cemetery company by providing a mechanism to ensure the parties received the required information.

**Substance:** The amendments add language to the section dealing with itemized statement and general price list of burial fees to implement the provisions of Chapter 251 of the 2013 Acts of Assembly.

**Issues:** The primary advantage to the public is that the revisions will improve clarity of the regulations and ensure consistency with current legal requirements all to better protect the health, safety, and welfare of the citizens of the Commonwealth.

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance Virginia places on ensuring the regulations are the least burdensome but also provide protection to the citizens of the Commonwealth. No disadvantages could be identified.

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

**Summary of the Proposed Amendments to Regulation.** The Cemetery Board (Board) proposes to amend its regulation to require cemetery companies to provide a general price list and an itemized statement of charges for burial services to customers before contract execution. The Board also proposes to require cemetery companies to get a signed acknowledgment of receipt from the customer.

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

**Estimated Economic Impact.** Currently, cemetery companies are required to offer a general price list and itemized statement of charges for burial services to customers. The Board now proposes to require cemetery companies to provide these lists to customers and get them to sign an acknowledgment that they have received them.

Cemetery companies will incur very minimal costs for adding the required acknowledgment to contract paperwork that customers already sign and receive. Cemetery companies also may incur copying costs for customers who may refuse copies of the lists currently but would get them automatically under the proposed regulatory changes. Board staff reports that the number of customers affected in this way is likely very small and that the expected extra costs incurred by cemetery companies would also be very small. Cemetery companies would likely benefit from having the signed acknowledgment of receipt signed by customers should a contract dispute arise and customers will likely benefit from automatically receiving pricing information prior to signing a contract with a cemetery company. These benefits will likely outweigh the minimal costs that may be incurred on account of this regulatory action.

**Businesses and Entities Affected.** Board staff reports that there are 93 cemetery companies in the Commonwealth that employ 1,788 sales people. Board staff also reports that 90 of the 93 cemetery companies would qualify as small businesses.

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

**Projected Impact on Employment.** These proposed regulatory changes are unlikely to have any impact on employment in the Commonwealth.

**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 cemetery companies may incur minimal copying costs because they will be required to provide price lists and itemized cost statements to the likely small number of customers who are currently offered those lists but refuse them.

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**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There are likely no alternative methods that would both meet the Board's goal and further reduce costs.

**Real Estate Development Costs.** This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**Legal Mandate.**

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The Cemetery Board concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*Pursuant to Chapter 251 of the 2013 Acts of Assembly, the amendments require cemetery companies to provide a general price list and an itemized statement of charges for burial services to customers before contract execution and to obtain a signed acknowledgment of receipt from the customer.*

**18VAC47-20-220. Itemized statement and general price list of burial fees to be furnished.**

Cemetery companies shall furnish a written general price list and a written itemized statement of goods and services they provide. This itemized statement shall include, but is not limited to, burial vaults and other burial receptacles, other merchandise, facilities used, and other professional services. Prices for merchandise may be stated as a range of values. Prices for services must be specific for each type of service, including any difference in prices based on the day or time the service is provided. This list shall be set forth in a clear and conspicuous manner.

The list shall be available to individuals inquiring in person about burial arrangements or the prices of property or services. In addition, upon beginning a discussion of burial arrangements or the selection of any property or services, the general price list shall be offered by the cemetery property.

Prior to execution of any contract, cemetery companies shall provide the general price list and itemized statement of goods and services to the individual or individuals entering the contract. The contract shall include an acknowledgment signed by the individual or individuals and the cemetery sales personnel stating the cemetery company provided the general price list and itemized statement of goods and services to the individual or individuals prior to the execution of the contract.

VA.R. Doc. No. R16-4366; Filed September 9, 2015, 2:36 p.m.

## BOARD FOR CONTRACTORS

### Final Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-20, 18VAC50-22-30).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: January 1, 2016.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

Summary:

*Pursuant to Chapter 116 of the 2013 Acts of Assembly, the amendments (i) add the classification of commercial building contractor and outline the scope of practice this classification is permitted to perform, (ii) change the current definition of building contractor to residential*

*building contractor and amend the definition so that it only references residential work, and (iii) change the definition of any specialty that requires a reference to the new commercial building contractor classification.*

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

**18VAC50-22-20. Definitions of license classifications.**

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

~~"Building contractors" (Abbr: BLD) means those individuals whose contracts include construction on real property owned, controlled or leased by another person of commercial, industrial, institutional, governmental, residential (single-family, two family or multifamily) and accessory use buildings or structures. This classification also provides for remodeling, repair, improvement or demolition of these buildings and structures.~~

~~If the BLD contractor performs specialty services other than those listed below, all required specialty designations shall be obtained. The BLD contractor may act as a prime contractor and contract with subcontractors to perform work not permitted by the BLD license. The building classification includes but is not limited to the functions carried out by the following specialties:~~

- ~~Billboard/sign contracting~~
- ~~Commercial improvement contracting~~
- ~~Concrete contracting~~
- ~~Farm improvement contracting~~
- ~~Home improvement contracting~~
- ~~Industrialized building contracting~~
- ~~Landscape service contracting~~
- ~~Marine facility contracting~~
- ~~Masonry contracting~~
- ~~Recreational facility contracting~~
- ~~Roofing contracting~~

"Commercial building contractors" (Abbr: CBC) means those individuals whose contracts include construction, remodeling, repair, improvement, removal, or demolition on real property owned, controlled, or leased by another person of commercial, industrial, institutional, governmental, and accessory use buildings or structures. The CBC classification does not provide for electrical, plumbing, HVAC, or gas fitting services and does not allow construction, [ removal, ] repair, [ or ] improvement, [ or demolition ] of dwellings and townhouses [ as defined in the USBC ].

If the CBC performs specialty services other than those listed in this definition, all required specialty designations shall be obtained. The CBC may act as a prime contractor and

contract with subcontractors to perform work not permitted by the CBC license. The commercial building classification includes but is not limited to the functions carried out by the following specialties for contracts of commercial, institutional, governmental, and accessory use buildings or structures, including multi-family housing:

- Billboard/sign contracting
- Commercial improvement contracting
- Concrete contracting
- Farm improvement contracting
- Industrialized building contracting
- Landscape service contracting
- Marine facility contracting
- Masonry contracting
- Painting and wallcovering contracting
- Recreational facility contracting
- Roofing contracting
- Swimming pool contracting

"Electrical contractors" (Abbr: ELE) means those individuals whose contracts include the construction, repair, maintenance, alteration, or removal of electrical systems. This classification provides for all work covered by the electrical provisions of the USBC including electronic/communication service contracting (ESC) and fire alarm systems contracting (FAS) specialties. A firm holding an ELE license is responsible for meeting all applicable individual license and certification regulations.

"Highway/heavy contractors" (Abbr: H/H) means those individuals whose contracts include construction, repair, improvement, or demolition of the following:

- Bridges
- Dams
- Drainage systems
- Foundations
- Parking lots
- Public transit systems
- Rail roads
- Roads
- Runways
- Streets
- Structural signs & and lights
- Tanks

The functions carried out by these contractors include but are not limited to the following:

- Building demolition
- Clearing
- Concrete work

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Excavating  
Grading  
Nonwater well drilling  
Paving  
Pile driving  
Road marking  
Steel erection

These contractors also install, maintain, or dismantle the following:

1. Power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter;
2. Pumping stations and treatment plants;
3. Telephone, telegraph, or signal systems for public utilities; and
4. Water, gas, and sewer connections to residential, commercial, and industrial sites, subject to local ordinances.

This classification may also install backflow prevention devices incidental to work in this classification when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"HVAC contractors" (Abbr: HVA) means those individuals whose work includes the installation, alteration, repair, or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heaters, heating systems, boilers, process piping, and mechanical refrigeration systems, including tanks incidental to the system. This classification does not provide for fire suppression installations, sprinkler system installations, or gas piping. A firm holding a HVAC license is responsible for meeting all applicable individual license and certification regulations. This classification may install backflow prevention devices incidental to work in this classification.

"Plumbing contractors" (Abbr: PLB) means those individuals whose contracts include the installation, maintenance, extension, or alteration, or removal of all piping, fixtures, appliances, and appurtenances in connection with any of the following:

Backflow prevention devices  
Boilers  
Hot water baseboard heating systems  
Hot water heaters  
Hydronic systems  
[ ~~Limited area sprinklers (as defined by the USBC)~~ ]  
Process piping  
Public/private water supply systems within or adjacent to any building, structure, or conveyance  
Sanitary or storm drainage facilities

Steam heating systems  
Storage tanks incidental to the installation of related systems  
Venting systems related to plumbing  
These contractors also install, maintain, extend, or alter the following:  
Liquid waste systems  
Sewerage systems  
Storm water systems  
Water supply systems

This classification does not provide for (i) gas piping or (ii) the function of fire sprinkler contracting ~~as noted above except for [ limited area ] sprinklers [ as defined by the USBC that are tied into the domestic water supply ]~~. A firm holding a PLB license is responsible for meeting all applicable individual license and certification regulations. The classification may install sprinkler systems permitted to be designed in accordance with the plumbing provisions of the USBC when the installer has received formal vocational training approved by the board that included instruction of installation of sprinkler systems.

"Residential building contractors" (Abbr: RBC) means those individuals whose contracts include construction, remodeling, repair, improvement, removal, or demolition on real property owned, controlled, or leased by another person of dwellings and townhouses, [ as defined in the USBC, ] including accessory buildings or structures on such property. The RBC classification does not provide for electrical, plumbing, HVAC, or gas fitting services and does not allow construction, removal, repair, or improvement to commercial, industrial, institutional, or governmental use structures outside of dwellings and townhouses, [ ~~except for the repair or improvement to dwelling units within commercial buildings as defined by the USBC~~ ].

The residential building classification includes but is not limited to the functions carried out by the following specialties for contracts of dwellings and townhouses [ , as defined by the USBC, ] and related accessory use buildings or structures:

Concrete contracting  
Home improvement contracting  
Industrialized building contracting  
Landscape service contracting  
Masonry contracting  
Painting and wallcovering contracting  
Roofing contracting  
Swimming pool contracting

"Specialty contractors" means those individuals whose contracts are for specialty services ~~which that~~ do not generally fall within the scope of any other classification within this chapter.

**18VAC50-22-30. Definitions of specialty services.**

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting – LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation of asphalt paving or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and ~~BLD CBC~~ are the only other classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to ~~nonresidential property and multifamily property, as defined structures not defined as dwellings and townhouses [ in the ]~~ in the [ ~~Virginia Uniform Statewide Building Code (13VAC5-63)~~ USBC ]. The ~~BLD CBC~~ classification also provides for this function. The CIC classification does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also included. The ~~BLD CBC, RBC,~~ and H/H classifications also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement, or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery including but not limited to

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conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code (13VAC5-63) but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping, or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair, or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The ~~BLD CBC~~ classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems ~~which~~ that operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement, or removal of fire suppression systems including but not limited to halon and other gas systems, dry chemical systems, and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to ~~one-family and two-family residential buildings~~ dwelling units and townhouses as defined in the [ Virginia Uniform Statewide Building Code (13VAC5-63) USBC ] or structures annexed to ~~real property those dwelling units or townhouses [ and improvements to dwelling units within commercial buildings as defined in the USBC ]~~. The ~~BLD RBC~~ classification also

provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include ~~high-rise buildings, buildings with more than two dwelling units, or~~ new construction functions beyond the existing building structure other than decks, patios, driveways, and utility out buildings [ ~~of 200 square feet or less that do not require a permit per the USBC~~ ].

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The ~~BLD classification~~ CBC and RBC classifications also ~~provides~~ provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The ~~BLD CBC, RBC,~~ and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing, or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The ~~BLD~~ CBC and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC, or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate, or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The ~~BLD classification~~ CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment ~~which that~~ requires an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The ~~BLD classification~~ CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. This function can only be

performed by a firm holding the ~~BLD classification or CIC (for other than one family and two family dwellings), FIC (for nonresidential farm buildings) or HIC (for one family and two family dwellings) specialty services~~ CBC and RBC classifications or the CIC, FIC, or HIC specialties. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The ~~BLD~~ CBC classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVAC classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The ~~BLD classification~~ CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other ~~on-site~~ onsite sewage disposal systems annexed to real property.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement, or removal of in-ground swimming pools. The ~~BLD classification~~ CBC and RBC classifications and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow, or HVAC work is included in this specialty.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes

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construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude PLB, ELE<sub>2</sub> or HVAC from installation of pumps and tanks.

Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC<sub>2</sub> [ ~~and/or~~ and ] FIC specialty services, or they may fall under the ~~BLD classification~~ CBC [ ~~and/or~~ or ] RBC classifications.

Appliances	Fireplaces	Rubber linings
Awnings	Fireproofing	Sandblasting
Blinds	Fixtures	Scaffolding
Bulkheads	Floor coverings	Screens
Cabinetry	Flooring	Sheet metal
Carpentry	Floors	Shutters
Carpeting	Glass	Siding
Casework	Glazing	Skylights
Ceilings	Grouting	Storage bins and lockers
Chimneys	Grubbing	Stucco
Chutes	Guttering	Temperature controls
Conduit rodding	Insulation	Terrazzo
Curtains	Interior decorating	Tile
Curtain walls	Lubrication	Vaults
Decks	Metal work	Vinyl flooring
Doors	Millwrighting	Wall panels
Drapes	Mirrors	Wall tile
Drywall	Miscellaneous iron	Waterproofing
Epoxy	Ornamental iron	Weatherstripping
Exterior decoration	Partitions	Welding
Facings	Protective coatings	Windows
Fences	Railings	Wood floors
Fiberglass	Rigging	

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

[ FORMS (18VAC50-22)

~~Contractor Licensing Information, A503-27INTRO v 3 (rev. 12/2012)~~

~~Requirements for Qualified Individuals, A501-27EXINFO-v2 (rev. 12/2012)~~

~~Contractor's License Application, A501-27LIC v5 (rev. 12/2012)~~

~~Expedited Class A License Application, A503-2705A\_ELIC v5 (rev. 12/2012)~~

~~Additional Specialty Designation Application, A503-27ADDSP v5 (rev. 12/2012)~~

[Contractor Licensing Information, A501-27INTRO v-4 \(rev. 1/2016\)](#)

[Requirements for Qualified Individuals, A501-27EXINFO-v5 \(rev. 1/2016\)](#)

[Contractor's License Application, A501-27LIC-v7 \(rev. 1/2016\)](#)

[Additional Specialty Designation Application, A501-27ADDSP-v7 \(rev. 1/2016\)](#)

[Adverse Financial History Reporting Form, A406-01AFIN-v1 \(eff. 2/2015\)](#)

[Change in Qualified Individual and Designated Employee Application, A501-27CH\\_QIDE-v5 \(rev. 7/2013\)](#)

[Change of Responsible Management Application, A501-27CHRM-v4 \(rev. 12/2012\)](#)

[Certificate of License Termination, A501-27TERM-v3 \(rev. 12/2012\)](#)

[Criminal Conviction Reporting Form, A406-01CCR-v1 \(eff. 5/2015\)](#)

[Disciplinary Action Reporting Form, A406-01DAR-v1 \(eff. 5/2015\)](#)

[Education Provider Registration/Course Approval Application, A501-27EDREG-v5 \(rev. 12/2012\)](#)

[Education Provider Listing Application, A501-27EDLIST-v3 \(rev. 12/2012\)](#)

[Financial Statement, A501-27FINST-v4 \(rev. 12/2012\)](#)

~~Change in License Class Application, A501-27CHLIC v5 (rev. 12/2012)~~

[Change in License Class Application, A501-27CHLIC-v7 \(rev. 1/2016\)](#)

[Firm – Residential Building Energy Analyst Application, A501-2707LIC-v2 \(rev. 7/2013\)](#)

Statement of Consumer Protections, RBC-9.1 (rev. 12/2014) ]

VA.R. Doc. No. R13-3648; Filed September 14, 2015, 11:13 a.m.

**Final Regulation**

**Title of Regulation:** 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60, 18VAC50-22-170).

**Statutory Authority:** §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

**Effective Date:** January 1, 2016.

**Agency Contact:** Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

**Summary:**

*The amendments (i) remove the past adverse financial history reporting requirement for the qualified individual for all three classes of contractor license and (ii) extend the reinstatement period for a license from one year to two years after expiration.*

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

Part II  
Entry

**18VAC50-22-40. Requirements for a Class C license.**

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and
4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (Department of Fire Programs explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and

certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, ~~its qualified individual or individuals~~, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm, ~~the qualified individual~~, and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

**18VAC50-22-50. Requirements for a Class B license.**

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

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4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (Department of Fire Programs explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, ~~qualified individual or individuals~~, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, ~~the qualified individual~~, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any

contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

## **18VAC50-22-60. Requirements for a Class A license.**

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

- 2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;
- 3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;
- 4. a. Has obtained the appropriate certification for the following specialties:

Blast/explosive contracting (DHCD explosive use certification)

Fire sprinkler (NICET Sprinkler III certification)

Radon mitigation (EPA or DEQ accepted radon certification)

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

d. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, ~~qualified individual or individuals~~, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, ~~the qualified individual~~, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes but is not limited to, any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed above have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, the designated employee and the qualified individual or individuals for the firm:

- 1. All misdemeanor convictions within three years of the date of application; and
- 2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

**18VAC50-22-170. Reinstatement fees.**

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C reinstatement	with reinstatement application	\$405*
Class B reinstatement	with reinstatement application	\$460*
Class A reinstatement	with reinstatement application	\$490*

\*Includes renewal fee listed in 18VAC50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once ~~one year~~ two years from the expiration date of the license has passed.

VA.R. Doc. No. R13-3533; Filed September 10, 2015, 3:19 p.m.

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# Regulations

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## Final Regulation

**Title of Regulation:** 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10, 18VAC50-22-100, 18VAC50-22-130, 18VAC50-22-140, 18VAC50-22-160, 18VAC50-22-170, 18VAC50-22-180, 18VAC50-22-260; adding 18VAC50-22-62).

**Statutory Authority:** §§ 54.1-201, 54.1-1102, and 54.1-1146 of the Code of Virginia.

**Effective Date:** January 1, 2016.

**Agency Contact:** Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

### Summary:

*The amendments create the residential building energy analyst firm license to comport with Chapter 865 of the 2011 Acts of Assembly. The amendments add a definition of residential building energy analyst firm, establish licensure eligibility criteria, list the fees associated with the license, add prohibited acts for such a license, and identify other administrative requirements. The final regulations replace emergency regulations that have been in effect since July 1, 2013.*

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

### Part I Definitions

#### 18VAC50-22-10. General definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Change order" means any modification to the original contract including, but not limited to, the time to complete the work, change in materials, change in cost, and change in the scope of work.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18VAC50-30-10.

"Licensee" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"Net worth" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"Prime contractor" means a licensed contractor that performs, supervises, or manages the construction, removal, repair, or improvement of real property pursuant to the terms of a primary contract with the property owner/lessee. The prime contractor may use its own employees to perform the work or use the services of other properly licensed contractors.

"Principal place of business" means the location where the licensee principally conducts business with the public.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Residential building energy analyst firm" means any business entity wherein a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, is offered or practiced.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or

fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.

"Temporary license" means a license issued by the board pursuant to § 54.1-201.1 of the Code of Virginia that authorizes a person to engage in the practice of contracting until such time as the license is issued or 45 days from the date of issuance of the temporary license, whichever occurs first.

"Tenants by the entirety" means a tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, the other takes whole to exclusion of the deceased's remaining heirs.

"Virginia Uniform Statewide Building Code" or "USBC" means building regulations comprised of those promulgated by the Virginia Board of Housing and Community Development in accordance with § 36-98 of the Code of Virginia, including any model codes and standards that are incorporated by reference and that regulate construction, reconstruction, alteration, conversion, repair, maintenance or use of structures, and building and installation of equipment therein.

**18VAC50-22-62. Requirements for residential building energy analyst firm.**

A. An applicant for a residential building energy analyst firm license must meet the requirements of this section.

B. The firm shall name a qualified individual who meets all of the following requirements:

1. Is at least 18 years old;
2. Holds a current individual residential building energy analyst license issued by the board; and
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm.

C. The applicant shall provide documentation, acceptable to the board, that the firm currently carries a minimum of \$500,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm shall disclose at the time

of application (i) any current or previous energy analyst or home inspection licenses held in Virginia or in other jurisdictions and (ii) any disciplinary actions taken on these licenses. This includes, but is not limited to, any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. The firm shall provide information for the past five years prior to application on any outstanding past-due debts, outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies. The firm, its qualified individual, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of residential building energy analysis as defined in § 54.1-1144 of the Code of Virginia.

F. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

**18VAC50-22-100. Fees.**

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	\$210
Class B Initial License	with license application	\$345
Class A Initial License	with license application	\$360
Temporary License	with license application and applicable initial license fee	\$50

# Regulations

<u>Residential Building Energy Analyst Firm License</u>	<u>with license application</u>	<u>\$210</u>
Qualified Individual Exam Fee	with exam application	\$20
Class B Exam Fee	with exam application (\$20 per section)	\$40
Class A Exam Fee	with exam application (\$20 per section)	\$60

Fee Type	When Due	Amount Due
Class C renewal	with renewal application	\$195
Class B renewal	with renewal application	\$225
Class A renewal	with renewal application	\$240
<u>Residential Building Energy Analyst Firm renewal</u>	<u>with renewal application</u>	<u>\$195</u>

Note: A \$25 Recovery Fund assessment is also required with each initial license application, except for the residential building energy analyst firm license. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

## 18VAC50-22-130. Qualifications for renewal.

A. The license holder's completed renewal form and appropriate fees must be received within 30 days of the license expiration date in order to renew the license. Applications and fees received after the 30-day period will be processed in accordance with Part IV (18VAC50-22-160 et seq.) of this chapter.

B. Applicants for renewal of a Class C license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-40. Applicants for renewal of a Class B license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-50. Applicants for renewal of a Class A license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-60.

C. Applicants for renewal of a residential building energy analyst firm license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-62 and shall submit proof of insurance as required in 18VAC50-22-62 C.

## 18VAC50-22-140. Renewal fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

For renewal fees received on or before August 31, 2017, the fees shall be \$100 for a Class C renewal, \$125 for a Class B renewal, and \$150 for a Class A renewal.

## Part IV Reinstatement

### 18VAC50-22-160. Reinstatement required.

Should the Department of Professional and Occupational Regulation fail to receive a license holder's renewal form and appropriate fees within 30 days of the license expiration date, the licensee shall be required to reinstate the license. Applicants for reinstatement of a Class C license shall meet the requirements of 18VAC50-22-130. Applicants for reinstatement of a Class B license shall continue to meet the qualifications for licensure set forth in 18VAC50-22-50. Applicants for reinstatement of a Class A license shall continue to meet all the qualifications for licensure set forth in 18VAC50-22-60. Applicants for reinstatement of a residential building energy analyst firm license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-62 and shall submit proof of insurance as required in 18VAC50-22-62 C.

### 18VAC50-22-170. Reinstatement fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C reinstatement	with reinstatement application	\$405*
Class B reinstatement	with reinstatement application	\$460*
Class A reinstatement	with reinstatement application	\$490*
<u>Residential Building Energy Analyst Firm reinstatement</u>	<u>with reinstatement application</u>	<u>\$405*</u>

\*Includes renewal fee listed in 18VAC50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once one year from the expiration date of the license has passed.

For reinstatement fees received on or before August 31, 2017, the fees shall be \$200 for Class C reinstatement, \$250 for Class B reinstatement, and \$300 for Class A reinstatement. These fees include the renewal fee listed in 18VAC50-22-140.

**18VAC50-22-180. Status of licensee during the period prior to reinstatement.**

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

B. A contractor who reinstates his license shall be regarded as having been continuously licensed without interruption. Therefore:

1. The contractor shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.
2. A consumer who contracts with a contractor during the period between the expiration of the license and the reinstatement of the license shall not be prohibited from making a claim on the Virginia Contractor Transaction Recovery Fund.

A contractor who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward.

Nothing in this chapter shall divest the board of its authority to discipline a contractor for a violation of the law or

regulations during the period of time for which the contractor was licensed.

C. A residential building energy analyst firm that reinstates its license shall be regarded as having been continuously licensed without interruption and shall remain under the disciplinary authority of the board during this entire period and may be held accountable for its activities during this period.

**18VAC50-22-260. Filing of charges; prohibited acts.**

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.
4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.
5. Negligence and/or incompetence in the practice of contracting or residential building energy analyses.
6. Misconduct in the practice of contracting or residential building energy analyses.
7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.
8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

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## Regulations

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9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

- a. When work is to begin and the estimated completion date;
- b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
- c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
- d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;
- h. Contractor's name, address, license number, class of license, and classifications or specialty services;
- i. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and
- j. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

- 24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.
- 25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.
- 26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).
- 27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.
- 28. Failure to satisfy any judgments.
- 29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.
- 30. Failure to honor the terms and conditions of a warranty.
- 31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.
- 32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.
- 33. Failure to obtain a building permit or applicable inspection, where required.
- 34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the "Energy Star" Program.
- 35. Failure of a residential building energy analyst firm to maintain the general liability insurance required in 18VAC50-22-62 C at any time while licensed by the board.

VA.R. Doc. No. R13-2849; Filed September 9, 2015, 2:25 p.m.

**Final Regulation**

**EDITOR'S NOTE:** As a result of public comment, the Board for Contractors did not adopt the proposed amendments that would eliminate the requirement that tradesmen complete continuing education as a prerequisite for renewal or reinstatement (see [29:26 VA.R. 3821-3826 August 26, 2013](#), for proposed changes). Since the amendments were not adopted, 18VAC50-30-10, 18VAC50-30-120, and 18VAC50-30-220 are not being changed and 18VAC50-30-73 and 18VAC50-30-75 are not being repealed. These sections have been removed from the final regulation published below.

**Title of Regulation: 18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-130).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: January 1, 2016.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

Summary:

*The amendment extends the license reinstatement period for tradesman from one year to two years following the expiration date.*

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

**18VAC50-30-130. Reinstatement.**

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	\$140*
Liquefied petroleum gas fitter license	\$140*
Natural gas fitter provider license	\$140*
Backflow prevention device worker certification	\$140*
Elevator mechanic certification	\$140*
Certified accessibility mechanic	\$140*
Water well systems provider certification	\$140*

\*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

For reinstatement fees received on or before August 31, 2017, the fee shall be \$100. This fee includes the renewal fee listed in 18VAC50-30-120.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, or water well systems providers, no reinstatement will be permitted once ~~one year~~ two years from the expiration date has passed. After that date

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the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

V.A.R. Doc. No. R13-3534; Filed September 10, 2015, 3:20 p.m.

## BOARD OF LONG-TERM CARE ADMINISTRATORS

### Final Regulation

**Title of Regulation:** 18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-130, 18VAC95-30-150, 18VAC95-30-180, 18VAC95-30-190; adding 18VAC95-30-201).

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

**Effective Date:** November 4, 2015.

**Agency Contact:** Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email ltc@dhp.virginia.gov.

**Summary:**

*The amendments require (i) identification to the public that the acting administrator of an assisted living facility is an administrator-in-training, (ii) that the preceptor responsible for appropriate oversight of the acting administrator be present in the facility for training on a*

*regular basis (at least two hours per week), and (iii) that survey visit reports for the facility become part of the administrator-in-training reports.*

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

### 18VAC95-30-130. Application package.

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as an assisted living facility administrator or registration as a preceptor shall submit:

1. A completed application as provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant, to include the most recent survey report if the applicant has been serving as an acting administrator of a facility;
3. The applicable fee;
4. An attestation that he has read and understands and will remain current with the applicable Virginia laws and the regulations relating to assisted living facilities; and
5. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

C. With the exception of school transcripts, examination scores, the NPDB report, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.

### 18VAC95-30-150. Required hours of training.

A. The ALF AIT program shall consist of hours of continuous training as specified in 18VAC95-30-100 A 1 in a facility as prescribed in 18VAC95-30-170 to be completed within 24 months, except a person in an ALF AIT program who has been approved by the board and is serving as an acting administrator shall complete the program within 150 days. An extension may be granted by the board on an individual case basis. The board may reduce the required hours for applicants with certain qualifications as prescribed in subsection B of this section.

B. An ALF AIT applicant with prior health care work experience may request approval to receive hours of credit toward the total hours as follows:

1. An applicant who has been employed full time for one of the past four years immediately prior to application as an assistant administrator in a licensed assisted living facility or nursing home or as a hospital administrator shall complete 320 hours in an ALF AIT;
2. An applicant who holds a license or a multistate licensure privilege as a registered nurse and who has held an administrative level supervisory position in nursing for at least one of the past four consecutive years in a licensed

assisted living facility or nursing home shall complete 320 hours in an ALF AIT; or

3. An applicant who holds a license or a multistate licensure privilege as a licensed practical nurse and who has held an administrative level supervisory position in nursing for at least one of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 480 hours in an ALF AIT.

**18VAC95-30-180. Preceptors.**

A. Training in an ALF AIT program shall be under the supervision of a preceptor who is registered or recognized by Virginia or a similar licensing board in another jurisdiction.

B. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility administrator or nursing home administrator license;
2. Be employed full-time as an administrator in a training facility or facilities for a minimum of one of the past four years immediately prior to registration or be a regional administrator with on-site supervisory responsibilities for a training facility or facilities; and
3. Submit an application and fee as prescribed in 18VAC95-30-40. The board may waive such application and fee for a person who is already approved as a preceptor for nursing home licensure.

C. A preceptor shall:

1. Provide direct instruction, planning, and evaluation;
2. Be routinely present with the trainee in the training facility; and
3. Continually evaluate the development and experience of the trainee to determine specific areas needed for concentration.

D. A preceptor may supervise no more than two trainees at any one time.

E. A preceptor for a person who is serving as an acting administrator while in an ALF AIT program shall be present in the training facility for face-to-face instruction and review of the trainee's performance for a minimum of two hours per week.

**18VAC95-30-190. Reporting requirements.**

A. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training. For a person who is serving as an acting administrator while in an ALF AIT program, the preceptor shall include in the progress report evidence of face-to-face instruction and review for a minimum of two hours per week.

B. The trainee's certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the program.

**18VAC95-30-201. Administrator-in-training program for acting administrators.**

A. A person who is in an ALF AIT program while serving as an acting administrator pursuant to § 54.1-3103.1 of the Code of Virginia shall be identified on his nametag as an acting administrator-in-training.

B. The facility shall post the certificate issued by the board for the acting administrator and a copy of the license of the preceptor in a place conspicuous to the public.

VA.R. Doc. No. R12-2920; Filed September 8, 2015, 7:52 a.m.

**BOARD OF PHYSICAL THERAPY**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Physical Therapy 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 or the appropriation act where no agency discretion is involved. The Board of Physical Therapy will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-27, 18VAC112-20-81, 18VAC112-20-130, 18VAC112-20-131).

**Statutory Authority:** § 54.1-2400 of the Code of Virginia (18VAC112-20-27, 18VAC112-20-130, 18VAC112-20-131). §§ 54.1-2400 and 54.1-3482.1 of the Code of Virginia (18VAC112-20-81).

**Effective Date:** November 4, 2015.

**Agency Contact:** Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

**Summary:**

*Pursuant to Chapters 724 and 746 of the 2015 Acts of Assembly, the board is amending the requirements for a direct access certification to see patients for physical therapy without a referral. The amendments (i) eliminate the qualification of a doctorate in physical therapy because a practitioner with that degree no longer has to obtain direct access certification, (ii) delete the requirement for continuing education relating to carrying out direct access duties, and (iii) delete the requirement for renewal of direct access certification and the fee for renewal.*

**18VAC112-20-27. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

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1. The application fee shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be \$135 and for a physical therapist assistant shall be \$70 and shall be due by December 31 in each even-numbered year.

2. The fee for an inactive license renewal for a physical therapist shall be \$70 and for a physical therapist assistant shall be \$35 and shall be due by December 31 in each even-numbered year.

3. A fee of \$50 for a physical therapist and \$25 for a physical therapist assistant for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has expired for two or more years shall be \$180 for a physical therapist and \$120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be \$1,000; the fee for an application for reinstatement of a license that has been suspended shall be \$500.

2. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.

3. The fee for a returned check shall be \$35.

4. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.

~~F. Direct access certification fees.~~

~~1. 5. The application fee for direct access certification shall be \$75 for a physical therapist to obtain certification to provide services without a referral.~~

~~2. The fee for renewal on a direct access certification shall be \$35 and shall be due by December 31 in each even-numbered year.~~

~~3. A fee of \$15 for processing a late renewal of certification within one renewal cycle shall be paid in addition to the renewal fee.~~

**18VAC112-20-81. Requirements for direct access certification.**

A. An applicant for certification to provide services to patients without a referral as specified in § 54.1-3482.1 of the Code of Virginia shall hold an active, unrestricted license as a physical therapist in Virginia and shall submit evidence

satisfactory to the board that he has one of the following qualifications:

~~1. Completion of a doctor of physical therapy program approved by the American Physical Therapy Association;~~

~~2. 1. Completion of a transitional program in physical therapy as recognized by the board; or~~

~~3. 2. At least three years of postlicensure, active practice with evidence of 15 contact hours of continuing education in medical screening or differential diagnosis, including passage of a postcourse examination. The required continuing education shall be offered by a provider or sponsor listed as approved by the board in 18VAC112-20-131 and may be face-to-face or online education courses.~~

B. In addition to the evidence of qualification for certification required in subsection A of this section, an applicant seeking direct access certification shall submit to the board:

1. A completed application as provided by the board;

2. Any additional documentation as may be required by the board to determine eligibility of the applicant; and

3. The application fee as specified in 18VAC112-20-27.

**18VAC112-20-130. Biennial renewal of license and certification.**

A. A physical therapist and physical therapist assistant who intends to continue practice shall renew his license biennially by December 31 in each even-numbered year and pay to the board the renewal fee prescribed in 18VAC112-20-27.

B. A licensee whose licensure has not been renewed by the first day of the month following the month in which renewal is required shall pay a late fee as prescribed in 18VAC112-20-27.

C. In order to renew an active license, a licensee shall be required to:

1. Complete a minimum of 160 hours of active practice in the preceding two years; and

2. Comply with continuing competency requirements set forth in 18VAC112-20-131.

~~D. In order to renew a direct access certification, a licensee shall be required to:~~

~~1. Hold an active, unrestricted license as a physical therapist; and~~

~~2. Comply with continuing education requirements set forth in 18VAC112-20-131 F.~~

**18VAC112-20-131. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical

practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 20 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants shall be in Type 1 courses. 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 clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

- a. The Virginia Physical Therapy Association;
- b. The American Physical Therapy Association;
- c. Local, state or federal government agencies;
- d. Regionally accredited colleges and universities;
- e. Health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;
- f. The American Medical Association - Category I Continuing Medical Education course; and
- g. The National Athletic Trainers Association.

2. No more than 10 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he has taken the PRT may receive 10 hours of Type 1 credit for the biennium in which the assessment tool was taken. A physical therapist who can document that he has met the

standard of the PRT may receive 20 hours of Type 1 credit for the biennium in which the assessment tool was taken.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

~~I. Physical therapists holding certification to provide direct access without a referral shall include four contact hours as part of the required 30 contact hours of continuing education in courses related to clinical practice in a direct access setting.~~

VA.R. Doc. No. R16-4314; Filed September 8, 2015, 3:15 p.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Extension of Emergency Regulation

**Title of Regulation:** **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10; adding 22VAC40-201-115).**

**Statutory Authority:** §§ 63.2-217, 63.2-900, and 63.2-915 of the Code of Virginia.

**Expiration Date Extended Through:** June 24, 2016.

The Governor has approved the State Board of Social Services' request to extend the expiration date of the above-referenced emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through June 24, 2016. The emergency regulation was published in [30:23 VA.R. 2572-2577 July 14, 2014](#).

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Agency Contact: Phyl Parrish, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219-2901, telephone (804) 726-7926, FAX (804) 726-7895, TTY (800) 828-1849, or email [phyl.parrish@dss.virginia.gov](mailto:phyl.parrish@dss.virginia.gov).

VA.R. Doc No. R14-3687; Filed September 4, 2015, 1:04 p.m.

## Proposed Regulation

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10; adding 22VAC40-201-115).**

Statutory Authority: §§ 63.2-217, 63.2-900, and 63.2-915 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 4, 2015.

Agency Contact: Phyl Parrish, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219-2901, telephone (804) 726-7926, FAX (804) 726-7895, TTY (800) 828-1849, or email [phyl.parrish@dss.virginia.gov](mailto:phyl.parrish@dss.virginia.gov).

Basis: Sections 63.2-217 and 63.2-915 of the Code of Virginia provide state authority for this action. Federal authority is found at 45 CFR 1355.30 (k), 45 CFR 205.10, and 45 CFR 1392.11. This regulation replaces an emergency regulation that became effective on June 25, 2014.

Purpose: This regulatory action establishes a hearing process for individuals who may receive a payment or service that is intended to benefit a child in foster care. This action provides that those individuals may appeal to the Commissioner of the Department of Social Services when they believe a benefit has been denied or unreasonably delayed. Appropriate benefits help to protect the health and welfare of children in foster care.

Substance: Key provisions of the regulation include (i) who has a right to appeal to the Commissioner of Social Services, (ii) what decisions or benefits may not be appealed, (iii) who shall be notified of the right to an appeal and what is included in the notice, (iv) the ability of the commissioner to delegate the duty and authority to duly qualified officers, (v) information about the decision, and (vi) the appellant's right to judicial review. The only change to this regulation from the emergency regulation is the deletion of the first sentence in 22VAC-40-201-115 C, which was determined to be overly broad and subject to differing interpretations.

Issues: The advantage of this regulation is that it provides a process for individuals to appeal to the commissioner when they believe a benefit related to a foster care case has been denied or unreasonably delayed. This action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to amend its permanency regulation to include a process under which individuals who can claim benefits<sup>1</sup> can appeal a decision by a local Department of Social Services to deny, or not expeditiously act upon, requests for benefits or services.

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

Estimated Economic Impact. Board staff reports that foster care payment decisions are technically appealable right now and that guidance for such appeals has been developed but has not yet been posted to the State Department of Social Services (DSS) website. The Board amended its permanency regulation to include a new section that covers the appeal rights of individuals who can claim benefits in an emergency action that became effective on June 25, 2014. The Board now proposes to make those amendments permanent through this regulatory action. Board staff reports that they have no way of knowing right now how many appeals will be filed each year going forward but they estimate that about 3% of foster care cases would be the subject of some sort of appeal each year. There are currently 7,728 children who receive services in the foster care system. Using that number, DSS's appeals office would likely process approximately 230 appeals per year.

DSS's appeals office will likely incur greater costs for conducting hearings on account of this proposed regulation and the legislation that mandated this appeals process.<sup>2</sup> Two additional staff positions have been added to the appeals office to handle these anticipated cases. Individuals who can claim foster care benefits will likely benefit from this action as it will clarify their rights in the appeals process and make it easier to eventually receive benefits they may be due under the law.

Businesses and Entities Affected. This proposed regulation will affect all individuals who can claim foster care benefits. The number of affected individuals is unknown but would be larger than the number of children who receive foster care services in the Commonwealth (7,728).

Localities Particularly Affected. No localities will likely be disproportionately affected by this proposed regulatory change.

Projected Impact on Employment. This regulatory action will result in two additional staff people being hired by DSS's appeals office.

Effects on the Use and Value of Private Property. This regulatory action will likely have no impact on the use or value of private property.

Small Businesses: Costs and Other Effects. No small businesses are likely to be affected by this proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses are likely to be affected by this proposed regulation.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate.

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

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

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

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

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

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<sup>1</sup>These individuals may be foster parents, other representatives of foster children such as Guardians Ad Litem, parents of a child in foster care or foster children who are living independently or who qualify to live independently.

<sup>2</sup>House Bill 2045 passed the General Assembly in 2013.

Agency's Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs.

Summary:

*Pursuant to Chapter 437 of the 2013 Acts of Assembly, this regulatory action proposes to establish a hearing process for individuals eligible for benefits under the foster care program and to provide that those individuals may appeal to the Commissioner of Social Services when they believe a benefit has been denied or unreasonably delayed. The key provisions of the proposed regulation address (i) who has a right to appeal to the commissioner, (ii) what decisions or benefits may not be appealed, (iii) who is notified of the right to an appeal and what is included in the notice, (iv) the ability of the commissioner to delegate the duty and authority to duly qualified officers, (v) information about the decision, and (vi) the appellant's right to judicial review.*

**22VAC40-201-10. Definitions.**

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis, and that is open to the participation of the birth parents or prior custodians and other individuals significant to the child and family, to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Adoption assistance agreement" means a written agreement between the child-placing agency and the adoptive parents of a child with special needs to provide for the unmet financial and service needs of the child.

"Adoption Manual" means Volume VII, Section III, Chapter C - Adoption/Agency Placement of the Service Program Manual of the Virginia Department of Social Services dated October 2009/March 2010.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoption search" means interviews and written or telephone inquiries made by a local department to locate and

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advise the biological parents or siblings of an adult adoptee's request, by Application for Disclosure or petition to the court, for identifying information from a closed adoption record.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption. The adoptive home study is included in the dual approval process.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 and 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths

and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team (CPMT)" or "CPMT" means a team appointed by the local governing body to receive funds pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

~~"Comprehensive Services Act for At Risk Youth and Families (CSA)" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at risk youth and their families in the Commonwealth.~~

"Concurrent permanency planning" means a sequential, structured approach to case management which requires working towards a permanency goal (usually reunification) while at the same time establishing and working towards an alternative permanency plan.

"Custody investigation" means a method to gather information related to the parents and a child whose custody, visitation, or support is in controversy or requires determination.

"Department" means the State Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dual approval process" means a process that includes a home study, mutual selection, interviews, training, and background checks to be completed on all applicants being considered for approval as a resource, foster or adoptive family home provider.

"Family Assessment and Planning Team (FAPT)" "Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children placed away from their parents or guardians and for whom the local board has placement and care responsibility. Foster care also includes children under the placement and care of the local board who have not been removed from their home.

"Foster care maintenance payments" means payments to cover federally allowable expenses made on behalf of a child in foster care including the cost of food, clothing, shelter, daily supervision, reasonable travel for the child to visit relatives and to remain in his previous school placement, and other allowable expenses in accordance with guidance developed by the department.

"Foster Care Manual" means Chapter E - Foster Care of the Child and Family Services Manual of the Virginia Department of Social Services dated July 2011.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the CPMT where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of prevention, placement, treatment, and community services, including but not limited to independent living services, for a planned period of time as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living

arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual Family Service Plan (IFSP)" "Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children (ICPC)" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the local department obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the

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parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs including, but not limited to, attorney or other fees directly related to the finalization of the adoption, transportation, court costs, and reasonable and necessary fees of licensed child-placing agencies.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Permanency planning indicator—(PPI) or "PPI" means a tool used in concurrent permanency planning to assess the likelihood of reunification. This tool assists the worker in determining if a child should be placed with a resource family and if a concurrent goal should be established.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Resource parent" means a provider who has completed the dual approval process and has been approved as both a foster and adoptive family home provider.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service plan" means a written document that describes the programs, care, services, and other support which will be

offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia,

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"SSI" means Supplemental Security Income.

"State pool fund" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse, or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visitation conducted pursuant to § 63.2-1212 of the Code of Virginia subsequent to the entry of an interlocutory order of adoption and the written report compiling the findings of the visitation which is filed in the circuit court.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia.

## **22VAC40-201-115. Foster care appeal process.**

A. Any individual whose claim for benefits available pursuant to 42 USC § 670 et seq. or whose claim for benefits pursuant to § 63.2-905 of the Code of Virginia is denied or is not acted upon by the local department with reasonable promptness shall have a right to appeal to the commissioner.

B. A hearing need not be granted when either state or federal law requires automatic maintenance payment adjustments for classes of recipients unless the reason for an individual appeal is incorrect maintenance amount computation.

C. Placement decisions of local boards are final when in accordance with the relevant provisions of Title 16.1 of the Code of Virginia. However, in accordance with 42 USC § 671(a)(23), a hearing shall be granted for the denial or delay in placement of a child for adoption when an approved family is outside the locality with the legal custody of the child.

D. The hearing shall be face-to-face or, at the option of the commissioner or his designee, a hearing by telephone may be held if the individual agrees. The individual shall be afforded all rights as specified in this section, whether the hearing is face-to-face or by telephone.

E. The local department or, in those cases where the local department is not involved, the licensed child-placing agency, the family assessment and planning team, or other multi-disciplinary team shall inform an individual in writing of the right to appeal the denial of a benefit or the delay of a decision regarding a benefit under this section at the time the applicable plan is written and at the time of any action affecting claim for benefit. This shall include a written notice to the birth parents or caretaker at the time a child comes into foster care, a written notice to the guardian ad litem, and written notice to foster parents at the time the foster care agreement is signed. The notice shall include:

1. The right to a hearing;
2. The method by which the individual may obtain a hearing; and
3. That the individual may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

F. The local department or, in those cases where the local department is not involved, the licensed child-placing agency, the family assessment and planning team, or other multi-disciplinary team shall provide timely notice of a decision to discontinue, terminate, suspend, or change a benefit for the child. Timely notice means the notice is mailed at least 10 days before the date the action becomes effective. If the individual requests a hearing within the timely notice period, the benefit shall not be suspended, reduced, discontinued, or terminated, but is subject to recovery if the action is sustained, until a decision is rendered after a hearing unless:

1. A determination is made at the hearing that the sole issue is one of state or federal law or policy or a change in state or federal law and not one of incorrect benefit computation;
2. A change affecting the individual's benefit occurs while the hearing decision is pending and the individual fails to request a hearing after notice of the change; or
3. The individual specifically requests that he not receive continued benefits pending a hearing decision.

G. An individual shall be allowed to request a hearing for up to 30 days after the denial of a claim for benefit. Reasonable notice of the hearing shall be provided to the individual. Within 90 days of the request for a hearing, the hearing shall be conducted, a decision reached, and the individual notified of the decision.

H. The commissioner may provide that a hearing request made after the date of action, but during a period not in excess of 10 days following such date, shall result in reinstatement of the benefit to be continued until the hearing decision unless (i) the individual specifically requests that continued benefit not be paid pending the hearing decision or (ii) at the hearing it is determined that the sole issue is one of state or federal law or policy. In any case where action was taken without timely notice, if the individual requests a

hearing within 10 days of the mailing of the notice of the action and the commissioner determines that the action resulted from other than the application of state or federal law or policy or a change in state or federal law, the benefit shall be reinstated and continued until a decision is rendered after the hearing unless the individual specifically requests that he not receive continued benefits pending the hearing decision.

I. Pursuant to § 63.2-915 of the Code of Virginia, the commissioner may delegate the duty and authority to consider and make determinations on any appeal filed in accordance with this section to duly qualified officers.

J. The commissioner or designated hearing officer may deny or dismiss a request for a hearing where it has been withdrawn by the individual in writing or where it is abandoned. Abandonment may be deemed to have occurred if the individual without good cause fails to appear by himself or by authorized representative at the hearing scheduled for such individual.

K. The hearing shall include consideration of the denial of a claim for benefits or the local department's failure to act with reasonable promptness on a request for a benefit for the individual.

L. The individual requesting the hearing or his representative shall have adequate opportunity to:

1. Examine information relied upon by the local department, licensed child-placing agency, family assessment and planning team, or other multi-disciplinary team in considering the request for a benefit to the extent that the information does not violate confidentiality requirements;
2. Bring witnesses;
3. Establish all pertinent facts and circumstances;
4. Advance arguments without undue interference;
5. Question or refute testimony or evidence; and
6. Confront and cross-examine witnesses.

M. Decisions of the commissioner or designated hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all the papers and requests filed in the proceeding and the decision of the commissioner or hearing officer shall constitute the exclusive record and shall be available to the individual at a place accessible to him or his representative at a reasonable time.

N. Decisions by the commissioner or hearing officer shall consist of a memorandum decision summarizing the facts and identifying the regulations and policy supporting the decision.

O. The individual shall be notified of the decision in writing.

P. When the hearing decision is favorable to the individual, the local department, licensed child-placing agency, family assessment and planning team, or other multi-disciplinary

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team shall promptly begin the process to provide the requested service or, in the case of foster care maintenance, make corrective payments retroactively to the date the incorrect action was taken, unless foster care maintenance payments were continued during the pendency of the hearing decision.

Q. The decision of the commissioner shall be binding and considered a final agency action for purposes of judicial review. The hearing decision shall be a memorandum decision summarizing the facts and identifying the statutes and regulations supporting the decision.

VA.R. Doc. No. R14-3687; Filed September 14, 2015, 12:51 p.m.

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## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### MOTOR VEHICLE DEALER BOARD

#### Final Regulation

Title of Regulation: 24VAC22-30. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations (amending 24VAC22-30-20, 24VAC22-30-30, 24VAC22-30-40; repealing 24VAC22-30-10, 24VAC22-30-50).

Statutory Authority: §§ 46.2-1506 and 46.2-1582 of the Code of Virginia.

Effective Date: December 1, 2015.

Agency Contact: Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 West Broad Street, Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, or email bruce.gould@mvdv.virginia.gov.

#### Summary:

*The amendments (i) eliminate the requirement that motor vehicle dealers maintain copies of their advertisements in newspapers and on the Internet for 60 days from the expiration of the advertisement, (ii) make clarifying changes in language, and (iii) repeal language that is repetitious of the Code of Virginia.*

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

#### Part I

#### General Provisions

#### **24VAC22-30-10. Intent. (Repealed.)**

~~In the 1989 Acts of the Virginia General Assembly it was found that it is in the interest of the consuming public and legitimate motor vehicle dealers to ensure that the advertising of motor vehicles is honest, fair, and clear and that deceptive or misleading advertising of the retail sales of motor vehicles as described in Motor Vehicle Dealer Advertising, Article 9~~

~~(§ 46.2-1580 et seq.) of Chapter 15 of Title 46.2 of the Code of Virginia should be prohibited. In the 1995 Acts of the Virginia General Assembly it was found that it is in the interest of the consuming public and legitimate motor vehicle dealers for dealers to be regulated by a board of their peers, resulting in the formation of the Virginia Motor Vehicle Dealer Board. Therefore, the following regulations are promulgated by the board to administer the administrative and civil penalties necessary for enforcement of prohibited advertising practices.~~

#### Part I

#### General Provisions

#### **24VAC22-30-20. Definitions.**

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

"Act" means Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2 of the Code of Virginia.

"Administrative penalties" means the denial, suspension or revocation of a license as allowed in § 46.2-1576 of the Act and based on one or more of the grounds specified in § 46.2-1575 of the Act.

"Advertisement" means an oral, written, graphic or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an ~~on-line~~ online computer service, or on television. The term does not include an in-person oral communication by a dealer's employee with a prospective customer.

"Advertiser" means same as licensee.

"Board" means the Motor Vehicle Dealer Board of this Commonwealth.

"Civil penalty" means the monetary assessment imposed by the board or the executive director against a licensee not to exceed \$1,000 for any single violation of § 46.2-1581 of the Code of Virginia.

"Disclaimer" means those words or phrases used to provide a clear understanding or limitation to an advertised statement but not used to contradict or change the meaning of the statement.

"Disclosure" means a statement in clear terms of the dollar amounts, time frames, down payments and other terms which may be needed to provide a full understanding of credit terms, periodic payment, interest rates, time payment plans, etc.

"Executive director" means the Executive Director of the Motor Vehicle Dealer Board of this Commonwealth.

"Internet" means the international network of computer systems commonly known as the "Internet".

"License" means the document issued to a Virginia motor vehicle dealer and which permits such dealer to engage in the

business of buying and selling new and used motor vehicles or used motor vehicles only.

"Licensee" means any person, partnership, association, corporation or entity which is required to be licensed as a motor vehicle dealer in this Commonwealth.

"Line-make marketing group" means an association of motor vehicle dealers franchised to sell and advertise the same line-make of new motor vehicles.

"Manufacturer's factory invoice" or "distributor's invoice" means that document supplied by the manufacturer or the distributor listing the manufacturer's or distributor's charge to the dealer before any deduction for items such as holdback, group advertising, factory incentives or rebates, or any governmental charges.

~~"New motor vehicle" means a vehicle which meets all of the following criteria. The new motor vehicle has: the same as defined in § 46.2-1500 of the Code of Virginia.~~

- ~~1. Had limited use necessary in moving or road testing the vehicle prior to delivery to a customer;~~
- ~~2. Been transferred by a manufacturer's or distributor's certificate of origin which is the document provided by the manufacturer of a new motor vehicle, or its distributor to its franchised motor vehicle dealer;~~
- ~~3. The manufacturer's or distributor's certification that it conforms to all applicable federal motor vehicle safety and emission standards;~~
- ~~4. Not been previously sold by a dealer except for the purpose of resale and when the exchange is between franchised dealers of the same line make;~~
- ~~5. Not been used as a rental, driver education, or demonstration motor vehicle; and~~
- ~~6. Not been used for the personal and business transportation of the manufacturer, distributor or dealer or any of their employees.~~

~~"On line "Online service" means any information service, system, or access software provider that enables computer access by multiple users to a computer server, including specifically a service or system that provides accesses to the Internet.~~

~~"Repossessed vehicle" means a vehicle which meets all of the following criteria. It has:~~

- ~~1. Been sold, titled, registered, and taken back from a purchaser for nonpayment; and~~
- ~~2. Not yet been resold to an ultimate user.~~

~~"Sale" means there is a significant reduction from the advertiser's usual and customary price of a motor vehicle and the offer is for a limited period of time.~~

~~"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this chapter the same as defined in § 46.2-1500 of the Code of Virginia.~~

Part II  
Regulated Advertising Practices

**24VAC22-30-30. Practices.**

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

A. New motor vehicle. A motor vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the definition of a "new motor vehicle" as defined in 24VAC22-30-20.

B. Used motor vehicle.

1. The fact that a motor vehicle is used should be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. For example, "special purchase" or "program cars" by itself is not a satisfactory disclosure; however, such terms as ~~"demonstrator"~~ "pre-owned" or "former leased and/or rental vehicles" used alone clearly express that they meet the definition of a used vehicle for advertising purposes. When in doubt, the dealer should provide more information or simply say "used."

2. Once a certificate of origin as defined in § 46.2-1500 has been assigned to a purchaser, the motor vehicle becomes a used vehicle and must be advertised as such.

C. Finance charges or interest rates advertisements. ~~1.~~ Advertisements of finance charges or other interest rates "below market" (or words to that effect) shall not be used unless it is manufacturer or distributor sponsored or substantiated by a written agreement with the finance source.

~~2. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy down said charge or rate which is passed on, in whole or in part, to the purchaser.~~

D. Terms, conditions, and disclaimers.

1. When terms, conditions or disclaimers are used, they shall always be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information; but, the disclaimer shall not be used as a means of contradicting or changing the meaning of an advertised statement. In addition, they must meet the Federal Trade Commission Truth in Lending Act Requirements 15 USC §§ 1601 et seq., 12 CFR Part 226 (Regulation Z) or the Federal Trade Commission Truth in Leasing Act Requirements, as applicable.

2. In all printed media, where terms, conditions or disclaimers are used, they shall be clearly and conspicuously visible and printed in not less than 8-point type print or printed in 6-point upper case type print. If a ~~processing fee or freight charges~~ charges or destination charges, ~~or both,~~ are not included in the advertised price, the amount of any such ~~processing fee and freight charge~~ charge or destination charge, ~~or both,~~ must be clearly and conspicuously disclosed in [ ~~not less than 8 point~~ ]

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boldface type ~~or~~ [ that is ] not smaller than [ 8-point, unless the advertisement is in less than 8-point type in which case not smaller than ] the largest typeface within the advertisement. If ~~the~~ a processing fee is not included in the advertised price, the amount of the processing fee must be clearly and conspicuously disclosed in not less than 8-point boldface type or not smaller than the largest typeface within the advertisement; however the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than 8-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement includes an asterisk or other such notation to refer the reader to the listing of the fees. When billboards, portable signs, posters, etc., are used, all terms, conditions or disclaimers need to be displayed and phrased in a manner which is clear and conspicuous.

3. In radio advertisements, ~~where all terms, conditions, or disclaimers are used, they shall, and required disclosures must~~ be clearly announced during the advertisement. They must be explained clearly and at an understandable speed and volume level.

4. In television advertisements, ~~where all terms, conditions, or disclaimers are used, they shall, and required disclosures must~~ be clearly and conspicuously displayed or announced, or both, during the advertisement. They shall be at an understandable speed or understandable volume level, or both.

5. In Internet advertisements all terms, conditions, disclaimers, and required disclosures must be clearly and conspicuously displayed.

E. Sale or sales. The expiration date of an advertised "sale" shall be clearly and conspicuously disclosed. If the sale exceeds 30 days, the advertiser should be prepared to substantiate that the offering is indeed a valid reduction and has not become his regular price.

F. "List price," "sticker price," "suggested retail price." These terms and similar terms shall be used only as follows:

1. In reference to the manufacturer's or distributor's suggested retail price for new vehicles; or
2. The dealer's own usual and customary price for used vehicles.

G. "Cost" and "invoice price" terms.

1. "At cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of sale.

2. "Invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice, distributor's invoice, or a bona fide bill of sale, as applicable, and that it is available for customer inspection.

3. ~~"Manufacturer's factory invoice" or "distributor's invoice" means that document supplied by the manufacturer or the distributor listing the manufacturer's or~~

~~distributor's charge to the dealer before any deduction for items such as holdback, group advertising, factory incentives or rebates, or any governmental charges.~~

H. Price or credit terms of advertised vehicles. When the price or credit terms of a vehicle are advertised ~~in print, or on radio or television~~, the vehicle should be fully identified as to year, make, and model. In addition, in all advertisements placed by individual dealers and not marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the seller including "freight" or "destination charges." If there are deferred payments on credit sales where accrued finance charges are ultimately charged to the consumer for any part of the deferred period, then these charges must be clearly stated. State and local fees and taxes and buyer-selected options need not be included in the advertised price. If the buyer will be required to pay to the seller charges which increase the advertised price, the charges must be disclosed as set-out in subsection D of this section and priced in the advertisement.

I. Matching or bettering competitor's price advertisements. Advertisements ~~which that~~ set out a policy matching or bettering a competitor's price shall not be used unless the terms of the offer are specific, verifiable, and reasonable. All terms of the offer shall be included in the disclosure and disclaimer area and may not say such things as "rules or terms available in showroom" or "available before delivery." Any material or significant conditions ~~which that~~ must be met or the evidence the consumer must present to take advantage of the offer must be fully disclosed as a part of the advertisement.

J. Advertisements of dealer rebates shall not be used. Offers to match down payments or guarantee minimum trade-in allowances or offers of cash or money back are forms of dealer rebates.

K. "Free," "at no extra cost" terms. No equipment, accessory, other merchandise or service shall be described using any term that implies that such equipment, accessory, other merchandise or service is free if a purchase is required in order to receive the "free" offer. Examples of prohibited terms include:

1. Free.
2. Complimentary.
3. At no extra cost.
4. At no extra charge.
5. At no extra fee.
6. At no extra price.
7. At no additional cost.
8. At no additional charge.
9. At no additional fee.
10. At no additional price.
11. Present.

- 12. Gift.
- 13. On the house.
- 14. Gratis.
- 15. Courtesy.

L. "Bait advertising" shall not be used.

1. The purpose of this section is to ensure that customers will be informed the vehicle is in limited quantity or availability. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the advertisement. The listing of vehicles by stock numbers or vehicle identification numbers is permissible and is one means of satisfactorily disclosing a limitation of availability, provided a separate number is used for each vehicle. For new vehicles, if the offer is limited, you the dealer will be able to say such things as "in stock" or "will order" provided you the dealer can order the vehicle just as advertised and delivery can be assured as soon as the manufacturer or distributor can confirm the order and deliver it to your the dealer's dealership. If you the dealer cannot get an order confirmation within 30 days, you the dealer must refund all moneys collected from the buyer at his request. If the vehicle is available only by order then it must be clearly and conspicuously disclosed in the advertisement.

2. Advertising a vehicle at a certain price (including "as low as" statements), but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price above the advertised price, may also be considered "bait advertising."

3. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

M. The term "repossessed vehicle" shall not be used unless the full criteria of the definition in 24VAC22-30-20 is met. Advertisers offering such vehicles for sale shall provide proof of repossession upon request.

N. "Finance" or "loan." Words such as "finance" or "loan" shall not be used in a motor vehicle dealer advertiser's firm name or trade name unless that person is actually engaged in the financing of motor vehicles.

O. "Special arrangement or relationship" advertisements. Statements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet," and "factory wholesale outlet," shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used.

P. Records retention. ~~Advertisers~~ Licensees shall maintain for a period of 60 days from the expiration date of the advertisement and make available to the board and the board

staff, if requested, ~~the original or a clear facsimile copy copies of all radio and television advertisements in a manner that permits systematic retrieval for a period of 60 days subsequent to the expiration date of the advertisement.~~

Part III  
Enforcement

**24VAC22-30-40. Administrative and civil penalties.**

~~A.~~ Violations of any regulated advertising practice may, in the discretion of the board or executive director, be addressed by a verbal or written warning to the licensee as an initial step in the enforcement process.

~~B.~~ Any single violation of a regulated advertising practice may also, after an informal fact finding proceeding as provided in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, result in an assessment of a civil penalty up to \$1,000.

~~C.~~ Subsequent, same or similar violations may, after an informal fact finding proceeding as provided in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, result in an assessment of a civil penalty up to the \$1,000 and may also be grounds for denying, suspending or revoking a license subject to the hearing requirements pursuant to § 46.2-1576 of the Act, either or both.

**24VAC22-30-50. Appeals. (Repealed.)**

~~The action of the board in suspending, revoking or refusing any license or in imposing a monetary civil penalty against the licensee shall be subject to judicial review as provided in §§ 46.2-1577 and 46.2-1578 of the Act.~~

VA.R. Doc. No. R13-3540; Filed September 7, 2015, 11:02 a.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a small business impact review of **4VAC25-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Department of Mines, Minerals and Energy is publishing its report of findings dated September 8, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation is mandated by statute. The department has determined this regulation is effective as currently written and does not burden small businesses.

Contact Information: Michael A. Skiffington, Program Support Manager, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a small business impact review of the following regulations and determined that these regulations should be retained in their current forms. The Department of Mines, Minerals and Energy (DMME) is publishing its report of findings dated September 8, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

### 4VAC25-60, Rules and Regulations Governing the Installation and Use of Automated Temporary Roof Support Systems

### 4VAC25-70, Regulations Governing Disruption of Communications in Mines

### 4VAC25-101, Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells

### 4VAC25-110, Regulations Governing Blasting in Surface Mining Operations

### 4VAC25-120, Requirements for Installation and Use of Cabs and Canopies

These regulations are mandated by statute. In conjunction with the Virginia Coal Mine Safety Board, the Chief of DMME's Division of Mines has determined these regulations are effective as currently written and do not burden small businesses.

Contact Information: Michael A. Skiffington, Program Support Manager, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Enforcement Action for Heaven Scent, Inc.

An enforcement action has been proposed for Heaven Scent, Inc. for alleged violations of the State Water Control Law in Parksley, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Mr. Robin Schuhmann will accept comments by email at [robin.schuhmann@deq.virginia.gov](mailto:robin.schuhmann@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from October 5, 2015, through November 4, 2015.

### Proposed Consent Order for Mr. B.G. Locher, Jr.

An enforcement action has been proposed for Mr. B.G. Locher, Jr. for violations in Rockbridge County, Virginia. The State Water Control Board proposes to issue a consent order to Mr. Locher to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Tiffany Severs will accept comments by email at [tiffany.severs@deq.virginia.gov](mailto:tiffany.severs@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from October 5, 2015, through November 5, 2015.

### Total Maximum Daily Load Studies for Little Mosquito Creek and Assawoman Creek, Accomack County, Virginia

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for Little Mosquito Creek and Assawoman Creek in Accomack County, on Thursday, October 15, 2015.

The meeting will start at 6 p.m. in the Chincoteague Bay Field Station, Classroom 200 located at 34001 Mill Dam Road, Wallops Island, VA 23337. The purpose of the meeting is to provide information and discuss the study with community members and local government.

Little Mosquito Creek and Assawoman Creek were identified in Virginia's 2014 Water Quality Assessment and Integrated Report as impaired due to violations of the state's water quality standards for dissolved oxygen and do not support the designated use for aquatic life.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily limits (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL

Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a TMDL for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The Department of Environmental Quality and other agencies are working to identify the sources of pollution in the watersheds of these streams.

The public comment period on materials presented at this meeting will extend from October 16, 2015, to November 16, 2015. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov).

Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

### **Total Maximum Daily Load Study for Nassawadox Creek and Tributaries, Northampton County, Virginia**

The Department of Environmental Quality (DEQ) will host a public meeting on water quality studies for Nassawadox Creek and tributaries in Northampton County, on Thursday, October 22, 2015.

The meeting will start at 6:30 p.m. in the Exmore Town Hall, 3305 Main Street, Exmore, VA 23350. The purpose of the meeting is to provide information and discuss the study with community members and local government.

Nassawadox Creek and several tributaries have been identified in Virginia's 2014 Water Quality Assessment and Integrated Report as impaired due to violations of the state's water quality standards for shellfish and recreation uses due to elevated levels of bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The Department of Environmental Quality and other agencies are working to identify the sources of pollution in the watersheds of these streams.

The public comment period on materials presented at this meeting will extend from October 23, 2015, to November 23,

2015. For additional information or to submit comments, contact Jennifer Howell, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2111, or email [jennifer.howell@deq.virginia.gov](mailto:jennifer.howell@deq.virginia.gov).

Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

## **VIRGINIA CODE COMMISSION**

### **Notice to State Agencies**

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**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**

### **DEPARTMENT OF GENERAL SERVICES**

**Title of Regulation:** **1VAC30-45. Certification for Noncommercial Environmental Laboratories.**

**Publication:** 32:1 VA.R. 6-62 September 7, 2015.

**Correction to Proposed Regulation:**

Page 23, 1VAC30-45-95 B 1, line 2, after "Article" delete "2 (1VAC30-45-300 et seq.)" and insert "3 (1VAC30-45-500 et seq.)"

Page 23, 1VAC30-45-95 B 2, line 2, after "Article" delete "2 (1VAC30-45-300 et seq.)" and insert "3 (1VAC30-45-500 et seq.)"

VA.R. Doc. No. R12-3334; Filed September 11, 2015, 9:38 a.m.

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## General Notices/Errata

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**Title of Regulation: 1VAC30-46. Accreditation for Commercial Environmental Laboratories.**

**Publication:** 32:1 VA.R. 62-84 September 7, 2015.

**Correction to Final Regulation:**

Page 63, 1VAC30-46-30 D, line 5, strike "1VAC30-40" and insert "1VAC30-41"

Page 63, 1VAC30-46-40 B, last paragraph, line 1, after "Accreditation body" delete "of" and insert "or"

Page 72, column 1, 1VAC30-46-70 K 4, line 2, delete "TNI-accreditation" and insert "TNI accreditation"

VA.R. Doc. No. R12-3067; Filed September 9, 2015, 10:29 a.m.

### **MARINE RESOURCES COMMISSION**

**Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest.**

**Publication:** 32:1 VA.R. 84-93 September 7, 2015.

**Correction to Final Regulation:**

Page 85, column 1, 4VAC20-720-15 D:

Line 1, after "D." delete "It" and insert "After November 30, 2015, it"

Line 5, after "harvest" delete "by" and insert "for either the"

Line 5, after "dredge" insert ", in one season or averaged over two seasons,"

Line 6, delete "either of those" and insert "the"

Line 6, after "gear" delete "licenses after November 30, 2015" and insert "license associated with less than 20 harvest days"

VA.R. Doc. No. R16-4483; Filed September 17, 2015, 12:55 p.m.

### **STATE BOARD OF SOCIAL SERVICES**

**Title of Regulation: 22VAC40-73. Standards for Licensed Assisted Living Facilities.**

**Publication:** 32:1 VA.R. 174-233 September 7, 2015.

**Correction to Proposed Regulation:**

Page 187, 22VAC40-73-40 B 7, line 6, after "Article 1" delete "(§ 64.1-2000" and insert "(§ 64.2-2000"

Page 188, 22VAC40-73-60 A, line 3, delete ", §§ 59.1-479 through 59.1-501 of the Code of Virginia" and insert "(§ 59.1-479 et seq. of the Code of Virginia)"

VA.R. Doc. No. R12-3227; Filed September 11, 2015, 4:41 p.m.