



VIRGINIA

REGISTER OF REGULATIONS

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TABLE OF CONTENTS

Register Information Page	447
Publication Schedule and Deadlines	448
Petitions for Rulemaking	449
Notices of Intended Regulatory Action	450
Regulations	451
2VAC5-60. Rules and Regulations Governing the Operation of Livestock Markets (Final).....	451
2VAC5-61. Rules and Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock (Final)	451
2VAC5-120. Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle (Final)	451
2VAC5-110. Rules and Regulations Pertaining to a Pound or Enclosure to Be Maintained by Each County or City (Proposed).....	453
2VAC5-111. Public and Private Animal Shelters (Proposed).....	453
4VAC10-30. Virginia State Forests Regulations (Final)	457
4VAC20-110. Pertaining to Lobsters (Final)	458
4VAC20-720. Pertaining to Restrictions on Oyster Harvest (Final).....	459
6VAC20-40. Rules Relating to Compulsory Minimum Training Standards for Undercover Investigative Officers (Final)...	461
6VAC20-230. Regulations Relating to Special Conservator of the Peace (Proposed)	461
6VAC20-280. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Field Training Officers (Final)	465
9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (Fast-Track).....	466
12VAC30-130. Amount, Duration and Scope of Selected Services (Fast-Track)	468
14VAC5-270. Rules Governing Annual Financial Reporting (Proposed)	480
16VAC25-35. Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees (Final)	485
18VAC25-21. Regulations of the Virginia Auctioneers Board (Forms)	487
18VAC41-20. Barbering and Cosmetology Regulations (Proposed).....	487
18VAC41-40. Wax Technician Regulations (Proposed)	488
18VAC41-70. Esthetics Regulations (Proposed)	511
18VAC80-20. Board for Hearing Aid Specialists Regulations (Proposed)	530
18VAC80-20. Board for Hearing Aid Specialists Regulations (Proposed)	536
18VAC80-30. Opticians Regulations (Proposed)	545
18VAC90-20. Regulations Governing the Practice of Nursing (Final)	550
18VAC120-50. Regulations Governing Natural Gas Automobile Mechanics and Technicians (Proposed)	564
18VAC130-20. Real Estate Appraiser Board Rules and Regulations (Proposed)	573
Governor	577
General Notices/Errata	581

Virginia Code Commission

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair, **Gregory D. Habeeb**; **Ryan T. McDougle**; **Pamela S. Baskerville**; **Robert L. Calhoun**; **Carlos L. Hopkins**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Robert L. Tavenner**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

October 2015 through October 2016

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

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice.**

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

Name of Petitioner: Terry Dickinson.

Nature of Petitioner's Request: To amend regulations for unprofessional conduct to adopt, by reference, the Principles of Ethics and Code of Professional Conduct of the American Dental Association (ADA).

Agency's Decision: Request denied.

Statement of Reason for Decision: At its meeting on September 18, 2015, the board voted to deny the petition. The board reviewed comments on the petition, a crosswalk between the ADA Code and Virginia law and regulation, and the ADA Code itself. Members were reminded that the board relied heavily on the ADA Code in the 2010 development of amended regulations, so most of the standards in the ADA Code are addressed in current or proposed regulations. Additionally, some of the standards in the ADA Code, such as participation in professional societies, are not appropriate to establish as grounds for disciplinary action. While the board appreciates the aspirational language of the ADA Code, it must rely on more objective standards on which to base a finding of unprofessional conduct and discipline a licensee.

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

V.A.R. Doc. No. R15-35; Filed September 18, 2015, 2:11 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-100, Rules Relating to Compulsory Minimum Training Standards for Correctional Officers of the Department of Corrections, Division of Adult Institutions**. The purpose of the proposed action is to revise the minimum entry-level training standards as well as the hours needed for corrections officers' compulsory minimum training standards. The proposed action will remove the performance objectives for the compulsory minimum training standards, and individuals will be directed to the Department of Criminal Justice Services website to view the objectives. Additionally, the proposed action will address the approval authority of the Criminal Justice Services Board and the Committee on Training and make other changes to update the regulation.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: November 18, 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.

V.A.R. Doc. No. R16-2873; Filed September 18, 2015, 10:12 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider promulgating **6VAC20-290, Rules Relating to Minimum Training Standards for Juvenile Corrections Officers**. The purpose of the proposed action is to establish minimum training standards for juvenile corrections officers employed by the Department of Juvenile Justice pursuant to Chapter 159 of the 2012 Acts of Assembly.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: November 18, 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.

V.A.R. Doc. No. R16-3958; Filed September 17, 2015, 2:03 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Titles of Regulations: **2VAC5-60. Rules and Regulations Governing the Operation of Livestock Markets (repealing 2VAC5-60-10 through 2VAC5-60-90).**

2VAC5-61. Rules and Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock (adding 2VAC5-61-10 through 2VAC5-61-80).

2VAC5-120. Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle (repealing 2VAC5-120-10 through 2VAC5-120-80).

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

Effective Date: November 19, 2015.

Agency Contact: Charles Broaddus, D.V.M., Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-4560, FAX (804) 371-2380, or email charles.broaddus@vdacs.virginia.gov.

Summary:

This regulatory action repeals 2VAC5-60 and 2VAC5-120 and promulgates a new regulation, 2VAC5-61, Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases. The regulation (i) provides for the operation of Virginia's livestock marketing facilities, including requirements for sanitation and official identification and recordkeeping, and (ii) removes the obsolete requirement that breeding cattle sold at livestock markets be tested for brucellosis. Changes since the proposed stage of the regulation include (i) removing camels, llamas, and alpacas from regulation provisions; (ii) allowing 48 hours, instead of 24 hours, for removal of dead livestock from marketing facility premises; (iii) requiring livestock be individually identified before leaving a marketing facility and allowing the marketing facility to charge a fee for performing such identification; and (iv) prohibiting livestock to reside or be slaughtered at a marketing facility.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's

response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 61

REGULATIONS GOVERNING LIVESTOCK DEALERS AND MARKETING FACILITIES FOR THE PURPOSE OF CONTROLLING AND ERADICATING INFECTIOUS AND CONTAGIOUS DISEASES OF LIVESTOCK

2VAC5-61-10. Definitions.

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

"Animal waste" means livestock or poultry excreta and associated feed losses, bedding, litter, or other materials.

"Breeding cattle" means all sexually intact cattle 18 months of age or older as evidenced by the presence of one or more permanent incisor teeth, all female cattle that have produced a calf or are exhibiting signs of pregnancy, all sexually intact females of dairy type regardless of age, and any sexually intact bovine of any age that is purchased or sold with the intent that it be used for breeding purposes.

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

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

"Dairy type" means all cattle of, or primarily of, 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.

"Dealer" means any person who engages in or facilitates, including by electronic means, the business of buying, selling, auctioning, exchanging, or otherwise transferring ownership of livestock in the Commonwealth for his own account or that of another person. A person who only sells livestock of his own production or who buys livestock only for his own production purposes shall not be considered a dealer under this chapter.

"Feeder cattle" means all cattle other than breeding cattle and slaughter cattle.

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

"Marketing facility" means a livestock market; stockyard; buying station; auction, consignment, or other sale venue; or

Regulations

any other premises including those operating video, web-based, telephone, or other types of electronic sales methods, where livestock from multiple owners are commingled and assembled for sale or exchange in the Commonwealth.

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

"Premises" means all grounds, structures, and associated equipment used by the livestock facility including yards, docks, pens, paddocks, alleys, sale rings, chutes, scales, and means of conveyance.

"Slaughter cattle" means those cattle that are purchased by or shipped without diversion to a state or federally inspected slaughter establishment for immediate slaughter.

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

"State waters" means all waters of any river, creek, branch, lake, reservoir, pond, bay, roadstead, estuary, inlet, spring, or well and bodies of surface or underground water, natural or artificial, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

2VAC5-61-20. Registration.

A. Each dealer in the Commonwealth shall be registered with the State Veterinarian by application to the State Veterinarian on forms that he provides. Each dealer shall renew his registration by no later than January 8 of each even-numbered year thereafter. Anyone operating as a dealer who fails to register is guilty of a violation of this chapter.

B. The State Veterinarian may, after due notice and opportunity for a hearing, deny, suspend, or cancel the registration of a dealer when the State Veterinarian has determined that the dealer has:

1. Violated state or federal laws or regulations governing the interstate or intrastate movement, shipment, or transportation of livestock;
2. Made false or misleading statements in the application for registration;
3. Removed or altered the official identification of livestock;
4. Failed to carry out the requirements of this chapter; or
5. Made false or misleading entries in the records that are required by this chapter.

2VAC5-61-30. Identification of livestock.

A. All livestock, other than feeder cattle that are not of a dairy type, that are handled by or otherwise under the scope of business of each dealer and marketing facility shall be officially identified [upon arrival at the marketing facility]. [~~Each~~ For those livestock that are not identified upon arrival, each] dealer and marketing facility shall cause official identification to be applied to any livestock handled by or otherwise under the scope of their business that is not already

officially identified [before leaving the marketing facility and may charge a fee for this service].

B. Official identification.

1. Official identification for cattle shall be an ear tag bearing a unique identification number issued by an official state or federal program or other form of identification approved by the State Veterinarian. For slaughter cattle only that are purchased by a registered dealer, a U.S. Department of Agriculture back tag shall also be considered official identification.

2. Official identification for sheep and goats shall be any form of identification approved by the U.S. Department of Agriculture scrapie eradication program or other form of identification approved by the State Veterinarian.

3. Official identification for swine shall be a unique and permanent group or individual identification number issued by an official state or federal program and applied to each animal or other forms of identification approved by the State Veterinarian.

4. [~~Official identification for alpacas, camels, and llamas shall be a microchip, scrapie serial tag, or other forms of identification approved by the State Veterinarian.~~

5.] Official identification for horses shall be a microchip, registration tattoo, brand, name, and complete physical description as listed or demonstrated by photographs on either a current certificate of veterinary inspection or Coggins test certificate, or other form of identification approved by the State Veterinarian.

C. Official identification shall not be altered or removed.

2VAC5-61-40. Records.

A. Each dealer and marketing facility shall keep records of the following information, which shall be recorded in a timely fashion upon the completion of each transaction:

1. Record of the official identification numbers of all livestock handled or otherwise under the scope of business other than feeder cattle that are not of a dairy type.
2. The name and physical address of the person, firm, or agent from whom each animal was purchased and the date of such purchase.
3. The name and physical address of the person, firm, or agent to whom each animal was sold and the date of such sale.

B. Records required by this section shall be kept for at least five years. Every dealer or marketing facility, during all reasonable hours, shall permit the State Veterinarian to have access to and be able to copy any records made and retained as required by this section.

C. The State Veterinarian may allow for the records required by this section to be submitted to him in an electronic format he prescribes. Such records, properly submitted electronically to the State Veterinarian, are exempt from the requirement that they be retained for at least five years.

2VAC5-61-50. Inspection of marketing facilities.

All marketing facilities shall be under the jurisdiction of the State Veterinarian and available for his inspection. The State Veterinarian shall assign a designee to each marketing facility for the following purposes:

1. To be present before, during, or after the operation of the marketing facility as necessary for the purpose of ensuring compliance with this chapter.
2. To ensure that livestock bear official identification and that proper record is made of each transaction as required by this chapter.
3. To ensure that livestock are handled in accordance with the Virginia Comprehensive Animal Care laws (§ 3.2-6500 et seq. of Title 3.2 of the Code of Virginia).
4. To ensure proper disposition of all sick or diseased livestock offered for sale in accordance with this chapter or other orders of the State Veterinarian.
5. To make a thorough inspection of the marketing facility to determine if the premises are maintained in a clean, sanitary, and orderly manner.

2VAC5-61-60. Operation of marketing facilities.

A. The premises shall be maintained in a state of good repair. The marketing facility shall contain appropriately constructed and well-lighted livestock handling chutes, pens, and alleys for the inspection, identification, vaccination, and testing of livestock. Electrical power shall be provided.

B. The premises shall be maintained in a clean, sanitary, and orderly manner at all times and must be cleaned after each use. The sanitation process shall prevent contamination of state waters, production of noxious odors, and the breeding of insects or vermin. Run-off water shall be diverted from livestock holding areas.

C. The marketing facility shall be sprayed with disinfectant on a monthly basis or as otherwise required by the State Veterinarian. All alleys, scales, docks, pens, and rings in which livestock have been housed since the previous application of disinfectant must be cleaned of all bedding and animal waste so that the base surfaces can be thoroughly sprayed. No area shall be sprayed that has not been properly cleaned.

D. Isolation pens shall be provided that are clearly labeled, adequately drained, constructed of materials able to withstand frequent cleaning and disinfection, and cleaned and disinfected between each use.

E. Condemned and diseased livestock shall be penned separately from other livestock and shall be removed from the premises within 24 hours of the sale. Such pens shall be plainly marked "For Slaughter Only."

F. Dead animals shall be immediately moved to a designated area of the premises out of public view and removed from the premises within [24 48] hours.

G. The marketing facility shall ensure that feed and water can be provided to livestock in an appropriate manner when needed or as directed by the State Veterinarian.

[H. Livestock may not be slaughtered or processed at the marketing facility.

I. Livestock shall not reside at the marketing facility.]

2VAC5-61-70. Restriction of livestock movement.

A. Shipment of livestock into other states shall be subject to all federal laws and regulations governing the interstate shipment of livestock and in conformity with the requirements of the state of destination.

B. Whenever the State Veterinarian has reason to suspect or knowledge that a threat to the livestock industry or to public safety exists by the continued conduct of business by a marketing facility or dealer, he may restrict or prohibit the conduct of the marketing facility's or dealer's business for such time as the threat or condition exists.

C. Whenever the sanitation of a marketing facility is not maintained as required in 2VAC5-61-60, the State Veterinarian may, at his discretion, (i) prohibit the use of certain areas of the marketing facility or (ii) limit the activities of such facility with regards to the type or to the destination of livestock sold in such facility. This restriction shall remain in effect until the State Veterinarian has determined that the marketing facility is in compliance.

[2VAC5-61-80. Penalty.

Any person who violates any of the provisions of this chapter is guilty of a Class 1 misdemeanor.]

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

FORMS (2VAC5-61)

[Application for Registration: Virginia Livestock/Poultry Dealers and Marketing Facilities, Form VDACS-03214 \(eff. 11/13\)](#)

VA.R. Doc. No. R13-3709; Filed September 18, 2015, 1:54 p.m.

Proposed Regulation

Titles of Regulations: 2VAC5-110. Rules and Regulations Pertaining to a Pound or Enclosure to Be Maintained by Each County or City (repealing 2VAC5-110-10 through 2VAC5-110-110).

2VAC5-111. Public and Private Animal Shelters (adding 2VAC5-111-10 through 2VAC5-111-40).

Statutory Authority: § 3.2-6501 of the Code of Virginia.

Regulations

Public Hearing Information:

December 10, 2015 - 10:30 a.m. - Virginia State Capitol,
Senate Room 3, 1000 Bank Street Richmond, VA 23219

Public Comment Deadline: December 18, 2015.

Agency Contact: Dr.Carolynn Bissett, Program Manager,
Animal Care and Emergency Response, Department of
Agriculture and Consumer Services, P.O. Box 1163,
Richmond, VA 23218, telephone (804) 786-2483, FAX (804)
371-2380, TTY (800) 828-1120, or email
carolynn.bissett@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 grants the board the authority to adopt regulations
in accordance with the provisions of Title 3.2 of the Code of
Virginia.

This action is proposed pursuant to § 3.2-6501 of the Code of
Virginia, which authorizes the board to adopt regulations
consistent with the intent and objectives of the
Comprehensive Animal Care Laws (Chapter 65 (§ 3.2-6500
et seq.) of Title 3.2 of the Code of Virginia) pertaining to the
care of animals.

Specifically, this proposed action is consistent with the intent
and objectives of §§ 3.2-6546 (concerning public animal
shelters) and 3.2-6548 (concerning private animal shelters) of
the Code of Virginia.

Purpose: The Board of Agriculture and Consumer Services
currently regulates public animal shelters under 2VAC5-110.
This body of regulation, which has not been substantively
amended since 1985, sets standards of facility construction
and animal housing intended to ensure that companion
animals held in the public interest are protected from injury or
illness. These regulations apply to all animals housed in the
facility, including those that have satisfied or are not subject
to a stray or other holding period. Private animal shelters that
confine companion animals subject to a holding period are
currently unregulated.

The proposed regulation is intended to ensure that a
consistent standard of confinement and care is applied to all
companion animals held in the public trust while removing
redundant provisions and provisions that are burdensome to
public animal shelters holding animals for the purpose of
facilitating adoption. It also seeks to ensure proper oversight
of the provision of veterinary treatment and requires that all
animals be provided a resting platform, bedding, or a perch as
appropriate.

The confinement of animals in animal shelters is intended to
protect citizens from potential public health and safety risks
associated with free-roaming dogs. Additionally, the
regulations requiring confinement of loose animals and a
holding period are intended to protect the property rights of
individuals, as companion animals are considered personal
property under Virginia law.

Substance: The board intends to repeal 2VAC5-110, the
current regulation pertaining to public animal pounds, and
replace it with the proposed regulation pertaining to both
public and private animal shelters. The following points will
be addressed in this proposed regulatory action:

1. The current language concerning minimum animal
housing standards and individual cage construction and
size has been refined and applied to the housing of
animals subject to a holding period in both public and
private animal shelters.
2. The current language concerning facility sanitation,
ventilation, food preparation and storage, and drinking
water devices has been refined and applied to both public
and private animal shelters in the proposed regulation.
3. The current language concerning water supply, waste
disposal, and euthanasia has been eliminated. These
topics are fully addressed in the Code of Virginia or
elsewhere in the Virginia Administrative Code.

New provisions have been put in place concerning the
provision of veterinary treatment, control of contagious and
infectious disease, the care of compromised animal
populations, and the provision of a resting platform or
bedding.

Issues: This regulatory action offers advantages to the public
and the Commonwealth. The currently regulated
community—public animal shelters and the localities that
operate them—have asked the Department of Agriculture and
Consumer Services (VDACS) to provide them with greater
flexibility in housing animals that are not subject to a holding
period. This flexibility will allow localities to better serve the
public. Clarification of expectations regarding veterinary
treatment will help to better protect the public's interests in
Virginia's companion animal populations.

2VAC5-110 has not been substantively amended since 1985.
In the past 30 years, the scope of activities of many public
animal shelters throughout the Commonwealth has
significantly increased. Such facilities are routinely housing
companion animals beyond the statutory holding periods
established for stray animals in order to promote the adoption
or transfer of these animals. The current regulations can
preclude the implementation of housing and enrichment
practices that are considered industry standard for the long-
term housing of animals. Concurrently, private animal
shelters are confining companion animals subject to holding
periods on a routine basis without regulation. VDACS has
determined that it is in the public interest to ensure that all
companion animals in shelter facilities subject to a holding
period be maintained in a manner that protects the animals
from injury, illness, and theft for this short period while
allowing public animal shelters greater freedom in their
housing of animals that have satisfied holding period
requirements.

VDACS has also determined that greater direction concerning
the provision of veterinary treatment is needed. The Code of

Virginia mandates that veterinary treatment be provided to all animals when needed. Public and private animal shelters need to allocate sufficient resources for this mandated treatment and to follow an appropriate protocol in making decisions as to when treatment is warranted.

Finally, VDACS has determined that the provision of resting platforms or bedding to each animal housed in Virginia's animal shelters will offer substantive improvement in animal care in those few facilities that do not already provide such.

VDACS does not foresee 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 repeal its regulation that governs public animal shelters and replace it with a regulation that will govern both public and private animal shelters. The Board also proposes to two substantive changes for the replacement regulation which will 1) require animal shelters to provide each animal with an appropriate resting platform, bedding or perch and 2) require each shelter to have protocols for the medical treatment of animals, the control of infectious disease and the management and care of neonatal and medically compromised animals that have been approved by a veterinarian. The replacement regulation will also newly require private animal shelters to have special housing for strays that are in a holding period window.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for this regulatory proposal.

Estimated Economic Impact. Currently, the Virginia Department of Agriculture and Consumer Services (VDACS) is in charge of inspecting both public and private animal shelters. Public animal shelters are currently inspected for compliance with this Board regulation which was promulgated and became effective in 1985. Private animal shelters are currently inspected for compliance with relevant legislative requirements in Code of Virginia § 3.2-6548 and § 3.2-6557. Legislative requirements for private animal shelters are substantively the same as those contained in current regulation except that private animal shelters do not currently have to have special housing for strays that are in a holding period window (five days for stray animals with no identifying tags or chips and 10 days for animals with identifying tags or chips).

The Board now proposes to replace this current regulation with a new regulation that will apply to both public and private animal shelters. The regulations will be substantively the same except for new requirements that all animals be provided with a raised platform, bedding or perch and that all shelters have veterinarian approved protocols in place for 1) the medical treatment of animals, 2) the control of infectious disease and 3) the management and the care of neonatal and

medically compromised animals. Additionally, private animal shelters will newly be required to have separate housing for strays during the holding period if they accept the care of stray animals after the replacement regulation is promulgated.

Affected public and private animal shelters may incur costs for providing bedding for all animals in their care, if they do not already do so. If bedding must newly be acquired, animal shelters may incur no direct costs if bedding is donated. If they must purchase bedding, costs will likely range from a few dollars to \$50 per bed. Affected public and private animal shelters will also incur time costs for time spent writing required protocols and may incur fees for a veterinarian's time to approve those protocols. Board staff reports that some shelters have a full time veterinarian on staff and so would not incur extra costs for approving protocols. Animal shelters who do not have a veterinarian on staff, will likely have to pay an hourly fee that may range up to \$120 per hour for the time it takes to read and approve protocols. Board staff estimates that the approval process will take one to two hours.

Private animal shelters that currently take in stray animals will either have to incur costs for purchasing holding period compliant housing or they will have to stop taking in strays. Board staff estimates that such housing will cost between \$250 and \$1,000 per cage but also reports that shelters may choose to buy a block of six regulation compliant cages of various sizes for approximately \$2,500. The costs added for complying with new requirements may also cause shelters to be able to take in fewer animals. All costs associated with this proposed regulation must be weighed against any improvements that may accrue on account these new requirements. There is insufficient information to ascertain whether benefits will outweigh costs.

Businesses and Entities Affected. Board staff reports that approximately 94 public animal shelters maintained by localities, 15 public animal shelters that are maintained by private non-profit organizations and 43 private animal shelters will be affected by this proposed regulatory package. All of the affected private animal shelters are non-profit organizations so no businesses will be affected by this proposal.

Localities Particularly Affected. Localities with public animal shelters 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. Because this regulation will newly require private animal shelters to have special housing for strays that are in a holding period window, some private animal shelters may stop taking in strays.

Small Businesses: Costs and Other Effects. No small businesses will be affected by this proposed regulatory package.

Regulations

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses will be affected by this proposed regulatory package.

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 DPBs 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 concerning the proposed regulation, 2VAC5-111, Rules and Regulations Pertaining to Public and Private Animal Shelters, but offers additional information regarding private animal shelters.

Private animal shelters are not mandated to house stray or unowned animals that are subject to a holding period. Section 3.2-6546 of the Code of Virginia requires localities to maintain a public animal shelter to house stray or unowned animals that are subject to a holding period. Thus, if a private animal shelter chooses to refer all animals subject to a holding period to the appropriate public animal shelter it will not incur any costs related to obtaining compliant housing. Alternatively, if a private animal shelter chooses to house stray or unowned animals that are subject to a holding period and the shelter does not already possess compliant housing, it could incur costs between \$250 and \$1,000 per cage depending on the cage size. The shelter may also choose to purchase a block of six compliant cages of various sizes for approximately \$2,500.

Summary:

The Board of Agriculture and Consumer Services proposes to repeal its regulation that governs public animal shelters and replace it with a regulation that will govern both public and private animal shelters. The board also proposes substantive changes for the replacement regulation that will (i) require animal shelters to provide each animal with an appropriate resting platform, bedding, or perch; (ii) require each shelter to have protocols that have been approved by a veterinarian for the medical treatment of animals, the control of infectious disease, and the management and care of neonatal and medically compromised animals; and (iii) require private animal shelters to have special housing for strays that are subject to a holding period.

CHAPTER 111

PUBLIC AND PRIVATE ANIMAL SHELTERS

2VAC5-111-10. Definitions.

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

"Animal" means any nonaquatic companion animal that is in the custody of a public or private animal shelter and that is confined in or on the premises of the animal shelter.

"Enclosure" means a structure used to house or restrict animals from running at large such as a room, pen, cage, run, compartment, hutch, terrarium, or otherwise confined habitat.

"Facility" means a public animal shelter or private animal shelter as defined in § 3.2-6500 of the Code of Virginia.

2VAC5-111-20. General provisions.

A. Each facility shall be kept in a clean, dry, and sanitary condition and shall provide enclosures that can safely house and allow for adequate separation of animals of different species, sexes, ages, and temperaments. Animals shall be maintained in a manner that protects them against theft, injury, escape, and exposure to harmful substances.

B. Each facility shall ensure that all enclosures provide adequate shelter that is properly ventilated and that can be

maintained at a comfortable temperature for the animals confined therein. An enclosure shall not be cleaned when occupied by an animal unless the animal can be further confined in a portion of the enclosure that precludes exposure to any cleaning agent including water and shall be thoroughly dry before the enclosure is returned to use. A disinfectant or germicidal agent shall be used when cleaning an enclosure.

C. Each facility shall reasonably endeavor to ensure that drinking water is available to each animal at all times unless otherwise ordered by a licensed veterinarian. Drinking water receptacles or bowls shall be secured to the enclosure in a fixed position or otherwise be of a design that cannot be tipped over by an animal and shall be maintained in sanitary condition.

D. Each facility shall ensure that animals are adequately and appropriately fed according to their species and age and that feed is stored in a manner that prevents spoilage, infestation, and contamination. All feed delivery utensils and receptacles shall be properly cleaned between uses.

E. Each facility shall ensure that each animal is provided access to a resting platform, bedding, or perch as appropriate to its species, age, and condition. All enclosures shall have solid floors.

2VAC5-111-30. Provision of veterinary treatment.

A. Each facility shall engage a licensed veterinarian to develop or ratify a protocol for determining if an ill, injured, or otherwise compromised animal requires treatment by a licensed veterinarian. Each facility shall adhere to this protocol and provide veterinary treatment when needed.

B. Each facility shall engage a licensed veterinarian to develop or ratify a protocol for the control of infectious and contagious disease and shall adhere to such protocol. Each facility shall provide a marked isolation room for the confinement of animals suffering from a contagious or infectious disease.

C. Each facility shall engage a licensed veterinarian to develop or ratify a protocol for the management of neonatal and medically compromised animals and shall adhere to such protocol. Enclosures shall be maintained that can properly and safely house such animals.

2VAC5-111-40. Housing of animals subject to a holding period.

A. An enclosure or portion thereof used to house an animal subject to a holding period shall be entirely constructed of materials that are durable, nonporous, impervious to moisture, and able to be thoroughly cleaned and disinfected.

B. An enclosure or portion thereof used to house an animal subject to a holding period that is part of the structural integrity of the building shall have a surface material that is durable, nonporous, impervious to moisture, and able to be thoroughly cleaned and disinfected.

C. All structures contained within an enclosure or portion thereof shall be constructed of materials that are durable,

nonporous, impervious to moisture, and able to be thoroughly cleaned and disinfected unless discarded or laundered daily.

D. An enclosure and all structures therein used to house an animal subject to a holding period shall be thoroughly cleaned and disinfected before use by a different animal.

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 (2VAC5-111)

[Animal Facility Inspection Report, VDACS AC-10 \(rev. 7/2015\)](#)

[Animal Facility Inspection Form - Shelter, VDACS AC-10-A \(rev. 7/2015\)](#)

[Animal Facility Inspection Form – Animal Care, VDACS AC-10-B \(rev. 7/2015\)](#)

[Animal Facility Inspection Form – Operations, VDACS AC-10-C \(rev. 7/2015\)](#)

VA.R. Doc. No. R14-4009; Filed September 25, 2015, 9:12 a.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Final Regulation

Title of Regulation: 4VAC10-30. Virginia State Forests Regulations (amending 4VAC10-30-40, 4VAC10-30-120, 4VAC10-30-200, 4VAC10-30-210).

Statutory Authority: § 10.1-1101 of the Code of Virginia.

Effective Date: November 19, 2015.

Agency Contact: Andres Alvarez, Chief of Administration, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 220-9022, FAX (434) 977-7749, or email andres.alvarez@dof.virginia.gov.

Summary:

In accordance with Chapter 484 of the 2012 Acts of Assembly, the amendments require any person 16 years of age or older who hunts, fishes, traps, rides a bike, or rides a horse in a state forest to purchase an annual special use permit for a fee of \$15.

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

Regulations

4VAC10-30-40. Permits.

A permit to do any act shall authorize the same only insofar as it may be performed in strict accordance with the terms and conditions thereof. Any violation by its holder or his agents or employees of any term or condition thereof shall constitute grounds for its revocation by the department, or by its authorized representative. In case of revocation of any permit, all moneys paid for or on account thereof shall, at the option of the department, be forfeited to and be retained by it; and the holder of such permit, together with his agents and employees who violated such terms and conditions, shall be jointly and severally liable to the department for all damages and loss suffered by it in excess of money so forfeited and retained; but neither such forfeiture and retention by the department of the whole or any part of such moneys nor the recovery or collection thereby of such damages, or both, shall in any manner relieve such person or persons from liability to punishment for any violation of any provision of any Virginia State Forests Regulation. A state forest ~~hunting special use~~ permit will be required to hunt ~~or~~ trap, fish, ride bikes, or ride horses on any state forest or portion thereof on which hunting ~~and~~ trapping, fishing, riding bikes, or riding horses is permitted.

4VAC10-30-120. Charges.

No person 16 years of age or older shall make, use, or gain admittance to, or attempt to use or gain admittance to the facilities in any forest for the use of which a ~~charge special use permit is made required~~ by the department unless he shall ~~pay the charge or price fixed by the department~~ obtain a special use permit and pay an annual fee of \$15. Any person under 16 years of age may hunt, trap, fish, ride bikes, or ride horses on any state forest and is not required to obtain a special use permit or pay an annual fee.

4VAC10-30-200. Hunting and fishing.

No person within the confines of any forest, shall hunt, trap, shoot, injure, kill or molest in any way any bird or animal, nor shall any person have in his possession any bird or animal, dead or alive, within the forest except any bird or animal designated as a game bird or animal by the Virginia Board of Game and Inland Fisheries, and the trapping of, hunting of, shooting at, or possession of any such bird or animal is prohibited except during the lawful hunting season set for the forest or portion thereof by the Virginia Board of Game and Inland Fisheries and only in those forests or portion thereof designated by the Forest Superintendent as lawful hunting areas. A state forest ~~hunting special use~~ permit will be required. All provisions of the Virginia Code concerning hunting must be complied with.

4VAC10-30-210. Fishing.

Fishing is permitted in designated areas in each forest, the only stipulation being that persons fishing must have a state fishing license, have a special use permit, and comply with the Virginia Game and Inland Fisheries rules and regulations.

VA.R. Doc. No. R13-3185; Filed September 18, 2015, 11:46 a.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-110. Pertaining to Lobsters (amending 4VAC20-110-60, 4VAC20-110-65).**

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

Effective Date: October 1, 2015.

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

Summary:

The amendments establish a no-cost commercial lobster permit required for (i) any American lobster harvester using any gear or methods other than lobster traps in Virginia waters and (ii) any boat or vessel to possess or land American lobster in Virginia for commercial purposes.

4VAC20-110-60. License ~~required~~ and permit requirements.

A. In accordance with the provisions of § 28.2-201 of the Code of Virginia, the Marine Resources Commission does hereby establish a Lobster Boat License to be valid for one calendar year and does hereby require that each such vessel engaged in the fishing for or landing of lobster within or upon the waters within the jurisdiction of the Commonwealth procure and display such license provided that such vessel be not otherwise licensed for fishing by the Marine Resources Commission or engaged in the use of fishing gear that is not otherwise licensed by the Marine Resources Commission.

B. In accordance with the provisions of § 28.2-201 of the Code of Virginia, the Marine Resources Commission establishes a no cost commercial lobster permit for any American lobster harvester using any gear or methods other than lobster traps in Virginia waters.

C. It shall be unlawful for any boat or vessel to possess or land American lobster in Virginia for commercial purposes without first obtaining a Virginia lobster permit, as described in subsection B of this section, or a Federal Lobster Permit.

4VAC20-110-65. Landing limit.

Landings by fishermen using gear or methods other than lobster traps (nontrap fishermen) shall be limited to no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips five days or longer. Possession by any nontrap fishermen aboard any vessel on Virginia waters or the landing by any nontrap

fishermen of quantities greater than those specified shall constitute a violation of this chapter.

VA.R. Doc. No. R16-4501; Filed September 24, 2015; 2:27 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-40 through 4VAC20-720-80).**

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

Effective Date: October 1, 2015.

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

Summary:

The amendments establish a hand scrape season for public oyster grounds in the Pocomoke Sound Area - Public Ground 10 from November 2, 2015, through November 13, 2015, except as otherwise limited.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in the following subdivisions of this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2015, through April 30, 2016.
2. Milford Haven: December 1, 2015, through February 29, 2016.
3. Rappahannock River Area 9: November 1, 2015, through December 31, 2015.
4. Little Wicomico River: October 1, 2015, through December 31, 2015.
5. Coan River: October 1, 2015, through December 31, 2015.
6. Yeocomico River: October 1, 2015, through December 31, 2015.
7. Nomini Creek: October 1, 2015, through December 31, 2015.
8. Mobjack Bay Area: January 1, 2016, through January 31, 2016.
9. Rappahannock River Rotation Area 5: October 1, 2015, through November 30, 2015.

10. Rappahannock River Rotation Area 3: November 1, 2015, through December 31, 2015.

11. Great Wicomico River Area: December 1, 2015, through January 31, 2016.

12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, 2015, through January 31, 2016.

13. James River Area and the Thomas Rock Area (James River): November 1 2015, through December 31, 2015, and March 1, 2016, through March 31, 2016.

14. Pocomoke and Tangier Sounds Rotation Area 1: December 1, 2015, through February 29, 2016.

15. Pocomoke Sound Area - Public Ground 10: November 2, 2015, through November 13, 2015.

~~15.~~ 16. Deep Rock Area: December 1, 2015, through February 29, 2016.

~~16.~~ 17. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2015, through March 31, 2016.

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in the following subdivisions of this subsection.

1. James River Seed Area: October 1, 2015, through May 31, 2016.

2. Deep Water Shoal State Replenishment Seed Area: October 1, 2015, through May 31, 2016.

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. From October 1, 2015, through December 31, 2015, it shall be unlawful to take, catch, or possess oysters on any Friday from the public oyster grounds or unassigned grounds described in 4VAC20-720-40 B 9 through B ~~14~~ 15.

C. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through B ~~15~~ 16 and 4VAC20-720-40 C. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Area, including the Deep Water Shoal

Regulations

State Replenishment Seed Area, the Rappahannock River Area 9, Milford Haven, Little Wicomico River, Coan River, Nomini Creek and Yeocomico River, except by hand tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters from the seaside of the Eastern Shore area by any gear, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation Areas 3 and 5, James River Area, Thomas Rock Area, Upper Chesapeake Bay Blackberry Hangs Area, Mobjack Bay Area, ~~and~~ Great Wicomico River Area, and Pocomoke Sound Area - Public Ground 10, by any gear except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation Area 1, except by an oyster dredge.

F. It shall be unlawful to harvest oysters from the Deep Rock Area, except by an oyster patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, Mobjack Bay Area, ~~and~~ Great Wicomico River, and Pocomoke Sound Area - Public Ground 10, unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish with an oyster dredge from the public oyster grounds in the Pocomoke and Tangier Sounds Rotation Area 1, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish with a patent tong from the public oyster grounds in the Deep Rock Area, unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish with a hand tong from the public oyster grounds, as described in 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

E. It shall be unlawful for any person to harvest shellfish by hand from the public oyster grounds on the Seaside of the Eastern Shore, as described in 4VAC20-720-40 B ~~46~~ 17, unless that person has first obtained a valid oyster by hand license.

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. 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 ~~44~~ 15.

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. 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 ~~45~~ 16, 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.

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. R16-4500; Filed September 24, 2015, 3:12 p.m.



TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

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

Title of Regulation: 6VAC20-40. Rules Relating to Compulsory Minimum Training Standards for Undercover Investigative Officers (repealing 6VAC20-40-10 through 6VAC20-40-60).

Statutory Authority: § 9.1-102 of the Code of Virginia.

Effective Date: November 19, 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.

Summary:

Chapter 278 of the 2015 Acts of Assembly eliminates the requirement that the Department of Criminal Justice Services establish training courses for undercover investigation work that is designed to be conducted for law-enforcement officers who have not completed the compulsory law-enforcement officer minimum training standards. This action repeals the associated regulations as unnecessary.

VA.R. Doc. No. R16-4375; Filed September 18, 2015, 3:15 p.m.

Proposed Regulation

Title of Regulation: 6VAC20-230. Regulations Relating to Special Conservator of the Peace (amending 6VAC20-230-30, 6VAC20-230-90).

Statutory Authority: § 9.1-150.2 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 the public hearing must present a photo ID at the security desk when entering the building.)

Public Comment Deadline: December 18, 2015.

Agency Contact: Barbara Peterson-Wilson, Director of Policy and Legislative Affairs, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-6344, or email barbara.peterson-wilson@dcjs.virginia.gov.

Basis: Section 19.2-13 of the Code of Virginia requires persons appointed as a special conservator of the peace to be covered by a policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Criminal Justice Services Board. Pursuant to § 9.1-150.2 of the Code of Virginia, the Criminal Justice Services Board is statutorily authorized to establish the amount and type of insurance coverage required for special conservators of the peace. It also has the statutory authority to adopt regulations establishing the qualifications of applicants for registration and to administer the regulatory system promulgated by the board.

Purpose: Special conservators of the peace (SCOPs) are unique actors in that they are typically citizens granted full arrest authority equivalent to law-enforcement officers.

SCOPs can carry firearms and use lethal force when effecting arrests; they can use the seal of the Commonwealth and the word "police" on their badges and uniforms. SCOPs engage in similar activities as law enforcement, such as enforcing the laws of the Commonwealth, making arrests, and dealing with dangerous people and situations while on duty. Because their authority, responsibilities, and actions are similar to that of law-enforcement officers, SCOPs need to be adequately and similarly protected from potential claims of wrongdoing. Unlike governmental actors, who enjoy a certain degree of protection, coverage and in some cases, immunity, SCOPs employed by private corporations likely enjoy no immunity for their actions and therefore need adequate coverage when claims are made against them. For the same reasons, citizens interacting with SCOPs must also be afforded some degree of protection or ability to be made whole after suffering wrongdoing or misconduct by SCOPs.

Currently an SCOP applicant is required to maintain either a \$10,000 surety or cash bond or a \$10,000 general liability insurance policy. The \$10,000 bond amount is the minimum amount that the board can fix pursuant to § 19.2-13 of the Code of Virginia; this requirement will be removed from the Code of Virginia pursuant to Chapters 766 and 772 of the 2015 Acts of Assembly. The Code of Virginia does not specify a minimum amount of insurance and provides the board with the authority to fix the amount and type of insurance coverage. The board evaluated the established minimum standards to determine whether it adequately protected individual SCOPs, employers of SCOPs, and private citizens interacting with SCOPs.

To this end, the board sought additional information and input from the Department of Criminal Justice Services (DCJS) and the Private Security Services Advisory Board (PSSAB). An expert from the Virginia Municipal League (VML) and an expert from the Virginia Department of Taxation, Division of Risk Management (DRM) both presented information to the board about bonds and insurance as it relates to the coverage of individuals with arrest authority. VML is statutorily authorized to provide insurance whose members include local governments, towns, and counties. VML is the insurance company for 150 police departments in Virginia. The Division of Risk Management protects Virginia's state government, other public entities, and certain qualified individuals from financial loss caused by legal liability, loss to property, and other hazards. DRM protects a diverse range of exposures for state government, constitutional officers, local governments, and others throughout Virginia.

The experts indicated that a cash bond is a bond paid in cash and is not secured by property or real estate. They further advised that cash and surety bonds merely protect an employer from dishonest acts of the employee (such as theft) and speculated that the bond requirement for special conservators was an antiquated method that was likely codified in § 19.2-13 prior to the emergence of insurance. Both experts advised that bonds do not act like insurance and

Regulations

do nothing to protect the public from misconduct or injury inflicted by special conservators of the peace. Ideally, the SCOP would be covered by both a bond (to protect the employer) and liability insurance (to protect the SCOP and public). The expert from DRM advised that additional coverage of a \$500,000 faithful performance bond exists for all state employees.

The board was advised of the different types of insurance. General liability insurance covers situations resulting in injury or damage to another person or property. Self-insurance of one's property or interests against possible loss is established through a special fund for that specific purpose, instead of seeking coverage with an underwriter. Self-insurance is typically used by local and state governments. Law-enforcement liability insurance, a type of professional insurance, covers what general liability insurance does not, namely actions and misconduct arising out of arrests or the enforcement of criminal laws. Law-enforcement liability insurance covers errors of judgment (what the SCOP should have done), such as excessive use of force, wrongful detention, racial profiling, and infliction of mental anguish. Most law-enforcement claims are for errors of judgment and excessive use of force and, to a lesser degree, include claims for racial profiling and mental anguish. The main difference between general liability insurance and professional law-enforcement liability is that professional law-enforcement liability covers specific actions arising out of law-enforcement duties and actions.

The experts also advised the board that the industry standard for coverage of individuals with arrest authority is \$1 million in professional law-enforcement coverage. VML insures all of its member officers and special conservators of the peace for at least \$1 million per occurrence, and many police departments pay for additional coverage. By statute, sheriffs are covered by a \$1.5 million liability policy and a \$500,000 fidelity bond. The experts informed the board that there is a healthy, commercial market available for the purchase of professional law-enforcement liability.

In summary, the experts advised that a \$10,000 bond and a \$10,000 general liability insurance plan was not adequate coverage to (i) provide recourse for an individual harmed by SCOP actions or misconduct or (ii) protect the SCOP from claims arising out of his law-enforcement activities.

Prior to making a decision, the board also sought advice from the Private Security Services Advisory Board. The PSSAB recommended that the board increase the bond amount to \$100,000 and to change the insurance amount and type to \$500,000 in a general liability insurance plan. DCJS recommended increasing the bond amount to \$100,000 and changing the insurance amount and type to \$500,000 in professional law-enforcement liability insurance.

After considering all information and recommendations from experts, DCJS, and PSSAB, and mindful of ensuring the health, safety, and welfare of citizens and special

conservators of the peace arising out of the law-enforcement duties of SCOPs, the board decided at its June 2014 meeting that special conservators of the peace must maintain either a \$100,000 surety or cash bond or \$500,000 professional law-enforcement liability in order to become eligible for registration and appointment. On May 7, 2015, the board decided to remove the proposal to increase the surety or cash bond and to strike the requirement from the regulations to conform to statutory language enacted by Chapters 766 and 772 of the 2015 Acts of Assembly.

Substance: The proposed changes reflect the board's statutory authority to amend the \$10,000 general liability or self-insurance to a minimum of \$500,000 in professional law-enforcement liability insurance. Further, the proposed changes reflect the removal of the cash or surety bond option to conform to the change in the Code of Virginia as enacted in Chapters 766 and 772 of the 2015 Acts of Assembly.

Issues: The primary advantage to the public is ensuring an increased opportunity for recourse in the event that an individual is harmed as a result of interacting with an SCOP. Individual SCOPs are also provided with increased liability protection for actions arising out of their conduct. The current requirements do nothing to protect the individual SCOP from defending against actions arising out of their errors of judgment. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to amend its regulation for special conservators of the peace (SCOP) to change the type of insurance that SCOPs must be covered under and to increase the amount of insurance required from \$10,000 to \$500,000. Pursuant to Chapter 772 of the 2015 Acts of the Assembly, the Board also proposes to eliminate language that allowed SCOPs to carry a surety bond instead of insurance.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for this proposed regulatory action.

Estimated Economic Impact. Current regulation requires that special conservators of the peace (SCOP) have either a surety bond worth at least \$10,000 or have at least \$10,000 in comprehensive general insurance. In 2015, the General Assembly eliminated the choice for SCOPs to secure surety bonds; Board staff reports that the General Assembly made this change to SCOP legislation because surety bonds normally only provide coverage against economic losses caused by the covered employees theft and, so, would be an inappropriate instrument to cover SCOPs for claims made against them and to provide protection for the public from the misconduct of SCOPs.

For this reason, the Board also proposes to change the type of insurance required for SCOPs from comprehensive general

insurance liability insurance to professional law-enforcement liability insurance which covers actions and misconduct that may arise during arrests or the enforcement of criminal laws. Upon consultation with the Private Security Services Advisory Board, the Virginia Municipal League and the Department of Taxation's Division of Risk Management, the Board also proposes to increase the amount of insurance coverage required from \$10,000 to \$500,000. Board staff reports that the proposed insurance coverage will likely cost individual SCOPs or their employers in the range of \$2,500 to \$25,000 per year. Board staff reports that rates will vary widely based on any number of factors including the revenues, operational risk and history of the employing business as well as the scope of practice of the SCOPs. Changing the type and amount of insurance required will better protect the public from harm caused by SCOP misconduct. There is insufficient information about the scope of misconduct experienced by citizens of the Commonwealth in a typical year to ascertain whether benefits will outweigh costs for these regulatory changes.

Businesses and Entities Affected. Board staff reports that there are 760 SCOPs registered with the Board. Board staff estimates that less than one percent of these SCOPs are individual proprietors that would qualify as small businesses and reports that all other SCOPs are in the employ of cities, counties, state agencies or large corporations. All of these entities and their employers will be affected by these regulatory changes.

Localities Particularly Affected. Localities that employ SCOPs will be particularly affected by this proposed regulation. Localities that currently hold surety bonds on their SCOPs may see increased costs as they will have to obtain insurance for them instead. Board staff reports that five localities currently hold surety bonds on their SCOP employees. Board staff further reports that the other 30 localities that employ SCOPs have law-enforcement insurance to cover them that is already greater than the limits set by the Board. These localities will likely not see increased costs.

Projected Impact on Employment. Increasing insurance requirements in this regulatory action and the elimination of the surety bond alternative will likely increase costs for employing SCOPs and may, consequently, decrease the number of individuals who are employed in this field.

Effects on the Use and Value of Private Property. To the extent that this regulatory action raises the cost of working as an SCOP, individual proprietor SCOPs will likely see decreased profits. Individual proprietor SCOPs whose costs increase to the point that their businesses are not profitable at all will likely close those businesses and find other employment.

Large corporations that employ SCOPs may experience some decrease in profits or they may choose to employ fewer SCOPs as a result of increasing insurance requirements.

Small Businesses: Costs and Other Effects. Individual proprietor SCOPs will have to pay likely much higher insurance premiums on account of this regulatory action.

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 Department of Criminal Justice Services concurs with the

Regulations

economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) change the type of insurance under which special conservators of the peace must be covered; (ii) increase the amount of insurance required from \$10,000 to \$500,000; and (iii) pursuant to Chapters 766 and 772 of the 2015 Acts of Assembly, eliminate language allowing a special conservator of the peace to carry a surety bond instead of insurance.

6VAC20-230-30. Initial registration application.

A. Individuals are required to be registered pursuant to § 19.2-13 of the Code of Virginia in the category of special conservator of the peace. Prior to the issuance of a registration, the applicant shall meet or exceed the requirements of registration and application submittal to the department as set forth in this section. Individuals who carry or have access to a firearm while on duty must have a valid registration with firearms verification. The court may limit or prohibit the carrying of weapons by any special conservator of the peace as defined in § 19.2-13 ~~¶~~ G of the Code of Virginia.

B. Each person applying for registration shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 18 years of age;
2. Successfully complete all initial training requirements for special conservator of the peace, including firearms verification if applicable, requested pursuant to the entry-level training standards in 6VAC20-230-160; and
3. Be a United States citizen or legal resident alien of the United States.

C. Each person applying for registration shall file with the department:

1. A properly completed application provided by the department;
2. His mailing address on the application;
3. Fingerprint cards pursuant to 6VAC20-230-40;
4. The applicable, nonrefundable application fee;
5. A drug and alcohol test pursuant to ~~6VAC230-50~~ 6VAC20-230-50; and
6. Pursuant to § 19.2-13 ~~€~~ D of the Code of Virginia, documentation verifying that the applicant has secured a ~~surety bond or cash bond in the amount not to be less than \$10,000 executed by a surety company authorized to do business in Virginia, or~~ a certificate of insurance reflecting the department as a certificate holder, showing a policy of ~~comprehensive general~~ professional law-enforcement liability insurance with a minimum coverage of ~~\$10,000~~ \$500,000 issued by an insurance company authorized to do business in Virginia.

D. Upon completion of the initial registration application requirements, the department may issue a temporary registration letter for not more than 120 days at a time while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements. This temporary registration letter shall be taken to the circuit court where seeking appointment for special conservator of the peace.

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

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

G. Once the individual has met the requirements and received a temporary registration letter, he shall petition the circuit court for appointment in the jurisdiction where the individual will be employed.

H. Meeting the requirements of registration allows an individual to be eligible for appointment. Registration does not guarantee appointment.

I. Upon completion of an appointment by a circuit court, the individual shall file with the department a copy of the court order granting appointment as a special conservator of the peace. A final registration letter will be issued by the department. This registration letter shall be submitted to a specified entity for a state-issued photo identification card.

6VAC20-230-90. Reinstatement.

A. Individuals who do not renew their registration on or before the expiration date may not work as a special conservator of the peace until reinstatement requirements have been met. Pursuant to the Code of Virginia, all such persons must currently be registered with the department as a special conservator of the peace.

B. A renewal application must be received by the department within 60 days following the expiration date of the registration in order to be reinstated by the department providing all renewal requirements have been met. The department shall not reinstate renewal applications received after the 60-day reinstatement period has expired. It is unlawful to operate without a valid registration during the reinstatement period. The department shall not reinstate a registration that has become null and void due to not maintaining required insurance ~~or surety bond coverage~~. The department will notify the court when an individual has not met the registration renewal requirements with the department. Prior to reinstatement, the following shall be submitted to the department:

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

2. The applicable, nonrefundable reinstatement fee.

C. A registration shall be renewed or reinstated only when all renewal application requirements are received by the department. After the 60-day reinstatement period, an applicant shall meet all initial application requirements, including applicable training requirements.

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

VA.R. Doc. No. R15-4099; Filed September 18, 2015, 11:46 a.m.

Final Regulation

Title of Regulation: 6VAC20-280. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Field Training Officers (adding 6VAC20-280-10 through 6VAC20-280-90).

Statutory Authority: § 9.1-102 of the Code of Virginia.

Effective Date: November 18, 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, or email barbara.peterson-wilson@dcjs.virginia.gov.

Summary:

The regulation establishes minimum training standards and qualifications for the certification and recertification of law-enforcement officers serving as field training officers.

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

CHAPTER 280

RULES RELATING TO COMPULSORY MINIMUM TRAINING STANDARDS FOR LAW-ENFORCEMENT FIELD TRAINING OFFICERS

6VAC20-280-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency.

"Board" means the Criminal Justice Services Board.

"Certified training academy" means a training facility in compliance with academy certification standards operated by the state or by local units of government for the purpose of providing instruction of compulsory minimum training standards.

"Compulsory minimum training standards" means the performance outcomes and training criteria approved by the board's Committee on Training.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the department or his designee.

"Field training officer" means a certified law-enforcement officer who provides training to newly employed law-enforcement officers for the purposes of training and measuring entry-level officer performance.

"Provisional field training officer" means a certified law-enforcement officer who provides training to a newly employed law-enforcement officer for the purposes of training and measuring entry-level officer performance, but who has not met the standards as prescribed under 6VAC20-280-20. A provisional field training officer is only allowed to act as a field training officer if no other field training officer is available for that department.

6VAC20-280-20. Compulsory minimum training standards.

Pursuant to the provisions of subdivision 3 of § 9.1-102 of the Code of Virginia, the department establishes these standards [~~for~~ as the] compulsory minimum training standards for law-enforcement field training officers.

1. The course shall include a minimum of 32 hours of training and must address each of the following subjects:

- a. Field training program and the field training officer.
- b. Field training program delivery and evaluation.
- c. Training liability.
- d. Characteristics of the adult learner.
- e. Methods of instruction.
- f. Fundamentals of communication.
- g. Written test.

2. A field training officer recertification course shall include a minimum of two hours of training. The director of a certified training academy shall establish recertification criteria for that academy.

6VAC20-280-30. Applicability.

A. Every law-enforcement officer designated by the agency administrator to serve as a field training officer must meet the compulsory minimum training standards established in 6VAC20-280-20 after December 31, [~~2013~~ 2015].

B. The law-enforcement officer selected as a field training officer shall successfully complete a field training program designed by the certified criminal justice academy.

C. All officers serving as field training officers after December 31, [~~2013~~ 2015], shall be required to comply with this chapter other than for recertification.

D. A provisional field training officer must be certified by the department. A provisional field training officer certification:

Regulations

1. Requires a high school diploma or high school equivalency examination approved by the Board of Education;
2. Requires that the field training officer has met the minimum training standards for the primary function for which he is 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 courses; and
4. Is not valid for more than one year and is not renewable.

Individuals may apply for field training officer certification upon meeting the requirements of this chapter.

6VAC20-280-40. Time required for completion of training.

Effective January 1, [2014 2016], each law-enforcement officer designated by the agency administrator to serve as a field training officer shall comply with field training officer training requirements in 6VAC20-280-20 prior to serving in the capacity of that position.

6VAC20-280-50. Compliance with compulsory minimum training standards.

A. The field training officer curriculum shall be maintained in accordance with the academy certification standards. The academy director shall maintain documentation of the type of training approved, means of attaining such training, and means of testing such programs.

B. Training developed and conducted shall be subject to inspection and reviewed by the department.

C. Agencies without a certified field training officer may complete the Category 10 requirements of 6VAC20-20-21 with a certified field training officer from another Virginia criminal justice agency.

6VAC20-280-60. Grading.

A. All certified training academies shall utilize testing procedures for initial certification that indicate that the field training officer has satisfactorily completed the training standards of this chapter.

B. Academy training records must be maintained in accordance with the provisions of this chapter and §§ 42.1-76 through 42.1-90.1 of the Code of Virginia.

6VAC20-280-70. Recertification.

A field training officer's initial certification is valid for three years and may be renewed by attending a field training officer recertification course. The recertification course must contain at least two hours of training, and the director of a certified training academy shall establish recertification criteria for that academy.

6VAC20-280-80. Failure to comply with rules and regulations.

Any individual attending a certified training academy shall comply with the rules and regulations promulgated by the department. The academy director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees. If the academy director considers a violation of the rules and regulations detrimental to the welfare of the academy, the academy director may expel the individual from the academy. Notification of such action shall immediately be reported in writing to the agency administrator of the individual in accordance with the rules and regulations within the authority of the certified training academy.

6VAC20-280-90. Administrative requirements.

Records of field training officer certification and recertification shall be maintained by the employing agency.

VA.R. Doc. No. R13-2896; Filed September 17, 2015, 1:05 p.m.



TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: **9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9VAC20-110-110).**

Statutory Authority: § 10.1-1450 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 18, 2015.

Effective Date: December 3, 2015.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.harris@deq.virginia.gov.

Basis: This regulation is promulgated under the authorities of § 10.1-1450 of the Code of Virginia, which requires the Virginia Waste Management Board to promulgate regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. Additionally, the board's overall authority is provided in § 10.1-1402 of the Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia, which authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law.

Purpose: The Virginia State Police is provided grant funds through the federal government's Motor Carrier Safety Assistance Program (MCSAP) for its hazardous materials

program. A program audit by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration noted that 9VAC20-110 did not include the requirements of Subpart F of 49 CFR Part 107, which is a condition for the grant. Therefore, an amendment to 9VAC20-110-110 to add Subpart F to the list of federal regulations incorporated by reference is necessary. This amendment will provide the Virginia State Police with the ability to ensure cargo tanks used to transport hazardous material are properly registered in accordance with federal requirements and will also meet the conditions for the MCSAP grant and will provide a beneficial impact for the public's safety.

Rationale for Using Fast-Track Process: This amendment is not expected to be controversial as it is necessary to revise the regulation to meet the MCSAP grant conditions and provide the Virginia State Police with the ability to ensure hazardous material transport cargo tanks' registration, and records are in accordance with federal requirements.

Substance: The changes to the regulations have been made to include the requirements of Subpart F of 49 CFR Part 107.

Issues: There are no advantages or disadvantages to the public. The advantage to the Commonwealth is that this amendment will provide the Virginia State Police with the ability to ensure cargo tanks used to transport hazardous material are properly registered in accordance with federal requirements and will also meet the conditions for their MCSAP grant.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to amend its Regulations Governing the Transportation of Hazardous Materials to incorporate by reference 49 CFR 107 Subpart F (which is a federal regulation that includes registration and recordkeeping requirements for people who manufacture, assemble, inspect or repair certain cargo tank motor vehicles).

Result of Analysis. Benefits likely outweigh costs for this proposed regulatory change.

Estimated Economic Impact. The Board's Regulations Governing the Transportation of Hazardous Materials set rules for (and incorporate federal regulations that affect) the State Police's enforcement of safe hazardous materials transportation. The State Police are able to get grants to defray the cost of enforcement through the federal government's Motor Carrier Safety Assistance Program (MCSAP) so long as this regulation includes all applicable federal rules. A recent audit by the U.S. Department of Transportation, however, noted that the Board's Regulations did not include the requirements contained in 49 CFR 107 Subpart F. In order for the State Police to continue to be eligible to apply for MCSAP grants, the Board now proposes to incorporate 49 CFR 107 Subpart F by reference.

No affected entity is likely to incur any costs on account of this regulatory change because all regulated entities already have to follow all applicable federal laws and regulations. This proposed regulatory change will benefit regulated entities as it will give them a more complete picture of the rules that they must comply to. The State Police will also benefit from this change as it will allow them to continue getting federal grant money to defray the costs of this enforcement program.

Businesses and Entities Affected. All individuals or entities that haul hazardous materials, as well as the State Police that enforce hazardous waste transportation laws and regulations, will be affected by this regulatory change. Board staff reports that approximately 33,000 cargo tank trucks hauling hazardous materials are inspected by the State Police each year.

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

Projected Impact on Employment. This proposed regulation is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulation is unlikely to affect the use or value of private property in the Commonwealth.

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

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

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

Legal Mandate.

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

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

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

Regulations

- 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 has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendments incorporate by reference 49 CFR Part 107 Subpart F, a federal regulation that includes registration and recordkeeping requirements for people who manufacture, assemble, inspect, or repair certain cargo tank motor vehicles.

Part III

Compliance with Federal Regulations

9VAC20-110-110. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated as of October 1, 2014, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Special Permits. 49 CFR Part 107, Subpart B.
2. Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers in 49 CFR Part 107, Subpart F.
3. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.
3. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.
4. Specifications for Packagings in 49 CFR Part 178.

5. Specifications for Tank Cars in 49 CFR Part 179.
6. Continuing Qualification and Maintenance of Packagings in 49 CFR Part 180.
7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R16-3970; Filed September 29, 2015, 2:51 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-800, 12VAC30-130-810, 12VAC30-130-820).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 18, 2015.

Effective Date: December 3, 2015.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

42 CFR 431.54(e) permits state Medicaid agencies to have programs that restrict Medicaid individuals who have been found to be over-utilizing either physician or pharmacy services, or both. DMAS' Client Medical Management (CMM) Programs operate under the authority of a § 1915(b) (of the Social Security Act) waiver granted by the Centers for Medicare and Medicaid Services (CMS). The waiver permits DMAS to deny the standard freedom of choice (42 CFR § 431.51) to these identified recipients and restrict them to specified physicians or pharmacies, or both.

Purpose: The purpose of this action is to promulgate permanent regulatory changes for the CMM Programs. Item 301 RR of Chapter 2 of the 2014 Acts of the Assembly, Special Session I, directed DMAS to make programmatic

changes to this program to ensure appropriate utilization, prevent abuse, promote improved and cost efficient medical management of essential health care, and assist and educate beneficiaries in appropriately using medical and pharmacy services. These changes will further improve the health, safety, and welfare of individuals who are eligible for Medicaid and who also use higher than typical amounts of services from different physicians and pharmacies by assisting and educating these individuals in the appropriate use of medical and pharmacy services.

These changes will not impact the health and safety of the Commonwealth citizens who do not receive Medicaid services. These changes will not affect Medicaid enrolled providers.

Rationale for Using Fast-Track Process: DMAS believes that the fast-track rulemaking process is appropriate because these proposed changes are more liberal than the current policies. DMAS does not anticipate any objections to these changes. The CMM Programs are still DMAS' utilization control programs for fee-for-service individuals. DMAS did not receive any objections to the emergency regulations or comments during the Notice of Intended Regulatory Action public comment period.

Substance: This action affects the Client Medical Management Programs (12VAC30-130-800, 12VAC30-130-810, and 12VAC30-130-820).

Currently, the regulations that provide for the administration of the CMM programs affect the fee-for-service Medicaid eligible population, which is only potentially 31% of the entire Medicaid population. These regulations do not affect those individuals who participate in the managed care model of service delivery.

Medicaid's managed care program is now statewide and as of April 2014 cared for 69% of all Medicaid eligible individuals. 12VAC30-120-370 sets out the reasons that individuals can be exempted from participating in the managed care program. Some of the reasons are (i) individuals are inpatients in state mental hospitals, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, or hospice; (ii) individuals are affected by Medicaid spend-down policies; (iii) individuals are in either home or community-based waiver programs; (iv) individuals are eligible for Part C services through the Department of Behavioral Health and Developmental Services; (v) individuals have an eligibility period less than three months in duration or have retroactive eligibility; or (vi) children are enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ [38.2-5000](#) et seq.) of Title 38.2 of the Code of Virginia. Only the individuals who fit any of these exemption reasons receive their medical care via the fee-for-service model and therefore can be affected by CMM.

Pursuant to current CMM regulations and after patterns of inappropriate or excessive service use are identified,

individuals are restricted to one pharmacy or physician for a minimum of 36 months. At the end of the restriction period, if the recipient continues to demonstrate inappropriate use of services, he is re-enrolled in the program for another 36 months. DMAS tracks this inappropriate use with computer claim denial codes that result from providers' bills for services that may have been rendered.

Even though the recidivism rate averages about 7.8%, DMAS believes changing the restriction period to 24 months initially and 12 months for re-enrollment to be appropriate. With the managed care statewide expansion, the CMM potential population has substantially decreased. This reduction in CMM restricted members along with the changes to the restrictions periods will allow staff to facilitate resolution of any early enrollment issues and also to be more proactive in assisting and educating Medicaid individuals in appropriately using medical and pharmacy services. DMAS staff will continue to work with members who are over-utilizing services, but also will more closely assess under-utilization that results in abusive practices. These changes may also contribute to cost avoidance.

This action continues to provide for the medical care needs of individuals with multiple diagnoses and complex health care needs that require care from physicians and specialists in addition to their primary care physicians. Provision is also retained for individuals who have legitimate complex medical conditions that require high numbers of prescription medications. Provisions are being retained for such complex care recipients to appeal a restriction status and be exempted from restriction.

Providers must require that Medicaid individuals present their Medicaid identification cards when they present for services. When providers input the unique identification number, they are advised that the individual's access to physician or pharmacy services, or both, is restricted. This action continues to provide that if the individual's restriction pharmacy does not have the required drug, or in emergency situations, the individual may receive the required medication from an alternative pharmacy. Such alternative pharmacies are paid for providing medications in such situations.

Individuals demonstrating the following utilization patterns will be evaluated to determine if they warrant being restricted to designated physician or pharmacy providers, or both:

- An individual receiving narcotic prescriptions from two or more prescribers without supporting diagnoses indicative of use.
- An individual having two occurrences of filling prescriptions for the same drug two or more times on the same or the subsequent day.
- An individual receiving more than 24 prescriptions in a three-month period.
- An individual receiving more than 12 psychotropic prescriptions, more than 12 analgesic prescriptions, or

Regulations

more than 12 prescriptions for controlled drugs that have the potential for abuse, in a three-month period.

- An individual who uses emergency hospital services for three or more emergency room visits for nonemergency care during a three-month period to include cases of self referral, nonacute episodes of care, or solely for nonacute management of chronic diagnoses or symptoms.
- Utilizing services from three or more prescribers and three or more dispensing pharmacies in a three-month period.
- Exceeding the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class, which have been prescribed by two or more practitioners, for a period exceeding four weeks.
- Receiving two or more drugs, duplicative in nature or potentially addictive (even within acceptable therapeutic levels), dispensed by more than one pharmacy or prescribed by more than one practitioner for a period exceeding four weeks.
- Utilizing three or more different physicians of the same type or specialty in a three-month period for treatment of the same or similar condition or conditions.
- Two or more occurrences of seeing two or more physicians of the same type or specialty on the same or subsequent day for the same or similar diagnosis.
- Duplicative, excessive, or contraindicated utilization of medications, medical supplies, or appliances dispensed by or prescribed by more than one provider for the time period specified by DMAS.
- One or more providers recommend restriction for medical management because the recipient has demonstrated inappropriate utilization practices.
- A pattern of noncompliance that is inconsistent with sound fiscal or medical practices. For example, noncompliance may be characterized by (i) failure to disclose to a provider any treatment or services provided by another provider; (ii) failure to follow a drug regimen or other recommended treatment; (iii) requests for medical services or medications that are not medically necessary; (iv) use of hospital emergency services via self-referral for nonacute episodes of care, or solely for nonacute management of the medical condition; or (v) under-use or under-utilization of medically necessary services that result in higher costs for the management of the medical condition.
- Any documented occurrences of use of the eligibility card to obtain drugs under false pretenses, which includes, but is not limited to the purchase or attempt to purchase drugs via a forged or altered prescription.
- Any documented occurrences of card-sharing.
- Any documented occurrences of alteration of the recipient eligibility card.

Controls placed on individuals who may be abusing services will improve cost-efficiency of care and enable better monitoring and improved coordination of the health care needs toward the overall goal of improved health care outcomes. The following are examples of individuals whose use of Medicaid covered services warranted being included in a CMM program.

CASE A: For an individual who receives medical services for multiple diagnoses, a utilization review process documents the use of seven physicians, three pharmacies, and nonemergency services. In some of these instances, DMAS has found such individuals refusing regular therapies and opting instead for treatment in emergency rooms and hospitals. During such an individual's CMM program enrollment, DMAS staff (Recipient Monitoring Unit (RMU) case manager) would make multiple contacts with the individual, providers, other DMAS units and resources in the individual's community to identify and facilitate coordination of care with one treatment center. After enrollment in a CMM program, such an individual would receive scheduled services at one treatment center and pharmaceutical services at one pharmacy, while nonemergency services are denied or paid at reduced rates. In this manner, the individual's health would be stabilized through appropriate use of available services.

CASE B: For an individual, who is receiving medical services for multiple diagnoses (such as diabetes, depression, and chronic pain), a utilization review process documents the use of four physicians and one pharmacy with simultaneous prescriptions for narcotic analgesics and medicine for maintenance treatment of opioid dependence. Since enrollment in a CMM program, the individual's health care is coordinated by a primary care physician who has referred this individual to other health care providers that treat such diagnoses. Pharmaceutical services are received at one pharmacy.

CASE C: For an individual who is receiving medical services for multiple diagnoses (such as back pain, bipolar disorder, diabetes, and asthma), a utilization review process documented the use of five physicians and 10 pharmacies with duplicate prescriptions from the several physicians. The individual also had the same day/subsequent day filling of syringe supplies. RMU staff discussed inappropriate utilization identified during the review process with the individual prior to enrollment in a CMM program. Since enrollment in a CMM program, the individual's pharmaceutical services are coordinated through one pharmacy and one primary care physician who is the primary prescriber of medications. During routine monitoring of services, there have been documented attempts by the individual to use nondesignated pharmacies for services.

Issues: The primary advantage to the general public and private citizens of proposed amendments is the decrease in the duplicative efforts of doctors and pharmacies by allowing them to provide the same level of care for all patients. The amendments also reduce an individual's access to excessive amounts of medications that have therapeutic properties that could cause harm to himself and other individuals in the community if they are re-sold to other persons.

The primary advantage to the Commonwealth is the close monitoring of the fee-for-service Medicaid population's utilization patterns and the identifying of instances of over-utilization and noncompliance that could result in misappropriations of state and federal funding. Restriction of individuals to one pharmacy or physician, or both, has resulted in reductions in Medicaid expenditures for individuals during Client Medical Management restriction periods. 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 Medical Assistance Services (DMAS) proposes to 1) reduce the time periods the individuals with excessive utilization patterns may be restricted to a single physician and/or a pharmacy from 36 to 24 months initially and from 36 to 12 months beyond the initial restriction period, and 2) add under-utilization among the factors that may cause an individual to be enrolled in the program.

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

Estimated Economic Impact. The Client Medical Management program restricts access of individuals who have a history of utilizing high numbers of different physicians and/or pharmacies for their primary health care services to a single physician and/or pharmacy.¹ Restriction in the program is for a defined period of time and the individual is required to establish a medical home with a single primary care physician and/or pharmacy once enrolled in the program. The initial restriction period is currently 36 months. If the high utilization patterns continue, the individual is required to stay in the program for an additional 36 months. The proposed changes will reduce the initial restriction period to 24 months and the subsequent restriction period to 12 months.

Currently, there are approximately 120 individuals enrolled in the program. DMAS estimates that the program provides approximately \$800,000 savings in total funds (federal and state funds) per year by controlling over utilization of medical services. DMAS also reports a 7.8% recidivism rate in this program. However, DMAS believes that changing the restriction period to 24-months initially and 12 months for re-enrollment is appropriate. DMAS believes that no significant change in savings will materialize because the proposed less restrictive time periods are not expected to increase the

current recidivism rate. In addition, DMAS highlights that as the managed care has expanded over the years, the fee-for-service population and consequently the CMM program enrollment has shrunk, allowing DMAS staff more time to focus on individual cases and improve the program's success by assisting and educating Medicaid individuals in the appropriate use of medical and pharmacy services.

In addition, the proposed changes will allow enrollment of individuals who are underutilizing services in the program. According to DMAS, underutilization of medically necessary services is not medically responsible or fiscally sound and can result in the further deterioration of an otherwise manageable health condition. While this change may add to the savings that may be expected, given the small size of the program, DMAS does not expect such savings to be significant.

This proposed action also includes numerous other changes; however, they reorganize or clarify the current language and therefore are not expected to have a significant economic impact.

Businesses and Entities Affected. The proposed amendments primarily affect individuals enrolled in the Client Medical Management program and DMAS. Currently, there are approximately 120 individuals enrolled in the program.

Localities Particularly Affected. The regulations apply throughout the Commonwealth.

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 the use and value of private property.

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

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to 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 regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,

Regulations

- 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.

¹ The individuals with legitimate needs for having multiple physicians/pharmacies are not enrolled in the program.

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

Summary:

The amendments (i) reduce the time periods that individuals with excessive utilization patterns may be restricted to a single physician or a pharmacy to 24 months initially and 12 months beyond the initial restriction period, (ii) add under-utilization among the factors that may cause an individual to be enrolled in the Client Medical Management Programs and (iii) add an educational component to the programs. The amendments are made pursuant to Item 301 RR of Chapter 2 of the 2014 Acts of Assembly, Special Session I.

Part XIII

Client Medical Management Program Programs

12VAC30-130-800. Definitions.

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

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

~~"Abuse by recipients" means practices by recipients that are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid Program.~~

~~"Abuse by providers" means practices that are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to the Virginia Medicaid Program or in reimbursement for a level of utilization or pattern of services that is not medically necessary.~~

"Abuse" or "abusive activities" means practices by individuals or providers that are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid program.

"Card-sharing" means (i) the intentional sharing of a recipient an individual's eligibility card for use by someone other than the recipient individual for whom it was issued, or a ~~pattern of repeated~~ (ii) unauthorized use of a recipient an individual's eligibility card by one or more persons other than the recipient individual for whom it was issued due to the failure of the recipient individual to safeguard the card.

~~"Client Medical Management Program (CMM) for recipients individuals" or "CMM Program for individuals" means the recipients' individuals' utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care for noninstitutionalized recipients individuals through restriction to one primary care provider, or one pharmacy, and one transportation provider, or any combination of these three designated providers. Referrals may not be made to providers restricted through the Client Medical Management Program, nor may restricted providers serve as covering providers.~~

"Client Medical Management Program (CMM) for providers" or "CMM Program for providers" means the providers' utilization control program designed to complement the recipient individual abuse and utilization control program in promoting improved and cost efficient medical management of essential health care. Restricted providers may not serve as designated providers for restricted recipients. Restricted providers may not serve as referral or covering providers for restricted recipients.

~~"Contraindicated medical care" means treatment that is medically improper or undesirable and which results in duplicative or excessive utilization of services.~~

~~"Contraindicated use of drugs" means the concomitant use of two or more drugs whose combined pharmacologic action produces an undesirable therapeutic effect or induces an adverse effect by the extended use of a drug with a known potential to produce this effect.~~

"Controlled substance" means a substance that has a potential for abuse because physical and psychic dependence

and tolerance may develop upon repeated administration and that is classified as a Schedules I through V drug.

"Covering provider" means a provider designated by the primary provider to render health care services in the temporary absence of the primary provider.

"DMAS" or "the department" means the Department of Medical Assistance Services.

"Dental services" means covered dental services available to Medicaid or FAMIS eligible children as well as the limited, emergency services available to Medicaid eligible adults.

"Designated provider physician or pharmacy" means the provider who agrees to be the designated primary physician, designated or pharmacy, or designated transportation provider from whom the restricted recipient individual must first attempt to seek health care medical or pharmaceutical services. Other providers may be established as designated physician or pharmacy providers with the approval of DMAS.

"Diagnosis" means (i) the process of determining by examination the nature and circumstances of a diseased condition or injury and (ii) the decision reached from such examination.

"Diagnostic category" means the broad classification of diseases and injuries found in the ~~ICD as defined in 12VAC30-95-5~~ International Classification of Diseases (ICD), which is commonly used by providers in billing for medical services.

"Drug" means a substance or medication intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease as defined by the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Duplicative medical care" means two or more practitioners are concurrently ~~treating~~ treating the same or similar medical problems or conditions falling into the same diagnostic category, but excluding confirmation for diagnosis, evaluation, or assessment.

"Duplicative medications" means more than one prescription of the same drug or more than one drug in the same therapeutic class.

"Education" means providing individuals with information regarding DMAS' identification of inappropriate utilization and what is appropriate access to Medicaid covered services according to the policies and procedures of the CMM Program for individuals and the CMM Program for providers. Education shall not include providing a professional opinion regarding a individual's medical or mental health.

"Eligibility card" means the document issued to each Medicaid individual listing the name and Medicaid number, either the identification or billing number, of the eligible individual, which may be in the form of a plastic card magnetically encoded, allowing electronic access to inquiries for eligibility status.

"Emergency hospital services" means those hospital services that are necessary to treat a medical emergency. Hospital treatment of a medical emergency necessitates the use of the most accessible hospital available that is equipped to furnish the required services.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment Program ~~which~~ that is federally mandated for eligible individuals ~~under~~ younger than 21 years of age.

"Essential medical services" means quality medical services, including but not limited to preventive care, emergency services, maternity care, hospital and physician services, and prescription drug services as set out in the State Plan for Medical Assistance.

"Excessive medical care" means obtaining greater than necessary services such that health risks to the ~~recipient~~ individual or unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services or obtaining duplicative services.

"Excessive medications" means obtaining medication in greater than generally acceptable maximum therapeutic dosage regimens or obtaining duplicative medication from one or more than one practitioner practitioners.

~~"Excessive transportation services" means obtaining or rendering greater than necessary transportation services such that unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services.~~

"FAMIS" means the Family Access to Medical Insurance Security program as created by Title XXI of the Social Security Act.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health care" means any covered ~~services~~ service, including equipment; or supplies, ~~or transportation services~~, provided by any ~~individual~~ person, organization, or entity that participates in the Virginia Medical Assistance Program.

"Home and community-based services" means a range of community services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to individuals as an alternative to institutionalization.

"Hospice services" means services, pursuant to § 1905(o) of the Act, that are reasonable and necessary for the palliation or management of a terminal illness if the terminal illness runs its normal course.

"Immunization" means the creation of immunity against a particular disease using a vaccination.

Regulations

"Individual" means the recipient of Medicaid-covered services that are provided under the authority of Titles XIX and XXI of the Social Security Act.

"Java-Server Utilization Review System" or "JSURS" means a computer subsystem of the Virginia Medicaid Management Information System (VAMMIS) that collects claims data and computes statistical profiles of individual and provider activity and compares such profiles with the appropriate peer group.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed agreement with the department to provide services covered under (i) the Medallion II programs, pursuant to 12VAC30-120-360 et seq., or any successor programs and (ii) the FAMIS programs, pursuant to 12VAC30-141, or any successor programs.

"Medical emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, that in the absence of immediate medical attention could reasonably be expected to result in (i) placing the ~~client's~~ individual's health in serious jeopardy, (ii) serious impairment of the individual's bodily functions, or (iii) serious dysfunction of ~~any~~ the individual's bodily ~~organ or part~~ organs or parts.

"Medical management of essential health care" means a case management approach to health care in which the designated primary physician has responsibility for assessing the needs of the patient and making referrals to other physicians and clinics as needed. The designated pharmacy has responsibility for monitoring the drug regimen of the patient.

"Medically necessary" means services that are reasonable and necessary for the diagnosis or treatment of an illness, condition, or injury, or to improve the function of a disability, consistent with community standards of medical practice and in accordance with Medicaid or FAMIS policies.

"Noncompliance" means failing to follow Client Medical Management Program policies and procedures, or a pattern of utilization that is inconsistent with sound fiscal or medical practices. Noncompliance includes, but is not limited to, failure to follow a recommended treatment plan or drug regimen; failure to disclose to a provider any treatment or services provided by another provider; ~~or~~ requests for medical services or medications that are not medically necessary; ~~or~~ excessive use of transportation services.

"Not medically necessary" means an item or service that is not consistent with the diagnosis or treatment of the patient's condition or an item or service that is duplicative, contraindicated, or excessive.

"Pattern" means a combination of qualities, acts, or tendencies that result in duplication or frequent occurrence.

"Practitioner" means a health care provider licensed, registered, or otherwise permitted by law to distribute,

dispense, prescribe, and administer drugs or otherwise treat medical conditions.

"Primary care provider" or "PCP" means ~~the designated primary physician responsible for medical management of essential health care for the restricted recipient~~ a physician or nurse practitioner practicing in accordance with state law who is responsible for supervising, coordinating, and providing initial and primary medical care to patients; for initiating written referrals for specialist care; and for maintaining the continuity of patient care.

"Provider" means ~~the individual, facility or other entity registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services~~ a person, organization, or institution with a current, valid license or certification, as applicable, and participation agreement with DMAS who or that will (i) render service to Medicaid individuals who are eligible for covered services, (ii) submit a claim or claims for the rendered services, and (iii) accept as payment in full the amount paid by the Virginia Medicaid or FAMIS program.

"Psychotropic drugs" means drugs that alter the mental state activity, behavior, or perception. ~~Such~~ Examples of such drugs include, ~~but are not limited to,~~ morphine, barbiturates, hypnotics, antianxiety agents, antidepressants, and antipsychotics.

"Recipient" means the individual who is eligible, under Title XIX of the Social Security Act, to receive Medicaid covered services.

"Recipient eligibility card" means ~~the document issued to each Medicaid enrollee; an individual document issued to each Medicaid recipient listing the name and Medicaid number (either the identification or billing number) of the eligible individual. This document may be in the form of a plastic card magnetically encoded, allowing electronic access to inquiries for eligibility status.~~

"Renal dialysis services" means services that aid the process of diffusing blood across a semi-permeable membrane to remove substances that a normal kidney would eliminate, including poisons, drugs, urea, uric acid, and creatinine. Renal dialysis services help to restore electrolytes and correct acid-base imbalances.

"Restriction" "Restrict" or "restriction" means an administrative action imposed on ~~a recipient~~ an individual that limits access to specific types of health care services through a designated primary provider or an administrative action imposed on a provider to prohibit participation as a designated primary provider, referral, or covering provider for restricted recipients individuals.

"Social Security Act" or "the Act" means the ~~Act~~ statute, enacted by the 74th Congress on August 14, 1935, and amended, that provides for the general welfare by establishing a system of federal old age benefits, and by enabling the states to make more adequate provisions for aged persons,

blind persons, dependent ~~and crippled~~ children who have disabilities, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the ~~document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act~~ comprehensive written statement submitted by the department to the Centers for Medicare and Medicaid Services (CMS) for approval describing the nature and scope of the Virginia Medicaid program and giving assurance that it will be administered in conformity with the requirements, standards, procedures, and conditions for obtaining federal financial participation.

~~"Surveillance and Utilization Review Subsystem (SURS)" or "Automated Exception Analysis (AEA)" means a computer subsystem of the Medicaid Management Information System (MMIS) that collects claims data and computes statistical profiles of recipient and provider activity and compares them with that of their particular peer group.~~

"Therapeutic class" means a group of drugs with similar pharmacologic actions and uses.

"Under-use" or "under-utilization" means an occurrence where there is evidence that an individual did not receive a service or procedure whose benefits exceeded the risks.

"Utilization control" means the control of covered health care services to assure the use of cost efficient, medically necessary or appropriate services.

12VAC30-130-810. Client Medical Management Program for recipients individuals.

A. Purpose. The Client Medical Management Program for individuals is a ~~utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care~~ designed to assist and educate Medicaid individuals in appropriately using essential medical and pharmacy services. Individuals who use these services excessively or inappropriately as determined by DMAS may be assigned to a single primary care provider or pharmacy, or both. The CMM Program for individuals also monitors individual compliance with program guidelines.

B. Authority.

1. ~~Federal~~ The Act and federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program and 42 CFR 455.1 through 455.16 require the Medicaid agency to conduct investigations of abuse by recipients that (i) safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments, (ii) assesses the quality of those services, (iii) provides for the control of the utilization of all services provided under the Plan, and (iv) provides for the control of the utilization of inpatient services.

2. Federal regulations at 42 CFR 431.54(e) allow states to restrict recipients individuals to designated providers when the recipients individuals have utilized services at a frequency or an amount that is not medically necessary in accordance with utilization guidelines established by the state. ~~42 CFR 455.16(e)(4) provides for imposition of sanctions for instances of abuse identified by the agency.~~

C. Identification of Client Medical Management participants for inclusion in the CMM Program participants for individuals. DMAS shall identify recipients individuals for review from computerized reports such as but not limited to Recipient SURS or AEA individual Java-Server Utilization Review System (JSURS), VAMMIS, Oracle or by written referrals from agencies, health care professionals, or other individuals persons. Certain individuals who are reviewed may not be restricted when evidence indicates that the prescription or medical service utilization patterns, or both, are for appropriate therapy. Only individuals who are excluded, pursuant to 12VAC30-120-370 B , from receiving care from a managed care organization shall be reviewed and evaluated for restriction under the CCM Program for individuals.

D. Recipient Individual evaluation for restriction.

1. DMAS shall ~~review recipients~~ utilize data as indicated in subsection C of this section to conduct a review of individuals to determine if services are being utilized at a frequency or amount that results in a level of utilization or a pattern of services which is not medically necessary or which exceeds the thresholds are excessive medical services or excessive medications, or both, as established in these regulations by the department. Evaluation of utilization patterns can include but is not limited to review by the department staff of medical records or computerized reports, or both, generated by the department reflecting claims submitted for physician visits, ~~drugs/prescriptions~~ drugs or prescriptions, outpatient and emergency room visits, lab ~~and~~ or diagnostic procedures, or both, and hospital admissions, ~~and referrals.~~

2. Restricted individuals shall have reasonable access to all essential medical services. These restrictions shall not apply to hospital emergency services.

~~2.~~ 3. Abusive activities shall be investigated and, if appropriate, the recipient individual shall be reviewed for educational intervention or restriction, or both. Recipients demonstrating questionable patterns of utilization or exceeding reasonable levels of utilization shall be reviewed for restriction.

a. If DMAS' review determines that an individual's data indicates (i) inappropriate use of Medicaid services, (ii) questionable patterns of utilization, or (iii) unreasonable levels of utilization, the department shall initiate the individual's restriction to either a physician or pharmacy, or both.

Regulations

b. Once an individual is restricted, the restriction period shall last for 24 months from the enrollment date. During this restriction period, the individual shall be required to use the services of the designated physician or designated pharmacy, or both.

c. The individual may visit physicians or specialists other than those who are designated only by a written referral from the designated PCP.

d. The individual may obtain prescriptions from pharmacies other than the designated pharmacy only (i) in an emergency, (ii) when the designated pharmacy is closed, (iii) when the designated pharmacy does not stock the required medication, or (iv) when the designated pharmacy is not able to obtain the required medication in a timely manner.

E. Determination of restriction. DMAS may restrict an individual if any of the following activities or patterns or levels of utilization are identified. These activities, patterns, or levels of utilization include, for example:

~~3. DMAS may restrict recipients if any of the following activities or patterns or levels of utilization are identified. These activities or patterns or levels of utilization include but shall not be limited to:~~

~~a. Exceeding 200% of the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period exceeding four weeks.~~

~~b. 1. Two occurrences of having prescriptions for the same drugs filled two or more times on the same or the subsequent day.~~

~~c. 2. Utilizing services from three or more prescribers and three or more dispensing pharmacies in a three-month period.~~

~~d. 3. Receiving more than 24 prescriptions in a three-month period.~~

~~e. 4. Receiving more than 12 psychotropic prescriptions or more than 12 analgesic prescriptions or more than 12 prescriptions for controlled drugs with potential for abuse in a three-month period.~~

~~f. 5. Exceeding the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class, which have been prescribed by two or more practitioners, for a period exceeding four weeks. In addition, such drugs must be prescribed by two or more practitioners.~~

~~g. 6. Receiving two or more drugs, duplicative in nature or potentially addictive (even within acceptable therapeutic levels), dispensed by more than one pharmacy or prescribed by more than one practitioner for a period exceeding four weeks.~~

~~7. Receiving narcotic prescriptions from two or more prescribers without supporting diagnoses indicative of use.~~

~~h. 8. Utilizing three or more different physicians of the same type or specialty in a three-month period for treatment of the same or similar condition or conditions.~~

~~i. 9. Two or more occurrences of seeing two or more physicians of the same type or specialty on the same or subsequent day for the same or similar diagnosis.~~

~~j. 10. Duplicative, excessive, or contraindicated utilization of medications, medical supplies, or appliances dispensed by or prescribed by more than one provider for the time period specified by DMAS.~~

~~k. Duplicative, excessive, or contraindicated utilization of medical visits, procedures, or diagnostic tests from more than one provider for the time period specified by DMAS.~~

~~l. 11. Use of emergency hospital services for three or more emergency room visits for nonemergency care during a three-month period.~~

~~m. 12. One or more providers recommends recommend restriction for medical management because the recipient has demonstrated inappropriate utilization practices.~~

~~n. 13. A pattern of noncompliance which that is inconsistent with sound fiscal or medical practices. Noncompliance is For example, noncompliance may be characterized by, but not limited to:~~

~~(1) a. Failure to disclose to a provider any treatment or services provided by another provider;~~

~~(2) b. Failure to follow a drug regimen or other recommended treatment;~~

~~(3) c. Requests for medical services or medications which that are not medically necessary;~~

~~(4) Excessive use of transportation services; or~~

~~(5) Use of transportation services with no corresponding medical services.~~

~~d. Use of hospital emergency services via self-referral for nonacute episodes of care or solely for nonacute management of the medical condition; or~~

~~e. Under-use or under-utilization of medically necessary services that results in higher costs for the management of the medical condition.~~

~~o. One or more 14. Any documented occurrences of use of the eligibility card to obtain drugs under false pretenses, which includes, but is not limited to the purchase or attempt to purchase drugs via a forged or altered prescription.~~

~~p. One or more 15. Any documented occurrences of card-sharing.~~

~~q. One or more 16. Any documented occurrences of alteration of the recipient eligibility card.~~

~~17. One or more documented occurrences of paying cash for controlled substances, analgesic drugs, or psychotropic drugs in addition to the use of the eligibility card to obtain similar or duplicative controlled substances.~~

~~E.~~ F. Individual restriction procedures.

1. DMAS shall advise affected ~~recipients~~ individuals by written notice of the proposed restriction under the ~~Client Medical Management CMM Program for individuals.~~ Written notice shall include an explanation of restriction procedures and the ~~recipient's~~ individual's right to appeal the proposed action.
2. The ~~recipient individual~~ shall have the opportunity to select a designated ~~providers~~ physician or pharmacy, or both. If a ~~recipient~~ individual fails to respond by the date specified in the restriction notice, DMAS shall select a designated ~~providers~~ physician or pharmacy, or both.
3. DMAS shall not implement restriction if a valid appeal, consistent with 12VAC30-110-210, is noted. (See subsection K of this section.)
4. DMAS shall restrict ~~recipients~~ individuals to their designated ~~providers~~ physician or pharmacy, or both, for ~~36~~ 24 months.

~~F.~~ G. Designated providers.

1. A designated ~~primary~~ physician or pharmacy, or both, must be a ~~physician who provider that~~ is enrolled as an individual practitioner in Virginia Medicaid and who that is unrestricted by DMAS. Providers who are restricted pursuant to 12VAC30-130-820 D and E shall not serve as designated providers for restricted individuals and shall not serve as referral or covering providers for restricted individuals.
2. A ~~designated pharmacy provider must be a pharmacy that is enrolled as a community pharmacy and that is unrestricted by DMAS. Physicians or pharmacy providers, or both, who are under the CMM Program for providers shall not serve as designated providers, shall not provide services through referral, and shall not serve as covering providers for restricted individuals.~~
3. A ~~designated transportation provider must be enrolled as a taxi, registered driver, or wheelchair van and be unrestricted by DMAS. Recipients shall be assigned to the type of provider who meets the appropriate level of transportation that is medically necessary.~~
4. ~~Providers restricted through the Client Medical Management Program may not serve as designated providers, may not provide services through referral, and may not serve as covering providers for restricted recipients.~~
5. ~~3.~~ Physicians with practices limited to the delivery of emergency room services may not serve as designated primary providers.
6. ~~Restricted recipients shall have reasonable access to all essential medical services. These restrictions shall not apply to emergency services.~~

7. ~~4.~~ Other provider types physicians or pharmacies, or both, may be established as designated providers as needed but only with the approval of DMAS.

~~G.~~ H. Provider reimbursement.

1. DMAS shall reimburse for covered ~~outpatient~~ medical, or pharmaceutical services, or both, and physician services for restricted individuals only when they are provided by the designated providers, or by physicians seen on a written referral from the designated PCP, or in a medical emergency consistent with the methodologies established for such services in the State Plan for Medical Assistance. ~~Prescriptions may be filled by a nondesignated pharmacy only in emergency situations when the designated pharmacy is closed, or when the designated pharmacy does not stock, or is unable to obtain the drug in a timely manner.~~
2. DMAS shall require a written referral, in accordance with published procedures, from the designated PCP for payment of covered outpatient services by nondesignated practitioners unless there is a medical emergency requiring immediate hospital treatment. Services exempt from these written referral requirements include:
 - a. Family planning services;
 - b. Annual or routine vision examinations ~~(under age 21) for individuals under the age of 21 years;~~
 - c. Dental services ~~(under age 21) for individuals under the age of 21 years;~~
 - d. Emergency services;
 - e. EPSDT well-child exams/screenings ~~(under age 21) for individuals under the age of 21 years;~~
 - f. Immunizations ~~(under age 21) for individuals under the age of 21 years;~~
 - g. Home- and community-based care ~~waiver~~ services such as private duty nursing or respite services;
 - h. Renal dialysis services;
 - i. Expanded prenatal services, including prenatal group education, nutrition services, and homemaker services for pregnant women and care coordination for high-risk pregnant women and infants up to age two years; and
 - j. Hospice services.
3. ~~When a transportation restriction is implemented, DMAS shall reimburse for covered transportation services only when they are provided by the designated transportation provider, or on referral from the designated transportation provider, or in a medical emergency.~~
4. ~~3.~~ Designated primary care providers (PCPs) shall receive a monthly case management fee for each assigned recipient individual.

~~H. Client medical management identification material. DMAS shall provide an individual recipient eligibility card listing the recipient's designated primary care providers or a~~

Regulations

~~plastic card for each restricted recipient. DMAS shall provide correspondence to the recipient listing the name, address, and telephone number of each designated provider and the effective date of restriction to each provider.~~

I. Changes in designated providers.

1. DMAS must give prior ~~authorization approval~~ to all changes of designated providers.
2. The ~~recipient individual~~ or the designated provider may initiate requests for change for the following reasons:
 - a. Relocation of the ~~recipient individual~~ or provider.
 - b. Inability of the provider to meet the routine health or pharmaceutical needs of the ~~recipient individual~~.
 - c. Breakdown of the ~~recipient/provider individual/provider~~ relationship.
3. If the designated provider initiates the request and the ~~recipient individual~~ does not select a new ~~provider physician or pharmacy, or both~~, by established deadlines, DMAS shall select a provider, subject to concurrence from the provider ~~or providers~~.
4. If DMAS denies the ~~recipient's individual's~~ request for a ~~particular physician or pharmacy, or both~~, the ~~recipient individual~~ shall be notified in writing and given the right to appeal the decision. (See subsection K of this section.)

J. Review of ~~recipient individual~~ restriction status.

1. During the restriction period, DMAS shall monitor the ~~recipient's an individual's~~ utilization no less frequently than every 12 months and follow up with the ~~recipient individual~~ to promote appropriate utilization patterns.
2. DMAS shall ~~also~~ review ~~a recipient's an individual's~~ utilization prior to the end of the restriction period to determine restriction termination or continuation. ~~(See subsection D of this section.)~~
 - a. DMAS shall extend utilization control restrictions for ~~36~~ 12 months if any ~~one~~ of the following conditions is identified:
 - (1) The ~~recipient's individual's~~ utilization patterns include one or more conditions listed in ~~subdivision D 3 subsection E~~ of this section.
 - (2) The ~~recipient individual~~ has not complied with ~~Client Medical Management Program~~ procedures of the ~~CMM Program for individuals~~ resulting in services or medications received from ~~one or more any~~ nondesignated ~~providers provider, as demonstrated by his submitted claims~~, without a written referral or in the absence of a medical emergency.
 - (3) The ~~recipient individual~~ has not complied with ~~Client Medical Management Program~~ procedures of the ~~CMM Program for individuals~~ as demonstrated by a pattern of documented attempts to receive ~~services or~~ medications from ~~one or more any~~ nondesignated ~~providers without a written referral or pharmacy (i)~~ in the absence of a medical emergency, ~~(ii) when the designated pharmacy is~~

~~closed, (iii) when the designated pharmacy does not stock the required medication, or (iv) when the designated pharmacy is unable to obtain the required medication in a timely manner.~~

(4) One or more of the designated providers recommends continued restriction status because the ~~recipient individual~~ has demonstrated noncompliant behavior which is being controlled by ~~Client Medical Management restrictions within the CMM Program restrictions for individuals~~.

(5) Any changes of designated provider have been made due to the breakdown of the ~~recipient/provider individual/provider~~ relationship as a result of the ~~recipient's individual's~~ noncompliance.

b. DMAS shall notify the ~~recipient individual~~ and designated ~~provider physician or pharmacy, or both~~, in writing of the review decision. If restrictions are continued, written notice shall include the ~~recipient's individual's~~ right to appeal the proposed action. (See subsection K of this section.)

c. DMAS shall not implement the continued ~~recipient individual~~ restriction if a valid appeal is noted ~~pending the completion of the appeal action~~. ~~Should the outcome of the appeal action support implementation of the restriction, the restriction shall be promptly implemented.~~

K. ~~Recipient Individual~~ appeals.

1. ~~Recipients Individuals~~ shall have the right to appeal any ~~adverse action, as defined in 42 CFR 431.201, that is taken by DMAS under these regulations this part.~~

2. ~~Recipient Individual~~ appeals shall be held pursuant to the provisions of Part I (12VAC30-110-10 et seq.) of ~~12VAC30 Chapter 110 Client 12VAC30-110, Eligibility and Appeals.~~

12VAC30-130-820. Client Medical Management Program for providers.

A. Purpose. The ~~Client Medical Management CMM Program for providers~~ is a utilization control program designed to promote improved and cost-efficient medical management of essential health care.

B. Authority.

1. Federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program and at 42 CFR 455.1 through 455.16 require the Medicaid agency to conduct investigations of abuse by providers.

2. Federal regulations at 42 CFR ~~431.54 (f)~~ 431.54(f) allow states to restrict providers' participation in the Medicaid program if the agency finds that providers of items or services under the State Plan have provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state; or have provided items or services of a quality that

do not meet professionally recognized standards of health care.

C. Identification of ~~Client Medical Management participants for inclusion in the CMM Program participants for providers.~~ DMAS shall identify providers for review through computerized reports such as but not limited to ~~Provider SURS or AEA JSURS, Oracle, VAMMIS,~~ or by written referrals from agencies, health care professionals, or other individuals.

D. Provider evaluation for restriction.

1. DMAS shall review providers to determine if health care services are being provided at a frequency or amount that is not medically necessary or that are not of a quality to meet professionally recognized standards of health care. Evaluation of utilization patterns can include but is not limited to review by the department ~~staff~~ of medical records or computerized reports generated by the department reflecting claims submitted for physician visits, ~~drugs/prescriptions~~ drugs or prescriptions, outpatient and emergency room visits, lab or diagnostic procedures, hospital admissions, and referrals.

2. DMAS may restrict providers if any one or more of the following conditions is identified in a significant number or proportion of cases. These conditions include but shall not be limited to the following:

- a. Visits billed at a frequency or level exceeding that which is medically necessary;
- b. Diagnostic tests billed in excess of what is medically necessary;
- c. Diagnostic tests billed which are unrelated to the diagnosis;
- d. Medications prescribed or prescriptions dispensed in excess of recommended dosages;
- e. Medications prescribed or prescriptions dispensed unrelated to the diagnosis; or
- f. The provider's license to practice in any state has been revoked or suspended.
- ~~g. Excessive transportation services rendered such that unnecessary costs to the Virginia Medicaid Program ensue from the accumulation of services.~~

E. Provider restriction procedures.

1. DMAS shall advise affected providers by written notice of the proposed restriction under the ~~Client Medical Management CMM Program~~ CMM Program for providers. Written notice shall include an explanation of the basis for the decision, request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.

2. DMAS shall restrict providers from being the designated provider, a referral provider, or a covering provider for recipients individuals in the ~~Client Medical Management CMM Program~~ CMM Program for providers for 24 months.

3. DMAS shall notify the Centers for Medicare and Medicaid Services (CMS) and the general public of the restriction and its duration.

4. DMAS shall not implement provider restriction if a valid appeal is noted.

F. Review of provider restriction status.

1. DMAS shall review a restricted provider's claims history record prior to the end of the restriction period to determine restriction termination or continuation (See subsection D of this section). DMAS shall extend provider restriction for 24 months in one or more of the following situations:

- a. Where abuse by the provider is identified.
- b. Where the practices which led to restriction continue.

2. In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-month claims history is available for evaluation.

3. If DMAS continues restriction following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See subsection E of this section).

4. If the provider continues a pattern of inappropriate health care services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation and action as appropriate.

G. Provider appeals.

1. Providers shall have the right to appeal any ~~adverse~~ action taken by the department under ~~these regulations~~ this part pursuant to § 32.1-325.1 of the Code of Virginia.

2. Provider appeals shall be held pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

VA.R. Doc. No. R14-2290; Filed September 18, 2015; 10:59 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Regulations

Title of Regulation: 14VAC5-270. Rules Governing Annual Financial Reporting (amending 14VAC5-270-40, 14VAC5-270-100, 14VAC5-270-110, 14VAC5-270-120, 14VAC5-270-144, 14VAC5-270-174; adding 14VAC5-270-145).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: November 18, 2015.

Agency Contact: Raquel C. Pino, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino@scc.virginia.gov.

Summary:

The proposed amendments address revisions made to the National Association of Insurance Commissioners' Annual Financial Reporting Model Regulation pertaining to the State Corporation Commission's authority to require (i) all large insurers, that is those whose annual premiums exceed \$500 million, and (ii) insurance groups, that is those whose annual premiums exceed \$1 billion, to maintain an internal audit function that provides independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. The audit function is required to be organizationally independent from management and to report at least annually to the audit committee on the results of internal audit activities.

AT RICHMOND,

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2015-00141

Ex Parte: In the matter of
Amending the Rules Governing
Annual Financial Reporting

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/boi/laws.aspx>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 270 of Title 14 of the Virginia Administrative Code, entitled, Rules Governing Annual Financial Reporting ("Rules"), which amend the Rules at 14VAC5-270-40, 14VAC5-270-100, 14VAC5-270-110, 14VAC5-270-120, 14VAC5-270-144, and 14VAC5-270-174, and adds a new Rule at 14VAC5-270-145.

The amendments to the Rules are being proposed due to the National Association of Insurance Commissioners' adoption of the revisions to the Annual Financial Reporting Model Regulation. The proposed amendments provide the Commission with the authority to require all insurers with annual premiums exceeding \$500 million and insurance groups with annual premiums exceeding \$1 billion to maintain an internal audit function that provides independent, objective, and reasonable assurance to the audit committee and management regarding the insurer's governance, risk management, and internal controls. The internal audit function is required to be organizationally independent from management and to report at least annually to the audit committee on the results of internal audit activities.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14VAC5-270-40, 14VAC5-270-100, 14VAC5-270-110, 14VAC5-270-120, 14VAC5-270-144, and 14VAC5-270-174, and add a new Rule at 14VAC5-270-145 should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Rules Governing Annual Financial Reporting, which amend the Rules at 14VAC5-270-40, 14VAC5-270-100, 14VAC5-270-110, 14VAC5-270-120, 14VAC5-270-144, and 14VAC5-270-174, and add a new Rule at 14VAC5-270-145 are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support or in opposition to, or request a hearing to oppose amending Chapter 270 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before, November 18, 2015, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case/PublicComments.aspx>. All comments shall refer to Case No. INS-2015-00141.

(3) If no written request for a hearing on the proposal to amend Chapter 270 of Title 14 of the Virginia Administrative Code is received on or before, November 18, 2015, the Commission, upon consideration of any comments submitted in support or in opposition to the proposal, may amend the Rules.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposal to amend rules by mailing a copy of this Order, together with the proposal, to all licensed insurers, burial societies, fraternal benefit societies, health service plans, health maintenance organizations, legal services plans, dental or optometric services plans, and dental plan organizations authorized by the Commission pursuant to the provisions of Title 38.2 of the Code, as well as to all interested parties.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(7) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(8) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(9) This matter is continued.

14VAC5-270-40. Definitions.

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

"Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants ("AICPA") and in all states in which the accountant or firm is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

"Affiliate" of a specific person or a person "affiliated" with a specific person means a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the specific person.

"Audit Committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer or group of insurers. The Audit Committee of an entity that controls a group of insurers may be deemed to be the Audit Committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. If an Audit Committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit Committee.

"Audited Financial Report" means and includes those items specified in 14VAC5-270-60.

"Commission" means the State Corporation Commission when acting pursuant to or in accordance with Title 38.2 of the Code of Virginia.

"Due date" means (i) June 1 for all domestic insurers; (ii) June 30 for all foreign or alien companies domiciled or entered through a state in which similar law, regulation, or administrative practice provides for a June 30 filing date; and (iii) for all other insurers, the earlier of June 30 or the date established by the insurer's state of domicile or entry for filing similar audited financial reports.

"Group of insurers" means those licensed insurers included in the reporting requirements of Article 5 (§ 38.2-1322 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia, or a set of insurers as identified by an entity's management, for the purpose of assessing the effectiveness of internal control over financial reporting.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

"Internal audit function" means a person or persons that provide independent, objective, and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

"Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

1. Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of assets;
2. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
3. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements.

"NAIC" means the National Association of Insurance Commissioners.

"RBC" means risk-based capital.

Regulations

"RBC Level" means a licensee's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

1. "Company Action Level RBC" means, with respect to any licensee, the product of 2.0 and its Authorized Control Level RBC;
2. "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;
3. "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions; and
4. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level RBC.

"SEC" means the ~~United States~~ U.S. Securities and Exchange Commission.

"Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 (15 USC § 7201 et seq.) and the SEC's rules and regulations promulgated thereunder.

"Section 404 report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

"SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 (15 USC § 7201 et seq.): (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934 (15 USC § 78a et seq.)); (ii) the Audit Committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934 (15 USC § 78a et seq.)); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

"Workpapers" means the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the accountant in the course of the examination of the financial statements of an insurer and which support the accountant's opinion thereof.

14VAC5-270-100. Scope of audit and report of independent certified public accountant.

Financial statements furnished pursuant to 14VAC5-270-60 shall be examined by an accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with U.S. Auditing (AU) Standards – AICPA Clarified (AU-C) Section 315 of the AICPA Professional Standards, ~~Consideration of Internal Control in a Financial Statement~~

~~Audit~~ Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement, the accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by ~~AU~~ AU-C Section ~~319~~ 315, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to 14VAC5-270-148, the accountant should consider (as the term should consider is defined in ~~Statements on Auditing Standards (SAS) No. 102~~ AU-C Section 200 of the AICPA Professional Standards, ~~Defining Professional Requirements in Statements on~~ Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the NAIC as the accountant deems necessary.

14VAC5-270-110. Notification of adverse financial condition.

A. The insurer required to furnish the annual Audited Financial Report shall require the accountant to report in writing within five business days to the board of directors or its Audit Committee any determination by the accountant that the insurer has materially misstated its financial condition as reported to the commission as of the balance sheet date under examination or that the insurer does not meet its minimum statutory capital and surplus requirements as of that date pursuant to Virginia law. An insurer that has received a report pursuant to this subsection shall forward a copy of the report to the commission within five business days of receipt of the report and shall provide the accountant making the report with evidence of the report being furnished to the commission. If the accountant fails to receive the evidence within the required five-business-day period, the accountant shall furnish to the commission a copy of its report within the next five business days.

B. No accountant shall be liable in any manner to any person for any statement made in connection with subsection A of this section if the statement is made in good faith in compliance with subsection A of this section.

C. If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this chapter, becomes aware of facts which might have affected the report, the commission notes the obligation of the accountant to take action as prescribed in ~~AU~~ AU-C Section ~~561~~ 560 of the AICPA Professional Standards, ~~Subsequent Discovery of Events and Subsequently Discovered Facts Existing at the Date of the Auditor's Report.~~

14VAC5-270-120. Communicating internal control related matters identified in an audit.

A. In addition to the annual Audited Financial Report, each insurer shall furnish the commission with a written communication as to any unremediated material weaknesses

in its internal controls over financial reporting identified during the audit. The communication shall be prepared by the accountant within 60 days after the filing of the annual Audited Financial Report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined in ~~SAS No. 112~~ AU-C Section 265 of the AICPA Professional Standards, Communicating Internal Control Related Matters Identified in an Audit) as of the immediately preceding December 31 (so as to coincide with the Audited Financial Report discussed in 14VAC5-270-50 A) in the insurer's internal control over financial reporting identified by the accountant during the course of the audit of the financial statements. If no unremediated material weaknesses were identified, the communication should so state.

B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses; if the actions are not described in the accountant's communication.

C. The insurer is expected to maintain information about significant deficiencies communicated by the independent certified public accountant. The information should be made available to the examiner conducting a financial condition examination for review and kept in a manner as to remain confidential.

14VAC5-270-144. Requirements for Audit Committees.

A. This section shall not apply to foreign or alien insurers licensed in Virginia or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

B. The Audit Committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the Audited Financial Report or related work pursuant to this chapter. Each accountant shall report directly to the Audit Committee.

C. The Audit Committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by 14VAC5-270-145.

D. Each member of the Audit Committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection ~~F~~ G of this section.

~~D~~. E. In order to be considered independent for purposes of this section, a member of the Audit Committee may not, other than in the capacity as a member of the Audit Committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or subsidiary thereof. However, if Virginia law requires board participation

by otherwise nonindependent members, that law shall prevail and such members may participate in the Audit Committee and be designated as independent for Audit Committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

~~E~~. F. If a member of the Audit Committee ceases to be independent for reasons outside the member's reasonable control, that member, with notice by the responsible entity to the commission, may remain an Audit Committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

~~F~~. G. To exercise the election of the controlling person to designate the Audit Committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commission of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commission by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, unless rescinded.

~~G~~. H. The Audit Committee shall require the accountant that conducts for an insurer any audit required by this chapter to timely report to the Audit Committee in accordance with the requirements of ~~SAS No. 114~~ AU-C Section 260 of the AICPA Professional Standards, The Auditor's Communication with those Charged with Governance, including:

1. All significant accounting policies and material permitted practices;
2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
3. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

If an insurer is a member of an insurance holding company system, the reports required by this subsection may be provided to the Audit Committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the Audit Committee.

Regulations

H. I. The proportion of independent Audit Committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300 million	Over \$300 million - \$500 million	Over \$500 million
No minimum requirements. See Notes A and B.	Majority (50% or more) of members shall be independent. See Notes A and B.	Supermajority of members (75% or more) shall be independent. See Note A.

Note A: The commission has authority afforded by state law to require the entity's board to enact improvements to the independence of the Audit Committee membership if the insurer is in a RBC level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500 million in prior year direct written and assumed premiums are encouraged to structure their Audit Committees with at least a supermajority of independent Audit Committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

I. J. An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million may make application to the commission for a waiver from the requirements of this section based upon hardship. The insurer shall file, with its annual statement filing, the commission's letter granting relief from this section with the states in which it is licensed or doing business and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the letter granting relief in an electronic format acceptable to the NAIC.

14VAC5-270-145. Internal audit function requirements.

A. An insurer is exempt from the requirements of this section if:

1. The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million; and
2. If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the

Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

B. The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the Audit Committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews, and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

C. In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

D. The head of the internal audit function shall report to the Audit Committee regularly, but no less often than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

E. If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

14VAC5-270-174. Retention of independent certified public accountant on or after January 1, 2010, and other effective dates.

A. Unless otherwise noted, the requirements of this chapter shall become effective for the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers not required to file a report because its total written premium is below the threshold that subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

B. The requirements of 14VAC5-270-80 D shall become effective for audits of the year beginning January 1, 2010, and thereafter.

C. The requirements of 14VAC5-270-144 shall become effective on January 1, 2010. An insurer or group of insurers that is not required to have independent Audit Committee

members or only a majority of independent Audit Committee members (as opposed to a supermajority) because the total direct written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

D. The requirements of 14VAC5-270-145 are to become effective January 1, 2016. If an insurer or group of insurers that is exempt from the 14VAC5-270-145 requirements no longer qualifies for that exemption, it shall have one year after the year the threshold is exceeded to comply with the requirements of this chapter.

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

FORMS (14VAC5-270)

~~Affidavit for Exemption From Filing Audited Financial Reports, SCCBOI-16.~~

[Audited Financial Statements Exemption Affidavit Year Ended December 31, 2014, R03 \(eff. 10/2014\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-270)

~~AICPA Professional Standards, Volume 1, June 1, 2007, American Institute of Certified Public Accountants.~~

~~AICPA Professional Standards, Volume 2, June 1, 2007, American Institute of Certified Public Accountants.~~

AICPA Professional Standards, Volume 1, as of June 1, 2015, American Institute of Certified Public Accountants, New York, New York 10036-8775, <http://www.aicpa.org>

AICPA Professional Standards, Volume 2, as of June 1, 2015, American Institute of Certified Public Accountants, New York, New York 10036-8775, <http://www.aicpa.org>

V.A.R. Doc. No. R16-4479; Filed September 22, 2015, 10:00 a.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

Title of Regulation: 16VAC25-35. Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees (amending 16VAC25-35-30).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: November 19, 2015.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email crisanti.john@dol.gov.

Summary:

The amendment requires a lead contractor to file a written lead project notification with the Department of Labor and Industry for all lead projects, rather than only projects where the contract price is \$2,000 or more.

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

16VAC25-35-30. Notification and permit fee.

A. Written notification of any lead project, ~~the contract price of which is \$2,000 or more,~~ shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

B. The department form shall include the following information:

1. Name, address, telephone number, and the certification number of each person intending to engage in a lead project.
2. Name, address, and telephone number of the owner or operator of the facility in which the lead project is to take place.
3. Type of notification: amended, emergency, renovation or demolition.
4. Description of facility in which the lead project is to take place, including address, size, and number of floors.
5. Estimate of amount of lead and method of estimation.
6. Amount of the lead project fee submitted.
7. Scheduled setup date, removal date or dates, and completion date and times during which lead-related activity will take place.
8. Name and license number of the supervisor on site.
9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site or sites where the lead-containing material will be disposed.

Regulations

10. Detailed description of the methods to be used in performing the lead project.

11. Procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint, and to replace lead-painted surfaces or fixtures in order to protect public health during performance of the lead project.

12. If a facsimile transmission is to be made pursuant to subsection J of this section, the credit card number, expiration date, and signature of cardholder.

13. Any other information requested on the department form.

C. A lead project permit fee shall be submitted with the completed project notification form. The fee shall be in accordance with the following schedule:

1. The greater of \$100 or 1.0% of the contract price, with a maximum of \$500.

2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least 10%, the commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for a lead project on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in subsection A of this section to the department at least 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

a. The dates of work required by subdivision B 7 of this section shall be every work day during the blanket notification period, excluding weekends and state holidays.

b. The estimate of lead to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary.

c. A copy of the contract shall be submitted with the notification.

2. The lead project permit fee for blanket notifications shall be as set forth in subsection C of this section.

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be present at the site. The fee for each amended notification will be \$15.

4. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must

include the actual amount of lead removed and the actual amount of payments made under the contract. The refund shall be the difference between the original lead permit fee paid and 1.0% of the actual amount of payments made under the contract.

E. Notification of fewer than 20 days may be allowed in case of an emergency involving protection of life, health or property. In such cases, notification and the lead permit fee shall be submitted within five working days after the start of the emergency lead project. A description of the emergency situation shall be included when filing an emergency notification.

F. A notification shall not be effective unless a complete form is submitted and the proper permit fee is enclosed with the completed form. A notification made by facsimile transmission pursuant to subsection J of this section shall not be effective if the accompanying credit card payment is not approved.

G. On the basis of the information submitted in the lead notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

H. Amended notifications may be submitted for modifications of subdivisions B 3 through B 11 of this section. No amendments to subdivision B 1 or B 2 of this section shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if an incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in accordance with the following schedule:

a. For modifications to subdivisions B 3, B 4, and B 6 through B 10 of this section, \$15.

b. For modifications to subdivision B 5 of this section, the difference between the permit fee in subsection C of this section for the amended amount of lead and the original permit fee submitted, plus \$15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

I. The department must be notified prior to any cancellation. A copy of the original notification form marked "canceled" must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the lead project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.

The following amounts will be deducted from the refund payment: \$15 for processing of the original notification, \$15 for each amendment filed, and \$15 for processing the refund payment.

J. Notification for any lead project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.

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

FORMS (16VAC25-35)

~~Lead Permit Application and Notification for Demolition/Renovation~~

[Permit Application and Notification for Lead Abatement and Renovation \(undated; filed 10/2015\)](#)

VA.R. Doc. No. R12-3269; Filed September 21, 2015, 3:41 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

AUCTIONEERS BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Auctioneers 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: **18VAC25-21. Regulations of the Virginia Auctioneers Board.**

Agency Contact: Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email auctioneers@dpor.virginia.gov.

FORMS (18VAC25-21)

~~Auctioneer License By Examination Application, 2907EXLIC (rev. 11/08).~~

~~Auctioneer Surety Bond Form, 2905_07BOND (rev. 11/08).~~

[Auctioneer License by Examination Application, A429-2907EXLIC-v4 \(rev. 6/2015\)](#)

[Auctioneer Surety Bond Form, 2905_07BOND \(rev. 4/2010\)](#)

[Auctioneer Firm License Application, 2908LIC \(rev. 11/08\)](#)

[Auction Firm Surety Bond Form, 2906_08BOND \(rev. 11/08\)](#)

~~States with Approved Reciprocal Agreements, 29RECLST (rev. 11/08).~~

~~Virginia Approved Auctioneering Schools, 29SCHLST (rev. 11/08).~~

[States with Approved Reciprocal Agreements, 29RECST \(rev. 2/2012\)](#)

[Virginia Approved Auctioneering Schools, 29SCHLST \(rev. 9/2013\)](#)

[Auctioneering School Application for Course Approval, 29CRS \(rev. 11/08\)](#)

[Auctioneer License By Reciprocity Application, 2907RECLIC \(rev. 11/08\)](#)

[Auctioneer License Reinstatement Application, 2905_07REI \(rev. 11/08\)](#)

[Application for Continuing Education Course Approval, 29CECRS \(rev. 11/08\)](#)

[Auctioneer Firm License Renewal Form, 2906_08REN \(eff. 11/08\)](#)

[Individual Auctioneer License Renewal Form, 2905_07REN \(eff. 11/08\)](#)

[Continuing Education Medical Exemption Request, 2905_07CEXMP \(eff. 11/08\)](#)

[Criminal Conviction Reporting Form, A406-01CCR-v2 \(rev. 9/2015\)](#)

[Disciplinary Action Reporting Form, A406-01DAR-v1 \(5/2015\)](#)

VA.R. Doc. No. R16-4490; Filed September 30, 2015, 11:12 a.m.

BOARD FOR BARBERS AND COSMETOLOGY

Proposed Regulation

Titles of Regulations: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-10, 18VAC41-20-20, 18VAC41-20-30, 18VAC41-20-50, 18VAC41-20-60, 18VAC41-20-80, 18VAC41-20-90 through 18VAC41-20-140, 18VAC41-20-160, 18VAC41-20-180, 18VAC41-20-200, 18VAC41-20-210, 18VAC41-20-**

Regulations

220, 18VAC41-20-240 through 18VAC41-20-280; repealing 18VAC41-20-190, 18VAC41-20-230).

18VAC41-40. Wax Technician Regulations (repealing 18VAC41-40-10 through 18VAC41-40-260).

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

Public Hearing Information:

December 16, 2015 - 1 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, Virginia 23233.

Public Comment Deadline: December 18, 2015.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

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

Purpose: The board seeks to amend its current regulations to ensure they are as least intrusive and burdensome as possible, in order to assist in providing an environment without unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public. Additionally, the board seeks to ensure regulations are clearly written and easily understandable and are representative of the current advancements and standards of the industries. Furthermore, the board seeks to strengthen some of its reporting requirements and prohibited acts to address areas of vulnerabilities for the perpetration of fraud by applicants and regulants.

Substance: Throughout the regulations, all pertinent sections have been updated to incorporate the board's Wax Technician Regulations, 18VAC41-40, into the board's regulations. As such, 18VAC41-40 is being repealed.

Following are the proposed amendments:

18VAC41-20-10. Add new definitions of "business entity," "firm," "responsible management," "sole proprietor," and "post-secondary education level" to clarify terms used in the regulation.

18VAC41-20-20. Require applicants to disclose all felony convictions during their lifetime and certain misdemeanors within the last three years and add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession.

18VAC41-20-60. Add requirements that if an applicant does not apply for licensure within five years of passing both exams, he must reapply, and that the board will only retain examination records for nonapplicants for a maximum of five years.

18VAC41-20-90. Add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession.

18VAC41-20-100. Require applicants to (i) hold a current license in the field in which they wish to become an instructor and (ii) disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity and allow for application denial where the board deems the applicant unfit or unsuited to engage in the profession.

18VAC41-20-110. Provide that student instructor temporary permits shall only be issued once and shall not be issued where grounds may exist to deny a permit due to prior criminal convictions or disciplinary action.

18VAC41-20-120. (i) Add the requirement that a shop or salon applicant's license be in good standing and require applicants and all members of responsible management to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity; (ii) add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; (iii) require disclosure of the applicant's physical address, the firm's responsible management, and certification that the applicant has read applicable laws and regulations; (iv) add the requirement that voided licenses be returned to the board within 30 days and set forth what events void a license; (v) require any change in responsible management be reported to the board within 30 days of the change; and (v) allow the board to inspect a shop or salon during reasonable hours and define reasonable hours.

18VAC41-20-130. (i) Add the requirement that the school applicant's license be in good standing and require applicants and all members of responsible management to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity; (ii) add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; (iii) require disclosure of the applicant's physical address, the firm's responsible management, and certification that the applicant has read applicable laws and regulations; (iv) add the requirement that voided licenses be returned to the board within 30 days and set forth what events void a license; (v) require any change in responsible management be reported to the board within 30 days of the change; (vi) exempt schools under the Virginia

Department of Education; and (vii) allow the board to inspect a school during reasonable hours and define reasonable hours.

18VAC41-20-160. Clarify and simplify the requirement that all licenses shall expire two years from the last day of the month in which issued.

18VAC41-20-180. Add salons and shops to reinstatement requirements.

18VAC41-20-190. Move the requirements of 18VAC41-20-190 to 18VAC41-20-130.

18VAC41-20-200. Add the requirement that schools either own or possess the necessary equipment and implements to teach the respective curriculum and require proof of access to equipment when the schools do not own the equipment.

18VAC41-20-210. Add curriculum requirements for nail schools and waxing schools.

18VAC41-20-230. Repeal this section, which is already contained within 18VAC41-20-130.

18VAC41-20-240. Require schools provide certain documentation to the board within specified time periods.

18VAC41-20-250. Require that schools provide student rosters to the board twice a year at specified intervals.

18VAC41-20-270. (i) Clarify the disinfection process and add that scissors must be disinfected between clients; (ii) add language about disinfecting tubs and bowls used for nail care, upkeep of the immediate area around wax pots, and requiring client bathrooms; (iii) add regulations regarding sanitary storage of soiled and clean linens, sanitary containers, labeling, and disinfectant for nail care; and (iv) specify what should be included in the blood spill cleanup kit.

18VAC41-20-280. (i) Provide grounds for discipline for failing to teach the approved curriculum, committing bribery, failing to respond or providing false or misleading information to the board or its agents, and refusing to allow inspection of any shop, salon, or school; (ii) clarify and refine grounds for discipline for certain criminal convictions and failing to report convictions within a certain time period; (iii) provide grounds for discipline for allowing unlicensed activity, failing to take sufficient measures to prevent transmission of communicable disease, and failing to comply with all procedures with regard to conduct at the examination.

Issues: The primary advantage of the proposed amendments to the public is the board will continue to approve applicants and license professionals for which it has safeguards to ensure proper competency and standards of conduct. The addition of prohibited acts will reduce fraud and better ensure the regulant population is minimally competent. The clarification of requirements regarding sanitation and health safety will ensure that the health, safety, and welfare of the public are better served. Further, regulants and applicants within these professions will be able to read board requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by

enhancing their understanding of their individual requirements. Further, consumers in the public, as well as regulators from related agencies, will have a better understanding of board requirements, which will also allow them to conduct their business with greater efficiency.

The primary advantage to the Commonwealth will be the continued successful regulation of barbers, cosmetologists, nail technicians, and wax technicians who meet the minimum entry standards. The proposed amendments strengthen the department's ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. No disadvantage has been identified.

The incorporation of the previously adopted wax technician regulations will further simplify and enhance the regulated community's efforts to locate pertinent regulations. The clarification of the proposed language will facilitate greater understanding of board requirements for all involved.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a periodic review, the Board for Barbers and Cosmetology (Board) proposes to make many substantive and clarifying changes to its regulations. Specifically, the Board proposes to:

- 1) Add a definition for responsible management and specify that responsible management must be in good standing if already licensed in Virginia or any other political jurisdiction and must provide a physical address (rather than a post office box) to the Board,
- 2) Change criminal background reporting requirements,
- 3) Require that individuals apply for licensure within five years of taking their licensure exam,
- 4) Allow the Board to decline to issue licenses, temporary permits and temporary instructor permits if grounds exist that would allow the Board to deny licensure (criminal activity, disciplinary action from this Board or any other, etc.),
- 5) Require that voided licenses be returned to the Board within 30 days of them being voided,
- 6) Require schools that are licensed by the Board have copies of any agreements that allow them to use necessary equipment that is owned by another entity,
- 7) Require schools licensed by the Board to periodically provide student rosters,
- 8) Require a 2x2 headshot of students attending any school licensed by the Board be attached to their student record files, and
- 9) Require all shops, salons and schools licensed by the Board to have a bathroom with hot and cold running water in their facility.

Result of Analysis. Benefits likely exceed costs for some proposed regulatory changes; for some changes, there is

Regulations

insufficient information to ascertain whether benefits will outweigh costs. One proposed change as written is far more expensive than it need be. Costs likely outweigh benefits for at least one proposed change.

Estimated Economic Impact. Current regulations are not written so that the Board receives information about criminal convictions or past Board disciplinary actions for individuals whose businesses are licensed as limited liability corporations (LLCs). This means that owners of a licensed business that is disciplined and loses its license can incorporate a new business and apply for a license and the Board would not know about past disciplinary actions against, essentially, the same entity. Because of situations such as this, the Board now proposes to add a definition for responsible management to include owners and officers of LLCs and also proposes to require that such entities be in good standing with this Board as well as any others where they might be licensed. This action will allow the Board to track owners of licensed businesses and deny licensure to businesses that have been disciplined and have lost their licenses in the past. This change is likely to benefit the public as it will keep businesses that have been disciplined in the past from opening up under a new name but likely with the same unsafe or unethical practices that lost them their license in the first place.

Current regulations require that applicants for licensure disclose, and provide corroborating paperwork, to the Board for all misdemeanor and felony convictions. Board staff reports, however, that most misdemeanor convictions would normally not be considered grounds for denial of licensure. This means that currently applicants for licensure are spending time and money to gather paperwork from whatever jurisdictions they need to, including jurisdictions very far away from Virginia, and that the Board is spending time unnecessarily looking at paperwork for legal infractions that have no bearing on whether the applicant is likely to provide safe and ethical services to their clients. To address these issues, the Board now proposes to limit the scope of convictions that applicants must report to misdemeanors involving moral turpitude that occur within three years of application for licensure and all felony convictions regardless of when they occurred. Affected applicants for licensure will benefit from this as they will not have to incur expenses for gathering paperwork associated with older misdemeanors or misdemeanors that do not involve moral turpitude, which may only be available if they physically go to the courthouses where convictions occurred. The Board will also benefit from not being inundated with paperwork that is unlikely to affect the licensing decisions they make.

Currently, individuals may apply for licensure any time after they complete training requirements and pass the licensure exam without time limits. The Board feels that practical methodology in fields licensed by the Board change enough over time that individuals who passed their licensure exam a long time before they actually apply for licensure may no longer be competent to practice. As a consequence, the Board

proposes to specify that individuals must apply for licensure no longer than five years after they take the licensure exam. Any individuals applying for licensure past that timeframe will have to pay to take the licensure exam again (currently this costs \$155). The benefits of this change will only outweigh the costs if changes within fields licensed by the Board are significant enough to render individuals incompetent to practice without refreshing their knowledge and retaking the exam. There is insufficient information to ascertain whether this would be the case.

Board staff reports that currently the Board requires applicants for licensure to disclose past crimes and disciplinary actions but that current regulations do not allow the Board to deny licensure because of the information disclosed. The Board now proposes to add language to these regulations that will allow the Board to deny the issuance of licenses, temporary permits and temporary instructor permits if they believe that any information disclosed to the Board would deem the applicant unfit or unsuited to practice in fields that are licensed by the Board. This change will likely benefit the public as it will allow the Board to decline to license individuals that have, for instance, a past history of injury to clients in other jurisdictions.

Current regulations require that the Board be notified within 30 days if a Board issued business license is voided for any reason (the business has been sold, responsible management has changed, etc.) and also require that the voided license be returned to the Board but does not specify when. Because the Board is concerned that holders of these licenses will pass them to other entities that might fraudulently set up shop with them, the Board now proposes to require that voided licenses be returned to the Board within 30 days of the change that voided them. To the extent that it is complied with, this change will greatly benefit the public as it will stop the offering of services that would be performed fraudulently under a license that does not belong to the individual(s) offering those services.

The Board proposes several other regulatory changes to prevent possible fraudulent activity at licensed schools. Specifically the Board proposes to require schools that do not own equipment necessary for teaching to have copies of agreements that allow them to access equipment owned by other entities for their students to use; schools will also be required to periodically provide the Board with student rosters. These changes will allow Board staff to verify that students will have access to the equipment needed to learn Board required skills and that schools are not making up student files only when they are inspected by the Board. Board staff reports that these changes will likely cost less than \$25 per year in compliance costs. These costs are likely outweighed by the benefits that will likely accrue to students who will be more likely to be guaranteed to have access to equipment necessary for their education.

The Board also proposes to require that student files include a 2x2 head and shoulder photo of the student. Board staff reports that this will be required to combat rampant testing fraud and will allow the identity of students taking licensure exams to be verified. While this change is likely to benefit the public, because fewer individuals would presumably be licensed without actually passing the licensure exam, the cost of compliance for this requirement as written will likely be far higher than it needs to be. 2x2 (passport size) photos cost between \$8 and \$12¹ whereas larger, more conventionally sized photos, are far cheaper. A 4x6 photo print, for instance, can be printed for as little as \$0.09 at Walmart. Compliance costs for this requirement could be very easily significantly reduced if the Board changed the proposed language to require a photo that was at least 2x2 rather than exactly 2x2.

Finally, current regulations require that licensed shops, salons and schools have a fully functional bathroom in the same building with a working toilet and sink. Some enforcement agents have allowed salons in malls to count the mall bathrooms as meeting this requirement and some enforcement agents have said that mall bathrooms do not meet this requirement. Board staff reports that the Board is concerned that allowing mall bathrooms to meet regulatory requirements will have a client wandering far afield of licensed facilities possibly in the middle of chemical hair treatments of various kinds. Board staff reports that the Board feels it would be safer for clients if salons are required to have bathrooms within their shops. The Board now proposes to add language to these regulations that requires licensed facilities have bathrooms that are maintained exclusively for client use. Board staff estimates that there are approximately 15 to 30 licensed shops that are located in malls and do not have bathroom facilities within the confines of their shops that would have to either move or build a bathroom in order to comply with this proposed regulatory change. Board staff further estimates that building a bathroom in shops that do not have them can cost between \$2,000 and \$10,000. Given the high cost of requiring shops to meet a stricter standard than is sometimes allowed now, costs for this proposed change likely outweigh the benefits of increased convenience for clients and possibly avoiding chemical burns if clients go to use the mall bathroom and stay away longer than they should or longer than is advised.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that the Board currently licenses 58,421 individuals and 7,349 shops and schools in the Commonwealth. All of these entities, as well as future licensees, will be affected by these proposed changes. Most, if not all, shops and schools would likely qualify as small businesses.

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

Projected Impact on Employment. A new proposed requirement that individuals apply for licensure within five

years of taking their licensure exam may increase costs for these individuals (as they would have to study for and retake their exam) and may slightly decrease the probability of them becoming licensed and working in fields licensed by the Board. Board staff believes from anecdotal evidence that such a situation would be extremely rare.

Effects on the Use and Value of Private Property. Proposed changes such as requiring in-shop client bathrooms where shops currently are allowed to be in regulatory compliance by being in a large facility (such as a mall) that has bathroom accommodations are likely to greatly increase costs, and lower profits, for affected shops

Small Businesses: Costs and Other Effects. Proposed requirements that impact bathroom facilities will likely increase costs for affected small businesses. Several proposed requirements, such as having to periodically provide student rosters and have 2x2 headshots attached to student files, are likely to increase costs either for schools or for both schools and their students.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board would likely be able to decrease costs for regulated entities by allowing photos that were larger than 2x2 for student files. The Board also may wish to revisit proposed bathroom requirements.

Real Estate Development Costs. Proposed changes such as requiring in-shop client bathrooms where shops currently are allowed to be in regulatory compliance by being in a larger facility (such as a mall) that has bathroom accommodations are likely to increase the cost of building new malls that will have barber shops or salons as tenants.

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,

Regulations

- 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.

¹ An internet search revealed prices for passport photos ranging from \$7.99 at Walmart to \$11.99 at CVS.

Agency's Response to Economic Impact Analysis: The board concurs with the analysis for #1, 2, and 4 through 7 in the Summary of Proposed Amendments to Regulations. The board respectfully disagrees with #3, 8, and 9.

Summary of Proposed Amendments to Regulations

1. Summary Item #3: The proposed regulations would require that an applicant who does not apply for licensure within five years of passing the exam must retake the exam to be eligible for licensure.

Economic Impact Analysis (EIA) position: "The benefits of this change will only outweigh the costs if changes within fields licensed by the Board are significant enough to render individuals incompetent to practice without refreshing their knowledge and retaking the exam."

Agency Response: There are several fundamental reasons for implementing this change in the regulations, not just the single issue raised by the EIA. For someone who applies for their license more than five years after taking the exam, the full scope of problems includes:

- The board cannot know whether they still possess the knowledge or skill to competently practice,
- The board does not have access to testing records older than five years to confirm the applicant truly passed the exam, and
- Changes in the industry may have made the applicant's knowledge obsolete.

The EIA fails to take into consideration the broader range of issues in its analysis. Without adding this requirement, the board will face the dilemma of having to license individuals who may not be minimally competent, as well as experience increased costs for maintaining exam records in perpetuity.

Explanation: The board is statutorily required to establish the qualifications of applicants for licensure. The board utilizes written and practical examinations to establish that applicants possess the competence to engage in the profession.

There are several issues that affect competence when an applicant has not been engaged with the profession for many years. The EIA correctly identifies that changes in the industry may render an applicant's knowledge obsolete. However, the EIA fails to account for the other, more significant reason, which is that individuals who have not been engaged in the profession for five years are likely to have forgotten much of the knowledge and skill for engaging in the practice. The board has no way of knowing whether an individual who has not been engaged in the practice for six, 10, or 20 years still has the practical skill or information base to practice safely. Since the board regulates professions which cut, use chemicals, and work closely on peoples bodies, it is particularly important that the board meet its statutory obligation to ensure it licenses minimally competent individuals. The board believes that it cannot accurately assess if an individual possesses the skill and knowledge qualifications for licensure if those skills and knowledge have not been measured in the previous five years.

Further, the EIA does not identify that the proposed regulations add the requirement that records of examinations only be kept for five years. Currently, while the regulations allow an applicant to apply any time after they have taken the exam, the board's examination vendor only maintains exam records for five years. This discrepancy means that the board has no way to verify that an applicant claiming to have passed the exam more than five years ago has truly done so. To resolve this conflict without changing the regulation, the board will have to either require the exam vendor to maintain records in perpetuity or start maintaining these records itself. Either of these options will increase costs to the board, which in turn, will impact licensing fees. As such, the board believes that the five-year recordkeeping will result in maintaining a lower cost for licensure.

2. Summary Item #8: The proposed regulations would require a 2x2 head and shoulder picture of the students attending any school licensed by the board be attached to their student record files.

EIA Position: "[T]he cost of compliance for this requirement as written will likely be far higher than it needs to be. 2x2 (passport size) photos cost between \$8 and \$12, whereas larger, conventionally sized photos, are far cheaper."

Agency Response: The proposed regulation does not specify passport photos, and can be met by any type of photo, as long as the head and shoulder portion are 2x2. The EIA assumes that the cost of this requirement will be the cost of acquiring passport photos. However, the EIA's assumptions fail to take into account that:

- This requirement is for the schools, not the students,
- The regulation does not require passport photos, and

- Students are already required to provide this 2x2 photo during the application process.

The EIA's incorrect assumption that only a passport photo would meet this requirement leads to a fundamental flaw in its analysis. Compliance costs would only be in the \$8 to \$12 range if the school did not provide this service and if the student chose to utilize passport photos in addition to the photos already required during the application process. Further, the proposed regulation would provide the board with an important tool to combat rampant fraud in the precicensure process.

Explanation: The board is authorized to establish the qualifications of licensure and to promulgate regulations necessary to effectively administer the regulatory system. The authority currently in 18VAC41-20-20 of the board's regulations already requires that in order to be eligible to sit for examination, a student must have completed a board-approved training program.

The language contained in proposed 18VAC41-20-240 A, requiring schools maintain a 2x2 color head and shoulder photo, is a necessary piece of fraud detection for the board to corroborate that the individual sitting for the exam is, in fact, the student who completed the training program. This regulation is being proposed, along with several other recordkeeping measures, to address rampant fraud in the precicensure process.

The EIA does not take into account that the requirement is for the schools. The school would bear the requirement of maintaining the photo, and may utilize its own photograph equipment to comply with the regulation. It is likely that there will be variation in the market, with some schools generating the photo in-house, and others asking the students to provide the photo. As such, the cost of the regulation may be as little as the cost for the school in ink and printer paper.

The EIA incorrectly assumes that this requirement is met only with a passport photo. While a school may utilize a passport photo, the regulation does not specify or require a passport photo. Schools may utilize whatever sized photo they wish, as long as the head and shoulder portion is 2x2. The EIAs recommendation of using a \$0.09 4x6 photo is already acceptable under the proposed regulation, as long as the head and shoulder portion meets the 2x2 criteria. In fact, as will be explained below, the board currently accepts and utilizes these types of photos for the other 2x2 photo requirements. It is worth noting that even the U.S. Department of State does not require individuals to purchase passport photos and has a tool to allow passport applicants to take their own photo.

The EIA incorrectly assumes that this requirement will create a new financial burden. As noted above, applicants already are required to provide a 2x2 head and shoulder color photograph when they apply for licensure. This photo must be submitted along with their application. The examination vendor utilizes this photo to ensure that the individual taking the exam is the same individual who applied for licensure.

These photograph requirements have been essential to the board's ability to stop testing fraud. Contrary to the EIA's assumption that there will be a new requirement for the student to produce a 2x2 photo, applicants are already obtaining these photographs. The board frequently sees 4x6 photos, whole or cut down to 2x2. The board also accepts 2x2 photographs that have been printed on home printers if they meet the standard. This recordkeeping requirement for the schools, if the school defrays the cost to the student, only means the student would have to produce an additional copy of the 2x2. So even if a student chose to utilize the higher cost passport photo, since passport photos come in sets, ranging from two to 10 photos, there would likely be no additional cost for students utilizing passport photos.

3. Summary Item #9: The proposed regulations would add to the existing requirement that shops, salons, schools, and facilities maintain working toilet and sink, an additional requirement that the bathroom be exclusively for client use and have hot and cold running water.

EIA Position: "The EIA argues that, [g]iven the high cost of requiring shops to meet a stricter standard than is sometimes allowed now, costs for this proposed change likely outweigh the benefits"

Agency Response: The proposed regulations address a very rare situation in which a salon or shop does not have an exclusive client bathroom with hot and cold water, usually because they are situated in a mall. Salons and shops are already required to utilize hot water for cleaning and sterilizing the facility and equipment. The board has encountered and foresees certain health and safety risks associated with not having this requirement, such as:

- Loss of oversight of chemical treatments while clients have left the salon or shop, and
- Unsanitary bathroom conditions that the salon or shop has no authority to address.

Additionally, this requirement would add a level of convenience, as patrons would not have to travel across the mall to use the bathroom. The board believes these are substantial issues for the salons and shops that are affected. The EIA fails to adequately account for the health and safety risk this regulation is meant to address and fails to mention that the board may consider grandfathering existing businesses that would be noncompliant when this regulation takes effect.

Explanation: As the EIA explains, this regulation partially stems out of a concern regarding salons and shops in malls. The board has expressed concern that if salons have to send their customers from one end of the mall to the other to use the bathroom, the salon is putting that client at risk. Salons and shops use chemicals (such as hair dyes, bleaches, etc.) which have the potential to cause injury to clients if not used correctly, or left on the client for too long. When a client under the treatment of these chemicals leaves the salon, the salon no longer has oversight of that client. The salon cannot

Regulations

properly supervise the treatment or ensure that the chemicals are removed timely when the consumer is off site and subject to whatever delays they may encounter while at a shopping mall. This situation is a clear and foreseeable risk to the public which the board seeks to address.

Further, the requirement that the bathroom be for client use only addresses a re-occurring problem of shared bathrooms. The board has encountered during inspections the situations of salons sharing bathrooms with other businesses, where the salon did not have control over the sanitation of the bathroom. This left the board in the dilemma of having to cite a business for unsanitary conditions it had no control over, or not citing a business that puts its clients in unsanitary conditions.

The board is aware that there could be significant costs associated with renovating a facility to come into compliance with this proposed regulation. There are currently regulations in place that require salons and shops to sanitize using hot water. Salons and shops that cannot meet the new standard are likely unable to meet the current standard either, and thus are not properly sanitizing their implements. The requirement for hot and cold water is not necessarily adding a new requirement, but rather clarifying the need for hot water. Despite this, the board will consider implementing a grandfather clause for facilities that this regulation may adversely affect due to what could be very large costs to comply. It is estimated that there are very few salons or shops that would be adversely affected by this regulation. Even with a grandfather provision, the board believes that applying the proposed regulation to new shops and salons going forward will ensure a more sanitary and safer experience as the industry moves toward this standard.

Summary:

The proposed amendments are the result of a periodic review; repeal 18VAC41-40, Wax Technician Regulations, and incorporate wax technician regulations into 18VAC41-20; and include clarifying changes to text to ensure consistency with other board regulations and state and federal laws and compliance with current industry standards. The proposed amendments (i) add new definitions; (ii) require disclosure of felonies, certain misdemeanors, and disciplinary actions; (iii) require individuals to apply for licensure within five years of taking the exam; (iv) allow the board to decline to issue licenses, temporary permits, and temporary instructor permits if grounds exist that would allow the board to deny licensure; (v) require voided licenses to be returned to the board within 30 days of the license being voided and clarify what circumstances may lead to voiding a license; (vi) allow for board inspection of shops, salons, and schools during reasonable hours; (vii) require schools to provide specific information to the board and within required time periods; (viii) provide grounds for discipline for several prohibited actions; and (ix) update sanitation

requirements, including a requirement that businesses provide a bathroom with hot and cold running water for clients.

Part I

General

18VAC41-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Direct supervision" means that a Virginia licensed barber, cosmetologist, ~~or~~ nail technician, or wax technician shall be present in the barbershop, cosmetology salon, ~~or~~ nail technician salon, or waxing salon at all times when services are being performed by a temporary permit holder or registered apprentice.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Licensee" means any person, ~~partnership, association, limited liability company, or corporation~~ sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by the Commission on Colleges or by an accrediting agency that is recognized by the U.S. Secretary of Education.

"Reciprocity" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Reinstatement" means having a license or certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certificate for another period of time.

"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.

"Virginia state institution" for the purposes of these regulations means any institution approved by the Virginia Department of Education or the Virginia Department of Corrections.

Part II
Entry

18VAC41-20-20. General requirements for a barber, cosmetologist, ~~or~~ nail technician, or wax technician license.

A. In order to receive a license as a barber, cosmetologist, or nail technician, an applicant must Any individual wishing to engage in barbering, cosmetology, nail care, or waxing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed barber, cosmetologist, ~~or~~ nail technician, or wax technician in every jurisdiction Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure, any disciplinary action taken in another jurisdiction Virginia and all other jurisdictions in connection with the applicant's practice as a barber, cosmetologist, ~~or~~ nail technician, or wax technician. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure ~~whether~~ if he has been previously licensed in Virginia as a barber, cosmetologist, ~~or~~ nail technician, or wax technician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and ~~the regulations of the board~~ this chapter.

4. ~~In accordance with § 54.1-204 of the Code of Virginia, the each applicant shall not have been convicted in any jurisdiction of a misdemeanor or felony which directly relates to the profession of barbering, cosmetology, or nail care. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of barbering, cosmetology, or nail care. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:~~

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within three years of the date of the application; and

b. All felony convictions during the applicant's 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.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the ~~board approved~~ board-approved examination, administered either by the board or by independent examiners.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved barber, cosmetology, ~~or~~ nail technician, or wax technician training program in a Virginia licensed barber, cosmetology, ~~or~~ nail technician, or wax technician school, respectively, or a Virginia public school's barber, cosmetology, ~~or~~ nail technician, or wax technician program approved by the ~~State~~ Virginia Department of Education shall be eligible for examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

Regulations

a. Any person completing a barber or cosmetology training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 1,500 hours of training to be eligible for examination. If less than 1,500 hours of barber or cosmetology training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent barber or cosmetology course and documentation of six months of barber or cosmetology work experience in order to be eligible for examination.

b. Any person completing a nail technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 150 hours of training to be eligible for examination. If less than 150 hours of nail technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent nail technician course and documentation of six months of nail technician work experience in order to be eligible for the nail technician examination.

c. Any person completing a wax technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 115 hours of training to be eligible for examination. If less than 115 hours of wax technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent wax technician course and documentation of six months of wax technician work experience in order to be eligible for the wax technician examination.

18VAC41-20-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as a barber, cosmetologist, ~~or~~ nail technician, or wax technician who is a barber, cosmetology ~~or~~, nail technician, or wax technician instructor, or who is a licensed instructor in the respective profession in any other state or jurisdiction of the United States and who has completed both a training program and a written and practical examination that is substantially equivalent to that required by ~~these regulations this chapter~~, may be issued a barber, cosmetology, ~~or~~ nail technician, or wax technician license or a barber, cosmetology ~~or~~, nail technician, or wax technician instructor certificate, respectively, without an examination. The applicant must also meet the requirements set forth in 18VAC41-20-20.

18VAC41-20-50. Exceptions to training requirements.

A. Virginia licensed cosmetologists with a minimum of two years of work experience shall be eligible for the barber examination; likewise, a Virginia licensed barber with a minimum of two years of work experience shall be eligible for the cosmetology examination.

B. Virginia licensed barbers with less than two years of work experience and Virginia barber students enrolling in a Virginia cosmetology training school shall be given educational credit for the training received for the performances completed at a barber school; likewise, licensed Virginia cosmetologists with less than two years of work experience and Virginia cosmetology students enrolling in a Virginia barber training school shall be given educational credit for the training received for the performances completed at a cosmetology school.

C. Any barber, cosmetologist, ~~or~~ nail technician, or wax technician applicant having been trained as a barber, cosmetologist, ~~or~~ nail technician, or wax technician in any Virginia state institution shall be eligible for the respective examination.

D. Any barber, ~~or~~ cosmetologist, nail technician, or wax technician applicant having a minimum of two years experience in barbering, ~~or~~ cosmetology, nail care, or waxing in the United States armed forces and having provided documentation satisfactory to the board of that experience shall be eligible for the respective examination.

18VAC41-20-60. Examination requirements and fees.

A. Applicants for initial licensure shall pass both a practical examination and a written examination approved by the board. The examinations may be administered by the board or by a designated testing service.

B. Any applicant who passes one part of the examination shall not be required to take that part again provided both parts are passed within one year of the initial examination date.

C. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

D. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed \$225 per candidate.

E. Any candidate failing to apply for initial licensure within five years of passing both a practical examination and a written examination shall be required to retake both portions. Records of examinations shall be maintained for a maximum of five years.

18VAC41-20-80. Examination administration.

A. The examinations shall be administered by the board or the designated testing service. The practical examination shall be supervised by a chief examiner.

B. Every barber, cosmetology, ~~or~~ nail technician, or wax technician examiner shall hold a current Virginia license in their respective professions, have three or more years of active experience as a licensed professional, and be currently practicing in that profession. Examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

C. No certified barber, cosmetology, ~~or~~ nail technician, or wax technician instructor who is currently teaching, or is a school owner, or is an apprentice sponsor shall be an examiner.

D. Each barber, cosmetology, ~~and~~ nail technician, and wax technician chief examiner shall hold a current Virginia license in his respective profession, have five or more years of active experience in that profession, have three years of active experience as an examiner, and be currently practicing in his respective profession. Chief examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

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

18VAC41-20-90. Barber, cosmetology, ~~and~~ nail technician, and wax technician temporary permits.

A. A temporary permit to work under the supervision of a currently licensed barber, cosmetologist ~~or~~, nail technician, or wax technician may be issued only to applicants for initial licensure ~~that~~ who the board finds eligible for examination. There shall be no fee for a temporary permit.

B. The temporary permit shall remain in force for 45 days following the examination date. The examination date shall be the first test date after the applicant has successfully submitted an application to the board that an examination is offered to the applicant by the board.

C. Any person continuing to practice barbering, cosmetology, ~~or~~ nail care ~~services~~, or waxing services after a temporary permit has expired may be prosecuted and fined by the Commonwealth under §§ 54.1-111 A 1 and 54.1-202 of the Code of Virginia.

D. No applicant for examination shall be issued more than one temporary permit.

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-20-20.

18VAC41-20-100. General requirements for a barber instructor certificate, cosmetology instructor certificate, ~~or~~ nail technician instructor certificate, or wax technician instructor certificate.

A. ~~Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a barber, e Cosmetology, or nail technician instructor certificate, if the person:~~ Any individual wishing to engage in barbering instruction, cosmetology instruction, nail care instruction, or waxing instruction shall meet the following qualifications:

1. ~~Holds a current Virginia barber, cosmetology, or nail technician license, respectively; and~~ The applicant shall be in good standing as a licensed barber, cosmetologist, nail technician, or wax technician, and instructor, respectively, in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, cosmetologist, nail technician, or wax technician, or in the practice of teaching any of those professions. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in the instruction of barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action:

2. The applicant shall hold a current Virginia barber, cosmetology, nail technician, or wax technician license, respectively;

~~Passes~~ 3. The applicant shall:

- a. Pass a course in teaching techniques at the post-secondary educational level; ~~or~~

Regulations

~~3. Completes b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified barber, cosmetologist, ~~or~~ nail technician, or wax technician instructor in a barber, cosmetology, ~~or~~ nail technician, or wax technician school, respectively; or~~

~~4. Passes c. Pass an examination in barber, cosmetology ~~or~~, nail technician, or wax technician instruction respectively, administered by the board or by a testing service acting on behalf of the board; and~~

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within three years of the date of the application; and

b. All felony convictions during the applicant's 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.

~~B. Applicants passing the examination for a barber, cosmetology or nail technician instructor certificate~~ Instructors shall be required to maintain a barber, cosmetology, ~~or~~ nail technician, or wax technician license, respectively.

18VAC41-20-110. Student instructor temporary permit.

A. A licensed barber, cosmetologist, ~~or~~ nail technician, or wax technician may be granted a student instructor temporary permit to function under the direct supervision of a barber instructor, cosmetology instructor, ~~or~~ nail technician instructor, or wax technician instructor respectively. A licensed nail technician or wax technician may also be granted a student instructor permit to function under the direct supervision of a cosmetology instructor.

B. The student instructor temporary permit shall remain in force for not more than 12 months after the date of issuance and shall be nontransferable and nonrenewable.

C. No applicant for examination shall be issued more than one student instructor temporary permit.

D. Failure to maintain a barber, cosmetology, ~~or~~ nail technician, or wax technician license shall disqualify an individual from holding a student instructor temporary permit.

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-20-100.

18VAC41-20-120. Shop General requirements for a shop or salon license.

~~A. Any individual firm wishing to operate a barbershop, cosmetology ~~or~~ salon, nail salon, or waxing salon shall obtain a shop or salon license in compliance with § 54.1-704.1 of the Code of Virginia; and shall meet the following qualifications in order to receive a license:~~

1. The applicant and all members of the responsible management shall be in good standing as a licensed shop or salon in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any barbershop, cosmetology salon, nail salon, or waxing salon or practice of the profession. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barbershop, cosmetology salon, nail salon, or waxing salon.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of a barbershop, cosmetology salon, nail salon, or waxing salon. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions within three years of the date of the application; and

b. All felony convictions.

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.

5. The applicant shall disclose the firm's responsible management.

B. A barbershop, cosmetology, or nail salon license Shop or salon licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address of the business. Any changes in the name, or address, or ownership of the shop or salon shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. In the event of a closing of a barbershop or cosmetology or nail salon, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned by the owners to the board. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license, within 30 days of the change in the business entity. Such changes include but are not limited to:

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

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed shop or salon for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

18VAC41-20-130. School General requirements for a school license.

A. Any individual firm wishing to operate a barber, cosmetology, or nail technician, or wax technician school shall submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia. All instruction and training of barbers, cosmetologists, or nail technicians shall be conducted under the direct supervision of a licensed barber, cosmetologist, or nail technician, respectively, and meet the following qualifications in order to receive a license:

1. The applicant and all members of the responsible management shall be in good standing as a licensed school in Virginia and all other jurisdiction where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any barbering, cosmetology, nail, or waxing school or practice of the profession. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barbering, cosmetology, nail, or waxing school.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in the operation of a barbering, cosmetology, nail, or waxing school. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose the applicant's physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions within three years of the date of the application; and

Regulations

b. All felony convictions.

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.

5. The applicant shall disclose the firm's responsible management.

B. A ~~barber~~ Barber, cosmetology, ~~or~~ nail technician, and wax technician school license licenses are issued to firms as defined in this chapter, shall not be transferable, and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school shall be reported to the board in writing within 30 days of such change. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs, or other advertisements, must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

D. In the event of a school closing, the board must be notified by the owners in writing within 30 days of the closing, and the license must be returned.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in business entity. Such changes include but are not limited to:

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

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. Barber schools, cosmetology schools, nail schools, or waxing schools under the Virginia Department of Education shall be exempted from licensure requirements.

F. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

Part III
Fees

18VAC41-20-140. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$105	With application
License by Endorsement	\$105	With application
Renewal:		
Barber	\$105	With renewal card prior to expiration date
Cosmetologist	\$105	With renewal card prior to expiration date
Nail technician Technician	\$105	With renewal card prior to expiration date
Wax Technician	\$105	With renewal card prior to expiration date
Reinstatement	\$210* *includes \$105 renewal fee and \$105 reinstatement fee	With reinstatement application
Instructors:		
Application	\$125	With application
License by Endorsement	\$125	With application

Renewal	\$150	With renewal card prior to expiration date
Reinstatement	\$300* *includes \$150 renewal fee and \$150 reinstatement fee	With reinstatement application
Facilities:		
Application	\$190	With application
Renewal	\$190	With renewal card prior to expiration date
Reinstatement	\$380* *includes \$190 renewal fee and \$190 reinstatement fee	With reinstatement application
Schools:		
Application	\$220	With application
Add Program	\$100	With application
Renewal	\$220	With renewal card prior to expiration date
Reinstatement	\$440* *includes \$220 renewal fee and \$220 reinstatement fee	With reinstatement application

Part IV
Renewal/Reinstatement

18VAC41-20-160. License renewal required.

A. All barber licenses, cosmetology licenses, nail technician licenses, barbershop licenses, cosmetology salon licenses, and nail technician salon licenses A license or certificate issued under this chapter shall expire two years from the last day of the month in which they were it was issued.

B. All barber instructor certificates, cosmetology instructor certificates, and nail technician instructor certificates ~~shall expire on the same date as the certificate holder's license expiration date.~~

C. All school licenses ~~shall expire on December 31 of each even numbered year.~~

18VAC41-20-180. Failure to renew.

A. When a licensed or certified individual or business entity fails to renew its license or certificate within 30 days following its expiration date, the licensee or certificate holder shall apply for reinstatement of the license or certificate by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and reinstatement fee.

B. When a ~~barber, cosmetologist, or nail technician~~ licensed or certified individual or business entity fails to renew ~~his~~ its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee or certificate holder shall apply for licensure or certification as a new applicant; and shall meet all current application requirements, shall pass the board's current examination and shall receive a new license. Individuals applying for licensure under this section shall be eligible to apply for a temporary permit from the board under 18VAC41-20-90 entry requirements for each respective license or certificate.

~~C. When a barber instructor, cosmetology instructor, or nail technician instructor fails to renew his certificate within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former certificate holder shall apply as a new applicant, meet all current application requirements, and receive a new license or temporary permit from the board. Upon receiving the new license, the individual may apply for a new instructor's certificate.~~

~~D. C.~~ The application for reinstatement for a school shall provide (i) the reasons for failing to renew prior to the expiration date; and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school and if the school's records are maintained in accordance with 18VAC41-20-240 and 18VAC41-20-250 and 18VAC41-20-260 by the Department of Professional and Occupational Regulation. Pursuant to ~~18VAC41-20-190 18VAC41-20-130~~, upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time

Regulations

the student attended if the school license is reinstated by the board.

~~E. D.~~ The date a renewal fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether a penalty fee or the requirement for reinstatement of a license or certificate is applicable.

~~F. E.~~ When a license or certificate is reinstated, the licensee or certificate holder shall be assigned an expiration date two years from the date of the last day of the month of reinstatement ~~except for school licenses that shall expire on December 31 of each even numbered year.~~

~~G. F.~~ A licensee or certificate holder ~~who that~~ reinstates ~~his~~ its license or certificate shall be regarded as having been continuously licensed or certified without interruption. Therefore, a licensee or certificate holder shall be subject to the authority of the board for activities performed prior to reinstatement.

~~H. G.~~ A licensee or certificate holder ~~who that~~ fails to reinstate ~~his~~ its license or certificate shall be regarded as unlicensed or uncertified from the expiration date of the license or certificate forward. Nothing in ~~these regulations~~ this chapter shall divest the board of its authority to discipline a licensee or certificate holder for a violation of the law or regulations during the period of time for which the individual was licensed or certified.

Part V

Barber ~~and~~ Cosmetology, Nail, and Waxing Schools

18VAC41-20-190. Applicants for state approval. (Repealed.)

~~A. Any person, firm, or corporation desiring to operate a barber, cosmetology, or nail school shall submit an application to the board at least 60 days prior to the date for which approval is sought.~~

~~B. Barber schools, nail schools, or cosmetology schools under the Virginia Department of Education shall be exempted from licensure requirements.~~

18VAC41-20-200. General requirements.

A barber, cosmetology, ~~or~~ nail, or waxing school shall:

1. Hold a school license for each and every location.
2. Hold a salon license if the school receives compensation for services provided in its clinic.
3. Employ a staff of licensed and certified barber, cosmetology, ~~or~~ nail technician, or wax technician instructors.
4. Develop individuals for entry level competency in barbering, cosmetology, ~~or~~ nail care, or waxing.
5. Submit its curricula for board approval.
 - a. Barber curricula shall be based on a minimum of 1,500 clock hours and shall include performances in accordance with 18VAC41-20-220.

b. Cosmetology curricula shall be based on a minimum of 1,500 clock hours and shall include performances in accordance with 18VAC41-20-220.

c. Nail technician curricula shall be based on a minimum of 150 clock hours and shall include performances in accordance with 18VAC41-20-220.

d. Wax technician curricula shall be based on a minimum of 115 clock hours and shall include performances in accordance with 18VAC41-20-220.

6. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the shop or salon in plain view of the public.

7. ~~Classroom~~ Conduct classroom instruction ~~must be conducted~~ in an area separate from the clinic area where practical instruction is conducted and services are provided.

8. Possess the necessary equipment and implements to teach the respective curriculum. If any such equipment or implement is not owned by the school, then a copy of all agreements associated with the use of such property by the school shall be provided to the board.

18VAC41-20-210. Curriculum requirements.

A. Each barber school shall submit with its application a curriculum including, but not limited to, a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for barbering shall include, but not be limited to, the following:

1. School policies;
2. State law, regulations, and professional ethics;
3. Business and shop management;
4. Client consultation;
5. Personal hygiene;
6. Cutting the hair with a razor, clippers, and shears;
7. Tapering the hair;
8. Thinning the hair;
9. Shampooing the hair;
10. Styling the hair with a hand hair dryer;
11. Thermal waving;
12. Permanent waving with chemicals;
13. Shaving;
14. Trimming a moustache or beard;
15. Applying hair color;
16. Lightening or toning the hair;
17. Analyzing skin or scalp conditions;
18. Giving scalp treatments;
19. Giving basic facial massage or treatment;

20. Sanitizing and maintaining implements and equipment; and

21. Honing and stropping a razor.

B. Each cosmetology school shall submit with its application a curriculum including, but not limited to, a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for cosmetology shall include, but not be limited to, the following:

1. Orientation:
 - a. School policies;
 - b. State law, regulations, and professional ethics;
 - c. Personal hygiene; and
 - d. Bacteriology, sterilization, and sanitation.
2. Manicuring and pedicuring:
 - a. Anatomy and physiology;
 - b. Diseases and disorders;
 - c. Procedures to include both natural and artificial application; and
 - d. Sterilization.
3. Shampooing and rinsing:
 - a. Fundamentals;
 - b. Safety rules;
 - c. Procedures; and
 - d. Chemistry, anatomy, and physiology.
4. Scalp treatments:
 - a. Analysis;
 - b. Disorders and diseases;
 - c. Manipulations; and
 - d. Treatments.
5. Hair styling:
 - a. Anatomy and facial shapes;
 - b. Finger waving, molding, and pin curling;
 - c. Roller curling, combing, and brushing; and
 - d. Heat curling, waving, braiding and pressing.
6. Hair cutting:
 - a. Anatomy and physiology;
 - b. Fundamentals, materials, and equipment;
 - c. Procedures; and
 - d. Safety practices.
7. Permanent waving-chemical relaxing:
 - a. Analysis;
 - b. Supplies and equipment;
 - c. Procedures and practical application;

- d. Chemistry;
- e. Recordkeeping; and
- f. Safety.

8. Hair coloring and bleaching:
 - a. Analysis and basic color theory;
 - b. Supplies and equipment;
 - c. Procedures and practical application;
 - d. Chemistry and classifications;
 - e. Recordkeeping; and
 - f. Safety.
9. Skin care and make-up:
 - a. Analysis;
 - b. Anatomy;
 - c. Health, safety, and sanitary rules;
 - d. Procedures;
 - e. Chemistry and light therapy;
 - f. Temporary removal of hair; and
 - g. Lash and brow tinting.
10. Wigs, hair pieces, and related theory:
 - a. Sanitation and sterilization;
 - b. Types; and
 - c. Procedures.
11. Salon management:
 - a. Business ethics; and
 - b. Care of equipment.

C. Each nail school shall submit with its application a curriculum including, but not limited to, a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for nail care shall include, but not be limited to, the following:

1. Orientation:
 - a. School policies;
 - b. State law, regulations, and professional ethics;
2. Sterilization, sanitation, bacteriology, and safety;
3. Anatomy and physiology;
4. Diseases and disorders of the nail;
5. Nail procedures (i.e., manicuring, pedicuring, and nail extensions); and
6. Nail theory and nail structure and composition.

D. Each waxing school shall submit with its application a curriculum including, but not limited to, a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that

Regulations

will lead to licensure. The outline for waxing shall include, but not be limited to, the following:

1. Orientation:

- a. School policies;
- b. State law, regulations, and professional ethics; and
- c. Personal hygiene.

2. Skin care and treatment:

- a. Analysis;
- b. Anatomy and physiology;
- c. Diseases and disorders of the skin;
- d. Health sterilization, sanitation, bacteriology, and safety including infectious disease control measures; and
- e. Temporary removal of hair.

3. Skin theory, skin structure, and composition.

4. Client consultation:

- a. Health conditions;
- b. Skin analysis;
- c. Treatments;
- d. Client expectations; and
- e. Health forms and questionnaires.

5. Waxing procedures for brow, lip, facial, legs, arms, underarm, chest, back, and bikini areas:

- a. Fundamentals;
- b. Safety rules; and
- c. Procedures.

6. Wax treatments:

- a. Analysis;
- b. Disorders and diseases;
- c. Manipulations; and
- d. Treatments.

7. Salon management:

- a. Business ethics; and
- b. Care of equipment.

18VAC41-20-220. Hours of instruction and performances.

A. Curriculum and performance requirements shall be offered over a minimum of 1,500 clock hours for barbering and cosmetology, ~~and~~ 150 clock hours for nail care, and 115 clock hours for waxing.

B. The curriculum requirements for barbering must include the following minimum performances:

Hair and scalp treatments	10
Hair styling	320
Tinting	15
Bleaching and frosting	10

Temporary rinses	10
Semi-permanent color	10
Cold permanent waving or chemical relaxing	25
Hair shaping	50
Wig care, styling, placing on model	5
Finger waving and thermal waving	30
Facials <u>Basic facials</u> and waxings	5
TOTAL	490

C. The curriculum requirements for cosmetology must include the following minimum performances:

Hair and scalp treatments	10
Hair styling	320
Tinting	15
Bleaching and frosting	10
Temporary rinses	10
Semi-permanent color	10
Cold permanent waving or chemical relaxing	25
Hair shaping	50
Wig care, styling, placing on model	5
Finger waving and thermal waving	30
Manicures/ <u>and</u> pedicures	15
Facials <u>Basic facials</u> and waxings	5
Sculptured nails/ <u>2</u> nail tips/ <u>2</u> <u>and</u> wraps	20
TOTAL	525

D. The curriculum requirements for nail care must include the following minimum performances:

Manicures	30
Pedicures	15
Individual sculptured nails/ <u>and</u> nail tips	200
Individual removals	10
Individual nail wraps	20
TOTAL	275

E. The curriculum requirements for waxing must include the following minimum performances:

<u>Arms</u>	<u>4</u>
<u>Back</u>	<u>2</u>

<u>Bikini area</u>	<u>6</u>
<u>Brows</u>	<u>12</u>
<u>Chest</u>	<u>1</u>
<u>Facial (i.e., face, chin, and cheek and lip)</u>	<u>6</u>
<u>Leg</u>	<u>3</u>
<u>Underarm</u>	<u>2</u>
<u>TOTAL</u>	<u>36</u>

18VAC41-20-230. School identification. (Repealed.)

~~Each barber, cosmetology, or nail care school approved by the board shall identify itself to the public as a teaching institution.~~

18VAC41-20-240. Records.

~~A. Schools are required to keep upon graduation shall maintain on the premises of each school and available for inspection by the board or any of its agents the following records for the period of a student's enrollment through five years after the student's completion of the curriculum, termination, or withdrawal, written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school:~~

1. Enrollment application containing student's signature and a 2x2 color head and shoulders photograph;
2. Daily record of attendance containing student's signature;
3. Student clock hours containing student's signature and method of calculation;
4. Practical performance completion sheets containing student's signature;
5. Final transcript; and
6. All other relevant documents that account for a student's accrued clock hours and practical applications.

~~B. Schools shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any student, or for which the licensee is required to maintain records, for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.~~

~~C. Schools shall, within 21 days upon receipt of a written request from a student, provide documentation of hours and performances completed by the student as required to be maintained by subsection A of this section.~~

~~D. Prior to a school changing ownership or a school closing, the school is required to provide to current students documentation of hours and performances completed.~~

~~E. For a period of one year after a school changes ownership, the school shall provide, within 21 days upon receipt of a written request from a student, documentation of hours and performances completed by a current student.~~

18VAC41-20-250. Hours reported Reporting.

~~A. Schools shall provide, in a manner, format, and frequency prescribed by the board, a roster of all current students and a roster of students who attended in the preceding six months prior to the reporting deadline.~~

~~B. Within 30 days of the closing of a licensed barber school, cosmetology school, or nail care school, for any reason, ceasing to operate, whether through dissolution or alteration of the business entity, the school shall provide a written report to the board on performances and hours of each of its students who have not completed the program.~~

Part VI
Standards of Practice

18VAC41-20-260. Display of license.

A. Each shop owner, salon owner or school owner shall ensure that all current licenses, certificates or permits issued by the board shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop, salon, or school ~~in plain view of the public~~. Duplicate licenses, certificates, or permits shall be posted in a like manner in every shop, salon, or school location where the regulant provides services.

B. Each shop owner, salon owner, or school owner shall ensure that no employee, licensee, student, or apprentice performs any service beyond the scope of practice for the applicable license.

C. All licensees, certificate holders, and permit holders shall operate under the name in which the license, certificate, or permit is issued.

D. Unless also licensed as a cosmetologist, a barber is required to hold a separate nail technician or wax technician license if ~~he will be performing nail care or waxing manicures or pedicures or applying artificial nails.~~

E. All apprenticeship cards issued by the Department of Labor and Industry (DOLI) shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop or salon. The apprentice sponsor shall require each apprentice to wear a badge clearly indicating their status as a DOLI registered apprentice.

18VAC41-20-270. Sanitation and safety standards for shops, salons, and schools.

A. Sanitation and safety standards. Any shop, salon, school, or facility where barber, cosmetology, or nail ~~services or waxing services~~ are delivered to the public must be clean and sanitary at all times. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical

Regulations

construction and maintenance, safety, and public health. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall insure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be a hospital (grade) and tuberculocidal disinfectant solution registered with the Environmental Protection Agency (EPA). Disinfectant solutions shall be used according to manufacturer's directions. ~~Disinfection is to be carried out in the following manner:~~

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic that the manufacturer designed for use on more than one client, including but not limited to clippers, scissors, combs, and nippers is to be carried out in the following manner prior to servicing a client:

- a. ~~Remove hair and~~ all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter.
- b. Wash thoroughly with hot water and soap.
- c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel.
- d. Fully immerse ~~instruments~~ implements into solution for a minimum of 10 minutes, and
- e. After immersion, rinse articles, thoroughly dry with a clean paper towel, and store in a clean pre-disinfected and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection/storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including but not limited to powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

~~2.~~ 4. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container. This area shall be clean and the cutting edges of any clippers are to be disinfected.

~~3.~~ 5. Electrical clipper blades shall be disinfected before and after each use. Disinfection is to be carried out in the following manner:

- ~~a. Remove all hair and foreign matter;~~
- ~~b. Remove blade and all hair and foreign matter under blade; and~~
- ~~c. Completely immerse clipper blade into an EPA-registered hospital (grade) and tuberculocidal disinfectant solution for not less than 10 minutes. Wipe the entire handle down with the solution.~~

~~d.~~ If the clipper blade cannot be removed, the use of a spray or foam used according to the manufacturer's instructions will be acceptable provided that the disinfectant is an EPA-registered hospital (grade) and tuberculocidal disinfectant solution, and that the entire handle is also disinfected by wiping with the disinfectant solution.

~~4. All materials including cosmetic and nail brushes, sponges, chamois, spatulas and galvanic electrodes must be cleaned with warm water and soap or detergent to remove all foreign matter. Implements should then be rinsed, thoroughly dried with a clean paper towel, and completely immersed in an EPA registered hospital (grade) and tuberculocidal disinfectant solution. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly and stored in a pre-disinfected and dry drawer, cabinet or nonairtight covered container, or left in an EPA-registered disinfection/storage solution used according to manufacturer's directions.~~

~~5.~~ 6. All wax pots will shall be cleaned and disinfected with an EPA-registered hospital (grade) and tuberculocidal disinfectant solution with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items which may pose a hazard.

~~6.~~ 7. Each barber, cosmetologist, and nail technician, and wax technician must have a wet disinfection unit at his station.

~~7. Nail brushes, nippers, finger bowls, disinfectable or washable files and buffers and other instruments must be washed in soap and water (files are to be scrubbed with a brush to remove all foreign matter), rinsed, thoroughly dried with a clean paper towel, and then completely immersed in an EPA registered hospital (grade) and tuberculocidal disinfectant solution for 10 minutes after each use. After disinfection they must be rinsed, dried thoroughly with a clean paper towel, and placed in a dry, pre-disinfected, nonairtight covered receptacle, cabinet or drawer, or left in an EPA registered disinfectant/storage system used according to manufacturer's directions.~~

~~8. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter. All foreign matter must be removed. The drill bits must then be cleaned with warm water and soap or detergent and rinsed, dried thoroughly with a clean paper towel, and completely immersed in an EPA registered hospital (grade) and~~

~~tuberculocidal disinfectant solution. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly, and stored in a pre-disinfected and dry drawer, cabinet or nonairtight covered container, or left in an EPA-registered disinfection/storage solution used according to manufacturer's directions.~~

8. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipe-less units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

- a. Drain all water and remove all debris;
- b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residue and then rinse with water;
- c. Disinfect by spraying or wiping the surface with an appropriate disinfectant; and
- d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. All furniture, walls, floors, and windows shall be clean and in good repair. Wash basins and shampoo sinks shall be clean. Service chairs, wash basins, shampoo sinks, workstations and workstands, and back bars shall be clean.

2. The floor surface in the immediate all work area areas must be of a washable surface other than carpet. The floor must be kept clean, and free of hair, nail clippings, dropped articles, spills and clutter, trash, electrical cords, other waste materials, and any other items which may pose a hazard;

3. All furniture, fixtures, walls, floors, windows, and ceilings in the immediate work area must be shall be clean and in good repair; and free of water seepage and dirt. Any mats shall be secured or shall lay flat;

4. A fully functional bathroom in the same building with a working toilet and sink must be available for clients shall be maintained exclusively for client use. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. If there is a window, it must have a screen. There must be antibacterial soap and clean individual single-use towels or hand air-drying device for the client's use. Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee; and 7. Electrical electrical outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times,

safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The salon area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and

9. Adequate lighting shall be provided.

D. Equipment sanitation.

~~1. Service chairs, wash basins, shampoo sinks and workstations shall be clean. Floors shall be kept free of hair, nail product, and other waste materials. Combs, brushes, towels, razors, clippers, scissors, nippers, and other instruments shall be cleaned and sanitized after every use and stored free from contamination.~~

~~2. The top of workstands or back bars shall be kept clean;~~

~~3. The work area shall be free of clutter, trash, and any other items that may cause a hazard;~~

~~4. Heat producing appliances and equipment shall be placed so as to prevent any accidental injury to the client or licensee; and~~

~~5. Electrical appliances and equipment shall be in safe working order at all times.~~

E. D. Articles, tools, and products.

1. Clean towels and robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean pre-disinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels and robes, or smocks other linens shall be stored in an enclosed a container enclosed on all sides including the top, except if the towels are stored in a separate laundry room; room;

2. Whenever a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin;

~~3. Scissors, razors, clippers, nippers, and all sharp edged cutting instruments shall be sanitized after each use with a disinfectant in accordance with the manufacturer's instructions.~~

~~4. Hair brushes and combs shall be washed in soap and hot water and sanitized after each use. Cleaned instruments, such as combs, hair brushes, shears, towels, etc., shall be kept free from contamination.~~

~~5. No alum or other astringent shall be used in stick form. Liquid or powder astringent must be used.~~

~~6. Permanent wave rods shall be rinsed after each use. End papers shall not be reused and shall be destroyed after each use.~~

~~7. 3. Soiled implements must be removed from the tops of work stations immediately after use;~~

~~8. Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;~~

Regulations

~~9. Powder puffs, lip color, cheek color, sponges, or styptic pencils that cannot be sanitized or sterilized are prohibited from being used on more than one client;~~

~~10. 4. Lotions, ointments, creams, and powders shall be kept in closed containers. A clean spatula, other clean tools, or clean disposable gloves shall be used to remove bulk substances such as creams or ointments from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be ~~recovered~~ covered after each use;~~

~~11. 5. For nail care, if a sanitary container shall be is provided to each for a client. Emery boards shall be discarded after use on each individual client, the sanitary container shall be labeled and implements shall be used solely for that specific client. Disinfection shall be carried out in accordance with subdivisions B 1 and B 2 of this section;~~

~~12. All sharp tools, implements, and heat producing appliances shall be safely stored;~~

~~13. Pre-sanitized tools and implements, linens and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;~~

~~14. Soiled towels, linens and implements shall be deposited in a container made of cleanable materials and separate from those that are clean or pre-sanitized;~~

~~15. 6. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and~~

~~16. 7. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the shop, salon, school, or facility in accordance with the guidelines of the Department of Health.~~

~~F. E. Chemical storage and emergency information.~~

~~1. Shops, salons, schools, and facilities shall have in the immediate working area a binder with all Material Safety Data Sheets (MSDS) provided by manufacturers for any chemical products used;~~

~~2. Shop, salons, schools, and facilities shall have a blood spill clean-up kit in the work area that contains at minimum latex gloves, two 12x12 towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;~~

~~3. Flammable chemicals shall be stored in a nonflammable storage cabinet or a properly ventilated room; and~~

~~4. Chemicals that could interact in a hazardous manner (oxidizers, catalysts and solvents) shall be separated in storage.~~

~~G. F. Client health guidelines.~~

~~1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client. Licensees shall require that clients for nail care services shall cleanse their hands immediately prior to the requested nail care service;~~

~~2. An artificial nail shall only be applied to a healthy natural nail;~~

~~3. A nail drill or motorized instrument shall be used only on the free edge of the nail;~~

~~4. No shop, salon, school, or facility providing cosmetology or nail care services shall have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products.~~

~~5. No product shall be used in a manner that is disapproved by the FDA; and~~

~~6. All regulated services must be performed in a facility that is in compliance with current local building and zoning codes.~~

~~H. G. In addition to any requirements set forth in this section, all licensees and temporary permit holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational Safety and Health Compliance Division of the Virginia Department of Labor and Industry.~~

~~I. H. All shops, salons, schools, and facilities shall immediately report the results of any inspection of the shop, salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.~~

~~J. I. All shops, salons, schools, and facilities shall maintain a self-inspection form on file to be updated on an annual basis, and kept for five years, so that it may be requested and reviewed by the board at its discretion.~~

18VAC41-20-280. Grounds for license revocation or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

~~A. The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder; suspend or revoke or refuse to renew or reinstate any license, certificate, or permit; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board this chapter if the board it finds that the licensee, certificate holder, permit holder, or applicant;~~

~~1. The licensee, certificate holder, permit holder or applicant is is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a barber, cosmetologist, ~~or~~ nail technician, or wax technician, or to operate a barbershop, cosmetology salon, nail salon, or waxing salon;~~

~~2. The licensee, certificate holder, permit holder or applicant is~~ Is convicted of fraud or deceit in the practice or teaching of barbering, cosmetology, ~~or nail care, or waxing or fails to teach the curriculum as provided for in this chapter;~~

~~3. The licensee, certificate holder, permit holder or applicant attempted~~ Attempts to obtain, obtained, renewed or reinstated a license, certificate, or ~~permit~~ temporary license by false or fraudulent representation;

~~4. The licensee, certificate holder, permit holder or applicant violates~~ Violates or induces others to violate, or cooperates with others in violating, any of the provisions of ~~these regulations~~ this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any barber, cosmetologist, ~~or nail technician, or wax technician~~ may practice or offer to practice;

5. Offers, gives, or promises 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 barbering, cosmetology, nail care, or waxing as defined in § 54.1-700 of the Code of Virginia;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed shop, salon, or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

~~5. The licensee, certificate holder, permit holder or applicant fails~~ 8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with these regulations;

~~6. A licensee, certificate holder, or permit holder fails~~ 9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or permit. ~~The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;~~

~~7. The licensee, certificate holder, permit holder or applicant publishes~~ 10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

~~8. The licensee, certificate holder, permit holder or applicant fails~~ 11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any other jurisdiction or of any license, certificate, or permit that has been the subject of disciplinary action in any other jurisdiction; ~~or~~

~~9. In accordance with § 54.1-204 of the Code of Virginia, the licensee, certificate holder, permit holder or applicant has been convicted in any jurisdiction of a misdemeanor or felony that directly relates to the profession of barbering, cosmetology, or nail care. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of barbering, cosmetology, or nail care. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The applicant shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the applicant to the board within 10 days after all appeal rights have expired.~~

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as an owner or operator of a shop, salon, or school, a person who has not obtained a license or a temporary permit to practice as a barber, cosmetologist, nail technician, or wax technician unless the person is duly enrolled as a registered apprentice;

15. Allows, as an owner or operator of a school, a person who has not obtained an instructor certificate or a temporary permit to practice as a barber, cosmetologist, nail technician, or wax technician instructor;

Regulations

~~16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of barbering, cosmetology, nail care, or waxing, or the operation of barbershops, cosmetology salons, nail salons, or waxing salons; or~~

~~17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at the examination.~~

~~B. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. An instructor of the approved school fails to teach the curriculum as provided for in these regulations;~~

~~2. The owner or director of the approved school permits or allows a person to teach in the school without a current instructor certificate; or~~

~~3. The instructor, owner or director is guilty of fraud or deceit in the teaching of barbering, cosmetology or nail care.~~

~~C. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any barbershop, cosmetology or nail salon or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. The owner or operator of the shop or salon fails to comply with the sanitary requirements of barbershops or cosmetology or nail salons provided for in these regulations or in any local ordinances; or~~

~~2. The owner or operator allows a person who has not obtained a license or a temporary permit to practice as a barber, cosmetologist, or nail technician unless the person is duly enrolled as a registered apprentice.~~

~~D. The board may, in considering the totality of the circumstances, revoke, suspend or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practices of barbering, cosmetology, or nail care.~~

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 (18VAC41-20)

~~Barber — Barber Instructor Examination & Instructor Application, A425-1301_02EXLIC (eff. 9/11)~~

~~Cosmetology — Cosmetology Instructor Examination & License Application, A425-1201_04EXLIC (eff. 9/11)~~

~~Nail Technician — Nail Technician Instructor Examination & License Application, A425-1206_07EXLIC (eff. 9/11)~~

~~Temporary Permit Application, A425-1213TP (eff. 9/11)~~

~~License by Endorsement Application, A425-1213END (rev. 2/14)~~

[Barber - Barber Instructor Examination & License Application, A450-1301_02EXLIC-v12 \(rev. 7/2016\)](#)

[Cosmetology - Cosmetology Instructor Examination & License Application, A450-1201_04EXLIC-v15 \(rev. 7/2016\)](#)

[Nail Technician - Nail Technician Instructor Examination & License Application, A450-1206_07EXLIC-v13 \(rev. 7/2016\)](#)

[Wax Technician - Wax Technician Instructor Examination & License Application, A450-1214_15EXLIC-v12 \(rev. 7/2016\)](#)

[Temporary Permit Application, A450-1213TEMP-v2 \(rev. 7/2016\)](#)

[License by Endorsement Application, A450-1213END-v8 \(rev. 7/2016\)](#)

[Training & Experience Verification Form, A425-1213TREXP \(eff. 9/11\)](#)

[Reinstatement Application, A425-1213REI \(rev. 2/14\)](#)

[Salon, Shop, Spa & Parlor License Application A425-1213BUS \(rev. 2/14\)](#)

[Individuals - Reinstatement Application, A450-1213REI-v8 \(rev. 7/2016\)](#)

[Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS-v8 \(rev. 7/2016\)](#)

[Salon, Shop & Spa Self Inspection Form, A425-1213_SSS_INSP \(eff. 9/11\)](#)

~~Instructor Certification Application, A425-1213INST (rev. 2/14)~~

~~School License Application, A425-1213SCH (rev. 2/14)~~

[Instructor Certification Application, A450-1213INST-v7 \(rev. 7/2016\)](#)

[Student Instructor - Temporary Permit Application A450-1213ST_TEMP-v2 \(rev. 7/2016\)](#)

[School License Application, A450-1213SCHL-v8 \(rev. 7/2016\)](#)

[School Self Inspection Form, A425-1213SCH_INSP \(eff. 9/11\)](#)

[Licensure Fee Notice, A425-1213FEE \(rev. 2/14\)](#)

[Change of Responsible Management Application, A450-1213CRM-v1 \(rev. 7/2016\)](#)

VA.R. Doc. No. R12-3107; Filed September 25, 2015; 9:23 a.m.

Proposed Regulation

Title of Regulation: 18VAC41-70. Esthetics Regulations (amending 18VAC41-70-10 through 18VAC41-70-40, 18VAC41-70-60 through 18VAC41-70-110, 18VAC41-70-160, 18VAC41-70-230, 18VAC41-70-240, 18VAC41-70-260, 18VAC41-70-270, 18VAC41-70-280; adding 18VAC41-70-35; repealing 18VAC41-70-170, 18VAC41-70-220).

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

Public Hearing Information:

December 16, 2015 - 1:15 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA 23233

Public Comment Deadline: December 18, 2015.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

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

Purpose: The board seeks to amend its current regulations to ensure they are as least intrusive and burdensome as possible to provide an environment without unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public. Additionally, the board seeks to ensure regulations are clearly written and easily understandable and are representative of the current advancements and standards of the industries. Furthermore, the board seeks to strengthen some of its reporting requirements and prohibited acts to address areas of vulnerabilities for the perpetration of fraud by applicants and regulants. The board is also adding regulations to allow for esthetics apprenticeships.

Substance: The proposed amendments:

18VAC41-70-10. Add new definitions of the terms "business entity," "firm," "responsible management," "sole proprietor," and "post-secondary education level" and amend the term "licensee" to clarify usage in the chapter.

18VAC41-70-20. Require applicants to disclose all felony convictions during their lifetime and certain misdemeanors

within the last three years and allow that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession.

18VAC41-70-30. Clarify endorsement requirements and extend this avenue of licensure to master estheticians.

18VAC41-70-35. Establish requirements for esthetics apprenticeships and allow exam eligibility upon successful completion of the apprenticeship by adding this new section.

18VAC41-70-40. Add requirements that if an applicant does not apply for licensure within five years of passing both exams, he must reapply and clarify that the board will only retain examination records for nonapplicants for a maximum of five years.

18VAC41-70-60. Clarify and standardize requirements for examiners and chief examiners and bring the esthetics regulations in line with other board regulations.

18VAC41-70-70. Clarify that no fees will be charged for a temporary license and that the license will not be issued where grounds exist to deny the license.

18VAC41-70-80. (i) Add the requirement that the applicant spa's license be in good standing and require applicants and all members of responsible management to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity and add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; (ii) require disclosure of the applicant's physical address, the firm's responsible management, and certification that the applicant has read applicable laws and regulations; (iii) add the requirement that voided licenses be returned to the board within 30 days and set forth what events void a license; (iv) require any change in responsible management be reported to the board within 30 days of the change; and (v) allow the board to inspect a shop or salon during reasonable hours, and define reasonable hours.

18VAC41-70-90. (i) Add the requirement that the applicant school's license be in good standing and require applicants and all members of responsible management to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity and add that the board may deny licensure to any applicant having prior disciplinary violations for which the board deems the applicant unfit to engage in the profession; (ii) require disclosure of the applicant's physical address, the firm's responsible management, and certification that the applicant has read applicable laws and regulations; (iii) incorporate 18VAC41-70-170, add the requirement that voided licenses be returned to the board within 30 days, and set forth what events void a license; (iv) require any change in responsible management be reported to the board within 30 days of the change; (v) exempt schools under the Virginia Department of Education;

Regulations

and (vi) allow the board to inspect a school during reasonable hours, and define reasonable hours.

18VAC41-70-100. Require esthetics instructor applicants to hold a current license in esthetics and to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity and allow for application denial where the board deems the applicant unfit or unsuited to engage in the profession.

18VAC41-70-110. Require master esthetics instructor applicants to hold a current license in master esthetics and to disclose all felony convictions during their lifetime, certain misdemeanors within the last three years, and any prior discipline by a licensing entity and allow for application denial where the board deems the applicant unfit or unsuited to engage in the profession.

18VAC41-70-160. Clarify and standardize the requirements for failing to renew licensure.

18VAC41-70-170. Repeal this section, which is incorporated into 18VAC41-70-90.

18VAC41-70-220. Repeal this section, which is already contained within 18VAC41-70-90.

18VAC41-70-230. Add specific requirements for recordkeeping and add a requirement that schools provide certain documentation to the board within specified time periods.

18VAC41-70-240. Add the requirement that schools provide student rosters to the board twice a year at specified intervals.

18VAC41-70-260. Add certificate display requirements for apprentices.

18VAC41-70-270. (i) Clarify the disinfection process between clients; (ii) add language about disinfecting tubs and bowls used for nail care, upkeep of the immediate area around wax pots, and requiring client bathrooms with hot and cold water; (iii) add regulations regarding sanitary storage of soiled and clean linens, sanitary containers, labeling, and disinfectant for nail care; and (iv) specify what should be included in the blood spill cleanup kit.

18VAC41-70-280. (i) Provide grounds for discipline for failing to teach the approved curriculum, committing bribery, failing to respond to or providing false or misleading information to the board or its agents, and refusing to allow inspection of any shop, salon, or school; (ii) clarify and refine grounds for discipline for certain criminal convictions and failing to report convictions within a certain time period; (iii) provide grounds for discipline for allowing unlicensed activity, failing to take sufficient measures to prevent transmission of communicable disease, and failing to comply with all procedures with regard to conduct at the examination

Issues: The primary advantage of the proposed amendments to the public is the addition of the apprenticeship program as a method of entry into the profession. Currently, the only avenue for entry is through training at proprietary schools,

which may be financially burdensome for some who seek to enter the profession, potentially limiting the number of estheticians who enter the workforce, thus small businesses may have a reduced number of qualified employees to hire. The existence of the Department of Labor and Industry apprenticeship structure will facilitate an efficient and expeditious outcome to this change while providing an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program. Additionally, the board will continue to approve applicants and license professionals for which it has safeguards to ensure proper competency and standards of conduct as required by statute. The addition of prohibited acts will reduce fraud and better ensure the regulant population is minimally competent. The clarification of requirements regarding sanitation and health safety will ensure that the health, safety, and welfare of the public are better served. Further, regulants and applicants within these professions will be able to read the board's requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by enhancing their understanding of their individual requirements. Further, consumers in the public, as well as regulators from related agencies, will have a better understanding of board requirements, which will also allow them to conduct their business with greater efficiency.

The primary advantage to the Commonwealth will be the positive economic impact of an increase of eligible estheticians entering the workforce who go through the apprenticeship program and potentially contribute to an increase in small businesses, the strengthening of existing small businesses, and a segment of the population with higher earning potential. Additionally, the proposed regulations would provide an avenue to pursue training while being paid at least minimum wage as required by the apprenticeship program. Another advantage is the continued successful regulation of estheticians and master estheticians who meet the minimum entry standards as required by statute. The proposed amendments strengthen the department's ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. No disadvantage has been identified.

The addition of apprenticeship as a method of entry will likely have a multifaceted positive economic impact. The clarification of the proposed language will facilitate greater understanding of board requirements for all involved.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of a periodic review, the Board for Barbers and Cosmetology (Board) proposes to make many substantive and clarifying changes to its regulations. Specifically, the Board proposes to:

- 1) Add a definition for "responsible management" and specify that responsible management must be in good standing if already licensed in Virginia or any other political jurisdiction and must provide a physical address (rather than a post office box) to the Board,
- 2) Change criminal background reporting requirements,
- 3) Require that individuals apply for licensure within five years of taking their licensure exam,
- 4) Allow the Board to decline to issue licenses, temporary permits and temporary instructor permits if grounds exist that would allow the Board to deny licensure (criminal activity, disciplinary action from this Board or any other, etc.),
- 5) Require that voided licenses be returned to the Board within 30 days of them being voided,
- 6) Allow individuals to obtain required training in an apprenticeship program and to take the licensure examination after successful completion of that program,
- 7) Require schools that are licensed by the Board have copies of any agreements that allow them to use necessary equipment that is owned by another entity,
- 8) Require schools licensed by the Board to periodically provide student rosters,
- 9) Require a 2x2 headshot of students attending any school licensed by the Board be attached to their student record files and
- 10) Require all shops, salons and schools licensed by the Board to have a bathroom with hot and cold running water in their facility.

Result of Analysis. Benefits likely exceed costs for some proposed regulatory changes; for some changes, there is insufficient information to ascertain whether benefits will outweigh costs. One proposed change as written is far more expensive than it need be. Costs likely outweigh benefits for at least one proposed change.

Estimated Economic Impact. Current regulations are not written so that the Board receives information about criminal convictions or past Board disciplinary actions for individuals whose businesses are licensed as limited liability corporations (LLC). This means that owners of a licensed business that is disciplined and loses its license can incorporate a new business and apply for a license and the Board would not know about past disciplinary actions against, essentially, the same entity. Because of situations such as this, the Board now proposes to add a definition for "responsible management" to include owners and officers of an LLC and also proposes to require that such entities be in good standing with this Board as well as any others where they might be licensed. This action will allow the Board to track owners of licensed businesses and deny licensure to businesses that have been disciplined, and lost their licenses, in the past. This change is likely to benefit the public as it will keep businesses that have been disciplined in the past from opening up under a new

name but likely with the same unsafe or unethical practices that lost them their license in the first place.

Current regulations require that applicants for licensure disclose, and provide corroborating paperwork, to the Board for all misdemeanor and felony convictions. Board staff reports, however, that most misdemeanor convictions would normally not be considered grounds for denial of licensure. This means that currently applicants for licensure are spending time and money to gather paperwork from whatever jurisdictions they need to, including jurisdictions very far away from Virginia, and that the Board is spending time unnecessarily looking at paperwork for legal infractions that have no bearing on whether the applicant is likely to provide safe and ethical services to their clients. To address these issues, the Board now proposes to limit the scope of convictions that applicants must report to misdemeanors involving moral turpitude that occur within three years of application for licensure and all felony convictions regardless of when they occurred. Affected applicants for licensure will benefit from this as they will not have to incur expenses for gathering paperwork associated with older misdemeanors or misdemeanors that do not involve moral turpitude, which may only be available if they physically go to the courthouses where convictions occurred. The Board will also benefit from not being inundated with paperwork that is unlikely to affect the licensing decisions they make.

Currently, individuals may apply for licensure any time after they complete training requirements and pass their licensure exams (written and practical) without time limits. The Board feels that practical methodology in fields licensed by the Board change enough over time that individuals who passed their licensure exams a long time before they actually apply for licensure may no longer be competent to practice. As a consequence, the Board proposes to specify that individuals must apply for licensure no longer than five years after they take the licensure exams. Any individuals applying for licensure past that timeframe will have to pay to take the licensure exams again (currently this costs \$170 to take both). The benefits of this change will only outweigh the costs if changes within fields licensed by the Board are significant enough to render individuals incompetent to practice without refreshing their knowledge and retaking the exam. There is insufficient information to ascertain whether this would be the case.

Board staff reports that currently the Board requires applicants for licensure to disclose past crimes and disciplinary actions but that current regulations do not allow the Board to deny licensure because of the information disclosed. The Board now proposes to add language to these regulations that will allow the Board to deny the issuance of licenses, temporary permits and temporary instructor permits if they believe that any information disclosed to the Board would deem the applicant unfit or unsuited to practice in fields that are licensed by the Board. This change will likely benefit the public as it will allow the Board to decline to

Regulations

license individuals that have, for instance, a past history of injury to clients in other jurisdictions.

Current regulations require that the Board be notified within 30 days if a Board issued business license is voided for any reason (the business has been sold, responsible management has changed, etc.) and also require that the voided license be returned to the Board but does not specify when. Because the Board is concerned that holders of these licenses will pass them to other entities that might fraudulently set up shop with them, the Board now proposes to require that voided licenses be returned to the Board within 30 days of the change that voided them. To the extent that it is complied with, this change will greatly benefit the public as it will stop the offering of services that would be performed fraudulently under a license that does not belong to the individual(s) offering those services.

Currently, individuals who wish to obtain an esthetician's or master esthetician's license must obtain required training at one of the 48 esthetics schools in the Commonwealth; attending one of these schools costs between \$15,000 and \$20,000. The Board now proposes to allow an alternate path to licensure by working with the Department of Labor and Industry to set up standards for an apprenticeship program in esthetics. After these standards are set, individually licensed estheticians and master estheticians as well as esthetics spas will be able to offer apprenticeships which will allow individuals to obtain on the job training that, when successfully completed, will qualify them to take the licensure exam and become licensed. This change will benefit individuals who wish to become estheticians as it will offer them a way to become licensed that does not cost thousands of dollars. This change will also likely benefit the public as it may lead to more people entering this professional field which may, in turn, lead to the costs of esthetics services dropping. Esthetics schools will likely not benefit from this change as they will not be getting tuition from individuals who currently must use their services in order to become licensed.

The Board proposes several other regulatory changes to prevent possible fraudulent activity at licensed schools. Specifically the Board proposes to require schools that do not own equipment necessary for teaching to have copies of agreements that allow them to access equipment owned by other entities for their students to use; schools will also be required to periodically provide the Board with student rosters. These changes will allow Board staff to verify that students will have access to the equipment needed to learn Board required skills and that schools are not making up student files only when they are inspected by the Board. Board staff reports that these changes will likely cost less than \$25 per year in compliance costs. These costs are likely outweighed by the benefits that will likely accrue to students who will be more likely to be guaranteed to have access to equipment necessary for their education.

The Board also proposes to require that student files include a 2x2 head and shoulder photo of the student. Board staff reports that this will be required to combat rampant testing fraud and will allow the identity of students taking licensure exams to be verified. While this change is likely to benefit the public, because fewer individuals would presumably be licensed without actually passing the licensure exam, the cost of compliance for this requirement as written will likely be far higher than it needs to be. 2x2 (passport size) photos cost between \$8 and \$12¹ whereas larger, more conventionally sized photos, are far cheaper. A 4x6 photo print, for instance, can be printed for as little as \$0.09 at Walmart. Compliance costs for this requirement could be very easily significantly reduced if the Board changed the proposed language to require a photo that was at least 2x2 rather than exactly 2x2.

Finally, current regulations require that licensed shops, spas and schools have "a fully functional bathroom in the same building with a working toilet and sink." Some enforcement agents have allowed licensed facilities in malls to count the mall bathrooms as meeting this requirement and some enforcement agents have said that mall bathrooms do not meet this requirement. Board staff reports that the Board is concerned that allowing mall bathrooms to meet regulatory requirements will have a client wandering far afield of licensed facilities, possibly in the middle of a chemical peel. Board staff reports that the Board feels it would be safer for clients if licensed facilities are required to have bathrooms within their shops. The Board now proposes to add language to these regulations that requires licensed facilities have bathrooms that are "maintained exclusively for client use." Board staff estimates that there are approximately 15 licensed facilities that are located in malls and do not have bathroom facilities within the confines of their shops that would have to either move or build a bathroom in order to comply with this proposed regulatory change. Board staff further estimates that building a bathroom in shops that do not have them can cost between \$2,000 and \$10,000. Given the high cost of requiring shops to meet a stricter standard than is sometimes allowed now, costs for this proposed change likely outweigh the benefits of increased convenience for clients and possibly avoiding chemical burns if clients go to use the mall bathroom and stay away longer than they should or longer than is advised.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that the Board currently licenses 2,851 estheticians, 550 esthetics and 48 esthetics schools in the Commonwealth. All of these entities, as well as future licensees, will be affected by these proposed changes. Most, if not all, spas and schools would likely qualify as small businesses.

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

Projected Impact on Employment. A new proposed requirement that individuals apply for licensure within five

years of taking their licensure exam may increase costs for these individuals (as they would have to study for and retake their exam) and may slightly decrease the probability of them becoming licensed and working in fields licensed by the Board. Board staff believes from anecdotal evidence that such a situation would be extremely rare.

Effects on the Use and Value of Private Property. Proposed changes such as requiring in-shop client bathrooms where shops currently are allowed to be in regulatory compliance by being in a large facility (such as a mall) that has bathroom accommodations are likely to greatly increase costs, and lower profits, for affected shops

Small Businesses: Costs and Other Effects. Proposed requirements that impact bathroom facilities will likely increase costs for affected small businesses. Several proposed requirements, such as having to periodically provide student rosters and have 2x2 headshots attached to student files, are likely to increase costs either for schools or for both schools and their students.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board would likely be able to decrease costs for regulated entities by allowing photos that were larger than 2x2 for student files. The Board also may wish to revisit proposed bathroom requirements.

Real Estate Development Costs. Proposed changes such as requiring in-shop client bathrooms where shops currently are allowed to be in regulatory compliance by being in a larger facility (such as a mall) that has bathroom accommodations are likely to increase the cost of building new malls that will have barber shops or salons as tenants.

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.

¹ An internet search revealed prices for passport photos ranging from \$7.99 at Walmart to \$11.99 at CVS.

Agency's Response to Economic Impact Analysis: The board concurs with the analysis for items #1, 2, and #4 through 8 in the Summary of Proposed Amendments to Regulations. The board respectfully disagrees with items #3, 9, and 10.

Estimated Economic Impact:

1. Summary Item #3: The proposed regulations would require that an applicant who does not apply for licensure within five years of passing the exam must retake the exam to be eligible for licensure.

Economic Impact Analysis (EIA) Position: "The benefits of this change will only outweigh the costs if changes within fields licensed by the board are significant enough to render individuals incompetent to practice without refreshing their knowledge and retaking the exam."

Agency Response: There are several fundamental reasons for implementing this change in the regulations, not just the single issue raised by the EIA. For someone who applies for their license more than five years after taking the exam, the full scope of problems includes:

- The board cannot know whether they still possess the knowledge or skill to competently practice,
- The board does not have access to testing records older than five years to confirm the applicant truly passed the exam, and
- Changes in the industry may have made the applicant's knowledge obsolete.

Without adding this requirement, the board will face the dilemma of having to license individuals who may not be minimally competent, as well as experience increased costs for maintaining exam records in perpetuity.

Explanation: The board is statutorily required to establish the qualifications of applicants for licensure. The board utilizes

Regulations

written and practical examinations to establish that applicants possess the competence to engage in the profession.

There are several issues that affect competence when an applicant has not been engaged with the profession for many years. The EIA correctly identifies that changes in the industry may render an applicant's knowledge obsolete. However, the EIA fails to account for the other, more significant reason, which is that individuals who have not been engaged in the profession for five years are likely to have forgotten much of the knowledge and skill for engaging in the practice in a safe manner. The board has no way of knowing whether an individual who has not been engaged in the practice for six, 10, or 20 years still has the practical skill or information base to practice safely. Since the board regulates professions which use chemicals and must have current knowledge in preventing the transmission of communicable diseases, it is particularly important that the board meet its statutory obligation to ensure it licenses minimally competent individuals in order to protect the public. The board believes that it cannot accurately assess if an individual possesses the skill and knowledge qualifications for licensure if those skills and knowledge have not been measured in the previous five years.

Further, the EIA does not identify that the proposed regulations add the requirement that records of examinations only be kept for five years. Currently, while the regulations allow an applicant to apply any time after they have taken the exam, the board's examination vendor only maintains exam records for five years. This discrepancy means that the board has no way to verify that an applicant claiming to have passed the exam more than five years ago has truly done so. To resolve this conflict without changing the regulation, the board will have to either require the exam vendor to maintain records in perpetuity, or start maintaining these records itself. Either of these options will increase costs either through higher examination fees for the candidate or if the board were to maintain the records, it would increase the board's expenses, and ultimately licensing fees. As such, the board believes that the five year recordkeeping will result in maintaining a lower cost for licensure, in addition to protecting the public's health, safety, and welfare.

2. Summary Item #9: The proposed regulations would require a 2"x2" head and shoulder picture of the students attending any school licensed by the board be attached to their student record files.

EIA Position: "[T]he cost of compliance for this requirement as written will likely be far higher than it needs to be. 2x2 (passport size) photos cost between \$8 and \$12, whereas larger, conventionally sized photos, are far cheaper."

Agency Response: The proposed regulation does not specify passport photos, and can be met by any type of photo, as long as the head and shoulder portion are 2x2. The EIA assumes that the cost of this requirement will be the cost of acquiring

passport photos. However, the EIA's assumptions fail to take into account that:

- This requirement is for the schools, not the students,
- The regulation does not require passport photos, and
- Students are already required to provide this 2x2 photo during the application process.

The EIA incorrectly assumes that only a passport photo would meet this requirement. However, compliance costs would only be in the \$8.00-\$12.00 range if the school did not provide this service and if the student chose to utilize passport photos instead of a low cost or free alternatives identified below. Further, the proposed regulation provides the board with an important tool to combat rampant fraud in the pre-licensure process.

Explanation: The board is authorized to establish the qualifications of licensure and to promulgate regulations necessary to effectively administer the regulatory system. The authority currently in 18VAC41-70-20 of the board's regulations already requires that in order to be eligible to sit for examination, a student must have completed a board-approved training program.

The language contained in proposed 18VAC41-70-230.A, requiring schools maintain a 2x2 color head and shoulder photo, is a necessary piece of fraud detection for the board to corroborate that the individual sitting for the exam is, in fact, the student who completed the training program. This regulation is being proposed, along with several other recordkeeping measures, to address fraud in the pre-licensure process.

The EIA does not take into account that the requirement is for the schools. The school would bear the requirement of maintaining the photo, and may utilize its own photograph equipment to comply with the regulation. It is likely that there will be variation in the market, with some schools generating the photo in-house, and others asking the students to provide the photo. As such, the cost of the regulation may be as little as the cost for the school in ink and printer paper.

The EIA incorrectly assumes that this requirement is met only with a passport photo. While a school may utilize a passport photo, the regulation does not specify or require a passport photo. Schools may utilize whatever sized photo they wish, as long as the head and shoulder portion is 2x2. The EIA's recommendation of using a \$0.09 4x6 photo is already acceptable under the proposed regulation, as long as the head and shoulder portion meets the 2x2 criteria. In fact, as will be explained below, the board currently accepts and utilizes these types of photos for the other 2x2 photo requirements. It is worth noting that even the U.S. Department of State does not require individuals to purchase passport photos, and has a tool to allow passport applicants to take their own photo and convert it to the proper specifications for free. Schools would be able to utilize this free service to meet the board's requirements.

The EIA incorrectly assumes that this requirement will create a new financial burden. Applicants already are required to provide a 2x2 head and shoulder color photograph when they apply for licensure. This photo must be submitted along with their application. The examination vendor utilizes this photo to ensure that the individual taking the exam is the same individual who applied for licensure. These photograph requirements have been essential to the board's ability to stop testing fraud. Further, the board frequently sees 4x6 photos, whole or cut down to 2x2. The board also accepts 2x2 photographs that have been printed on home printers if they meet the standard. This recordkeeping requirement for the schools, if the school defrays the cost to the student, only means the student would have to produce an additional copy of the 2x2 photo. So even if a student chose to utilize the higher cost passport photo, since passport photos come in sets, ranging from 2 to 10 photos, there would likely be no additional cost for students utilizing passport photos.

3. Summary Item #10: The proposed regulations would add to the existing requirement that shops, salons, schools, and facilities maintain working toilet and sink, an additional requirement that the bathroom be exclusively for client use and have hot and cold running water.

EIA Position: The EIA argues that, "[g]iven the high cost of requiring shops to meet a stricter standard than is sometimes allowed now, costs for this proposed change likely outweigh the benefits..."

Agency Response: The proposed regulations address a very rare situation in which a spa does not have a bathroom exclusively for client use with hot and cold water, usually because they are situated in a mall. Spas are already required to have bathrooms, and this change is meant to clarify an ambiguity in the regulation that has caused confusion for staff and business owners. The board has encountered and foresees certain health and safety risks associated with not having this requirement, such as:

- Loss of oversight of chemical treatments while clients have left the spa, and
- Unsanitary bathroom conditions that the spa has no authority to address.

Additionally, this requirement would add a level of convenience, as patrons would not have to travel across the mall to use the bathroom. The board believes these are substantial issues for the spas that are affected. The EIA fails to adequately account for the health and safety risk this regulation is meant to address and fails to mention that the board may consider grandfathering existing businesses that would be non-compliant when this regulation takes effect.

Explanation: As the EIA explains, this regulation partially stems out of a concern regarding spas in malls. Spas are already required to have bathrooms, but spas in mall have the unique problem of not having control over the common bathroom. This has led to some confusion on the part of staff and business owners regarding spa responsibility. So, for

example, the mall may temporarily shut down the bathroom for maintenance or cleaning. This would put the spa in non-compliance with the regulations, even though the spa does not have control of the situation. This lack of control over the bathroom may lead to other regulatory violations, since current regulations require the bathroom's fixtures to be in good repair, have adequate lighting, and sufficient ventilation. By specifying the bathroom must be exclusively for client use, this should help resolve this issue and reduce staff and business owner confusion.

Also, the board has expressed concern that if salons have to send their customers from one end of the mall to the other to use the bathroom, the spa is putting that client at risk. Spas use chemicals (such as those used in chemical peels) which have the potential to cause injury to clients if not used correctly, or left on the client for too long. When a client under the treatment of these chemicals leaves the spa, the spa no longer has oversight of that client. The spa cannot properly supervise the treatment or ensure that the chemicals are removed timely when the consumer is off site and subject to whatever delays they may encounter while at a shopping mall. This situation is a clear and foreseeable risk to the public which the board seeks to address.

Further, the requirement that the bathroom be for client use only addresses a re-occurring problem of shared bathrooms. The board has encountered during inspections the situations of spas sharing bathrooms with other businesses, where the spa did not have control over the sanitation of the bathroom. This left the board in the dilemma of having to cite a business for unsanitary conditions it had no control over, or not citing a business that puts its clients in unsanitary conditions.

The board is aware that there could be significant costs associated with renovating a facility to come into compliance with this proposed regulation. There are currently regulations in place that require spas to sanitize using hot water. Spas that cannot meet the new standard are likely unable to meet the current standard either, and thus are not properly sanitizing their implements. The requirement for hot and cold water is not necessarily adding a new requirement, but rather clarifying the need for hot water. Despite this, the board will consider implementing a grandfather clause for facilities that this regulation may adversely affect due to what could be very large costs to comply. It is estimated that there are very few spas that would be adversely affected by this regulation. Even with a grandfather provision, the board believes that applying the proposed regulation to new spas going forward will ensure a more sanitary and safer experience as the industry moves toward this standard.

Effects on the Use and Value of Private Property.

EIA Position: "Proposed changes such as requiring in-shop client bathrooms where shops currently are allowed to be in regulatory compliance by being in a large facility (such as a mall) that has bathroom accommodations are likely to greatly increase costs, and lower profits, for affected shops."

Regulations

Agency Response: The board believes that while the very few spas that would be affected by this change would incur a one-time expense, the actual use and value of the property would increase. Adding a bathroom to a facility that does not currently have one makes the building more functional and desirable as a marketable space.

Small Businesses: Costs and Other Effects.

EIA Position: "Proposed requirements that impact bathroom facilities will likely increase costs for affected small businesses. Several proposed requirements, such as having to periodically provide student rosters and have 2x2 headshots attached to student files, are likely to increase costs either for schools or for both schools and their students."

Agency Response: As noted above, the board believes that there are very few spas, 15 or less, that would be affected by the requirement to have bathrooms exclusively for client use.

The reporting requirements being added in this action, including the 2x2 headshot, are not anticipated to have significant costs associated with compliance. The board expects that compliance costs for all of the new reporting requirements should be less than \$25 annually. For those that choose to utilize digital recordkeeping, there may not be any increased costs at all. It should be noted that the board currently is contracting with an exam vendor that allows schools to maintain almost all of the required records on the vendor's online servers, at no charge to the school. Since the board has access to these servers, schools that utilize this free service would essentially automatically be in compliance with the new regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact:

EIA Position: "The board would likely be able to decrease costs for regulated entities by allowing photos that were larger than 2x2 for student files. The board also may wish to revisit proposed bathroom requirements."

Agency Response: As noted above, schools may be able to meet the 2x2 photograph requirement several ways for little or no cost. The requirement is that the head and shoulder portion of the photo be 2x2. This does not preclude the use of larger photos, only necessitates cropping the photo to meet the board's requirement. Additionally, the Department of State has a free program that converts digital photos to the standards required by the board.

The board believes that the requirement for spas to have bathrooms available exclusively for client use is necessary to protect the health, safety, and welfare of the public.

Summary:

The proposed amendments are the result of a periodic review and include clarifying text to ensure consistency with other board regulations and state and federal laws and compliance with current industry standards. Changes include (i) adding new definitions; (ii) requiring disclosure of felonies, certain misdemeanors, and disciplinary

actions; (iii) allowing individuals to obtain required training in esthetics apprenticeship programs and to take licensure exams after successful completion of such a program; (iv) requiring individuals to apply for licensure within five years of taking their exams; (v) clarifying that no fee is charged for a temporary license; (vi) requiring voided licenses to be returned to the board within 30 days and clarifying what circumstances may lead to a voided license; (vii) allowing for board inspection of shops, salons, and schools during reasonable hours; (viii) requiring schools to provide specific information to the board and within required time periods; (ix) providing grounds for discipline for several prohibited actions; and (x) updating sanitation requirements for salons, shops, and schools, including requiring salons and shops to provide a client bathroom.

Part I

General

18VAC41-70-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Credit hour" means a combination of the number of hours in class each week and the number of hours per week in a laboratory by which a school may measure its course work. One unit of credit equals one hour of classroom study, two hours of laboratory experience or three hours of internship or practicum or a combination of the three times the number of weeks in the term. Emerging delivery methodologies may necessitate a unit of undergraduate credit to be measured in nontime base methods. These courses shall use the demonstration of competency, proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Direct supervision" means that a Virginia licensed esthetician or master esthetician shall be present in the esthetics spa or esthetics school at all times when services are being performed by a temporary license holder or student.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state or jurisdiction.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Licensee" means any ~~individual,~~ sole proprietorship, partnership, association, corporation, limited liability company, or corporation limited liability partnership, or any other form of organization permitted by law holding a license

issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by the Commission on Colleges or by an accrediting agency that is recognized by the U.S. Secretary of Education.

"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.

"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.

"Virginia state institution" for the purposes of this chapter means any institution approved by the Virginia Department of Education.

Part II
Entry

18VAC41-70-20. General requirements for an esthetician license or master esthetician license.

~~A. In order to receive a license as an esthetician or master esthetician, an applicant must~~ Any individual wishing to engage in esthetics or master esthetics shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and meet the following qualifications:

1. The applicant shall be in good standing as a licensed esthetician in ~~every jurisdiction~~ Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in ~~another jurisdiction~~ Virginia and all other jurisdictions in connection with the applicant's practice as an esthetician. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.

Upon review of an applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in esthetics or master esthetics. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and ~~the board's esthetics regulations~~ this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, ~~each applicant shall disclose a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for this purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia~~ the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within three years of the date of the application; and
- b. All felony convictions during the applicant's 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.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination requirement administered either by the board or by independent examiners.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved esthetics training program or a master esthetics training program in a Virginia licensed

Regulations

esthetics school shall be eligible for the applicable examination.

2. Training outside of the Commonwealth of Virginia. Any person completing esthetics training that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training to be eligible for examination. If less than the required hours of esthetics training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent esthetics course and documentation of six months of work experience as an esthetician in order to be eligible for the esthetician examination.

18VAC41-70-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as an esthetician or master esthetician in any other state or jurisdiction of the United States and who has completed both a training program and a written examination and a practical examination requirement that is are substantially equivalent to ~~that~~ those required by this chapter may be issued an esthetician or master esthetician license without an examination. The applicant must also meet the requirements set forth in 18VAC41-70-20 A.

18VAC41-70-35. Apprenticeship training.

A. Licensed estheticians and master estheticians who train apprentices shall comply with the standards for apprenticeship training established by the Division of Registered Apprenticeship of the Virginia Department of Labor and Industry and the Virginia Board for Barbers and Cosmetology. Owners of esthetics spas who train apprentices shall comply with the standards for apprenticeship training established by the Division of Registered Apprenticeship of the Virginia Department of Labor and Industry.

B. Any person completing the Virginia apprenticeship program in esthetics or master esthetics shall be eligible for examination.

18VAC41-70-40. Examination requirements and fees.

A. Applicants for initial licensure shall ~~meet the~~ pass both a written examination and a practical examination requirement approved by the board. The examinations may be administered by the board or by a designated testing service. ~~The board maintains discretion in determining the license requirements.~~

B. Any applicant who passes one part of the examination shall not be required to take that part again provided both parts are passed within one year of the initial examination date.

~~B.~~ C. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

~~C.~~ D. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These

contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed \$225 per candidate.

E. Any candidate failing to apply for initial licensure within five years of passing both a written examination and a practical examination shall be required to retake both portions. Records of examinations shall be maintained for a maximum of five years.

18VAC41-70-60. Examination administration.

A. The examination shall be administered by the board or the designated testing service. The practical examination shall be supervised by a chief examiner.

B. Every esthetics or master esthetics examiner shall hold a current Virginia license in his respective profession, have three or more years of active experience as a licensed professional, and be currently practicing in that profession. Examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

C. No certified esthetics or master esthetics instructor who (i) is currently teaching, (ii) is a school owner, or (iii) is an apprentice sponsor shall be an examiner.

D. Each esthetics or master esthetics chief examiner shall (i) hold a current Virginia license in his respective profession, (ii) have five or more years of active experience in that profession, (iii) have three years of active experience as an examiner, and (iv) be currently practicing in his respective profession. Chief examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

~~B.~~ E. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include ~~any~~ written instructions communicated prior to the examination date and ~~any~~ instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

18VAC41-70-70. Esthetician temporary license.

A. A temporary license to work under the direct supervision of a currently licensed esthetician or master esthetician may be issued only to applicants for initial licensure that the board finds eligible for the applicable examination. There shall be no fee for a temporary license.

B. The temporary license shall remain in force for 45 days following the examination date. The examination date shall be the first test date after the applicant has successfully submitted an application to the board.

C. Any person continuing to practice esthetics services after a temporary license has expired may be prosecuted and fined

by the Commonwealth under §§ 54.1-111 A 1 and 54.1-202 of the Code of Virginia.

D. No applicant for examination shall be issued more than one temporary license.

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-70-20.

18VAC41-70-80. Spa General requirements for a spa license.

A. Any individual firm wishing to operate an esthetics spa shall obtain a spa license in compliance with § 54.1-704.1 of the Code of Virginia, and shall meet the following qualifications in order to receive a license:

1. The applicant, and all members of the responsible management, shall be in good standing as a licensed spa in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics spa or practice of the profession. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as an esthetics spa.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics spa. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions within three years of the date of the application; and

b. All felony convictions.

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.

5. The applicant shall disclose the firm's responsible management.

B. ~~An esthetics spa license~~ Shop or salon licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address of the business. Any changes in the name, or address, or ownership of the spa shall be reported to the board in writing within 30 days of such changes. ~~New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.~~ The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.

C. In the event of a closing of an esthetics spa, the owner must notify the board in writing within 30 days of the closing, and return the license to the board. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license, within 30 days of the change in the business entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

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

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

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed shop or salon for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the

Regulations

same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

18VAC41-70-90. School General requirements for a school license.

A. Any ~~individual~~ firm wishing to operate an esthetics school shall submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia. ~~All instruction and training of estheticians shall be conducted under the direct supervision of a certified esthetics instructor. All instruction and training of master estheticians shall be conducted under the direct supervision of a certified master esthetics instructor., and meet the following qualifications in order to receive a license:~~

1. The applicant and all members of the responsible management shall be in good standing as a licensed school in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics school or practice of the profession. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as an esthetics school.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics school. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions within three years of the date of the application; and

b. All felony convictions.

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.

5. The applicant shall disclose the firm's responsible management.

B. ~~An esthetics~~ Esthetics school license licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school shall be reported to the board in writing within 30 days of such change. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

~~C. In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes and obtain a new license.~~

~~D. In the event of a school closing, the owner must notify the board in writing within 30 days of the closing, and return the license to the board.~~

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in business entity. Such changes include but are not limited to:

1. Death of a sole proprietor;

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

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

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. Barber schools, cosmetology schools, nail schools, or waxing schools under the Virginia Department of Education shall be exempted from licensure requirements.

F. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

18VAC41-70-100. General requirements for an esthetics instructor certificate.

~~A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for an esthetics instructor certificate if the person~~ Any individual wishing to engage in esthetics instruction shall meet the following qualifications:

1. Holds a current Virginia esthetician license; and The applicant shall be in good standing as a licensed esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as an esthetician. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in esthetics. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall hold a current Virginia esthetics license;

~~Completes~~ 3. The applicant shall complete one of the following qualifications:

- a. ~~Passes~~ Pass a course in teaching techniques at the postsecondary educational level; or
- b. ~~Completes~~ Complete an instructor training course approved by the Virginia Board for Barbers and

Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and passes pass an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board.; and

~~3. Persons who (i) make application for licensure between September 20, 2007, and September 19, 2008, and (ii) have completed one year of documented work experience as an esthetics instructor are not required to complete subdivision 2 of this subsection.~~

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within three years of the date of the application; and
- b. All felony convictions during the applicant's 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.

~~B. Esthetics instructors~~ Instructors shall be required to maintain a Virginia esthetician license.

18VAC41-70-110. General requirements for a master esthetics instructor certificate.

~~A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a master esthetics instructor certificate if the person~~ Any individual wishing to engage in master esthetics instruction shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed master esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as an master esthetician. This includes but is not limited to monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as an esthetician or master esthetician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in esthetics or master esthetics. The

Regulations

board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

~~1. Holds~~ 2. The applicant shall hold a current Virginia master esthetician license; ~~and~~

~~2. Completes~~ 3. The applicant shall complete one of the following qualifications:

a. ~~Passes~~ Pass a course in teaching techniques at the postsecondary educational level; or

b. ~~Completes~~ Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and ~~passes~~ pass an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board. ~~3. Persons who (i) make application for licensure between September 20, 2007, and September 19, 2008, and (ii) have completed one year of documented work experience as a master esthetics instructor are not required to complete subdivision 2 of this subsection.; and~~

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within three years of the date of the application; and

b. All felony convictions during the applicant's 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.

~~B. Master esthetics instructors~~ Instructors shall be required to maintain a Virginia master esthetician license.

18VAC41-70-160. Failure to renew.

A. When a ~~licensed individual or entity~~ licensee fails to renew its license within 30 days following its expiration date, the licensee shall apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and reinstatement fee.

~~B. When an esthetician or master esthetician a licensee fails to renew his its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application entry requirements and shall pass the board's current examination for each respective license. Individuals applying for licensure under this section shall be eligible to apply for a temporary license from the board under 18VAC41-70-70.~~

~~C. When an esthetics spa fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.~~

~~D. C.~~ The application for reinstatement for a an esthetics school shall provide (i) the reasons for failing to renew prior to the expiration date and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school by the Department of Professional and Occupational Regulation and if the school's records are maintained in accordance with 18VAC41-70-230 and 18VAC41-70-240. Upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

~~When an esthetics school fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.~~

~~E. D.~~ The date a renewal fee is received by the Department of Professional and Occupational Regulation or its agent will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

~~F. E.~~ When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

G. F. A licensee ~~who~~ that reinstates ~~his~~ its license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

H. G. A licensee ~~who~~ that fails to reinstate ~~his~~ its 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 licensee for a violation of the law or regulations during the period of time for which the individual or business entity was licensed.

Part V
Esthetics Schools

18VAC41-70-170. ~~Applicants for school license.~~ (Repealed.)

~~Any person, firm, or corporation desiring to operate an esthetics school shall submit an application to the board at least 60 days prior to the date for which approval is sought.~~

18VAC41-70-220. ~~School identification.~~ (Repealed.)

~~Each esthetics school approved by the board shall identify itself to the public as a teaching institution.~~

18VAC41-70-230. Records.

A. Schools ~~are required to keep all records of hours in accordance with 18VAC41 70 190, including transcripts, course descriptions and competency examinations used to award such credit for a period of five years after the student terminates or completes the curriculum of the school.~~ shall maintain on the premises of each school and available for inspection by the board or any of its agents the following records for the period of a student's enrollment through five years after the student's completion of the curriculum, termination, or withdrawal:

1. Enrollment application containing the student's signature and a 2x2 color head and shoulders photograph of the student,
2. Daily record of attendance containing the student's signature,
3. Student clock hours containing the student's signature and method of calculation,
4. Practical performance completion sheets containing the student's signature,
5. Final transcript,
6. Competency examinations used to award credit,
7. Course descriptions, and
8. All other relevant documents that account for a student's accrued clock hours and practical applications

~~B. Schools are required to keep upon graduation, termination or withdrawal written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall~~

~~be available for inspection by the department. All records must be kept on the premises of each school.~~

~~C. For a period of five years after a student completes the curriculum, terminates or withdraws from the school, schools are required to provide documentation of hours and performances completed by a student upon receipt of a written request from the student.~~

B. Schools shall produce to the board or any of its agents, within 10 days of the request, any document, book, or record concerning any student, or for which the licensee is required to maintain records, for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. Schools shall, within 21 days upon receipt of a written request from a student, provide documentation of hours and performances completed by the student as required to be maintained by subsection A of this section.

D. Prior to a school changing ownership or a school closing, ~~the schools are~~ school is required to provide to current students documentation of hours and performances completed.

E. For a period of one year after a school changes ownership, ~~schools are required to~~ the school shall provide, within 21 days upon receipt of a written request from a student, documentation of hours and performances completed by a current student ~~upon receipt of a written request from the student.~~

18VAC41-70-240. ~~Hours reported~~ Reporting.

A. Schools shall provide, in a manner, format, and frequency prescribed by the board, a roster of all current students and a roster of students who attended in the preceding six months prior to the reporting deadline.

B. Within 30 days of the closing of a licensed esthetics school for any reason ceasing to operate, whether through dissolution or alteration of the business entity, the school shall provide a written report to the board on performances and hours of each of its students who ~~have~~ has not completed the program.

18VAC41-70-260. Display of license.

A. Each licensed spa or school shall ensure that all current licenses and temporary licenses issued by the board shall be displayed in plain view of the public either in the reception area or at individual work stations of the spa or school ~~in plain view of the public.~~ Duplicate licenses or temporary licenses shall be posted in a like manner in every spa or school location where the ~~regulant~~ licensee or temporary license holder provides services.

B. All licensees and temporary license holders shall operate under the name in which the license or temporary license is issued.

Regulations

C. All apprenticeship cards issued by the Department of Labor and Industry (DOLI) shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop or salon. The apprentice sponsor shall require each apprentice to wear a badge clearly indicating his status as a DOLI registered apprentice.

18VAC41-70-270. Sanitation and safety standards for spas and schools.

A. Sanitation and safety standards.

1. Any spa or school where esthetics services are delivered to the public must be clean and sanitary at all times.
2. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.
3. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be a hospital grade and tuberculocidal disinfectant solution registered with the U.S. Environmental Protection Agency (EPA). Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic, which the manufacturer designed for use on more than one client, is to be carried out in the following manner prior to servicing a client:

- a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;
- b. Wash thoroughly with hot water and soap;
- c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;
- d. Fully immerse implements into solution for a minimum of 10 minutes; and
- e. After immersion, rinse articles, thoroughly dry with a clean paper towel, and store in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded

immediately after use on each individual client, including but not limited to powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable tools or implements may be stored in an area other than in a closed cabinet or container. This area shall be clean.

5. All materials including cosmetic and nail brushes, sponges, chamois, spatulas, and galvanic electrodes must be cleaned with warm water and soap or detergent to remove all foreign matter. Implements should then be rinsed, thoroughly dried with a clean paper towel, and completely immersed in an EPA-registered hospital grade and tuberculocidal disinfectant solution. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly, and stored in a predisinfected and dry drawer, cabinet or nonairtight covered container, or left in an EPA-registered disinfection storage solution used according to manufacturer's directions.

6. All wax pots shall be cleaned and disinfected with an EPA-registered hospital (grade) and tuberculocidal disinfectant solution with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

7. Each esthetician must have a wet disinfection unit at his station.

8. Nail brushes; nippers; finger bowls; disinfected or washable buffers; disinfected or washable files, which must also be scrubbed with a brush to remove all foreign matter, and other instruments must be washed in soap and water, rinsed, thoroughly dried with a clean paper towel, and then completely immersed in an EPA-registered hospital grade and tuberculocidal disinfectant solution for 10 minutes after each use. After disinfection they must be rinsed, dried thoroughly with a clean paper towel, and placed in a dry, predisinfected, nonairtight covered receptacle, cabinet, or drawer, or left in an EPA-registered disinfectant storage system used according to manufacturer's directions.

9. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipe-less units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

- a. Drain all water and remove all debris;
- b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residues and then rinse with water;

c. Disinfect by spraying or wiping the surface with an appropriate disinfectant; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. ~~All furniture, walls, floors, and windows~~ Service chairs, workstations and workstands, and back bars shall be clean ~~and in good repair;~~

2. The floor surface in ~~the immediate~~ all work area areas must be of a washable surface other than carpet. The floor must be kept clean; and free of debris, nail clippings, dropped articles, spills, and clutter, trash, electrical cords, other waste materials, and other items that may pose a hazard;

3. ~~Walls~~ All furniture, fixtures, walls, floors, windows, and ceilings in the immediate work area must ~~shall~~ be in good repair; and free of water seepage and dirt. All mats shall be secured or shall lay flat;

4. A fully functional bathroom with a working toilet and sink ~~must be available for clients~~ shall be maintained exclusively for client use. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. There must be antibacterial soap and clean ~~individual~~ single-use towels or hand air-drying device for the client's use;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee; and electrical ~~7. Electrical~~ outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The spa area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals; and to allow the free flow of air; and

9. Adequate lighting shall be provided.

C. ~~Equipment sanitation.~~

1. ~~Service chairs, wash basins, sinks, showers, tubs, tables, and workstations shall be clean. Floors shall be kept free of waste materials. Instruments shall be cleaned and disinfected after every use and stored free from contamination;~~

2. ~~The top of workstands shall be kept clean;~~

3. ~~The work area shall be free of clutter, trash, and any other items that may cause a hazard;~~

4. ~~Equipment shall be placed so as to prevent any accidental injury to the client or licensee; and~~

5. ~~Electrical appliances and equipment shall be in safe working order at all times.~~

D. Articles, tools, and products.

1. Any multiuse article, tool, or product that cannot be cleansed or disinfected is prohibited from use;

2. Soiled implements must be removed from the tops of work stations immediately after use;

3. Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;

4. Lotions, ointments, creams, and powders shall be kept in closed containers. A clean spatula shall be used to remove creams or other products from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be ~~recovered~~ covered after each use;

5. All appliances shall be safely stored;

6. Presanitized tools and implements, linens, and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;

7. ~~Soiled~~ Clean towels, robes, or other linens ~~and implements shall be deposited in a container made of cleanable materials and separate from those that are clean used for each patron. Clean towels, robes, or other linens shall be stored in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;~~

8. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

9. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the spa or school in accordance with the guidelines of the Virginia Department of Health and OSHA (Occupational Safety and Health Administration).

E. Chemical storage and emergency information.

1. Spas and schools shall have in the immediate working area a binder with all Material Safety Data Sheets (MSDS) provided by manufacturers for any chemical products used;

2. Spas and schools shall have a blood spill clean-up kit in the work area that contains at a minimum latex gloves, two 12x12 towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any OSHA-approved blood spill clean-up kit;

3. Flammable chemicals shall be stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) shall be separated in storage.

Regulations

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client;
2. All employees providing client services shall wear gloves while providing services when exposure to bloodborne pathogens is possible;
3. No spa or school providing esthetics services shall have on the premises esthetics products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in esthetics products;
4. No product shall be used in a manner that is disapproved by the ~~U.S. Food and Drug Administration (FDA)~~ FDA; and
5. Esthetics spas must be in compliance with current building and zoning codes.

G. In addition to ~~any~~ the requirements set forth in this section, all licensees and temporary license holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry.

H. All spas and schools shall immediately report the results of any inspection of the spa or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All spas and schools shall conduct a self-inspection on an annual basis and maintain a self-inspection form on file for five years so that it may be requested and reviewed by the board at its discretion.

18VAC41-70-280. Grounds for license revocation, probation, or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

~~A.~~ The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or temporary license holder, and suspend, place on probation, or revoke or refuse to renew or reinstate any license, certificate, or temporary license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board this chapter~~ if the board finds that the licensee, certificate holder, permit holder, or applicant:

1. ~~The licensee, certificate holder, temporary license holder or applicant is~~ Is incompetent, ~~or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as an esthetician;~~
2. ~~The licensee, certificate holder, or temporary license holder fails to teach in accordance with the board-approved curriculum or fails to comply with 18VAC41 70 190 D when making an assessment of credit hours awarded.~~

~~3. The licensee, certificate holder, temporary license holder, or applicant is~~ 2. Is convicted of fraud or deceit in the practice or teaching of esthetics, ~~fails to teach in accordance with the board-approved curriculum, or fails to comply with 18VAC41-70-190 D when making an assessment of credit hours awarded;~~

~~4. The licensee, certificate holder, temporary license holder, or applicant attempted~~ 3. Attempts to obtain, obtained, renewed, or reinstated a license certificate or temporary license by false or fraudulent representation;

~~5. The licensee, certificate holder, temporary license holder, or applicant violates~~ 4. Violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any esthetician may practice or offer to practice;

5. Offers, gives, or promises 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 esthetics or master esthetics;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed shop, salon, or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter;

~~6. The licensee, certificate holder, temporary license holder, or applicant fails~~ 8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, temporary license holder's, applicant's, or owner's possession or maintained in accordance with this chapter;

~~7. A licensee, certificate holder, or temporary license holder fails~~ 9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or temporary license. ~~The board shall not be responsible for the licensee's, certificate holder's, or temporary license holder's failure to receive notices, communications and correspondence caused by the licensee's, certificate holder's, or temporary license holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;~~

~~8. The licensee, certificate holder, temporary license holder, or applicant publishes~~ 10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

~~9. The licensee, certificate holder, temporary license holder, or applicant fails~~ 11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or temporary license in connection with a disciplinary action in any other jurisdiction or of any license or temporary license that has been the subject of disciplinary action in any other jurisdiction; or

~~10. The licensee, certificate holder, temporary license holder, or applicant has been convicted or found guilty in any jurisdiction of any misdemeanor or felony. Any plea or nolo contendere shall be considered a conviction for the purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;~~

~~11. The licensee, certificate holder, temporary license holder, or applicant fails to notify the board in writing within 30 days that the licensee, certificate holder, temporary license holder, or applicant has pleaded guilty or nolo contendere or was convicted and found guilty of any misdemeanor or felony.~~

12. Has been convicted or found guilty, regardless of the manner of adjudication, in Virginia or any other jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13 Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of convictions as stated in subdivision 12 of this section;

14. Allows, as an owner or operator of a spa or school, a person who has not obtained a license or a temporary permit to practice unless the person is duly enrolled as a registered apprentice;

15. Allows, as an owner or operator of a school, a person who has not obtained an instructor certificate to practice as an esthetics or a master esthetics instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of esthetics or master esthetics, or the operation of esthetics spas; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at the examination.

~~B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. An instructor of the approved school fails to teach the curriculum as provided for in this chapter;~~

~~2. The owner or director of the approved school permits or allows a person to teach in the school without an applicable current esthetics instructor certificate or master esthetics instructor certificate; or~~

~~3. The instructor, owner or director is guilty of fraud or deceit in the teaching of esthetics.~~

~~C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any esthetics spa or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. The owner or operator of the spa fails to comply with the sanitary requirements of an esthetics spa provided for in this chapter or in any local ordinances; or~~

~~2. The owner or operator allows a person who has not obtained a license or a temporary license to practice as an esthetician or master esthetician.~~

~~D. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of esthetics.~~

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 (18VAC41-70)

~~Esthetician—Esthetics Instructor Examination & License Application, A425-1261_62EXLIC (eff. 9/11)~~

~~Master Esthetician—Master Esthetics Instructor Examination & License Application, A425-1264_65EXLIC (eff. 9/11)~~

Temporary Permit Application, A425-1213TP (eff. 9/11)

Regulations

~~License by Endorsement Application, A425-1213END (rev. 2/14)~~

~~[Esthetician - Esthetics Instructor Examination & License Application, A450-1261_62EXLIC-v12 \(eff. 7/2016\)](#)~~

~~[Master Esthetician - Master Esthetics Instructor Examination & License Application, A450-1264_65EXLIC-v13 \(eff. 7/2016\)](#)~~

~~[Temporary Permit Application, A450-1213TEMP-v2 \(eff. 7/2016\)](#)~~

~~[License by Endorsement Application, A450-1213END-v8 \(eff. 7/2016\)](#)~~

~~Training & Experience Verification Form, A425-1213TREXP (eff. 9/11)~~

~~Reinstatement Application, A425-1213REI (rev. 2/14)~~

~~Salon, Shop, Spa & Parlor License Application A425-1213BUS (rev. 2/14)~~

~~[Individuals - Reinstatement Application, A450-1213REI-v8 \(eff. 7/2016\)](#)~~

~~[Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS-v8 \(eff. 7/2016\)](#)~~

~~Salon, Shop & Spa Self Inspection Form, A425-1213_SSS_INSP (eff. 9/11)~~

~~Instructor Certification Application, A425-1213INST (rev. 2/14)~~

~~School License Application, A425-1213SCHL (rev. 2/14)~~

~~[Instructor Certification Application, A450-1213INST-v7 \(eff. 7/2016\)](#)~~

~~[School License Application, A450-1213SCHL-v8 \(eff. 7/2016\)](#)~~

~~School Self Inspection Form, A425-1213SCH_INSP (eff. 9/11)~~

~~Licensure Fee Notice, A425-1213FEE (rev. 2/14)~~

~~[Change of Responsible Management, A450-1213CRM-v1 \(eff. 7/2016\)](#)~~

V.A.R. Doc. No. R14-3985; Filed September 25, 2015, 9:24 a.m.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Proposed Regulation

Title of Regulation: **18VAC80-20. Board for Hearing Aid Specialists Regulations (amending 18VAC80-20-70).**

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

Public Hearing Information:

December 16, 2015 - 1:45 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA 23233

Public Comment Deadline: December 18, 2015.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hearingaidspec@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the board (i) evaluates its current and projected financial position and (ii) determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 (commonly known as the Callahan Act) states that following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation (DPOR) or the Department of Health Professions maintained under § 54.1-308 or 54.1-2505 of the Code of Virginia shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, the board shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Subdivision A 4 of § 54.1-201 describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department."

Subdivision 3 of § 54.1-304 describes the power and duty of the Director of DPOR to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the board, regulatory boards, and the department shall be paid."

Section 54.1-308 provides for compensation of the director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

The above sections of the Code of Virginia mandate that the board manage and periodically review and adjust fees. The referenced sections require the department to (i) pay expenses of each board and the department from revenues collected, (ii) establish fees adequate to provide sufficient revenue to pay expenses, (iii) account for the revenues collected and expenses charged to each board, and (iv) adjust fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the department (i) distinctly accounts for the revenue collected for each board, (ii) accounts for direct board expenses for each board and allocates a proportionate share of agency operating expenses to each board, (iii) reviews the actual and projected financial position of each board biennially to determine whether

revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles, and (iv) recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses.

If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code of Virginia sections. The board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Purpose: The intent of the proposed changes in the regulation is to increase licensing fees for applicants and regulants of the board. The board must establish fees adequate to support the costs of board operations and a proportionate share of the department's operations.

The board provides protection for the health, safety, and welfare of the citizens of the Commonwealth by ensuring that only individuals who meet specific criteria set forth in statute and regulations receive licensure as hearing aid specialists, by ensuring its regulants meet standards of practice and conduct set forth in the regulation, and by imposing penalties for not complying with the governing statutes and regulations. Without adequate funding, complaints against regulants brought to the attention of the board by citizens cannot be investigated and processed in a timely manner. Ensuring that hearing aid specialists have at least the minimal competencies to perform work protects the health, safety, and welfare of Virginia citizens.

The department receives no general fund money, instead it is funded almost entirely from revenue collected through applications for certification, licensure, renewals, examination fees, and other certification and licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide adequate revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The board has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to adjust the fees related to obtaining and maintaining licensure as a hearing aid specialist.

- 1) The hearing aid specialist new applicant fee is adjusted from \$30 to \$85.
- 2) The hearing aid specialist new applicant by reciprocity fee is adjusted from \$30 to \$85.

3) The hearing aid specialist new applicant temporary permit is adjusted from \$30 to \$85.

4) The hearing aid specialist licensure renewal fee is adjusted from \$20 to \$115.

5) The hearing aid specialist licensure reinstatement fee is adjusted from \$50 to \$85.

Issues: The Code of Virginia establishes the board as the state agency that oversees licensure of hearing aid specialists providing services in Virginia. The board's primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the Code of Virginia requires the department to comply with the Callahan Act. The proposed fee adjustments will ensure that the board has sufficient revenues to fund its operating expenses.

There are no disadvantages to the public or the Commonwealth in raising the board's fees as proposed in this action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (Board) proposes to amend fees for hearing aid specialist licensure. Specifically, the Board proposes to increase fees for initial application, renewal of licensure, reinstatement of licensure and fees for temporary permits. The Board also proposes to decrease the fee for licensure by reciprocity. In a separate action (<http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7102>), the Board proposes to eliminate the examination fee from this regulation and instead inform regulated entities that this fee will be set according to requirements of the Virginia Public Procurement Act. This change will be discussed in depth in a separate economic impact analysis but it is worth noting that these two actions would need to be considered together in order to gauge the full effect of proposed fee changes for licensees.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed changes.

Estimated Economic Impact. Under current regulations, applicants for initial licensure as hearing aid specialists pay \$30 plus a \$110 examination fee; licensees pay a biennial renewal fee of \$20 and, when necessary, a reinstatement fee of \$50. Temporary permits for individuals who are completing training currently cost \$30 for a one-year period and can be renewed at no cost for an additional six-month period. Currently, individuals who are seeking licensure by reciprocity must pay \$140 that covers both the fee for application and the fee for taking the licensure examination. The Board now proposes to increase fees for initial licensure application, renewal and reinstatement of licensure and for temporary permits. The Board also proposes to amend the fee

Regulations

for licensure by reciprocity in such a way that looks like a fee reduction but that will likely see individuals seeking such licensure paying more. While the fee for licensure by reciprocity will change from \$140 to \$85 in this proposed action, in the separate action linked above, the Board proposes to remove language that states the licensure by reciprocity fee includes the examination fee. This means that for any examination fee over \$55 (\$140-85), applicants for licensure by reciprocity will be paying more than they currently do to become licensed. The current examination fee is \$110.

Below is a comparison table for current and proposed fees:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% INCREASE
Initial Application for Licensure	\$30	\$85	183%
License Renewal	\$20	\$85	325%
License Reinstatement	\$50	\$85	70%
Temporary Permit	\$30	\$85	183%
Licensure by Reciprocity	\$140 (includes the \$110 exam fee)	\$85 (will likely not include the to-be-determined exam fee)	Undeterminable at this time

Board staff reports that, although revenues have fallen short of being able to pay for all expenditures in this and the last biennium, the Board had excess balances that covered budget shortfalls. Absent some fee increase, Board staff reports that the Board will run a deficit by the end of the 2016-18 biennium. Even though historical revenue and expenditure numbers support that the Board would eventually have to increase fees, an assumption used to forecast a decrease in revenues seems dubious. Board staff reports that forecasted revenues for the current biennium and the next two biennia are less than revenues over the last two biennia because they assumed that renewals would follow historical patterns (in that approximately 92% of current licensees would choose to renew) but they also assumed that revenues for initial licensure applications would be lower than they have been historically over the last two biennia. In short, Board staff assumes that fewer new individuals will choose to be licensed over this or the next two biennia in order to forecast a decrease in revenues. While revenue increased from \$288,840 for the 2010-12 biennium to \$289,704 for the 2012-14 biennium, the Board is forecasting the revenue will fall to \$276,485 for the current biennium and will be the same for the next two biennia (absent fee increases).

An assumption used to forecast increased costs (that the Department of Professional and Occupational Regulation (DPOR) will fill empty positions that the Board would then be responsible for partially covering the cost of) also may not happen and may not be in the best interests of current or future licensees if it does happen. Specifically, if neither licensee services nor investigations of complaints for this Board have suffered a significant lag on account of DPOR's lower staffing levels, neither licensees of this Board nor the public who uses their services are likely to experience a significant benefit on account of DPOR's anticipated hiring of additional staff.

In addition to anticipated staffing increases at DPOR, Board staff also reports that they expect expenditures to increase because of rising cost of health insurance for DPOR staff. On a per employee basis these costs are entirely outside of the power of the Board (and DPOR) to control. To the extent that health care costs are anticipated to increase because DPOR plans to hire more staff, the analysis in the paragraph above would also apply here.

Increasing fees will likely increase the cost of being licensed and, so, will likely slightly decrease the number of people who choose to become or remain licensed. To the extent that the public benefits from the Board regulating these professional populations, they will also likely benefit from the Board's proposed action that will increase fees to support Board activities. There is insufficient information to ascertain whether benefits will outweigh costs.

Businesses and Entities Affected. This proposed regulation will affect all current and future hearing aid specialist licensees. Board staff reports that there are currently 668 hearing aid specialists who are licensed in the Commonwealth.

Localities Particularly Affected. No localities will likely be disproportionately affected by this proposed regulatory change.

Projected Impact on Employment. Increased licensure fees will likely lead to at least a marginal decrease in the number of individuals who are employed as hearing aid specialists.

Effects on the Use and Value of Private Property. To the extent that professional licenses are private property of value to licensees, increasing the cost of licenses will commensurately decrease their value.

Small Businesses: Costs and Other Effects. To the extent that increasing licensure fees leads to a decrease in the number of individuals licensed as hearing aid specialists, the cost of hiring the services of the remaining, smaller pool of licensees may marginally increase for the small businesses that hire them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are actions that the Board could take that might mitigate the necessity of raising fees at this time. If licensees and the public have not thus far been harmed by

decreased staffing levels, licensees would likely benefit from DPOR reconsidering its decision to hire more staff who would need to be funded through licensure fees.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate.

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The board concurs with the approval. However, the board would like to correct an error in the summary and address certain statements regarding the board's projected revenues and expenditures.

Summary Correction – "The board also proposes to decrease the fee for licensure by reciprocity."

EIA Position: "Specifically, the Board proposes to increase fees for initial application, renewal of licensure, reinstatement of licensure and fees for temporary permits. The Board also proposes to decrease the fee for licensure by reciprocity. In a separate action (<http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7102>), the Board proposes to eliminate the examination fee from this regulation and instead inform regulated entities that this fee will be set according to requirements of the Virginia Public Procurement Act."

Agency Response: The board's proposed fee adjustment does not decrease the fee for licensure by reciprocity. The current regulations include a \$30 application fee and a \$110 examination fee. For those applying for licensure by reciprocity, the regulations combine these fees into one fee, \$140. This \$140 fee explicitly states it includes the examination fee, which is set at \$110 on the preceding line. The actual licensure by reciprocity application fee, excluding the exam fee, is \$30. This is the same licensing fee for non-reciprocity applicants. The application fee is being increased from \$30 to \$85, pursuant to the Callahan Act. The examination fee is not being changed in this action; however, its inclusion in the reciprocity license fee is being removed. This change creates consistency in the regulations. It should be noted that in a separate regulatory action, the application fee and reciprocity license fee are being consolidated into a single fee type, Initial application for licensure, simplifying the regulations even further.

Estimated Economic Impact.

1. EIA Position: "The Board also proposes to amend the fee for licensure by reciprocity in such a way that looks like a fee reduction but that will likely see individuals seeking such licensure paying more."

Agency Response: The board disagrees with the EIA's characterization that the proposed amendment appears as a fee reduction. As noted above, the board is separating out the examination fee from the license by reciprocity fee by removing the language "includes examination fee" from the regulation. The application fee for licensure by reciprocity is currently \$30, the same amount as the non-reciprocity application fee. The current text of the regulation states the initial application fee is \$30, the exam fee is \$110, and the licensure by reciprocity fee is \$140, "includes[ing] examination fee." It is clear in the regulation that the \$140 reciprocity fee is the \$110 examination fee and \$30 application fee. The proposed fee adjustment is a change to the application fee and should not mislead any potential reciprocity applicants about the nature of the change. It should be noted that the board has had only one applicant for reciprocity since 2009.

2. EIA Position: "Absent some fee increase, Board staff reports that the Board will run a deficit by the 2016-18

Regulations

biennium. Even though historical revenue and expenditure numbers support that the Board would eventually have to increase fees, an assumption used to forecast a decrease in revenues seems dubious."

Agency Response: The board concurs with the EIA's conclusion that revenue and expenditure numbers support that the board must increase fees. The board disagrees with the EIA's characterization that its revenue forecast is dubious. Revenue projections for applicants are based on historical averages for the past eight years for opticians. This method has been proven successful when considering that the number of applicants vary from year to year. The projection methodology used for renewals has also shown to be historically fairly accurate, with a typical variance of less than 5.0%. This revenue projection method has been reviewed by DPOR management, external budget analysts, and an external auditor; and the method is considered sound and reasonable. This revenue projection methodology is used across all professions under DPOR and has been in place for over a decade. These specific revenue projections are the same used for all budgeting purposes, including the annual executive branch six-year budget projections. It is of note that the board projects the cash deficit to occur in the first part of 2017 under the current fee structure.

3. EIA Position: "Specifically, if neither licensee services nor investigations of complaints for this Board have suffered a significant lag on account of DPOR's lower staffing levels, neither licensees of this Board nor the public who uses their services are likely to experience a significant benefit on account of DPOR's anticipated hiring of additional staff."

Agency Response: DPOR utilizes a specific staffing model, honed over several decades, to keep costs at a minimum while maintaining its charge of protecting the health, safety, and welfare of the public by ensuring minimal competency of licensed professionals. boards are staffed with licensing professionals who are generalists in licensing and board-specific functions. Functions that are not board specific, some of which include accounting, investigations, examinations, information services, and recordkeeping, are staffed by professionals in those fields who perform these functions for all of the boards at DPOR. So, for example, the DPOR finance section staffs accountants, who split their time performing accounting for each of the boards. The board is then charged a portion of the accountant's costs based on the percentage of the accountant's workload that was spent on the board's accounting. This model saves the board the expense of hiring a staff accountant to perform this function. The board simply does not have the funds to staff professionals to perform all of the incidental or specialized services performed by DPOR staff. Neither can the board afford the loss of productivity by having generalists attempt to perform these functions in addition to their other duties for the board. The board receives the benefits of economies of scale when sharing the cost of services provided by DPOR staff. When DPOR is adequately staffed, all of the boards, including this

board, operate at minimal costs by receiving the benefits of specialization and economies of scale.

Filling vacant positions is only one aspect of the projected increased expenditures. The increases in health insurance and retirement costs to DPOR that are already in effect as of Fiscal Year 2015 total nearly \$2 million per biennium, with the board's allocated portion estimated at about \$18,000 per biennium.

Projected Impact on Employment.

EIA Position: "Increased licensure fees will likely lead to at least a marginal decrease in the number of individuals who are employed as hearing aid specialists."

Agency Response: In DPOR's experience, the number of licensees rarely decreases solely because of fee increases. Licensees rarely drop out of the profession due to fee increases. This is likely due to the cost of changing careers greatly exceeding that of the marginal fee adjustment. It is of note that even if this fee is increased, Virginia will still have one of the lowest hearing aid specialist licensing fees in the nation.

Effects on the Use and Value of Private Property.

EIA Position: "To the extent that professional licenses are private property of value to licensees, increasing the cost of licenses will commensurately decrease their value."

Agency Response: Regardless of the EIA response's relation to a separate action, the board disagrees with the characterization of an occupational license as private property. The board, in consultation with the Attorney General's office, maintains that an occupational license is a legal status conferred by the state granting special privileges to the licensee, not private property.

Further, it is not clear how increasing the cost of the license decreases its value. Changing the cost of the license does not affect its function, characteristics, or the usability of the license, factors that would normally determine its value. In this sense, it is not clear how a fee change alone can change the value of a license. The EIA takes the position that a fee increase will lead to a decrease in the number of licensees, making the license more scarce. A decrease in supply would likely result in increased value. So if the license is more scarce due to the fee increase, its value would increase, not decrease as the EIA indicates.

Small Businesses: Costs and Other Effects.

EIA Position: "To the extent that increasing licensure fees leads to a decrease in the number of individuals licensed as hearing aid specialists, the cost of hiring the services of the remaining, smaller pool of licensees may marginally increase for the small businesses that hire them."

Agency Response: As noted above, in DPOR's experience, the number of licensees rarely decreases solely because of fee increases. Licensees rarely drop out of the profession due to fee increases, as the cost of changing careers usually greatly exceed that of the marginal fee adjustment.

Small Businesses: Alternative Method that Minimizes Adverse Impact.

EIA Position: "There are actions that the Board could take that might mitigate the necessity of raising fees at this time. If licensees and the public have not thus far been harmed by decreased staffing levels, licensees would likely benefit from DPOR reconsidering its decision to hire more staff that would need to be funded through licensure fees."

Agency Response: As indicated above, licensees and the public benefit when DPOR maintains adequate staffing levels. DPOR utilizes a specific staffing model, honed over several decades, to keep costs at a minimum while maintaining its charge of protecting the health, safety, and welfare of the public by ensuring minimal competency of licensed professionals. Boards are staffed with licensing professionals who are generalists in licensing and board-specific functions. Functions that are not board specific, some of which include accounting, investigations, examinations, information services, and recordkeeping, are staffed by professionals in those fields who perform these functions for all of the boards at DPOR. So, for example, the DPOR finance section staffs accountants, who split their time performing accounting for each of the boards. The board is then charged a portion of the accountant's costs based on the percentage of the accountant's workload that was spent on the board's accounting. This model saves the board the expense of hiring a staff accountant to perform this function. The board simply does not have the funds to staff professionals to perform all of the incidental or specialized services performed by DPOR staff. Neither can the board afford the loss of productivity by having generalists attempt to perform these functions in addition to their other duties for the board. The board receives the benefits of economies of scale when sharing the cost of services provided by DPOR staff. When DPOR is adequately staffed, all of the boards, including this board, operate at minimal costs by receiving the benefits of specialization and economies of scale.

Summary:

The proposed amendments increase the fees for a new applicant, a new applicant by reciprocity, a new applicant temporary permit, licensure renewal, and licensure reinstatement for hearing aid specialists.

18VAC80-20-70. Fees.

A. All fees are nonrefundable and shall not be prorated. The date of receipt by the board or its agent is the date ~~which~~ that will be used to determine whether or not it is on time.

B. Application and examination fees must be submitted with the application for licensure.

C. 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 the additional processing charge established by the department.

The following fees apply:

Application Fee	\$30 <u>\$85</u>	to be paid by all applicants for initial licensure except reciprocal applicants
Examination Fee	\$110	
Licensure Fee for Reciprocity	\$140 <u>\$85</u>	includes exam fee
Temporary Permit Fee	\$30 <u>\$85</u>	
Re-examination Fee	\$95	per written or practical part
Renewal	\$20 <u>\$115</u>	
Reinstatement	\$50 <u>\$85</u>	
Duplicate Wall Certificate	\$25	

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 (18VAC80-20)

~~License Application, 21LIC (rev. 10/03).~~

~~Temporary Permit Application, 21TPER (eff. 10/03).~~

~~Reinstatement Application, 21REI (rev. 10/03).~~

~~Reexamination Application, 21REEX (rev. 12/00).~~

[Hearing Aid Specialist License Application, A440-2101LIC-v3 \(rev. 3/2016\)](#)

[Hearing Aid Specialist Temporary Permit Application, A440-2102TP PKG-v4 \(rev. 3/2016\)](#)

[Hearing Aid Specialist License Reinstatement Application, A440-2101REI-v3 \(rev. 3/2016\)](#)

[Hearing Aid Specialist Re-examination Application, A440-2101REEX-v2 \(rev. 9/2013\)](#)

[Hearing Aid Specialist Training & Experience Form, A440-21TREXP-v2 \(eff. 9/2013\)](#)

VA.R. Doc. No. R14-4011; Filed September 25, 2015; 9:25 a.m.

Regulations

Proposed Regulation

Title of Regulation: 18VAC80-20. Board for Hearing Aid Specialists Regulations (amending 18VAC80-20-10, 18VAC80-20-30, 18VAC80-20-40, 18VAC80-20-70, 18VAC80-20-220, 18VAC80-20-230, 18VAC80-20-250, 18VAC80-20-270; repealing 18VAC80-20-280).

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

Public Hearing Information:

December 16, 2015 - 1:30 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA 23233

Public Comment Deadline: December 18, 2015.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hearingaidspec@dpor.virginia.gov.

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

Purpose: The board seeks to amend its current regulations to ensure they are as least intrusive and burdensome as possible, in order to assist in providing an environment without unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public. Additionally, the board seeks to ensure its regulations are clearly written, easily understandable, and representative of the current advancements and standards of the industries.

Substance:

18VAC80-20-10. Definitions: The definitions of hearing aid specialist and licensee have been modified to align them with the statutory definition found in § 54.1-1500 of the Code of Virginia.

18VAC80-20-30. Basic qualifications for licensure: The proposed amendments modify the description of the practice to reflect the Code of Virginia and changes in 18VAC80-20-10.

18VAC80-20-40. Qualifications for a temporary permit: The proposed amendments modify the description of the practice to reflect the Code of Virginia and changes in 18VAC80-20-10. The requirement that correspondence be sent to both the permit holder and sponsor is updated to expressly exempt correspondence protected by law.

18VAC80-20-50. Fees: The proposed amendments replace specific examination fees with language authorizing examination fees to be set in accordance with the § 2.2-4300

et seq. of the Code of Virginia (Virginia Procurement Act) and with subdivision A 4 of § 54.1-201 of the Code of Virginia. Fees for wall certificates are removed and the licensure fee for reciprocity is consolidated with the initial license fee.

18VAC80-20-220. Purchase agreement: The proposed amendments require disclosure of nonrefundable fees in accordance with the Code of Virginia and prohibit the fees from being a percentage of the purchase price of the hearing aid.

18VAC80-20-230. Fitting and sale of hearing aids for children: The proposed amendments modify the description of the practice to reflect the Code of Virginia and changes in 18VAC80-20-10.

18VAC80-20-250. Testing procedures: The proposed regulations expand the standard testing frequencies to include 6000 – 8000 hertz.

18VAC80-20-270. Grounds for discipline: The proposed amendments (i) expand the grounds for disciplinary action to include probation and refusal to renew and (ii) clarify that temporary permit holders are subject to discipline by the board. The proposed amendments also modify the description of the practice to reflect the Code of Virginia and changes in 18VAC80-20-10.

18VAC80-20-280. Accountability of licensee: The proposed amendments repeal this section.

Issues: The primary advantage of the proposed amendments to the public is the board will continue to approve applicants and license professionals with safeguards in place to ensure proper competency and standards of conduct. The change of scope of prohibited acts to include permit holders will reduce fraud and better ensure the regulant population is minimally competent. Further, regulants and applicants within these professions will be able to read the board's requirements with greater clarity and understanding. The added clarity of the language in the proposed regulations will facilitate a quicker and more efficient process for applicants and regulants by enhancing their understanding of their individual requirements. Further, consumers in the public and regulators from related agencies will have a better understanding of the board's requirements that will allow them to conduct business with greater efficiency.

The primary advantage to the Commonwealth will be the continued successful regulation of hearing aid specialists who meet the minimum entry standards. The proposed amendments strengthen the ability to investigate and discipline regulants who disregard the health, safety, and welfare of the public. No disadvantage has been identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (Board) proposes to amend its Hearing Aid Specialists Regulations to:

1) make them conform to definitions and other language in the Code of Virginia, 2) add several frequencies to the standard air conduction test standard frequencies, 3) clarify that temporary permit holders are subject to Board discipline, 4) consolidate the initial licensure and licensure by reciprocity fees and 5) remove the examination fee (and other language pertaining to that fee) from the schedule of fees and insert language that allows the examination fee to be set outside the regulation by agreement between the Department of Professional and Occupational Regulation (DPOR) and the exam vendor so long as the vendor is chosen through rules set in the Virginia Public Procurement Act.

Result of Analysis. Benefits will likely outweigh costs for several of these regulatory changes. For at least one regulatory change, costs will likely outweigh benefits.

Estimated Economic Impact. Currently, this regulation contains definitions and other language that differs from the language contained in controlling legislation. The Board now proposes to amend the definitions for "licensee" and "hearing aid specialist" as well as add language requiring the disclosure of nonrefundable fees (which may not be a percentage of the purchase price of a hearing aid) so that regulatory language conforms to relevant language in the Code of Virginia (COV). Since the language in the COV is already legally controlling, no entity is likely to incur costs on account of these changes. To the extent that conforming regulatory language to the COV will eliminate the chance of confusion, interested parties will benefit from the added clarity these changes bring.

Currently, this regulation specifies that licensees and temporary permit holders must conduct air conduction tests at standard frequencies of 500, 1,000, 2,000 and 4,000 Hertz. Board staff reports that technology has improved for hearing tests and so the Board now proposes to add 6,000 and 8,000 Hertz to the list of required standard frequencies. Board staff also reports that this change reflects an already established and universally used standard in the hearing aid industry, so they do not expect any affected entity to have to buy any new equipment or incur any additional costs on account of this change.

Current regulatory language does not allow the Board to discipline temporary permit holders for wrongdoing but would instead require the Board to wait until permit holders got their licenses in order to discipline them. The Board now proposes to add temporary permit holders to the list of entities who are subject to Board discipline. This change will likely benefit the public as it will better protect them from temporary permit holders who are providing poor or fraudulent services or who have committed a crime that would preclude them from being licensed in the Commonwealth.

Currently, this regulation has a separate fee that individuals seeking licensure by reciprocity must pay. This fee is \$140 and includes the cost of taking the licensure examination

(\$110). The Board proposes to eliminate the separate fee for licensure by reciprocity and require all applicants for initial licensure to pay the same fee. The fee for initial licensure is currently set at \$30 and does not include the examination fee. Although on its face, this change is cost neutral for affected entities, the Board is seeking to increase the initial licensure fee to \$85 in a separate action (<http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7104>).

The two actions analyzed together indicate that individuals seeking licensure by reciprocity will likely have to pay more than they currently do to become licensed. Assuming the higher initial licensure fee is promulgated, individuals seeking licensure by reciprocity will pay higher fees in all instances where the examination fee is greater than \$55. Analysis of fee increases for this Board can be found at the link provided above.

The Board also proposes to eliminate the explicit examination and re-examination fees from this regulation and instead set these fees administratively based on the cost of private examination services contracted under the rules of the Virginia Public Procurement Act. This change would give the Board greater flexibility to set and change fees without having to go through the regulatory process but the general public and licensees would be adversely impacted in that their ability to receive notice of fee increases (and their ability to make public comment to try to affect Board decisions) will be greatly reduced or even eliminated. This change will increase uncertainty for these groups and will also likely lead to higher costs for licensees which may then be passed on to members of the public who use hearing aid services.

Businesses and Entities Affected. This proposed regulation will affect all current and future hearing aid specialist licensees. Board staff reports that there are currently 668 hearing aid specialists who are licensed in the Commonwealth.

Localities Particularly Affected. No localities will likely be disproportionately affected by this proposed regulatory change.

Projected Impact on Employment. Likely increased licensure fees will likely lead to at least a marginal decrease in the number of individuals who are employed as hearing aid specialists.

Effects on the Use and Value of Private Property. To the extent that professional licenses are private property of value to licensees, increasing the cost of licenses will commensurately decrease their value.

Small Businesses: Costs and Other Effects. To the extent that increasing licensure fees leads to a decrease in the number of individuals licensed as hearing aid specialists, the cost of hiring the services of the remaining, smaller pool of licensees may marginally increase for the small businesses that hire them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The Board could likely mitigate adverse

Regulations

impacts for licensees and the public by leaving fees structured as they currently are.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate.

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

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

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

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

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

Agency's Response to Economic Impact Analysis: The board concurs with the analysis for #1, 2, and 3 in the Summary of Proposed Amendments to Regulations. The board respectfully disagrees with #4 and 5 of the Summary, the sections titled Projected Impact on Employment and Effects

on the Use and Value of Private Property, and both Small Businesses sections.

Summary.

1. Summary Item #4: The proposed regulations would "consolidate the initial licensure and licensure by reciprocity fees."

EIA position: "Although on its face, this change is cost neutral for affected entities, the Board is seeking to increase the initial licensure fee to \$85 in a separate action (<http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7104>) . The two actions analyzed together indicate that individuals seeking licensure by reciprocity will likely have to pay more than the [sic] currently do to become licensed. Assuming the higher initial licensure fee is promulgated, individuals seeking licensure by reciprocity will pay higher fees in all instances where the examination fee is greater than \$55."

Agency Response: The benefit of consolidating the initial licensure fee and the licensure by reciprocity fee will be that the regulations will be clearer and more easily understood by the regulants and the general public. These two fees are the same amount and serve the same purpose, but listing them separately in the regulations causes confusion for applicants. This regulatory change is meant solely to simplify language in the fees sections by reducing two separate fee entries with the same content into one entry. Many of the board's under the Department of Professional and Occupational Regulation successfully utilize this model.

The EIA states that this change is cost neutral, then proceeds to analyze a separate regulatory action, even linking to the other action. While the EIA does not explicitly state the costs outweigh the benefits of this action, it claims that individuals seeking licensure by reciprocity will likely pay higher fees. In actuality, this regulatory action does not change fees at all and uses simplified language to maintain the same fee for all applicants for licensure, whether applying by reciprocity or not. Further, the board believes this regulatory change will be beneficial to the regulants and public, independent of the separate action referenced by the EIA. In fact, this is the reason the board brought separate actions, because this simplification is necessary regardless of the actual amount of the fee.

2. Summary Item #5: The proposed regulations would remove the examination fee (and other language pertaining to the fee) from the schedule of fees and insert language that allows the exam fee to be set by agreement between a vendor, so long as the vendor is chosen in compliance with the Virginia Public Procurement Act.

EIA Position: "This change will increase uncertainty for these groups and will also likely lead to higher costs for licensees which may then be passed on to members of the public who use hearing aid services."

Agency Response: The current regulations set the examination fee at \$110. By setting the exam fee in the

regulations, the board is effectively unable to modernize its exam. When the exam fee is set in regulations, the process to update the exam, or change the exam, is extremely limited. Any desired change must go through the standardized regulatory review process. This also means that if the administration costs of the exam increase, whether through inflation, or other reasonable causes, and the board is unable to adjust the examination fee capped at \$110, the board will have to absorb that cost, increasing its expenses and thus expedite the requirement for a fee increase action to maintain the budget balancing requirements of the Callahan Act. Removing the exam fee from the regulations frees the board from having to seek regulatory changes every time it needs to update the exam, or exam expenses change. Further, this change brings the regulation in line with most of the boards under the Department of Professional and Occupational Regulations (DPOR), including the optician regulations.

As noted in the NOIRA and Agency Background Document, the board's current written examination is a proprietary paper and pencil exam and is being phased out by the exam owner. The company that owns the exam has transitioned to a computer-based exam, and the board would like to be able to explore procuring a modernized exam, in compliance with the Virginia Public Procurement Act (PPA). By eliminating the reference to a specific fee and authorizing setting the fees based on an exam vendor negotiated in compliance with the PPA, the board will be able to adapt more quickly if it loses access to its current exam or if it is able to acquire a new, modernized exam. This allows the board to more ably fulfill its statutory mission to protect the health, safety, and welfare of the public through ensuring licensed professionals are minimally competent.

The EIA's claim that this will likely lead to higher costs for the licensees is unsupported. While the board may need to seek a change in its exam in the future, the competitive bidding process implemented under the PPA may result in a lower or equivalent exam fee.

Projected Impact on Employment.

EIA Position: "Likely increased licensure fees will likely lead to at least a marginal decrease in the number of individuals who are employed as hearing aid specialists."

Agency Response: This regulatory action does not propose a fee increase. The EIA position on the projected impact on employment appears to be directed at a separate regulatory action. The EIA does not identify how any of the proposed changes in this regulatory action would impact employment. The changes proposed in this regulatory action simplify and modernize the regulations and are not anticipated to have a negative impact on employment.

Effects on the Use and Value of Private Property.

EIA Position: "To the extent that professional licenses are private property of value to licensees, increasing the cost of licenses will commensurately decrease their value."

Agency Response: As noted above, this regulatory action does not propose a fee increase. The EIA position on the Effects on the Use and Value of Private Property appears to be directed at a separate regulatory action and does not reference any of the proposed changes in this regulatory action.

Regardless of the EIA response's relation to a separate action, the board disagrees with the characterization of an occupational license as private property. The board, in consultation with the Attorney General's office, maintains that an occupational license is a legal status conferred by the state granting special privileges to the licensee, not private property.

Further, it is not clear how increasing the cost of the license decreases its value. Changing the cost of the license does not affect its function, characteristics, or the usability of the license, factors that would normally determine its value. In this sense, it is not clear how a fee change alone can change the value of a license. The EIA takes the position that a fee increase leads to a decrease in the number licensees. If this is the case, then the license would be more scarce. A decrease in supply would likely result in increased value. So if the license is more scarce due to the fee increase, its value would increase, not decrease as the EIA indicates.

Small Businesses: Costs and Other Effects.

EIA Position: "To the extent that increasing licensure fees leads to a decrease in the number of individuals licensed as hearing aid specialists, the cost of hiring the services of the remaining, smaller pool of licensees may marginally increase for the small businesses that hire them."

Agency Response: As noted above, this regulatory action does not propose a fee increase. The EIA position on the Small Businesses: Costs and Other Effects appears to be directed at a separate regulatory action, and does not reference any of the proposed changes in this regulatory action.

Further, the changes made by this regulatory action are not anticipated to have any negative effect on small business costs. The changes in this action are clarifying changes, updates to reflect current business practices, and a consolidation and simplification of the categories of application fees. This simplification should reduce the regulatory burden on licensees, including small businesses. In fact, the board takes the position that by streamlining and simplifying its regulations, small businesses will experience reduced costs, as owners and employees will have to spend less time and resources reading and understanding the regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact.

EIA Position: "The Board could likely mitigate adverse impacts for licensees and the public by leaving fees structured as they currently are."

Regulations

Agency Response: These regulatory changes are clarifying and simplifying in nature and are meant to have a positive impact on the licensee population. Further, to the extent the EIA is referring to the fee increase as fee structure, this regulatory action does not propose a fee increase.

Summary:

The proposed amendments (i) modify the definitions of "hearing aid specialist" and "licensee" and other provisions to align them with statutory definitions found in § 54.1-1500 of the Code of Virginia, (ii) exempt correspondence protected by law from the requirement that correspondence be sent to both the permit holder and sponsor, (iii) eliminate the examination fee cap and authorize examination fees to be set by agreement between the Department of Professional and Occupational Regulation and the examination vendor provided that the vendor is chosen in accordance with Virginia Procurement Act, (iv) eliminate fees for wall certificates and consolidate the licensure fee for reciprocity with the initial license fee, (v) require a hearing aid specialist to disclose nonrefundable fees and prohibit the fees from being a percentage of the purchase price of the hearing aid, (vi) expand the standard testing frequencies to include 6000 – 8000 hertz, (vii) expand the grounds for disciplinary action to include probation and refusal to renew, (viii) clarify that temporary permit holders are subject to discipline by the board, and (ix) make other clarifying changes.

CHAPTER 20 ~~BOARD FOR~~ HEARING AID SPECIALISTS REGULATIONS

Part I Definitions

18VAC80-20-10. Definitions.

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

"Audiologist" means any person who engages in the practice of audiology as defined by § 54.1-2600 of the Code of Virginia.

"Board" means Board for Hearing Aid Specialists and Opticians.

"Department" means Department of Professional and Occupational Regulation.

"Hearing aid specialist" means a person who engages in the practice of fitting ~~and or~~ dealing in hearing aids or who advertises or displays a sign or represents himself as a person who practices the fitting or ~~and~~ dealing of ~~in~~ hearing aids.

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

"Licensee" means any person holding a valid license issued by the Board for Hearing Aid Specialists and Opticians for

the practice of fitting ~~and or~~ dealing in hearing aids, as defined in § 54.1-1500 of the Code of Virginia.

"Otolaryngologist" means a licensed physician specializing in ear, nose, and throat disorders.

"Reciprocity" means an agreement between two or more states to recognize and accept one another's regulations and laws.

"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.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

Part II Entry Requirements

18VAC80-20-30. Basic qualifications for licensure.

A. Every applicant for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years of age.
2. The applicant has successfully completed high school or a high school equivalency course.
3. The applicant has training and experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:
 - a. Basic physics of sound;
 - b. Basic maintenance and repair of hearing aids;
 - c. The anatomy and physiology of the ear;
 - d. Introduction to psychological aspects of hearing loss;
 - e. The function of hearing aids and amplification;
 - f. Visible disorders of the ear requiring medical referrals;
 - g. Practical tests utilized for selection or modification of hearing aids;
 - h. Pure tone audiometry, including air conduction, bone conduction, and related tests;
 - i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
 - j. Masking when indicated;
 - k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;
 - l. Taking earmold impressions;
 - m. Proper earmold selection;
 - n. Adequate instruction in proper hearing aid orientation;
 - o. Necessity of proper procedures in after-fitting checkup; and
 - p. Availability of social service resources and other special resources for the hearing impaired.

4. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:

- a. A statement on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or
- b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.

5. The applicant ~~shall~~ has not ~~have~~ been convicted or found guilty of any crime directly related to the practice of fitting ~~and or~~ dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. The applicant review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

6. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.

7. The applicant has disclosed his physical address. A post office box is not acceptable.

8. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in Virginia.

9. The applicant has submitted the required application with the proper fee as referenced in 18VAC80-20-70 and signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview or both. The board may refuse initial

licensure due to the applicant's failure to comply with entry requirements. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

18VAC80-20-40. ~~Qualifications for a temporary~~ Temporary permit.

A. Any individual may apply for a temporary permit, which is to be used solely for the purpose of gaining the training and experience required to become a licensed hearing aid specialist in Virginia. The licensed sponsor shall be identified on the application for a temporary permit and the licensed sponsor shall comply strictly with the provisions of ~~subdivision 2 of this subsection~~ B of this section.

1. A temporary permit shall be issued for a period of 12 months and may be extended once for not longer than six months. After a period of 18 months an extension is no longer possible and the former temporary permit holder shall sit for the examination in accordance with this section.

2. The board may, at its discretion, extend the temporary permit for a temporary permit holder who suffers serious personal illness or injury, or death in his immediate family, or obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation of these circumstances must be received by the board no later than 12 months after the date of the expiration of the temporary permit or within six months of the completion of military or Peace Corps service, whichever is later.

~~2.~~ B. Every applicant for a temporary permit shall provide information ~~on~~ upon application establishing that:

~~a.~~ 1. The applicant for a temporary permit is at least 18 years of age.

~~b.~~ 2. The applicant for a temporary permit has successfully completed high school or a high school equivalency course.

3. The applicant ~~shall~~ has not ~~have~~ been convicted or found guilty of any crime directly related to the practice of fitting ~~and or~~ dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

Regulations

4. The applicant for a temporary permit is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant for a temporary permit must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application, the applicant for a temporary permit must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant for a temporary permit must also disclose whether he has been licensed previously in Virginia as a hearing aid specialist.

5. The applicant for a temporary permit has disclosed his physical address. A post office box is not acceptable.

6. The applicant for a temporary permit has submitted the required application with the proper fee referenced in 18VAC80-20-70 and has signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter.

~~B.~~ C. The licensed hearing aid specialist who agrees to sponsor the applicant for a temporary permit shall certify on the application that as sponsor, he:

1. Assumes full responsibility for the competence and proper conduct of the temporary permit holder with regard to all acts performed pursuant to the acquisition of training and experience in the fitting ~~and~~ or dealing of hearing aids;

2. Will not assign the temporary permit holder to carry out independent field work without on-site direct supervision by the sponsor until the temporary permit holder is adequately trained for such activity;

3. Will personally provide and make available documentation, upon request by the board or its representative, showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; and

4. Will return the temporary permit to the department should the training program be discontinued for any reason.

~~C.~~ D. The licensed sponsor shall provide training and shall ensure that the temporary permit holder under his supervision gains experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:

1. Basic physics of sound;
2. Basic maintenance and repair of hearing aids;
3. The anatomy and physiology of the ear;
4. Introduction to psychological aspects of hearing loss;
5. The function of hearing aids and amplification;
6. Visible disorders of the ear requiring medical referrals;

7. Practical tests utilized for selection or modification of hearing aids;

8. Pure tone audiometry, including air conduction, bone conduction, and related tests;

9. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

10. Masking when indicated;

11. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

12. Taking earmold impressions;

13. Proper earmold selection;

14. Adequate instruction in proper hearing aid orientation;

15. Necessity of proper procedures in after-fitting checkup; and

16. Availability of social service resources and other special resources for the hearing impaired.

~~D.~~ E. The board may make further inquiries and investigations with respect to the qualifications of the applicant for a temporary permit or require a personal interview, or both.

~~E.~~ F. All correspondence from the board to the temporary permit holder not otherwise exempt from disclosure, shall be addressed to both the temporary permit holder and the licensed sponsor and shall be sent to the business address of the licensed sponsor.

18VAC80-20-70. Fees.

A. All fees are nonrefundable and shall not be prorated. The date of receipt by the board or its agent is the date ~~which~~ that be used to determine whether or not it is on time.

B. Application and examination fees must be submitted with the application for licensure.

C. 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 the additional processing charge established by the department.

The following fees apply:

Application Fee	\$30	to be paid by all applicants for initial licensure except reciprocal applicants
Examination Fee	\$110	
Licensure Fee for Reciprocity	\$140	includes exam fee
Temporary Permit Fee	\$30	

Re-examination Fee	\$95	per-written or practical part
Renewal	\$20	
Reinstatement	\$50	
Duplicate Wall Certificate	\$25	

D. The written examination fee shall be established in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The practical examination fee shall be established by the department that is sufficient to cover expenses for the administration of the examination in compliance with subdivision A 4 of § 54.1-201 of the Code of Virginia.

18VAC80-20-220. Purchase agreement.

A. Each hearing aid shall be sold through a purchase agreement ~~which that~~ shall:

1. Show the licensee's business address, license number ~~and~~, business telephone number, and signature;
2. Comply with federal and Virginia laws and regulations, ~~United States U.S.~~ Food and Drug Administration (FDA) regulations, the Virginia Home Solicitation Sales Act (Chapter 2.1 (§ 59.1-21.1 et seq.) of Title 59.1 of the Code of Virginia), and the Virginia Consumer Protection Act (Chapter 17 (§ 59.1-196 et seq.) of Title 59.1 of the Code of Virginia);
3. Clearly state, if the hearing aid is not new and is sold or rented, that it is "used" or "reconditioned," whichever is applicable, including the terms of warranty, if any. The hearing aid container shall be clearly marked with the same information contained in the purchase agreement.
4. Identify the brand names and model of the hearing aid being sold, and the serial number of the hearing aid shall be provided, in writing, to the purchaser or prospective purchaser at the time of delivery of the hearing aid;
5. Disclose the full purchase price;
6. Disclose the down payment and periodic payment terms in cases where the purchase price is not paid in full at delivery;
7. Disclose any nonrefundable fees established in accordance with § 54.1-1505 of the Code of Virginia. Nonrefundable fees shall not be a percentage of the purchase price of the hearing aid;
8. Disclose any warranty;
9. Explain the provisions of § 54.1-1505 of the Code of Virginia, which entitles the purchaser to return the hearing aid, in ~~the~~ 10-point bold face type that is bolder than the type in the remainder of the purchase agreement; and
10. Disclose that the licensee or temporary permit holder is not a physician licensed to practice medicine in Virginia

and that no examination or representation made shall be regarded as a medical examination, opinion or advice.

B. Subdivision A 10 of this section shall not apply to sales made by a licensed hearing aid specialist who is a physician licensed to practice medicine in Virginia.

18VAC80-20-230. Fitting ~~and~~ or sale of hearing aids for children.

1. Any person engaging in the fitting ~~and~~ or sale of hearing aids for a child under 18 years of age shall ascertain whether such child has been examined by an otolaryngologist or licensed physician within six months prior to fitting.

2. No child under 18 years of age shall be initially fitted with a hearing aid or hearing aids unless the licensed hearing aid specialist has been presented with a written statement signed by an otolaryngologist stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

3. No child under 18 years of age shall be subsequently fitted with a hearing aid or hearing aids unless the licensed hearing aid specialist has been presented with a written statement signed by a licensed physician stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

18VAC80-20-250. Testing procedures.

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000-4000-~~6000-8000~~ Hertz. Intermediate frequencies shall be tested if the threshold difference between octaves exceeds 15dB. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.
2. Bone Conduction Tests are to be made on every client--A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.
3. Speech testings shall be made before fittings and shall be recorded with type of test, method of presentation and the test results.
4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the client to a licensed physician unless the client can show that his present condition is under treatment or has been treated:
 - a. Visible congenital or traumatic deformity of the ear.

Regulations

- b. History of active drainage from the ear within the previous 90 days.
 - c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
 - d. Acute or chronic dizziness.
 - e. Unilateral hearing loss.
 - f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.
 - g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.
 - h. Tinnitus as a primary symptom.
 - i. Pain or discomfort in the ear.
5. All tests shall have been conducted no more than six months prior to the fitting.
6. Post-fitting testing shall be made and recorded with type of test, method of presentation and the test results.

18VAC80-20-270. Grounds for discipline.

The board may, in considering the totality of the circumstances, fine any temporary permit holder or licensee ~~or~~, and suspend, place on probation, or revoke, or refuse to renew any temporary permit or license or deny any ~~license application~~ issued under the provisions of Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the ~~regulations of the board this chapter.~~ Disciplinary procedures are governed by the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. In exercising its disciplinary function, the board will consider the totality of the circumstances of each case. Any licensee is subject to board discipline for any of the following:

- 1. Improper conduct, including but not limited to:
 - a. Obtaining ~~or~~, renewing, or attempting to obtain a license by false or fraudulent representation;
 - b. Obtaining any fee or making any sale by fraud or misrepresentation;
 - c. Employing to fit ~~and~~ or sell hearing aids a person who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;
 - d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;
 - e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;
 - f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true; or using the words "physician," "audiologist," "clinic," "hearing service,"

"hearing center," or similar description of the services and products provided when such use is not accurate;

- g. Directly or indirectly giving, or offering to give, favors, paid referrals, or anything of value to any person who in his professional capacity uses his position to influence third parties to purchase products offered for sale by a hearing aid specialist; or
- h. Failing to provide expedient, reliable ~~and~~, or dependable services when requested by a client or client's guardian.

2. Failure to include on the purchase agreement a statement regarding home solicitation when required by federal and state law.

3. Incompetence or negligence, as those terms are generally understood in the profession, in fitting or selling hearing aids.

4. Failure to provide required or appropriate training resulting in incompetence or negligence, as those terms are generally understood in the profession, by a temporary permit holder under the licensee's sponsorship.

5. Violating or cooperating with others in violating any provisions of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia or ~~any regulation of the board this chapter.~~

6. The licensee, temporary permit holder, or applicant ~~shall not have~~ has been convicted or found guilty of any crime directly related to the practice of fitting ~~and~~ or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any pleas of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

18VAC80-20-280. Accountability of licensee. (Repealed.)

~~A licensee shall be responsible for the acts or omissions of his staff in the performance of the fitting and dispensing of hearing aid services.~~

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 (18VAC80-20)

~~License Application, 21LIC (rev. 10/03).~~

~~Temporary Permit Application, 21TPER (eff. 10/03).~~

~~Reinstatement Application, 21REI (rev. 10/03).~~

~~Reexamination Application, 21REEX (rev. 12/00).~~

[Hearing Aid Specialist License Application, A440-2101LIC-v3 \(rev. 3/2016\)](#)

[Hearing Aid Specialist Temporary Permit Application, A440-2102TP PKG-v4 \(rev. 3/2016\)](#)

[Hearing Aid Specialist License Reinstatement Application, A440-2101REI-v3 \(rev. 3/2016\)](#)

[Hearing Aid Specialist Re-examination Application, A440-2101REEX-v2 \(rev. 9/2013\)](#)

[Hearing Aid Specialist Training & Experience Form, A440-21TREXP-v2 \(eff. 9/2013\)](#)

VA.R. Doc. No. R14-3984; Filed September 25, 2015, 9:26 a.m.

Proposed Regulation

Title of Regulation: **18VAC80-30. Opticians Regulations (amending 18VAC80-30-50).**

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

Public Hearing Information:

December 16, 2015 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 1, Richmond, VA 23233

Public Comment Deadline: December 18, 2015.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hearingaidspec@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by several sections of the Code of Virginia. To comply with these statutes, the board evaluates its current and projected financial position and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses. The sections are:

§ 54.1-113 (commonly known as the Callahan Act), which states that following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or 54.1-2505 of the Code of Virginia shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4, which describes each regulatory board's power and duty to "levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department."

§ 54.1-304.3, which describes the power and duty of the director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the board, regulatory boards, and the department shall be paid."

§ 54.1-308, which provides for compensation of the director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

The above sections of the Code of Virginia mandate that the board manage and periodically review and adjust fees. The referenced sections require the department to (i) pay expenses of each board and the department from revenues collected; (ii) establish fees adequate to provide sufficient revenue to pay expenses; (iii) account for the revenues collected and expenses charged to each board; and (iv) adjust fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the department (i) distinctly accounts for the revenue collected for each board; (ii) accounts for direct board expenses for each board and allocates a proportionate share of agency operating expenses to each board; (iii) reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and (iv) recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with the cited Code of Virginia sections. The board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Purpose: The intent of the proposed changes in the regulation is to increase licensing fees for applicants and regulants of the board. The board must establish fees adequate to support the costs of board operations and a proportionate share of the department's operations.

The board provides protection for the health, safety, and welfare of the citizens of the Commonwealth by ensuring that

Regulations

only individuals who meet specific criteria set forth in statute and regulations receive licensure as opticians, by ensuring its regulants meet standards of practice and conduct set forth in the regulation, and by imposing penalties for not complying with the governing statutes and regulations. Without adequate funding, complaints against regulants brought to the attention of the board by citizens cannot be investigated and processed in a timely manner. Ensuring that opticians have at least the minimal competencies to perform work protects the health, safety, and welfare of Virginia citizens.

The department receives no general fund money, instead it is funded almost entirely from revenue collected through applications for certification, licensure, renewals, examination fees, and other certification and licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide adequate revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The board has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to adjust the fees related to obtaining and maintaining licensure as an optician in the following ways:

- 1) The optician licensure new applicant fee is adjusted from \$100 to \$85.
- 2) The optician licensure renewal fee is adjusted from \$100 to \$115.
- 3) The optician licensure late renewal fee is adjusted from \$25 to \$35.
- 4) The optician licensure reinstatement fee is adjusted from \$100 to \$85.

Issues: The Code of Virginia establishes the board as the state agency that oversees licensure of opticians providing services in Virginia. The board's primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies, by prescribing standards of conduct and practice, and by imposing penalties for not complying with the regulations. Further, the Code of Virginia requires the department to comply with the Callahan Act. The proposed fee adjustments will ensure that the board has sufficient revenues to fund its operating expenses.

There are no disadvantages to the public or the Commonwealth in raising the board's fees as proposed in this action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (Board) proposes to amend fees for optician licensure. Specifically, the Board proposes to decrease fees for initial application and for contact lens certification and to increase fees for license

renewal (renewal with the 30-day grace period after license expiration), late renewal (between 30 and 60 days of license expiration) and reinstatement (more than 60 days after license expiration).

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed changes.

Estimated Economic Impact. Under current regulations, applicants for initial licensure as optician pay \$100 and pay an additional \$100 for contact lens certification; licensees currently pay a biennial renewal fee of \$100 and, when necessary, pay a late renewal fee of \$125 or a reinstatement fee of \$225 (depending on how late they are in renewing their licenses). The Board now proposes to decrease fees for initial licensure application and contact lens certification and to increase fees for license renewal, late renewal and reinstatement of licensure.

Below is a comparison table for current and proposed fees:

FEE TYPE	CURRENT FEE	PROPOSED FEE	% change
Initial Application for Licensure	\$100	\$85	-15%
Contact Lens Certification	\$100	\$85	-15%
License Renewal	\$100	\$115	+15%
License Late Renewal	\$125	\$150	+20%
License Reinstatement	\$225	\$235	+4.44%

Board staff reports that, although revenues have fallen short of being able to pay for all expenditures in this and the last biennium, the Board had excess balances that covered budget shortfalls. Absent some fee increase, Board staff reports that the Board will run a deficit by the end of the 2016-18 biennium. Even though historical revenue and expenditure numbers support that the Board would eventually have to increase fees, an assumption used to forecast a decrease in revenues seems dubious. Board staff reports that forecasted revenues for the current biennium and the next two biennia are less than revenues over the last two biennia because they assumed that renewals would follow historical patterns (in that approximately 92% of current licensees would choose to renew) but they also assumed that revenues for initial licensure applications would be lower than they have been historically over the last two biennia. In short, Board staff assumes that fewer new individuals will choose to be licensed over this or the next two biennia in order to forecast a decrease in revenues. While revenue increased from \$288,840

for the 2010-12 biennium to \$289,704 for the 2012-14 biennium, the Board is forecasting the revenue will fall to \$276,485 for the current biennium and will be the same for the next two biennia (absent fee increases).

An assumption used to forecast increased costs (that the Department of Professional and Occupational Regulation (DPOR) will fill empty positions that the Board would then be responsible for partially covering the cost of) also may not happen and may not be in the best interests of current or future licensees if it does happen. Specifically, if neither licensee services nor investigations of complaints for this Board have suffered a significant lag on account of DPOR's lower staffing levels, neither licensees of this Board nor the public who uses their services are likely to experience a significant benefit on account of DPOR's anticipated hiring of additional staff.

In addition to anticipated staffing increases at DPOR, Board staff also reports that they expect expenditures to increase because of rising cost of health insurance for DPOR staff. On a per employee basis these costs are entirely outside of the power of the Board (and DPOR) to control. To the extent that health care costs are anticipated to increase because DPOR plans to hire more staff, the analysis in the paragraph above would also apply here.

Increasing fees will likely increase the cost of being licensed or registered and, so, will likely slightly decrease the number of people who choose to be remain in these jobs or businesses. To the extent that the public benefits from the Board regulating these professional populations, they will also likely benefit from the Board's proposed action that will increase fees to support Board activities. There is insufficient information to ascertain whether benefits will outweigh costs.

Businesses and Entities Affected. This proposed regulation will affect all current and future optician licensees. Board staff reports that there are currently 1,965 opticians who are licensed in the Commonwealth.

Localities Particularly Affected. No localities will likely be disproportionately affected by this proposed regulatory change.

Projected Impact on Employment. Marginally decreased initial licensure fees may lead to a likely very marginal increase in the number of individuals seeking initial licensure as opticians. This effect will likely be partially or fully offset by a marginal decrease in the number individuals who choose to renew their licenses because renewal fees are higher. On the whole, this action will likely have little net effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. To the extent that professional licenses are private property of value to licensees, Board proposed changes will marginally increase the initial value of an optician's license and will marginally decrease the value of licenses more than two years old.

Small Businesses: Costs and Other Effects. Given that these proposed changes will have little to no net effect on employment in the Commonwealth, small businesses that employ opticians are unlikely to incur any additional costs. Opticians who own their own businesses will incur slightly higher renewal fees on account of these regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are actions that the Board could take that might mitigate the necessity of raising fees at this time. If licensees and the public have not thus far been harmed by decreased staffing levels, licensees would likely benefit from DPOR reconsidering its decision to hire more staff who would need to be funded through licensure fees.

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

Regulations

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 for Hearing Aid Specialists and Opticians concurs with the approval. However, the board would like to address certain statements regarding the board's projected revenues and expenditures.

Estimated Economic Impact.

1. Economic Impact Analysis (EIA) position: "Absent some fee increase, Board staff reports that the Board will run a deficit by the 2016-18 biennium. Even though historical revenue and expenditure numbers support that the Board would eventually have to increase fees, an assumption used to forecast a decrease in revenues seems dubious."

Agency Response: The board concurs with the EIA's conclusion that revenue and expenditure numbers support that the board must increase fees. The board disagrees with the EIA's characterization that its revenue forecast is dubious. Revenue projections for applicants are based on historical averages for the past eight years for opticians. This method has been proven successful when considering that the number of applicants vary from year to year. The projection methodology used for renewals has also shown to be historically fairly accurate, with a typical variance of less than 5.0%. This revenue projection method has been reviewed by Department of Professional and Occupational Regulation (DPOR) management, external budget analysts, and an external auditor; and the method is considered sound and reasonable. This revenue projection methodology is used across all professions under DPOR, and has been in place for over a decade. These specific revenue projections are the same used for all budgeting purposes, including the annual executive branch six year budget projections. It is of note that the board projects the cash deficit to occur in the first part of 2017, under the current fee structure.

2. EIA position: "Specifically, if neither licensee services nor investigations of complaints for this Board have suffered a significant lag on account of DPOR's lower staffing levels, neither licensees of this Board nor the public who uses their services are likely to experience a significant benefit on account of DPOR's anticipated hiring of additional staff."

Agency Response: DPOR utilizes a specific staffing model, honed over several decades, to keep costs at a minimum while maintaining its charge of protecting the health, safety, and welfare of the public by ensuring minimal competency of licensed professionals. Boards are staffed with licensing professionals who are generalists in licensing and board-specific functions. Functions that are not board specific, some of which include accounting, investigations, examinations, information services, and recordkeeping, are staffed by professionals in those fields who perform these functions for all of the boards at DPOR. So, for example, the DPOR

finance section staffs accountants who split their time performing accounting for each of the boards. The board is then charged a portion of the accountant's costs based on the percentage of the accountant's workload that was spent on the board's accounting. This model saves the board the expense of hiring a staff accountant to perform this function. The board simply does not have the funds to staff professionals to perform all of the incidental or specialized services performed by DPOR staff. Neither can the board afford the loss of productivity by having generalists attempt to perform these functions in addition to their other duties for the board. The board receives the benefits of economies of scale when sharing the cost of services provided by DPOR staff. When DPOR is adequately staffed, all of the boards, including this board, operate at minimal costs by receiving the benefits of specialization and economies of scale.

Filling vacant positions is only one aspect of the projected increased expenditures. The increases in health insurance and retirement costs to DPOR that are already in effect as of Fiscal Year 2015 total nearly \$2 million per biennium, with the board's allocated portion estimated at about \$18,000 per biennium.

Effects on the Use and Value of Private Property.

EIA position: "To the extent that professional licenses are private property of value to licensees, Board proposed changes will marginally increase the initial value of an optician's license and will marginally decrease the value of licenses more than two years old."

Agency Response: Regardless of the EIA response's relation to a separate action, the board disagrees with the characterization of an occupational license as private property. The board, in consultation with the Attorney General's office, maintains that an occupational license is a legal status conferred by the state granting special privileges to the licensee, not private property.

Further, it is not clear how increasing the cost of the license decreases its value. Changing the cost of the license does not affect its function, characteristics, or the usability of the license, factors that would normally determine its value. In this sense, it is not clear how a fee change alone can change the value of a license. The EIA takes the position that a fee increase will lead to a decrease in the number licensees making the license more scarce. A decrease in supply would likely result in increased value. So if the license is more scarce due to the fee increase, its value would increase, not decrease as the EIA indicates.

Small Businesses: Alternative Method that Minimizes Adverse Impact.

EIA position: "There are actions that the Board could take that might mitigate the necessity of raising fees at this time. If licensees and the public have not thus far been harmed by decreased staffing levels, licensees would likely benefit from DPOR reconsidering its decision to hire more staff that would need to be funded through licensure fees."

Agency Response: As indicated above, licensees and the public benefit when DPOR maintains adequate staffing levels.

DPOR utilizes a specific staffing model, honed over several decades, to keep costs at a minimum while maintaining its charge of protecting the health, safety, and welfare of the public by ensuring minimal competency of licensed professionals. Boards are staffed with licensing professionals who are generalists in licensing and board-specific functions. Functions that are not board specific, some of which include accounting, investigations, examinations, information services, and recordkeeping, are staffed by professionals in those fields who perform these functions for all of the boards at DPOR. So, for example, the DPOR finance section staffs accountants who split their time performing accounting for each of the boards. The board is then charged a portion of the accountant's costs based on the percentage of the accountant's workload that was spent on the board's accounting. This model saves the board the expense of hiring a staff accountant to perform this function. The board simply does not have the funds to staff professionals to perform all of the incidental or specialized services performed by DPOR staff. Neither can the board afford the loss of productivity by having generalists attempt to perform these functions in addition to their other duties for the board. The board receives the benefits of economies of scale when sharing the cost of services provided by DPOR staff. When DPOR is adequately staffed, all of the boards, including this board, operate at minimal costs by receiving the benefits of specialization and economies of scale.

Summary:

The proposed amendments (i) decrease the application fee for licensure and for contact lens endorsement and (ii) increase the license fees for renewal, late renewal, and reinstatement.

18VAC80-30-50. Fees.

A. The fee for examination or examinations shall consist of the combination of an administrative charge of \$25 (spectacle), \$25 (contact lens), and the appropriate contract charges. Examination service contracts shall be established in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The total examination fee shall not exceed a cost of \$1,000 to the applicant.

B. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date ~~which~~ that will be used to determine whether it is on time.

C. Application and examination fees must be submitted with the application for licensure.

D. The following fees shall apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for licensure	\$100 <u>\$85</u>	With application
Application for contact lens certification <u>endorsement</u>	\$100 <u>\$85</u>	With application
Renewal	\$100 <u>\$115</u>	Up to the expiration date on the license with a 30-day grace period
Late renewal (includes renewal fee)	\$125 <u>\$150</u>	Between 30 and 60 days after the expiration date on the license
Reinstatement (includes renewal and late renewal fees)	\$225 <u>\$235</u>	After 60 days following the expiration date on the license

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 (18VAC80-30)

~~License and Examination Application, 11LIC (rev. 2004).~~

~~Contact Lens Endorsement Application, 11CLEND (rev. 2004).~~

[Opticians Examination & License Application, A448-11EXLIC-v6 \(rev. 3/2016\)](#)

[Contact Lens Endorsement Application, A448-11CLEND-v4 \(rev. 3/2016\)](#)

Reciprocity Application, 11REC (eff. 2004).

~~Reinstatement Application, 11REI (rev. 2004).~~

[Opticians License Reinstatement Application, A448-11REI-v3 \(rev. 3/2016\)](#)

Voluntary Practice Registration Application, 11VOLREG (eff. 7/03).

Sponsor Certification for Voluntary Practice Registration, 11VRSPCERT (eff. 7/03).

VA.R. Doc. No. R14-3948; Filed September 25, 2015, 9:24 a.m.

Regulations

BOARD OF NURSING

Final Regulation

Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-10, 18VAC90-20-35, 18VAC90-20-40, 18VAC90-20-70, 18VAC90-20-80, 18VAC90-20-90, 18VAC90-20-100 through 18VAC90-20-170; adding 18VAC90-20-121, 18VAC90-20-122, 18VAC90-20-131 through 18VAC90-20-137, 18VAC90-20-161; repealing 18VAC90-20-50, 18VAC90-20-60, 18VAC90-20-95, 18VAC90-20-96).

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: November 18, 2015.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments reorganize provisions for approval of nursing education programs to clarify all criteria that must be met to obtain initial approval, full approval, and continued full approval. The amendments (i) incorporate current guidance on observational experiences and simulation into the regulation; (ii) provide processes and procedures for granting initial or full approval, for placing a program on conditional approval, and for denial or withdrawal of approval of a program; (iii) require entities that are applying for approval as nursing schools to submit the results of a community assessment or market analysis; and (iv) require 80% of clinical hours to be conducted in 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

18VAC90-20-10. Definitions.

In addition to words and terms defined in § 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by the Accreditation Commission for Education in Nursing [~~(ACEN) or by~~] the Commission on Collegiate Nursing Education (CCNE) [or a national nursing accrediting organization recognized by the board].

"Active practice" means activities performed, whether or not for compensation, for which an active license to practice nursing is required.

"Advisory committee" means a group of persons from a nursing education program and the health care community

who [~~meet~~ meets] regularly to advise the nursing education program on the quality of its graduates and the needs of the community.

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education for Virginia.

"Baccalaureate degree nursing program" or "prelicensure graduate degree program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate or a graduate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education for Virginia.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status ~~which~~ that results when an approved nursing education program has failed to maintain requirements as set forth in ~~Article 2 (18VAC90-20-70 et seq.) of Part II~~ of this chapter.

"Contact hour" means 50 minutes of continuing education coursework or activity.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning clinical or observational experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"FERPA" means the Family Educational Rights and Privacy Act (20 USC § 1232g).

"Initial approval" means the status granted to a nursing education program that allows the admission of students.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia State Board Department of Education or the appropriate governmental credentialing agency by an accrediting agency recognized by the U.S. Department of Education.

"Preceptor" means a licensed ~~health care provider~~ nurse who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting providing clinical supervision.

"Primary state of residence" means the state of a person's declared fixed permanent and principal home or domicile for legal purposes.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

~~"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.~~

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved or maintain approval.

"Site visit" means a focused on-site review of the nursing program by board staff, usually completed within one day for the purpose of evaluating program components such as the physical location (skills lab, classrooms, learning resources) for obtaining initial program approval, in response to a complaint, compliance with NCLEX plan of correction, change of location, or verification of noncompliance with this chapter.

"Survey visit" means a comprehensive on-site review of the nursing program by board staff, usually completed within two days (depending on the number of programs or campuses being reviewed) for the purpose of obtaining and maintaining full program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit, as well as a board staff review of all program resources (including skills lab, classrooms, learning resources, and clinical facilities) and other components to ensure compliance

with this chapter. Meetings with faculty, administration, students, and clinical facility staff will occur.

18VAC90-20-35. Identification; accuracy of records.

A. Any person regulated by this chapter who provides direct ~~patient~~ client care shall, while on duty, wear identification that is clearly visible and indicates the person's first and last name and the appropriate title for the license, ~~certification, or registration issued to such person by the board, or student status~~ under which he is practicing in that setting. Any person practicing in hospital emergency departments, psychiatric and mental health units and programs, or in health care facilities units offering treatment for ~~patients~~ clients in custody of state or local law-enforcement agencies may use identification badges of first name and first letter only of last name and appropriate title.

B. A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

C. Each licensee shall maintain an address of record with the board. Any change in the address of record or in the public address, if different from the address of record, shall be submitted by a licensee electronically or in writing to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address of record on file with the board.

Part II

Nursing Education Programs

Article 1

~~Establishing Initial Approval of a Nursing Education Program~~

18VAC90-20-40. Application for initial approval.

~~A.~~ An institution wishing to establish a nursing education program shall:

1. Provide documentation of attendance by the program director at a board orientation on establishment of a nursing education program prior to submission of an application and fee.

2. Submit to the board, at least 12 months in advance of expected opening date, a statement of intent an application to establish a nursing education program along with ~~an~~ a nonrefundable application fee as prescribed in 18VAC90-20-30.

a. The application shall be effective for 12 months from the date the application was received by the board.

b. If the program does not meet the board's requirements for approval within 12 months, it shall file a new application and fee.

3. Submit the following information on the organization and operation of a nursing education program:

Regulations

a. A copy of a business license and zoning permit to operate a school in a Virginia location, a certificate of operation from the State Corporation Commission, evidence of approval from the Virginia Department of Education, and documentation of accreditation, if applicable;

b. The organizational structure of the institution and its relationship to the nursing education program therein;

c. The type of nursing program, as defined in 18VAC90-20-10;

d. An enrollment plan specifying the beginning dates and number of students for each class for a two-year period from the date of initial approval including (i) the planned number of students in the first class and in all subsequent classes and (ii) the planned frequency of admissions. Any increase in admissions that is not stated in the enrollment plan must be approved by the board. Also, transfer students are not authorized until full approval has been granted to the nursing education program; and

e. A tentative time schedule for planning and initiating the program through graduation of the first class and the program's receipt of results of the NCLEX examination.

~~2.~~ 4. Submit to the board evidence documenting adequate resources for the projected number of students and the ability to provide a program that can meet the requirements of Article 2 (18VAC90-20-70 et seq.) of this part to include the following information:

~~a. Organizational structure of the institution and relationship of nursing program therein~~ The results of a community assessment or market analysis that demonstrates the need for the nursing education program in the geographic area for the proposed school. The assessment or analysis shall include employment opportunities of nurses in the community, the number of clinical facilities or employers available for the size of the community to support the number of graduates, and the number and types of other nursing education programs in the area;

~~b. Purpose and type of program;~~

~~e. Availability~~ b. A projection of the availability of qualified faculty sufficient to provide classroom instruction and clinical supervision for the number of students specified by the program;

~~d. c.~~ Budgeted faculty positions sufficient in number to provide classroom instruction and clinical supervision;

~~e. d.~~ Availability of clinical training facilities for the program as evidenced by copies of contracts or letters of agreement specifying the responsibilities of the respective parties and indicating sufficient availability of clinical experiences for the number of students in the program, the number of students, and clinical hours permitted at each clinical site and on each nursing unit;

e. Documentation that at least 80% of all clinical experiences are to be conducted in Virginia, unless an exception is granted by the board. There shall be documentation of written approval for any clinical experience conducted outside of Virginia by the agency that has authority to approve clinical placement of students in that state. The use of any clinical site in Virginia located 50 miles or more from the school shall require board approval;

f. Availability A diagram or blueprint showing the availability of academic facilities for the program, including classrooms, skills laboratory, and library learning resource center. This information shall include the number of restrooms for the student and faculty population, classroom and skills laboratory space large enough to accommodate the number of the student body, and sufficient faculty office space that meets FERPA requirements; and

g. Evidence of financial resources for the planning, implementation, and continuation of the program with line-item budget projections for the first three years; of operations beginning with the admission of students.

~~h. Tentative time schedule for planning and initiating the program; and~~

~~i. An enrollment plan specifying the beginning dates and number of students for each class for a two-year period from the date of initial approval.~~

~~3.~~ 5. Respond to the board's request for additional information within a time frame established by the board.

~~B. A site visit may be conducted by a representative of the board.~~

~~C. The Education Special Conference Committee (the "committee"), composed of not less than two members of the board, shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review applications and the report of the site visit and shall make recommendations to the board regarding the granting or denial of approval of the program application.~~

~~1. If the board accepts the recommendation to approve the program application, the institution may apply for provisional approval of the nursing education program as set forth in this chapter.~~

~~2. If the committee recommendation is to deny approval of the program application, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 9 of § 54.1-2400 of the Code of Virginia.~~

18VAC90-20-50. Provisional approval. (Repealed.)

~~A. The application for provisional approval shall be complete when the following conditions are met:~~

1. A program director has been appointed, and there are sufficient faculty to initiate the program as required in 18VAC90-20-90; and
2. A written curriculum plan developed in accordance with 18VAC90-20-120 has been submitted.

~~B. The committee shall, in accordance with § 2.2-4019 of the Code of Virginia, make recommendations to the board to grant or deny provisional approval.~~

1. If provisional approval is granted:
 - a. The admission of students is authorized; and
 - b. The program director shall submit quarterly progress reports to the board which shall include evidence of progress toward program approval and other information as required by the board.
2. If the committee recommendation is to deny provisional approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 9 of § 54.1-2400 of the Code of Virginia.

18VAC90-20-60. Program approval. (Repealed.)

~~A. The application for approval shall be complete when:~~

1. A self-evaluation report of compliance with Article 2 (18VAC90-20-70 et seq.) of this part has been submitted along with the fee for a survey visit as required by 18VAC90-20-30;
2. The first graduating class has taken the licensure examination, and the cumulative passing rate for the program's first time test takers taking the NCLEX over the first four quarters following graduation of the first class is not less than 80%; and
3. A satisfactory survey visit and report has been made by a representative of the board verifying that the program is in compliance with all requirements for program approval.

~~B. The committee shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review the self-evaluation, the NCLEX results and survey reports and shall make a recommendation to the board for the granting or denial of approval or for continuance of provisional approval.~~

~~C. If the committee's recommendation is to deny approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 of the Code of Virginia.~~

Article 2

Requirements for Initial and Continued Approval

18VAC90-20-70. Organization and administration.

A. The governing or parent institution offering Virginia nursing education programs shall be approved ~~or accredited~~ by the appropriate state agencies by the Virginia Department of Education or accredited by an accrediting agency

recognized by the ~~United States~~ U.S. Department of Education.

B. Any agency or institution used for clinical experience by a nursing education program shall be in good standing with its licensing body.

C. The program director of the nursing education program shall ~~hold an unenumbered~~:

1. Hold a current license or multistate licensure privilege to practice as a registered nurse or a multistate licensure privilege to practice nursing in the Commonwealth, with the without any disciplinary action that currently restricts practice;
2. Have additional education and experience necessary to administer, plan, implement, and evaluate the nursing education program;
3. Ensure that faculty are qualified by education and experience to teach in the program or to supervise the clinical practice of students in the program;
4. Maintain a current faculty roster, a current clinical agency form, and current clinical contracts available for board review and subject to an audit; and
5. Only serve as program director at one location or campus [for the program].

~~D.~~ E. The program shall provide evidence that the director has authority to:

1. Implement the program and curriculum;
2. Oversee the admission, academic progression and graduation of students;
3. Hire and evaluate faculty; and
4. Recommend and administer the program budget, consistent with established policies of the controlling agency.

~~D.~~ E. An organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body; to other departments within the controlling institution; to the cooperating agencies; and to the advisory committee, ~~if one exists~~ for the nursing education program.

~~E.~~ F. There shall be evidence of financial support and resources sufficient to meet the goals of the nursing education program as evidenced by a copy of the current annual budget or a signed statement from administration specifically detailing its financial support and resources.

18VAC90-20-80. Philosophy and objectives.

Written statements of philosophy and objectives shall be the foundation of the curriculum and shall be:

1. Formulated and accepted by the faculty and the program director;
2. Descriptive of the practitioner to be prepared; and
3. The basis for planning, implementing, and evaluating the total program through the implementation of a

Regulations

systematic plan of evaluation that is documented in faculty or committee meeting minutes.

18VAC90-20-90. Faculty.

A. Qualifications for all faculty.

1. Every member of the nursing faculty, including the program director, shall hold a current, ~~unencumbered~~ license as a registered nurse or a multistate licensure privilege to practice nursing in Virginia as a registered nurse without any disciplinary action that currently restricts practice and have had at least two years of direct client care experience as a registered nurse prior to employment by the program. Persons providing instruction in topics other than nursing shall not be required to hold a license as a registered nurse.

2. Every member of a nursing faculty supervising the clinical practice of students shall meet the licensure requirements of the jurisdiction in which that practice occurs. Faculty shall provide evidence of education or experience in the specialty area in which they supervise students' clinical experience for quality and safety. Prior to supervision of students, the faculty providing supervision shall have completed a clinical orientation to the [unit site] in which supervision is being provided.

3. The program director and each member of the nursing faculty shall maintain documentation of professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects and professional writing. Documentation of annual professional development shall be maintained in employee files for the director and each faculty member until the next survey visit and shall be available for board review.

4. For baccalaureate degree and prelicensure graduate degree programs:

a. The program director shall hold a doctoral degree with a graduate degree in nursing.

b. Every member of the nursing faculty shall hold a graduate degree; the majority of the faculty shall have a graduate degree in nursing. Faculty members with a graduate degree with a major other than in nursing shall have a baccalaureate degree with a major in nursing.

5. For associate degree and diploma programs:

a. The program director shall hold a graduate degree, ~~preferably~~ with a major in nursing.

b. The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.

c. ~~Other~~ All members of the nursing faculty shall hold a baccalaureate or graduate degree, ~~preferably~~ with a major in nursing.

6. For practical nursing programs:

a. The program director shall hold a baccalaureate degree, ~~preferably~~ with a major in nursing.

b. The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

7. ~~Exceptions to provisions of subdivisions 4, 5, and 6 of this subsection shall be by board approval.~~

~~a. Initial request for exception-~~

~~(1) The program director shall submit a request for initial exception in writing for consideration prior to the academic year during which the nursing faculty member is scheduled to teach or whenever an unexpected vacancy has occurred.~~

~~(2) A description of teaching assignment, a curriculum vitae, and a statement of intent from the prospective faculty member to pursue the required degree shall accompany each request.~~

~~b. Request for continuing exception-~~

~~(1) Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by this chapter during each year for which the exception is requested.~~

~~(2) The program director shall submit the request for continuing exception in writing prior to the next academic year during which the nursing faculty member is scheduled to teach.~~

~~(3) A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.~~

~~(4) Any request for continuing exception shall be considered by the committee, which shall make a recommendation to the board.~~

~~e. The executive director of the board shall be authorized to make the initial decision on requests for exceptions. Any appeal of that decision shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)~~

B. Number of faculty.

1. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and to ensure safety for patients clients to whom students provide care.

2. When students are giving direct care to patients clients, the ratio of students to faculty shall not exceed 10 students to one faculty member, and the faculty shall be on site solely to supervise students.

3. When preceptors are utilized for specified learning experiences in clinical settings, the faculty member may supervise up to 15 students.

C. Functions. The principal functions of the faculty shall be to:

1. Develop, implement and evaluate the philosophy and objectives of the nursing education program;
2. Design, implement, teach, evaluate and revise the curriculum. Faculty shall provide evidence of education and experience necessary to indicate that they are competent to teach a given course;
3. Develop and evaluate student admission, progression, retention and graduation policies within the framework of the controlling institution;
4. Participate in academic advisement and counseling of students in accordance with FERPA requirements;
5. Provide opportunities for and evidence of student and graduate evaluation of curriculum and teaching and program effectiveness; and
6. Document actions taken in faculty and committee meetings using a systematic plan of evaluation for total program review.

18VAC90-20-95. Preceptorships. (Repealed.)

~~A. Clinical preceptors may be used to augment the faculty and enhance the clinical learning experience. The clinical preceptor shall be licensed at or above the level for which the student is preparing.~~

~~B. When giving direct care to patients, students shall be supervised by faculty or preceptors as designated by faculty. In utilizing preceptors to supervise students, the ratio shall not exceed two students to one preceptor at any given time.~~

~~C. Faculty shall be responsible for the designation of a preceptor for each student and shall communicate such assignment with the preceptor. A preceptor may not further delegate the duties of the preceptorship.~~

~~D. Preceptorships shall include:~~

- ~~1. Written objectives, methodology, and evaluation procedures for a specified period of time;~~
- ~~2. An orientation program for faculty, preceptors, and students;~~
- ~~3. The performance of skills for which the student has had faculty supervised clinical and didactic preparation; and~~
- ~~4. The overall coordination by faculty who assume ultimate responsibility for implementation, periodic monitoring, and evaluation.~~

18VAC90-20-96. Clinical practice of students. (Repealed.)

~~A. In accordance with § 54.1-3001 of the Code of Virginia, a nursing student, while enrolled in an approved nursing program, may perform tasks that would constitute the practice of nursing. The student shall be responsible and accountable for the safe performance of those direct patient care tasks to which he has been assigned.~~

~~B. Faculty members or preceptors providing supervision in the clinical care of patients shall be responsible and~~

~~accountable for the assignment of patients and tasks based on their assessment and evaluation of the student's clinical knowledge and skills. Supervisors shall also monitor clinical performance and intervene if necessary for the safety and protection of the patients.~~

18VAC90-20-100. Admission, promotion and graduation of students.

A. Requirements for admission to ~~the~~ a registered nursing education program shall not be less than the requirements of § 54.1-3017 A 1 of the Code of Virginia that will permit the graduate to be admitted to the appropriate licensing examination. The equivalent of a four-year high school course of study as required pursuant to § 54.1-3017 shall be considered to be:

1. A General Educational Development (GED) certificate for high school equivalence; or
2. Satisfactory completion of the college courses required by the nursing education program.

~~B. The equivalent of a four-year high school course of study is considered to be:~~

- ~~1. A General Educational Development (GED) certificate for high school equivalence; or~~
- ~~2. Satisfactory completion of the college courses required by the nursing education program.~~

B. Requirements for admission to a practical nursing education program shall not be less than the requirements of [subdivision 1 of] § 54.1-3020 [A 1] of the Code of Virginia that will permit the graduate to be admitted to the appropriate licensing examination.

C. Requirements for admission, readmission, advanced standing, progression, retention, dismissal and graduation shall be available to the students in written form.

D. A criminal background check shall be required for admission to a nursing education program [with the exception of high school students].

E. Transfer students may not be admitted until a nursing education program has received full approval from the board.

18VAC90-20-110. School records; student records; school bulletin or catalogue Resources, facilities, publications, and services.

~~A. A system of records shall be maintained and be made available to the board representative and shall include:~~

- ~~1. Data relating to accreditation by any agency or body.~~
- ~~2. Course outlines.~~
- ~~3. Minutes of faculty and committee meetings.~~

~~B. A file shall be maintained for each student. Each file shall be available to the board representative and shall include the student's:~~

- ~~1. Application;~~
- ~~2. High school transcript or copy of high school equivalence certificate; and~~

Regulations

~~3. Current record of achievement.~~

~~A final transcript shall be retained in the permanent file of the institution.~~

~~Provision shall be made for the protection of student and graduate records against loss, destruction and unauthorized use.~~

~~C. Current information about the nursing education program shall be published periodically and distributed to students, applicants for admission and the board. Such information shall include:~~

- ~~1. Description of the program.~~
- ~~2. Philosophy and objectives of the controlling institution and of the nursing program.~~
- ~~3. Admission and graduation requirements.~~
- ~~4. Fees.~~
- ~~5. Expenses.~~
- ~~6. Financial aid.~~
- ~~7. Tuition refund policy.~~
- ~~8. Education facilities.~~
- ~~9. Student activities and services.~~
- ~~10. Curriculum plan.~~
- ~~11. Course descriptions.~~
- ~~12. Faculty staff roster.~~
- ~~13. School calendar.~~
- ~~14. Annual passage rates on NCLEX for the past five years.~~

~~A. Classrooms, conference rooms, laboratories, clinical facilities, and offices shall be sufficient to meet the objectives of the nursing education program and the needs of the students, faculty, administration, and staff and shall include private areas for faculty-student conferences. The nursing education program shall provide facilities that meet federal and state requirements including:~~

- ~~1. Comfortable temperatures;~~
- ~~2. Clean and safe conditions;~~
- ~~3. Adequate lighting;~~
- ~~4. Adequate space to accommodate all students; and~~
- ~~5. Instructional technology and equipment needed for simulating client care.~~

~~B. The program shall have learning resources and technology that are current, pertinent, and accessible to students and faculty, and sufficient to meet the needs of the students and faculty.~~

~~C. Current information about the nursing education program shall be published and distributed to applicants for admission and shall be made available to the board. Such information shall include:~~

1. Description of the program [to include whether the program is accredited by a nursing education accrediting body];

2. Philosophy and objectives of the controlling institution and of the nursing program;

3. Admission and graduation requirements, including the policy on the use of a final comprehensive exam;

4. Fees and expenses;

5. Availability of financial aid;

6. Tuition refund policy;

7. Education facilities;

8. Availability of student activities and services;

9. Curriculum plan to include course progression from admission to graduation, the name of each course, theory hours, skills lab hours, simulation hours (if used in lieu of direct client care hours), and clinical hours;

10. Course descriptions to include a complete overview of what is taught in each course;

11. Faculty-staff roster;

12. School calendar;

13. Student grievance policy; and

14. Information about implication of criminal convictions.

D. Administrative support services shall be provided.

E. There shall be written agreements with cooperating agencies that:

1. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences to include the dismissal of students from the clinical site if client safety is or may be compromised by the acts of the student;

2. Provide that faculty members or preceptors are present in the clinical setting when students are providing direct client care;

3. Provide for cooperative planning with designated agency personnel to ensure safe client care;

4. Provide that faculty be readily available to students and preceptors while students are involved in preceptorship experiences; and

5. State the number of students allowed on each nursing unit from the nursing education program.

F. Cooperating agencies shall be approved by the appropriate accreditation, evaluation, or licensing bodies, if such exist.

18VAC90-20-120. Curriculum.

A. Curriculum Both classroom and online curricula shall reflect the philosophy and objectives of the nursing education program and shall be consistent with the law governing the practice of nursing.

B. Nursing education programs preparing for ~~nursing~~ licensure as a registered or practical nurse shall include:

1. ~~Didactic~~ Evidence-based didactic content and supervised clinical experience in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle and in a variety of acute, nonacute, [community-based,] and long-term care clinical settings and experiences to include adult medical/surgical nursing, geriatric nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, nursing fundamentals, and pediatric nursing;
2. Concepts of the nursing process that include conducting a focused nursing assessment of the client status that includes decision making about who and when to inform, identifying client needs, planning for episodic nursing care, implementing appropriate aspects of client care, ~~and~~ contributing to data collection and the evaluation of client outcomes, and the appropriate reporting and documentation of collected data and care rendered;
3. Concepts of anatomy, physiology, chemistry, microbiology, and the behavioral sciences;
4. Concepts of communication, growth and development, nurse-client interpersonal relations, and ~~patient~~ client education, including:
 - a. Development of professional socialization that includes working in interdisciplinary teams; and
 - b. Conflict resolution;
5. Concepts of ethics and the vocational and legal aspects of nursing, including:
 - a. Regulations and sections of the Code of Virginia related to nursing;
 - b. Patient Client rights, privacy, and confidentiality;
 - c. Prevention of ~~patient~~ client abuse, neglect, and abandonment throughout the life cycle, including instruction in the recognition, intervention, and reporting by the nurse of evidence of child or elder abuse;
 - d. Professional responsibility to include the role of the practical and professional nurse; and
 - e. Professional boundaries to include appropriate use of social media and electronic technology; and
 - e. ~~f.~~ History and trends in nursing and health care;
6. Concepts of pharmacology, dosage calculation, medication administration, nutrition, and diet therapy;
7. Concepts of client-centered care, including:
 - a. Respect for cultural differences, values, and preferences ~~and expressed needs;~~
 - b. Promotion of healthy life styles for clients and populations;
 - c. Promotion of a safe client environment; ~~and~~

d. Prevention and appropriate response to situations of bioterrorism, natural and man-made disasters, and ~~domestic~~ intimate partner and family violence; and

e. Use of critical thinking and clinical judgment in the implementation of safe client care; and

f. Care of clients with multiple, chronic conditions; and

8. Development of management and supervisory skills, including:

a. The use of technology in medication administration and documentation of client care;

b. Participation in quality improvement processes and systems to measure client outcomes and identify hazards and errors; and

c. Supervision of certified nurse aides, registered medication aides and unlicensed assistive personnel.

C. In addition to meeting curriculum requirements set forth in subsection B of this section, registered nursing education programs preparing for registered nurse licensure shall also include:

1. ~~Didactic~~ Evidence-based didactic content and supervised clinical experiences in conducting a comprehensive nursing assessment that includes:

a. Extensive data collection, both initial and ongoing, for individuals, families, groups, and communities addressing anticipated changes in client conditions as well as emerging changes in a client's health status;

b. Recognition of alterations to previous client conditions;

c. Synthesizing the biological, psychological and social aspects of the client's condition;

d. Evaluation of the effectiveness and impact of nursing care;

e. Planning for nursing interventions and evaluating the need for different interventions for individuals, groups and communities;

f. Evaluation and implementation of the need to communicate and consult with other health team members; and

g. Use of a broad and complete analysis to make independent decisions and nursing diagnoses;

2. ~~Didactic~~ Evidence-based didactic content and supervised experiences in:

a. Development of clinical judgment;

b. Development of leadership skills and knowledge unit management;

c. Knowledge of the rules and principles for delegation of nursing tasks to unlicensed persons;

d. Supervision of licensed practical nurses;

e. ~~e.~~ Involvement of clients in decision making and a plan of care; and

Regulations

~~d. Participation in quality improvement processes to measure client outcomes and identify hazards and errors;~~

~~3. f. Concepts of pathophysiology; and~~

~~4. Principles of delegation of nursing tasks to unlicensed persons.~~

~~D. On and after July 1, 2007, all nursing education programs shall provide instruction in child abuse recognition and intervention.~~

~~E. A nursing education program preparing for licensure as a practical nurse shall provide a minimum of 400 hours of direct client care supervised by qualified faculty. A nursing education program preparing for licensure as a registered nurse shall provide a minimum of 500 hours of direct client care supervised by qualified faculty.~~

18VAC90-20-121. Curriculum for direct client care.

A. A nursing education program preparing a student for licensure as a registered nurse shall provide a minimum of 500 hours of direct client care supervised by qualified faculty. A nursing education program preparing a student for licensure as a practical nurse shall provide a minimum of 400 hours of direct client care supervised by qualified faculty. Direct client care hours shall include experiences and settings as set forth in 18VAC90-20-120 B 1.

B. Licensed practical nurses transitioning into prelicensure registered nursing programs may be awarded no more than 150 clinical hours of the 400 clinical hours received in a practical nursing program. In a practical nursing to registered nursing transitional program, the remainder of the clinical hours shall include registered nursing clinical experience across the life cycle in adult medical/surgical nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, and pediatric nursing.

C. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives. Observational experiences shall not be accepted toward the 400 or 500 minimum clinical hours required. Observational objectives shall be available to students, the clinical unit, and the board.

D. Simulation for direct client clinical hours.

1. No more than [~~20%~~ 25%] of direct client contact hours may be simulation. For prelicensure registered nursing programs, the total of simulated client care hours cannot exceed [~~100~~ 125] hours [~~(20%~~ (25%) of the required 500 hours). For prelicensure practical nursing programs, the total of simulated client care hours cannot exceed [~~80~~ 100] hours [~~(20%~~ (25%) of the required 400 hours).

2. No more than 50% of the total clinical hours for any course may be used as simulation.

3. Skills acquisition and task training alone, as in the traditional use of a skills laboratory, do not qualify as simulated client care and therefore do not meet the requirements for direct client care hours.

4. Clinical simulation must be led by faculty who meet the qualifications specified in 18VAC90-20-90.

5. Documentation of the following shall be available for all simulated experiences:

a. Course description and objectives;

b. Type of simulation and location of simulated experience;

c. Number of simulated hours;

d. Faculty qualifications; and

e. Methods of debriefing.

18VAC90-20-122. Clinical practice of students.

A. In accordance with § 54.1-3001 of the Code of Virginia, a nursing student, while enrolled in an approved nursing program, may perform tasks that would constitute the practice of nursing. The student shall be responsible and accountable for the safe performance of those direct client care tasks to which he has been assigned.

B. Faculty shall be responsible for ensuring that students perform only skills or services in direct client care for which they have received instruction and have been found proficient by the instructor. Skills checklists shall be maintained for each student.

C. Faculty members or preceptors providing on-site supervision in the clinical care of clients shall be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the student's clinical knowledge and skills. Supervisors shall also monitor clinical performance and intervene if necessary for the safety and protection of the clients.

D. Clinical preceptors may be used to augment the faculty and enhance the clinical learning experience. Faculty shall be responsible for the designation of a preceptor for each student and shall communicate such assignment with the preceptor. A preceptor may not further delegate the duties of the preceptorship.

E. Preceptors shall provide to the nursing education program evidence of competence to supervise students' clinical experience for quality and safety in each specialty area where they supervise students. The clinical preceptor shall be licensed as a nurse at or above the level for which the student is preparing.

F. Supervision of students.

1. When faculty are supervising direct client care by students, the ratio of students to faculty shall not exceed 10 students to one faculty member. The faculty member shall be on site in the clinical setting solely to supervise students.

2. When preceptors are utilized for specified learning experiences in clinical settings, the faculty member may supervise up to 15 students. In utilizing preceptors to supervise students in the clinical setting, the ratio shall not exceed two students to one preceptor at any given time.

During the period in which students are in the clinical setting with a preceptor, the faculty member shall be available for communication and consultation with the preceptor.

G. Prior to beginning any preceptorship, the following shall be required:

1. Written objectives, methodology, and evaluation procedures for a specified period of time to include the dates of each experience;
2. An orientation program for faculty, preceptors, and students;
3. A skills checklist detailing the performance of skills for which the student has had faculty-supervised clinical and didactic preparation; and
4. The overall coordination by faculty who assume ultimate responsibility for implementation, periodic monitoring, and evaluation.

18VAC90-20-130. Resources, facilities and services. Granting of initial program approval.

~~A. Periodic evaluations of resources, facilities and services shall be conducted by the administration, faculty, students and graduates of the nursing education program.~~

~~B. Secretarial and other support services shall be provided.~~

~~C. Classrooms, conference rooms, laboratories, clinical facilities and offices shall be sufficient to meet the objectives of the nursing education program and the needs of the students, faculty, administration and staff.~~

~~D. The program shall have learning resources that are current, pertinent and accessible to students and faculty, and sufficient to meet the needs of the students and faculty.~~

~~E. Written agreements with cooperating agencies shall be developed, maintained and periodically reviewed. The agreement shall:~~

- ~~1. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences.~~
- ~~2. Provide that faculty members or preceptors be present in the clinical setting when students are assigned for direct patient care.~~
- ~~3. Provide for cooperative planning with designated agency personnel to ensure safe patient care.~~
- ~~4. Provide that faculty be available to students and preceptors while students are involved in preceptorship experiences.~~

~~F. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives.~~

~~G. Cooperating agencies shall be approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.~~

A. Initial approval may be granted when all documentation required in 18VAC90-20-40 has been submitted and is deemed satisfactory to the board and when the following conditions are met:

1. There is evidence that the requirements for organization and administration and the philosophy and objectives of the program, as set forth in 18VAC90-20-70 and 18VAC90-20-80, have been met;
2. A program director who meets board requirements has been appointed, and there are sufficient faculty to initiate the program as required in 18VAC90-20-90;
3. A written curriculum plan developed in accordance with 18VAC90-20-120 has been submitted and approved by the board;
4. A written systematic plan of evaluation has been developed and approved by the board; and
5. The program is in compliance with requirements of 18VAC90-20-110 for resources, facilities, publications, and services as verified by a satisfactory site visit conducted by a representative of the board.

B. If initial approval is granted:

1. The advertisement of the nursing program is authorized.
2. The admission of students is authorized, except that transfer students are not authorized to be admitted until the program has received full program approval.
3. The program director shall submit quarterly progress reports to the board that shall include evidence of progress toward full program approval and other information as required by the board.

18VAC90-20-131. Denying or withdrawing initial program approval.

A. Denial of initial program approval.

1. Initial approval may be denied for causes enumerated in 18VAC90-20-132.
2. If the initial approval is denied:
 - a. The program shall be given an option of correcting the deficiencies cited by the board during the time remaining in its initial 12-month period following receipt of the application.
 - b. No further action regarding the application shall be required of the board unless the program requests, within 30 days of the mailing of the decision, an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.
3. If denial is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.
4. If the recommendation of the informal conference committee to deny initial approval is accepted by the board or a panel thereof, the decision shall be reflected in a board order and no further action by the board is required. The

Regulations

program may request a formal hearing within 30 days from entry of the order, in accordance with § 2.2-4020 of the Code of Virginia.

5. If the decision of the board or a panel thereof, following a formal hearing, is to deny initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 [of the Code of Virginia] and Part 2A of the Rules of the Supreme Court of Virginia.

B. Withdrawal of initial program approval.

1. Initial approval shall be withdrawn and the program closed if:

a. The program has not admitted students within six months of approval of its application;

b. The program fails to submit evidence of progression toward full program approval; or

c. For any of the causes enumerated in 18VAC90-20-132.

2. If a decision is made to withdraw initial approval, no further action shall be required by the board unless the program, within 30 days of the mailing of the decision, requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

3. If withdrawal of initial approval is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

4. If the recommendation of the informal conference committee to withdraw initial approval is accepted by the board or a panel thereof, the decision shall be reflected in a board order and no further action by the board is required unless the program requests a formal hearing within 30 days from entry of the order, in accordance with § 2.2-4020 of the Code of Virginia.

5. If the decision of the board or a panel thereof following a formal hearing is to withdraw initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

18VAC90-20-132. Causes for denial or withdrawal of nursing education program approval.

A. Denial or withdrawal of program approval may be based upon the following:

1. Failing to demonstrate compliance with program requirements in Article 1 (18VAC90-20-40 et seq.), Article 2 (18VAC90-20-133 et seq.), or Article 3 (18VAC90-20-151 et seq.) of this part.

2. Failing to comply with terms and conditions placed on a program by the board.

3. Advertising for or admitting students without authority, board approval, or contrary to a board restriction.

4. Failing to progress students through the program in accordance with an approved time frame.

5. Failing to provide evidence of progression toward initial program approval within a time frame established by the board.

6. Failing to provide evidence of progression toward full program approval within a time frame established by the board.

7. Failing to respond to requests for information required from board representatives.

8. Fraudulent submission of documents or statements to the board or its representatives.

9. Having had past actions taken by the board, other states, or accrediting entities regarding the same nursing education program operating in another jurisdiction.

10. Failing to maintain a pass rate of 80% on the NCLEX for graduates of the program as required by 18VAC90-20-151.

11. Failing to comply with an order of the board or with any terms and conditions placed upon it by the board for continued approval.

12. Having the program director, owner, or operator of the program convicted of a felony or a misdemeanor involving moral turpitude or his professional license disciplined by a licensing body or regulatory authority.

13. Failing to pay the required fee for a survey or site visit.

B. Withdrawal of nursing education program approval may occur at any stage in the application or approval process pursuant to procedures enumerated in 18VAC90-20-131, 18VAC90-20-134, and 18VAC90-20-161.

C. Programs with approval denied or withdrawn may not accept or admit additional students into the program effective upon the date of entry of the board's final order to deny or withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program shall comply with board requirements regarding closure of a program as stated in 18VAC90-20-170.

Article 2

Full Approval for a Nursing Education Program

18VAC90-20-133. Granting full program approval.

A. Full approval may be granted when:

1. A self-evaluation report of compliance with Articles 1 (18VAC90-20-40 et seq.) and 2 (18VAC90-20-133 et seq.) of this part and a survey visit fee as specified in 18VAC90-20-30 have been submitted and received by the board;

2. The program has achieved a passage rate of not less than 80% for the program's first-time test takers taking the NCLEX based on at least 20 graduates within a two-year period; and

3. A satisfactory survey visit and report have been made by a representative of the board verifying that the program is in compliance with all requirements for program approval.

B. If full approval is granted, the program shall continue to comply with all requirements in Articles 1, 2, and 3 (18VAC90-20-151 et seq.) of this part, and admission of transfer students is authorized.

18VAC90-20-134. Denying full program approval.

A. Denial of full program approval may occur for causes enumerated in 18VAC90-20-132.

B. If full program approval is denied, the board shall also be authorized to do one of the following:

1. The board may continue the program on initial program approval with terms and conditions to be met within the time frame specified by the board; or

2. The board may withdraw initial program approval.

C. If the board takes one of the actions specified in subsection B of this section, the following shall apply:

1. No further action will be required of the board unless the program, within 30 days of the mailing of the decision, requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

2. If continued initial program approval with terms and conditions or withdrawal of initial approval is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

3. If the recommendation of the informal conference committee is accepted by the board or a panel thereof, the decision shall be reflected in a board order and no further action by the board regarding the application is required. The program may request a formal hearing within 30 days from entry of the order, in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.

4. If the decision of the board or a panel thereof following a formal hearing is to deny full and/or withdraw or continue on initial approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

D. If a program is denied full approval and initial approval withdrawn, no additional students may be accepted into the program, effective upon the date of entry of the board's final order to deny or withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program shall comply with board requirements regarding closure of a program as stated in 18VAC90-20-170.

18VAC90-20-135. Requests for exceptions or requirements for faculty.

After full approval has been granted, a program may request board approval for exceptions to requirements of 18VAC90-20-90 for faculty as follows:

1. Initial request for exception.

a. The program director shall submit a request for initial exception in writing to the board for consideration prior to the academic year during which the nursing faculty member is scheduled to teach or whenever an unexpected vacancy has occurred.

b. A description of teaching assignment, a curriculum vitae, and a statement of intent from the prospective faculty member to pursue the required degree shall accompany each request.

c. The executive director of the board shall be authorized to make the initial decision on requests for exceptions. Any appeal of that decision shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

2. Request for continuing exception.

a. Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by this chapter during each year for which the exception is requested.

b. The program director shall submit the request for continuing exception in writing prior to the next academic year during which the nursing faculty member is scheduled to teach.

c. A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.

d. Any request for continuing exception shall be considered by the committee, which shall make a recommendation to the board.

18VAC90-20-136. Records and provision of information.

A. Requirements for admission, readmission, advanced standing, progression, retention, dismissal, and graduation shall be readily available to the students in written form.

B. A system of records shall be maintained and be made available to the board representative and shall include:

1. Data relating to accreditation by any agency or body.

2. Course outlines.

3. Minutes of faculty and committee meetings including documentation of the use of a systematic plan of evaluation for total program review and including those faculty members in attendance.

4. Record of and disposition of complaints.

C. A file shall be maintained for each student. Provision shall be made for the protection of student and graduate files

Regulations

against loss, destruction, and unauthorized use. Each file shall be available to the board representative and shall include the student's:

1. Application, including the date of its submission and the date of admission into the program;

2. High school transcript or copy of high school equivalence certificate, and if the student is a foreign graduate, a transcript translated into English [~~and the results of passage of an examination of English proficiency as determined by the board~~];

3. Current record of achievement to include classroom grades, skills checklists, and clinical hours for each course; and

4. A final transcript retained in the permanent file of the institution to include dates of admission and completion of coursework, graduation date, name and address of graduate, the dates of each semester or term, number of clinical hours for each clinical course, course grades, and authorized signature.

D. Current information about the nursing education program shall be published and distributed to students and applicants for admission and shall be made available to the board. In addition to information specified in 18VAC90-20-110 C, the following information shall be included:

1. Annual passage rates on NCLEX for the past five years; and

2. Accreditation status.

18VAC90-20-137. Evaluation of resources; written agreements with cooperating agencies.

A. Periodic evaluations of resources, facilities, and services shall be conducted by the administration, faculty, students, and graduates of the nursing education program including an employer evaluation for graduates of the nursing education program. Such evaluation shall include assurance that at least 80% of all clinical experiences are conducted in Virginia unless an exception has been granted by the board.

B. Current written agreements with cooperating agencies shall be maintained and reviewed annually and shall be in accordance with of 18VAC90-20-110 E.

C. Upon request, a program shall provide a clinical agency summary on a form provided by the board.

D. Upon request and if applicable, the program shall provide (i) documentation of board approval for use of clinical sites located 50 or more miles from the school; and (ii) for use of clinical experiences conducted outside of Virginia, documented approval from the agency that has authority to approve clinical placement of students in that state.

18VAC90-20-140. Program changes.

A. The following shall be reported to the board within 10 days of the change or receipt of a report from an accrediting body:

1. Change in the program director, governing body, or parent institution;

2. Adverse action taken by a licensing authority against the program director, governing body, or parent institution;

3. Conviction of a felony or misdemeanor involving moral turpitude against the program director, owner, or operator of the program;

~~2.~~ 4. Change in accreditation status the physical location of the program;

~~3.~~ 5. Change in content of curriculum, faculty or method of delivery that affects 25% or more of the hours of instruction the availability of clinical sites;

~~4.~~ 6. Change in financial resources that could substantively affect the nursing education program;

7. Change in content of curriculum, faculty, or method of delivery that affects 25% or more of the [total] hours of [didactic and clinical] instruction;

~~5.~~ 8. Change in the physical location of the program accreditation status; and

~~6.~~ 9. A final report with findings and recommendations from the accrediting body.

B. Other curriculum or faculty changes shall be reported to the board with the annual report required in 18VAC90-20-160 A.

Article 3

Continued Approval of Nursing Education Programs

18VAC90-20-151. Passage rate on national examination.

A. For the purpose of continued approval by the board, a nursing education program shall maintain a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.

B. If an approved program falls below 80% for one year, it shall submit a plan of correction to the board. If a an approved program falls below 80% for two consecutive years, the board shall place the program on conditional approval with terms and conditions, require the program to submit a plan of correction, and conduct a site visit and place the program on conditional approval. Prior to the conduct of such a visit, the program shall submit the fee for a site visit pursuant to the NCLEX passage rate as required by 18VAC90-20-30. If a program falls below 80% for three consecutive years, the board may withdraw program approval.

C. For the purpose of program evaluation, the board may provide to the program the NCLEX examination results of its graduates. However, further release of such information by the program shall not be authorized without written authorization from the candidate.

Article 3

Maintaining or Closing an Approved Nursing Education Program

18VAC90-20-160. Maintaining an approved nursing education program.

A. The program director of each nursing education program shall submit an annual report to the board.

B. Each nursing education program shall be reevaluated as follows:

1. ~~A Every nursing education~~ program that has not achieved accreditation as defined in 18VAC90-20-10 shall be reevaluated at least every ~~eight five~~ years ~~for a practical nursing program and every six years for a registered nursing program~~ by submission of a comprehensive self-evaluation report based on ~~Article~~ Articles 1 (18VAC90-20-40 et seq.) and 2 (18VAC90-20-70 (18VAC90-20-133 et seq.) of this part, and a survey visit by a ~~representative(s) representative or representatives~~ of the board on dates mutually acceptable to the institution and the board.

2. A program that has maintained accreditation as defined in 18VAC90-20-10 shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If accreditation has been withdrawn or a program has been placed on probation by the accrediting body, the board ~~shall conduct an on-site~~ may require a survey visit within one year of such action. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

~~C. The Education Special Conference Committee (the "committee"), composed of not less than two members of the board, shall, in accordance with § 2.2-4019 of the Code of Virginia, receive and review the self evaluation and survey reports and shall make a recommendation to the board to grant continued approval, place the program on conditional approval or withdraw approval.~~

~~1. A nursing education program shall continue to be approved provided the requirements set forth in Article 2 of this part are attained and maintained.~~

~~2. If the committee determines that a nursing education program is not maintaining the requirements of Article 2 of this part, the committee shall recommend to the board that the program be placed on conditional approval and the governing institution shall be given a reasonable period of time to correct the identified deficiencies.~~

~~a. The committee shall receive and review reports of progress toward correcting identified deficiencies and, when a final report is received at the end of the specified time showing correction of deficiencies, make a recommendation to the board to grant continued approval, continue the program on conditional approval or withdraw approval.~~

~~b. If the nursing education program fails to correct the identified deficiencies within the time specified by an order of the board, the board may withdraw the approval following a formal hearing.~~

~~e. The governing institution may request a formal hearing before the board or a panel thereof pursuant to § 2.2-4020 and subdivision 9 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to conditional approval.~~

~~D. C. Interim site or survey visits shall be made to the institution by board representatives at any time within the initial approval period or full approval period either by request or as deemed necessary by the board. Prior to the conduct of such a visit, the program shall submit the fee for a survey visit as required by 18VAC90-20-30.~~

~~E. D. Failure to submit the required fee for a survey or site visit may subject an education program to board action or withdrawal of board approval.~~

18VAC90-20-161. Continuing and withdrawing full approval.

A. The board shall receive and review the self-evaluation and survey reports pursuant to 18VAC90-20-160 B or complaints relating to program compliance. Following review, the board may continue the program on full approval so long as it remains in compliance with all requirements in Articles 1 (18VAC90-20-40 et seq.), 2 (18VAC90-20-133 et seq.) and 3 (18VAC90-20-151 et seq.) of this part.

B. If the board determines that a program is not maintaining the requirements of Articles 1, 2, and 3, or for causes enumerated in 18VAC90-20-132, it may:

1. Place the program on conditional approval with terms and conditions to be met within the time frame specified by the board; or

2. Withdraw program approval.

C. If the board either places a program on conditional approval with terms and conditions to be met within a time frame specified by the board or withdraws approval, the following shall apply:

1. No further action will be required of the board unless the program requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

2. If withdrawal or continued program approval with terms and conditions is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

Regulations

3. If the recommendation of the informal conference committee is accepted by the board or a panel thereof, the decision shall be reflected in a board order and no further action by the board is required unless the program requests a formal hearing within 30 days from entry of the order in accordance with § 2.2-4020 of the Code of Virginia.

4. If the decision of the board or a panel thereof following a formal hearing is to withdraw approval or continue on conditional approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

D. If a program approval is withdrawn, no additional students may be admitted into the program effective upon the date of entry of the board's final order to withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program must comply with board requirements regarding closure of a program as stated in 18VAC90-20-170.

18VAC90-20-170. Closing of an approved nursing education program; custody of records.

A. When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan, and date of intended closing.

The governing institution shall assist in the transfer of students to other approved programs with the following conditions:

1. The program shall continue to meet the standards required for approval until all students are transferred and shall submit a quarterly report to the board regarding progress toward closure.

2. ~~A~~ The program shall provide to the board a list of the names of students who have been transferred to approved programs, and the date on which the last student was transferred shall be submitted to the board by the governing institution.

3. The date on which the last student was transferred shall be the closing date of the program.

B. When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:

1. The program shall be closed according to a time frame established by the board.

2. ~~A~~ The program shall provide to the board a list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

3. The program shall provide quarterly reports to the board regarding progress toward closure.

C. Provision shall be made for custody of records as follows:

1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The institution shall inform the board of the arrangements made to safeguard the records.

2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safekeeping.

V.A.R. Doc. No. R10-2513; Filed September 18, 2015, 11:30 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Proposed Regulation

Title of Regulation: **18VAC120-50. Regulations Governing Natural Gas Automobile Mechanics and Technicians (adding 18VAC120-50-10 through 18VAC120-50-230).**

Statutory Authority: §§ 54.1-201 and 54.1-2356 of the Code of Virginia.

Public Hearing Information:

November 17, 2015 - 11 a.m. - Department of Professional and Occupational Regulations, 9960 Mayland Drive, Suite 400, 2nd Floor, Training Room 2, Richmond, Virginia 23233.

Public Comment Deadline: December 18, 2015.

Agency Contact: Eric L. Olson, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email Cngmech@dpor.virginia.gov.

Basis: Chapter 763 of the 2014 Acts of the General Assembly created Chapter 23.4 (§ 54.1-2355 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2356 of this newly created chapter, effective July 1, 2014, requires the Department of Professional and Occupation Regulation to promulgate regulations that create a certification program for certified natural gas automobile mechanics and technicians.

Purpose: The department seeks to create initial regulations for this newly created regulatory program. The number of natural gas vehicles has continued to increase steadily since their inception in the late 1970s. The General Assembly has determined that this program is necessary to ensure that the public be protected against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities regulated by this newly created chapter.

Substance: As these would be newly created regulations, there would be no changes to existing regulations. These new regulations would include provisions for an advisory board to provide technical guidance to the department with regards to the industry, initial certification requirements, renewal and reinstatement requirements, standards of conduct, and education provider requirements for training programs.

Issues: In creating these regulations, the department is complying with the provisions of legislation signed into the law this year establishing a program to certify natural gas automobile mechanics and technicians. After studying data relative to accident rates, inspection reports and the licensing/education requirements in other states, the General Assembly determined a need for this level of regulation in order to protect the public. The primary advantage of the program is to ensure that the work done on natural gas powered vehicles is performed by individuals who have received sufficient training and demonstrated enough experience to reasonably assume competency in the repairs, maintenance and conversions they will be completing. This is a voluntary certification and is not a required certification therefore there are no foreseen disadvantages to the public.

This program is predicted to have a moderate impact on the department and its licensing staff. The initial licensing of approximately 100 certificate holders in the first year should not require significant staff training or modifications to existing software. The creation of the examination for certification may be challenging as there are only a few jurisdictions that currently regulate this type of work.

The development of this program, through the legislative process, was supported by industry representatives, localities and other interested parties, all of whom were in the workgroup created by the department. Testimony provided and information gathered by the work group indicated that the majority of those individuals currently employed as natural gas automobile mechanics and technicians would welcome a certificate that would recognize the individuals performing this type of work meet industry standards for minimum competency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 763 of the 2014 Acts of the Assembly, the Department of Professional and Occupational Regulation (DPOR) proposes to create a new certification program for individuals who convert vehicles so that they use natural gas for fuel or who repair or maintain such vehicles. This regulation will require that individuals seeking certification:

1. Be at least 18 years old,
2. Have attained one of the combinations of education and experience listed in this regulation,
3. Disclose (and provide documentation for) any misdemeanor convictions within the three years immediately preceding application for certification and any felony convictions at any time,
4. Pay for and take the certification exam written by or contracted for by DPOR, and
5. Pay the applicable application fee.

This proposed regulation also sets renewal, reinstatement and other fees, rules for certification by reciprocity or substantial

equivalency and sets rules for vocational training programs and providers. This certification program is voluntary but, as mandated in Chapter 763, individuals will not be able to call themselves certified natural gas mechanics or technicians without obtaining DPOR certification even if they have obtained private certification in this field.

Result of Analysis. There is insufficient information to ascertain whether the benefits of this certification program will outweigh its costs. Costs might be decreased for applicants if DPOR promulgates into regulation its offence matrix so that applicants would only have to provide documentation for convictions that have the potential to disqualify them from obtaining certification.

Estimated Economic Impact. In 2014, the General assembly passed legislation that requires DPOR to set up a voluntary certification program for natural gas automobile mechanics and technicians and applies title protection which mandates that only individuals who are certified through DPOR use the title certified NG automobile mechanic or technician. DPOR now proposes this regulation to establish a certification program.

DPOR proposes to require that individuals who are applying for certification to first either: 1) have one year of practical experience working on natural gas vehicles and have successfully completed a training program approved by the Director of DPOR, 2) have a current license as a professional engineer and one year of practical experience working on natural gas vehicles, 3) have successfully completed an approved apprenticeship program which includes at least one year of practical experience working on natural gas vehicles OR 4) have three years of practical experience working on natural gas vehicles. DPOR staff estimates that training required for option 1) above will cost between \$1,000 and \$1,500 depending on how much prior experience the trainee has in the field already.

DPOR also proposes to require applicants for certification to disclose any misdemeanor convictions within the three years immediately preceding application for certification and any felony convictions at any time. In practice, DPOR staff reports that applicants will have to provide documentation for all offences that they are required to disclose. DPOR staff also reports, however, that many disclosed offences would not have any impact on whether an applicant is approved for certification and that DPOR has a matrix of crimes that would not be disqualifying. Applicants for certification would very likely benefit from that matrix being promulgated into this regulation because it will limit their documentation costs in cases where those costs would not be beneficial for DPOR's decision making process. Documentation costs for applicants can be considerable and can include per page copying costs imposed by courts and travel costs to get records that must be obtained from courthouses (including courthouses that may be in another state or country) in person.

Regulations

In addition to costs for obtaining qualifications and disclosing convictions, DPOR proposes fees for this program. These fees include a fee for the licensure examination that is yet to be determined, a \$150 fee for initial certification (\$250 if expedited review¹ is requested), a \$100 for biennial certificate renewal and a \$150 fee for reinstatement for individuals who seek certificate renewal after the certificate expires but within one year of the expiration date. DPOR also proposes a \$190 training provider fee and a \$190 training course approval fee to be paid by training providers. Certificate holders will also be charged a \$40 fee if they want a wall certificate and will be charged an increasing fee if they need to replace their certification pocket card. There will be no cost for the first replacement within a certification cycle (two years) but the second replacement card will cost \$25 and the third replacement card will cost \$50.

All of these costs must be weighed against any increased safety that may be experienced by certificate holders and their customers on account of this certification program.

Businesses and Entities Affected. This proposed regulation will affect all individuals who apply for natural gas automobile mechanics and technicians certification as well as entities that apply to provide vocational training required for certification. DPOR staff estimates that initially 100 or fewer individuals will apply for certification, and 10 or fewer entities will apply for vocational trainer approval, once this regulation is promulgated.

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 initial impact on employment in the Commonwealth. If public or private action leads to certification being required to work as a natural gas mechanic or technician, either through further action of the General Assembly or by insurance companies requiring certification as a condition of insurance, the pool of individuals working in this field would likely become smaller and prices for their services may rise.

Effects on the Use and Value of Private Property. This regulatory action will likely have no impact on the use or value of private property.

Small Businesses: Costs and Other Effects. No small businesses are likely to incur costs on account of this proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur costs on account of this proposed regulation.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate.

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

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

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

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

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

¹Expedited review is performed within two business days of receipt of application

Agency's Response to Economic Impact Analysis: The Department of Professional and Occupational Regulations concurs with the economic impact analysis provided by the Department of Planning and Budget.

Summary:

The proposed action establishes a regulatory program for the voluntary certification of natural gas automobile mechanics and technicians in accordance with Chapter

763 of the 2014 Acts of Assembly. The new chapter will include establishment of (i) certification, renewal, and reinstatement requirements; (ii) standards of practice and conduct; (iii) grounds for disciplinary actions; (iv) education provider requirements for training programs; (v) fees; and (vi) an advisory board.

CHAPTER 50
REGULATIONS GOVERNING NATURAL GAS
AUTOMOBILE MECHANICS AND TECHNICIANS

Part I
Definitions

18VAC120-50-10. Definitions.

A. Section 54.1-2355 of the Code of Virginia provides definitions of other terms and phrases as used in this chapter.

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

"Address of record" means the mailing address designated by the certificate holder to receive notices and correspondence from the board or the board's agent.

"Advisory board" or "board" means the Natural Gas Automobile Mechanics and Technicians Advisory Board.

"Applicant" means an individual seeking certification who has submitted a fully executed application.

"Application" means a board prescribed form submitted with the appropriate fee and other required documentation, including, but not limited to, verification of formal vocational training, verification of experience, and documentation of other certifications and examinations.

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

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

"Formal vocational training" means courses in the trade administered at an accredited educational facility or formal training, approved by the director or his designee, conducted by trade associations, businesses, the military, correspondence schools, or other similar training organizations.

"Reciprocity" means a mutual agreement between the director and any other regulating body that accepts one or more of the eligibility criteria from that regulating body as having met the requirements of this chapter.

"Regulant" means a licensee, certificate holder, or registrant of any other regulatory programs in the Commonwealth of Virginia or any other jurisdiction.

"Reinstatement" means the process and requirements through which an expired certificate can be restored to effectiveness after the expiration date has passed.

"Renewal" means the process and requirement for periodically approving a certification for another period of time.

18VAC120-50-20. Advisory board.

A. The Natural Gas Automobile Mechanics and Technicians Advisory Board shall exercise the authority delegated by the director consistent with subsection A of § 2.2-2100 of the Code of Virginia and shall advise the department on any matters relating to the certification of natural gas automobile mechanics and technicians in the Commonwealth of Virginia.

B. The advisory board shall consist of eight members appointed by the director as follows: two representatives of private businesses that utilize natural gas powered vehicles, one representative of a local government that utilizes natural gas vehicles, one representative of a municipal transit agency that uses natural gas vehicles, one certified natural gas automobile mechanic or technician, one representative of an approved natural gas automobile mechanic or technician training provider, and two citizen members. All members must be residents of the Commonwealth of Virginia. After the original appointments, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms.

C. Each member shall serve a four-year term. No member shall serve more than two consecutive four-year terms.

D. The advisory board shall meet upon the call of the director, but at least once per year.

Part II
Application Procedures and Entry Requirements

18VAC120-50-30. Application procedures.

A. Every applicant seeking certification shall submit an application with the appropriate fee specified in 18VAC120-50-80. Application shall be made on forms provided by the department and shall contain the following information and documentation:

1. The full legal name of the applicant, a copy of a government-issued photo identification and verification that the applicant is at least 18 years old.
2. The applicant shall disclose his social security number or a control number issued by the Virginia Department of Motor Vehicles in accordance with § 54.1-116 of the Code of Virginia.
3. The physical address of the applicant and, if it is going to be used as the address of record, a mailing address. A post office box, private mail box, or other mail service may be used as a mailing address, but not as the address of record.
4. Documentation of formal vocational training as required in 18VAC120-50-50 in a format approved by the director.
5. Documentation of experience, as required in 18VAC120-50-50 in a format approved by the director.

Regulations

6. Each applicant shall disclose the following convictions in any jurisdiction:

- a. All misdemeanor convictions within three years of the date of the application; and
- b. All felony convictions at any time.

Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. Individuals convicted in the Commonwealth of Virginia shall include a copy of their Central Criminal Records Exchange report that is no more than 90 days old. Individuals convicted outside of the Commonwealth of Virginia shall include a copy of their Central Criminal Records Exchange report and documentation of their out-of-state convictions from a source approved by the department.

7. Each applicant shall provide certified copies of all other licenses, certifications, or registrations held in any jurisdiction as a natural gas or alternative fuel vehicle mechanic or technician. Additionally, the applicant must provide documentation of any disciplinary action taken against any other license, certification, or registration.

B. By signing the application or submitting it electronically to the department, the applicant certifies that he has read and understands the statutes and regulations that govern the program.

C. The receipt of an application and the deposit of fees by the department does not indicate approval of the application.

D. Applicants will be notified if their application is incomplete. Applicants who fail to complete the process within one year of the date the original application was received by the department must submit a new application and fee.

18VAC120-50-40. General qualifications for certification.

Every applicant for certification as a certified natural gas automobile mechanic or technician shall meet the requirements and have the qualifications provided in this section.

1. The applicant shall be at least 18 years old.
2. Unless otherwise exempted, the applicant shall meet the current educational requirements by passing all required courses prior to the time the applicant sits for the examination and applies for certification.
3. Unless otherwise exempted, the applicant shall have passed the examination provided by department or by a testing organization acting on behalf of the department.
4. The applicant shall meet the experience requirements in 18VAC120-50-50.
5. In those instances where the applicant is required to take the certification examination, the applicant shall follow all rules established by the department or testing organization with regard to conduct at the examination. Such rules shall include all written instructions communicated prior to the examination date and all instructions communicated at the

site, either written or oral, on the date of the examination. Failure to comply with all rules established by the department or the testing organization with regard to conduct at the examination shall be grounds for denial of the application and may result in the voiding of the examination or scores or both.

6. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands Chapter 23.4 (§ 54.1-2355 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

7. The department may make further inquiries or investigations or require a personal interview with the applicant with respect to the qualification of the applicant to verify information and documentation, or to clarify information supplied.

8. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information:

- a. All misdemeanor convictions within three years of the date of the application; and
- b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The department, at its discretion, may deny certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.

9. The applicant shall report all suspensions, revocations, or surrender of a certificate or license that is connected with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia. The director, at his discretion, may deny certification to any applicant based on prior suspensions, revocations, or surrender of certifications or licenses connected with disciplinary action by any jurisdiction.

18VAC120-50-50. Evidence of ability and proficiency.

A natural gas automobile mechanic or technician certificate shall be issued to an applicant who fulfills the requirements of 18VAC120-50-40 and one of the following:

1. One year of practical experience in the performance of services relating to the repair, conversion, or maintenance of motor vehicles that use, in whole or in part, natural gas as a fuel and successful completion of a training program approved by the director;
2. A current license as a professional engineer and one year of practical experience in the performance of services relating to the repair, conversion, or maintenance of motor vehicles that use, in whole or in part, natural gas as a fuel;
3. Successful completion of an apprenticeship program approved by the Virginia Apprenticeship Council or the U.S. Department of Labor, with a Dictionary of

Occupational Title or Standard Industrial Classification identifier approved by the director, which includes a minimum of one year of practical experience in the performance of services relating to the repair, conversion, or maintenance of motor vehicles that use, in whole or in part, natural gas as a fuel; or

4. Three years of practical experience in the repair, conversion, or maintenance of motor vehicles that use, in whole or in part, natural gas as a fuel.

18VAC120-50-60. Qualifications for licensure by reciprocity or substantial equivalency.

Individuals certified or licensed as natural gas automobile mechanics or technicians by governing bodies located outside the Commonwealth of Virginia shall be in compliance with this chapter if the director has determined the certifying or licensing requirements to be substantially equivalent to the requirements in Virginia. In addition to the requirements set forth in 18VAC120-50-40, these individuals must meet the following requirements:

1. The applicant shall have received the natural gas automobile mechanic or technician certification by virtue of having passed in the jurisdiction of original certification or licensing a written or oral examination deemed to be substantially equivalent to the Virginia examination; and

2. The applicant shall be in good standing as a certified or licensed natural gas automobile mechanic or technician in every jurisdiction where certified or licensed, and the applicant shall not have had a certificate or license that has been suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia.

18VAC120-50-70. Application denial.

The director may refuse initial certification due to an applicant's failure to comply with entry requirements or for any of the reasons the director may discipline a certified natural gas automobile mechanic or technician.

18VAC120-50-80. Application fees.

A. All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee has been submitted within the time requirements of this chapter. Checks or money orders shall be made payable to the Treasurer of Virginia.

B. Fees are as follows:

<u>Fee Type</u>	<u>Fee Amount</u>	<u>When Due</u>
<u>Original certification application</u>	<u>\$150</u>	<u>Upon submission of the application</u>

<u>Expedited application - application will be reviewed within two business days</u>	<u>\$250 plus application fee</u>	<u>Upon submission of the application</u>
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C. The fee for examination or re-examination is subject to contracted charges by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The board may adjust the fee charged to candidates in accordance with these contracts.

18VAC120-50-90. Renewal and reinstatement fees.

A. All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee has been submitted within the time requirements of this chapter. Checks or money orders shall be made payable to the Treasurer of Virginia.

B. Fees are as follows:

<u>Fee Type</u>	<u>Fee Amount</u>	<u>When Due</u>
<u>Certification renewal</u>	<u>\$100</u>	<u>Within 60 days of, but no later than, the expiration date of the certification</u>
<u>Certification reinstatement</u>	<u>\$150 - includes renewal fee</u>	<u>Within one year of the expiration date of the certification</u>

18VAC120-50-100. Certificate fees.

A. All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee has been submitted within time requirements set forth in this chapter. Checks or money orders shall be made payable to the Treasurer of Virginia.

B. Fees are as follows:

<u>Fee Type</u>	<u>Fee Amount</u>	<u>When Due</u>
<u>Wall certificate</u>	<u>\$40</u>	<u>Upon submission of the request for a wall certificate</u>
<u>Duplicate pocket certification card</u>	<u>First request within same licensing period - \$0 Second request within same licensing period - \$25 Third or subsequent request within five years - \$50</u>	<u>Upon submission of the request for a duplicate pocket certification card</u>

Regulations

C. Third and subsequent requests for duplicate certification pocket cards or wall certificates may result in the director initiating an investigation to determine if a violation has occurred.

Part III Renewal and Reinstatement

18VAC120-50-110. Renewal.

A. Certifications issued under this chapter shall expire two years from the last day of the month in which they were issued.

B. The department will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew.

C. Regulants may renew their certifications up to 60 days prior to the expiration date by submitting the fee specified in 18VAC120-50-90. If the regulant fails to receive the renewal notice, a copy of the certification pocket card or wall certification may be submitted with the required fee as an application for renewal.

D. By renewing the certification the regulant is attesting continued compliance with Part IV (Standards of Conduct and Practice) of this chapter.

E. The director may deny renewal of a certification card for the same reasons that he may refuse initial issuance or that he may discipline a regulant. The regulant has a right to appeal any such action by the director under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

F. 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 examination administration.

18VAC120-50-120. Reinstatement.

A. Should the department fail to receive the renewal application or fees by the expiration date, the regulant will be required to apply for reinstatement of the certification.

B. The date on which the reinstatement fee is received by the department or its agent will determine whether the certification is reinstated or a new application is required.

C. In order to ensure that certification holders are qualified to practice as certified natural gas automobile mechanics and technicians, no reinstatement will be permitted once one year from the expiration date has passed. After that date, the applicant must apply for a new certification and meet the then current entry requirements, including the successful completion of the examination.

D. Any person who holds himself out as a certified natural gas automobile mechanic or technician, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia.

E. The director may deny reinstatement of a certification for the same reasons that he may refuse initial issuance or that he may discipline a regulant. The regulant has a right to appeal any such action by the director under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

F. 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 examination administration.

18VAC120-50-130. Status of regulant during the period prior to reinstatement.

A. When a regulant is reinstated, the individual shall continue to have the same certificate number and shall be assigned an expiration date two years from the previous expiration date.

B. A regulant who reinstates his certification shall be regarded as having been continuously certified without interruption. Therefore, the regulant shall remain under the disciplinary authority of the board during this entire period and may be held accountable for activities during this period. Nothing in this chapter shall divest the director of the authority to discipline a regulant for a violation of the law or regulations during the period of certification.

Part IV Standards of Conduct and Practice

18VAC120-50-140. Grounds for disciplinary action.

The director may place a regulant on probation; impose a monetary penalty; or revoke, suspend, or refuse to renew a certification when the regulant has been found to have violated or cooperated with others in violating any provisions of this chapter or Chapter 23.4 (§ 54.1-2355 et seq.) of Title 54.1 of the Code of Virginia.

18VAC120-50-150. Maintenance of certification.

A. Any change of address shall be reported within 30 days of the change on a form provided by the department. The department shall not be responsible for the regulant's failure to receive notices or correspondence due to the regulant's failure to report a change of address. A post office box, private mail box, or other mailing service address alone is not acceptable as an address of record.

B. Any name change of the regulant shall be reported within 30 days of the change on a form provided by the department. The department shall not be responsible for the regulant's failure to receive notices or correspondence due to the regulant's failure to report a name change.

18VAC120-50-160. Transfer of certification prohibited.

No certification issued by the director shall be assigned or otherwise transferred.

18VAC120-50-170. Prohibited acts.

A. All complaints against certified natural gas automobile mechanics and technicians may be filed with the department at any time during business hours, pursuant to subdivision A 8 of § 54.1-201 of the Code of Virginia.

B. The following acts are prohibited:

1. Failing in any material way to comply with the provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 23.4 (§ 54.1-2355 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the department;
2. Furnishing substantially inaccurate or incomplete information to the department in obtaining, renewing, reinstating, or maintaining a certification;
3. Negligence or incompetence in the practice of alternative fuel vehicle repair, conversion, or maintenance;
4. Misconduct in the practice of alternative fuel vehicle repair, conversion, or maintenance;
5. Failing to respond to an agent of the department or providing false, misleading, or incomplete information to an investigator seeking information in the investigation of a complaint filed with the department against the regulant or failing or refusing to claim certified mail sent to the regulant's address of record shall constitute a violation of this regulation;
6. Making any misrepresentation or making a false promise that might influence, persuade, or induce;
7. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 23.4 (§ 54.1-2355 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 to do so;
8. Allowing one's certification to be used by another;
9. After initial certification, being convicted or found guilty, 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;
10. Failing to inform the department in writing within 30 days that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a misdemeanor; and
11. Failing to ensure that all work performed on natural gas fuel vehicles is consistent with the requirements set forth by the department, the U.S. Environmental Protection Agency, the California Air Resources Board, the National Fire Protection Agency 52: Vehicular Gaseous Fuel Systems Code, or other applicable authority as determined by the director.

Part V

Education Providers and Training Requirements

18VAC120-50-180. Requirements for formal vocational training providers, instructor qualifications, and course requirements.

A. The director is responsible for reviewing applications from education providers seeking board approval. Provider and course applications must be submitted by the department's established deadlines.

B. The course provider shall submit an application for course approval in a format approved by the director. The application shall include, but is not limited to:

1. The name of the provider;
2. Provider contact person, address, and telephone number;
3. Contact hours for each course submitted for approval;
4. Schedule of courses, if established, including dates, time, and locations;
5. Instructor information, including name, certification number, if applicable, and a list of other appropriate trade designations;
6. Course and material fees for each course offered; and
7. A syllabus for each course submitted for approval.

C. Each applicant for approval as an instructor for an approved formal vocational training provider shall have one of the following qualifications:

1. A Natural Gas Automobile Mechanic or Technician Certification issued by the director, or a comparable certification as determined by the director, and two consecutive years of discipline-free experience immediately prior to application; or
2. A minimum of three years of active experience in the subject matter being taught. Such applicants shall teach only in the area of their expertise and will be required to furnish proof of their expertise that is satisfactory to the director.

D. Approval of formal vocation training courses shall expire three years from the year in which the approval was issued, as indicated on the approval document. At the end of the three years, the course provider shall submit a new application to be approved by the director.

E. The course provider must establish and maintain a record for each student. The record shall include the student's name and address; social security number or a control number issued by the Virginia Department of Motor Vehicles; the course name and clock hours attended; and the course syllabus or outline, the name or names of the instructor, the date of successful completion, and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain all student and class records for a minimum of five years.

Regulations

F. The course provider must provide each student with a certificate of course completion or other documentation that the student may use as proof of course completion. Such documentation shall contain the hours of credit completed. Fifty contact minutes shall equal one credit hour. No credit shall be awarded for partial credit hours or partial completion of the course.

G. The course provider certifies that the laws, regulations, and industry practices that will be taught or utilized in the course are up-to-date and that subsequent changes in the laws, regulations, or industry practices will be incorporated into the course curriculum as they occur.

18VAC120-50-190. Educational provider and course approval fees.

A. All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee has been submitted within the time requirements of this chapter. Checks or money orders shall be made payable to the Treasurer of Virginia.

B. Fees are as follows:

<u>Fee Type</u>	<u>Fee Amount</u>	<u>When Due</u>
<u>Formal education provider approval initial application fee</u>	<u>\$190</u>	<u>Upon submission of the school application</u>
<u>Course approval application fee</u>	<u>\$190</u>	<u>Upon submission of the course application</u>

18VAC120-50-200. Posting formal education provider certificate of approval.

Copies of formal education provider certificates of approval must be available at the location a course is taught.

18VAC120-50-210. Termination of approval.

The director may withdraw approval of any formal vocational provider or course for any of the following reasons:

1. The provider, instructors, courses, or subjects no longer meet the standards established by the director.
2. The provider or instructor solicits information from any person for the purpose of discovering past examination questions or questions that may be used in future examinations.
3. The provider or instructor distributes to any person copies of examination questions or otherwise communicates to any person examination questions without receiving the prior written approval of the owner to distribute or communicate those questions.

4. The provider, through an agent or otherwise, advertises its services in a fraudulent, deceptive, or misrepresentative manner.

5. Officials, instructors, or designees of the provider sit for the natural gas automobile technician or mechanic certification examination for any purpose other than to obtain a certification.

6. The provider or instructor fails to allow any agent of the board access to facilities or records to conduct a review or audit of the approved courses, student records, or course materials.

7. The provider fails to submit an electronic roster of students completing a course within seven business days in a method and in a format approved by the department.

18VAC120-50-220. Course content.

A. The following shall be included in the course that shall not have less than 24 classroom hours, of which four hours are hands on training:

1. Conversions, repairs, and maintenance.
2. Safety.
3. National Fire Protection Agency 52: Vehicular Gaseous Fuel System Code.
4. Principles of natural gas.
5. Natural gas fuel line safety and inspection.
6. Natural gas fuel container mounting.
7. Fundamentals of natural gas engines.
8. Practical lab.

B. Courses shall be taught in a classroom environment. No online courses or correspondence courses shall be approved.

18VAC120-50-230. Reporting changes.

Any change in the information provided in subsection B of 18VAC120-50-180 must be reported to the director within 30 days of the change with the exception of changes in the schedule of courses, which must be reported within 10 days of the change. Failure to report the changes as required may result in the withdrawal of approval of the course provider by the director.

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 (18VAC120-50)

[Natural Gas Automobile Mechanics or Technicians Certification Application, A505-2310CERT-v1 \(rev. 2/2016\)](#)

[Natural Gas Automobile Mechanics or Technicians Experience Verification Form, A505-2310EXP-v3 \(rev. 2/2015\)](#)

[Natural Gas Automobile Mechanics or Technicians Training Provider Approval Application, A505-2330SCHL-v1 \(rev. 2/2015\)](#)

[Natural Gas Automobile Mechanics or Technicians Course Approval Application, A505-2331CRS-v4 \(rev. 2/2016\)](#)

[Address Change Form, A406-ACHG-v5 \(rev. 6/2015\)](#)

[Name Change Form, A406-NAMECHG-v4 \(rev. 6/2015\)](#)

VA.R. Doc. No. R14-4029; Filed September 16, 2015, 2:14 p.m.

REAL ESTATE APPRAISER BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10).

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Effective Date: January 1, 2016.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

The amendment updates the edition of the Uniform Standards of Professional Appraisal Practice incorporated by reference in the regulations to the 2016-2017 version effective from January 1, 2016, through December 31, 2017.

Part I
General

18VAC130-20-10. Definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the Virginia State Council of Higher Education for Virginia or listed in the Transfer Credit Practices of Designated Educational Institutions, published by

the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC § 3301 et seq.), as amended.

"Appraiser" means ~~one~~ an individual who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

"Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise or provide a review appraisal of nonresidential properties with a

Regulations

transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to \$250,000, whichever is the lesser.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, online learning, correspondence courses, etc.).

"Experience" as used in this chapter includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. "Fee/staff appraiser experience" means experience acquired as either a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 1 and 2.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by

fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 6.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports after January 30, 1989, recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 3.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the cosigner subcategory of fee/staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes, but is not necessarily limited to, the following:

- Absorption Study
- Ad Valorem Tax Study

Annexation Study
Assemblage Study
Assessment Study
Condominium Conversion Study
Cost-Benefit Study
Cross Impact Study
Depreciation/Cost Study
Distressed Property Study
Economic Base Analysis
Economic Impact Study
Economic Structure Analysis
Eminent Domain Study
Feasibility Study
Highest and Best Use Study
Impact Zone Study
Investment Analysis Study
Investment Strategy Study
Land Development Study
Land Suitability Study
Land Use Study
Location Analysis Study
Market Analysis Study
Market Strategy Study
Market Turning Point Analysis
Marketability Study
Portfolio Study
Rehabilitation Study
Remodeling Study
Rental Market Study
Right of Way Study
Site Analysis Study
Utilization Study
Urban Renewal Study
Zoning Study

To qualify for real estate consulting experience, an individual must have prepared written reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 4 and 5. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements specified in this chapter. Inactive licenses do not meet the requirements set forth in § 54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice is less than \$1 million. Licensed residential real estate appraisers may also appraise or provide a review appraisal of noncomplex, nonresidential properties with a transaction

value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to \$250,000, whichever is the lesser.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in § 54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association or other business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

"Reinstatement" means having a license or registration restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or registration for another period of time.

"Sole proprietor" means any individual, but not a corporation, partnership or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent" means any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a

Regulations

certified general real estate appraiser or certified residential real estate appraiser who supervises any unlicensed ~~person~~ individual acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction which may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means the ~~2014-2015~~ 2016-2017 edition of those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate or opinion of the value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

DOCUMENTS INCORPORATED BY REFERENCE
(18VAC130-20)

~~Uniform Standards of Professional Appraisal Practice, 2014-2015 Edition, Appraisal Standards Board, Appraisal Foundation~~

[Uniform Standards of Professional Appraisal Practice, 2016-2017 Edition, Appraisal Standards Board, Appraisal Foundation](#)

V.A.R. Doc. No. R16-4512; Filed September 17, 2015, 2:18 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 48 (2015)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Severe Weather and the Threat of Hurricane Joaquin Impacting Virginia

Importance of the Initiative

On this date, September 30, 2015, I am declaring a state of emergency to exist for the Commonwealth of Virginia based on the severe weather that began the morning of September 29, 2015, as well as forecasts by the National Hurricane Center and National Weather Service projecting impacts from Hurricane Joaquin and a coastal nor'easter. This severe weather pattern could produce damaging high winds, periods of heavy rainfall, massive power outages, and flooding throughout the Commonwealth with the potential to impact life safety and create significant transportation issues.

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

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on this date, September 30, 2015, whereby I am proclaiming that a state of emergency exists, and has existed since the morning of September 29, 2015, and I am directing that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the storm, alleviate any conditions resulting from the incident, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible. Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I am also directing that the Virginia National Guard and the Virginia Defense Force be called forth to state active duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law-enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security, may find necessary.

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

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

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

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

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

movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State Coordinator of Emergency Management and the VEOC, shall determine. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

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

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

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

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

Authorization of the State Coordinator of Emergency Management to grant limited exemption of hours of service by any carrier when transporting essential emergency relief supplies, passengers, property, livestock, poultry, equipment, food, feed for livestock or poultry, fuel, construction materials, and other critical supplies to or from any portion of the Commonwealth for purpose of providing direct relief or

assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3.

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

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

H. The authorization of a maximum of \$2,630,000 in state sum sufficient funds for state and local governments mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act. This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, \$350,000, or more if available, is authorized for the Department of Military Affairs for the state's portion of the eligible disaster related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

I. The authorization of a maximum of \$250,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

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

K. Designation of members and personnel of volunteer, auxiliary, and reserve groups including Search and Rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Community Emergency

Response Teams (CERTs), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 A and F of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

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

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

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

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

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

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military

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

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

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

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

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

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

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

- c. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be

reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia;

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

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective September 29, 2015, and continuing unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of September, 2015.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-510, Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services 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.

The regulation should be retained in its current form as it provides sufficient safeguards to ensure the safe manufacture and distribution of ice cream and frozen desserts in the Commonwealth. The agency has not received any comments or complaints about the regulation from the public. The regulation is clearly written and allows for the safe manufacture of various forms of ice cream and frozen desserts. This regulation is adopted from the U.S. Department of Agriculture model regulations for the production of frozen desserts and ice cream. The regulation does not conflict with any state or federal regulation. This regulation has been reviewed periodically and was last amended in 2008 to incorporate recommendations from the Attorney General's Government and Regulatory Reform Task Force. Although certain portions of the industry have evolved, the regulation is still relevant and helps to ensure the safe production of ice cream and frozen desserts. This regulation is consistent with the stated objectives of § 3.2-5212 of the Code of Virginia. The regulation is not overly burdensome to the industry, including the small businesses within the industry, is clear and concise, and is necessary to ensure the safe production of ice cream and frozen desserts.

Contact Information: Robert Trimmer, Dairy Services Program Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1452, FAX (804) 371-7792, or email robert.trimmer@vdacs.virginia.gov.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Board for Asbestos, Lead, and Home Inspectors is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment

is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC15-11, Public Participation Guidelines

18VAC15-20, Virginia Asbestos Licensing Regulations

18VAC15-30, Virginia Lead-Based Paint Activities Regulations

18VAC15-40, Virginia Certified Home Inspectors Regulations

The comment period begins October 19, 2015, and ends November 9, 2015.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Trisha Henshaw, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Criminal Justice Services and the Criminal Justice Services Board is conducting a periodic review and small business impact review of **6VAC20-70, Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections**.

The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent

General Notices/Errata

with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 19, 2015, and ends November 19, 2015.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Washington Building, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

FAIR HOUSING BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Fair Housing Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC62-10, Public Participation Guidelines

18VAC62-20, Fair Housing Certification Regulations

The comment period begins October 19, 2015, and ends November 9, 2015.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Christine Martine, Executive Director, Department of Professional and Occupational Regulation,

9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email fairhousing@dpor.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Hearing Aid Specialists and Opticians is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC80-11, Public Participation Guidelines

18VAC80-20, Board for Hearing Aid Specialists Regulations

18VAC80-30, Opticians Regulations

The comment period begins October 19, 2015, and ends November 9, 2015.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Demetrios J. Melis, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hearingaidspec@dpor.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Labor and Industry conducted a small business impact review of **16VAC15-40, Virginia Hours of Work for Minors**, and determined that this regulation should be retained in its current form. The Department of Labor and Industry is publishing its report of findings dated September

21, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation should have minimal economic impact on small businesses. The regulation also offers clarity and guidance for small businesses that employ minors under 16 years of age. The regulatory language is clear and avoids complexity. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation was last reviewed four years ago. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective. The agency has determined that retaining the regulation without amendment is consistent with the stated objectives of applicable law and is the most effective way to minimize the economic impact of regulations on small businesses.

Contact Information: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, email connor.reba@dol.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Labor and Industry conducted a small business impact review of **16VAC15-50, Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards**, and determined that this regulation should be retained in its current form. The Department of Labor and Industry is publishing its report of findings dated September 21, 2015, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation should have minimal economic impact on small businesses. The regulation offers clarity and guidance for small businesses that employ minors to work on farms, in gardens, and in orchards. The regulatory language is clear and avoids complexity. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation was last reviewed four years ago. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective. The agency has determined that retaining the regulation without amendment is consistent with the stated objectives of applicable law and is the most effective way to minimize the economic impact of regulations on small businesses.

Contact Information: Reba O'Connor, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, email connor.reba@dol.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Comment Period for Delivery System Reform Incentive Payment

Virginia is accelerating transformation of its Medicaid delivery system to ensure that high-value care is the norm, and that even the most medically complex enrollees with significant behavioral, physical, sensory, and developmental disabilities can live safely and thrive in the community. To begin this process, the Virginia Department of Medical Assistance Services (DMAS) is seeking approval of a demonstration project under § 1115 of the Social Security Act (Act) to implement three strategic initiatives. Alignment of the following three initiatives creates a powerful opportunity to strengthen and integrate Virginia Medicaid's community delivery structure and accelerate a shift toward value-based payment.

1. Medicaid Managed Long Term Services and Supports (MLTSS);
2. Continuum of Care for Individuals with Substance Use Disorders (SUD); and
3. Delivery System Reform Incentive Payment (DSRIP).

DMAS recognizes that this approach is monumental, however the opportunity is great. To accomplish this, DMAS seeks to build on its current managed care delivery system and extend access to managed care through the MLTSS initiative. MLTSS will provide coordinated medical, behavioral health, and long-term care services and supports for over 100,000 enrollees who are still receiving at least a portion of their care through fee-for-service. In addition, DMAS intends to take advantage of the newly proposed opportunity to strengthen the capability to identify substance use disorder (SUD) among Medicaid members, and redesign the benefits offered and community support structure for those who need access to these critical services. By aligning SUD with the implementation of MLTSS and DSRIP, Virginia can accelerate the transition to contracting for care and services based on value, not utilization. Further, enrollees will have a better care experience when DSRIP is used to invest in resources that offer an enhanced person-centered care model, access to integrated services and providers, and expanded availability of community supports and services.

Current Request for Public Comment on DSRIP

DMAS' ultimate approach will combine these three initiatives into one § 1115 waiver application with the Centers for Medicare and Medicaid Services (CMS). Due to the importance and complexity of this effort, however, DMAS believes that soliciting input independently for each initiative will yield the most comprehensive, focused, and valuable input. DMAS has posted a concept paper on its website

General Notices/Errata

(www.dmas.virginia.gov) that describes the design of the DSRIP portion of this waiver application.

All public comments pertaining to DSRIP and the concept paper should be received by DMAS no later than 4 p.m. EST on Monday, October 19, 2015. All submissions shall be Microsoft Word documents, 12-point, Times New Roman font, and no more than five individual pages.

Mail Submission - written comments shall be addressed to Ashley Hazelton, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Electronic Submission - for ease in compilation of comments, please ensure the submission is a Microsoft Word document, adhering to the instructions below. Please submit the electronic submission as an email attachment to: dsrip@dmas.virginia.gov.

Due to the significant amount of stakeholder input expected, it is important that the department have a method to catalogue and consider all received information. Please adhere to the instructions in order to ensure that all valued comment and feedback is incorporated into the stakeholder review process. Please note, DMAS must adhere to the Freedom of Information Act (FOIA) standards. Therefore, once public comment is submitted, that information is in the public domain and may be made available on the DMAS website or to any entity that requests it. Please make every effort to refrain from including proprietary or protected health information in comments, as striking this information is cumbersome for DMAS staff.

Specific Instructions

The key components for DSRIP feedback include the four transformation steps that Virginia Medicaid must take through the support of DSRIP:

1. Integrate service delivery;
2. Build a data platform for integration and usability;
3. Build community capacity; and,
4. Redesign how DMAS pays for services.

In addition to public comment regarding components found in the concept paper, please submit questions that will assist the Department in clarifying the role of DSRIP in Virginia. DMAS will compile these questions and provide responses within several weeks of the close of the public comment period.

Any person who or entity that is considering participating in DSRIP should please include in public comment the following: (i) contact information and (ii) information pertaining to projected implementation needs and appropriate timelines to achieve readiness and successful engagement in the DSRIP demonstration.

This is the initial opportunity to provide formal public comment to the waiver application process. However, DMAS intends to seek additional stakeholder input throughout the DSRIP process. Please visit the DMAS DSRIP webpage often to see the latest materials and progress on the DSRIP development. Questions can be sent to dsrip@dmas.virginia.gov. DMAS thanks participants in advance for making Virginia successful in this important delivery system transformation initiative.

Contact Information: Emily McClellan, Policy and Planning Manager II, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-4300.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC145-11, Public Participation Guidelines

18VAC145-20, Professional Soil Scientists Regulations

18VAC145-30, Regulations Governing Certified Professional Wetland Delineators

18VAC145-40, Regulations for the Geology Certification Program

The comment period begins October 19, 2015, and ends November 9, 2015.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Kathleen R. Nosbisch, Executive Director, Department of Professional and Occupational

Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA, 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email soilscientist@dpor.virginia.gov.

REAL ESTATE APPRAISER BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Real Estate Appraiser Board is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC130-11, Public Participation Guidelines

18VAC130-20, Real Estate Appraiser Board Rules and Regulations

The comment period begins October 19, 2015, and ends November 9, 2015.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Christine Martine, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reappraisers@dpor.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Atlantic Waste Disposal, Inc.

An enforcement action has been proposed for Atlantic Waste Disposal, Inc., for violations at the landfill located at 3474 Atlantic Lane in Waverly, Virginia. The State Water Control Board proposes to issue a consent order to address noncompliance with its Virginia Water Protection Permit at the landfill. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov,

FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 19, 2015, through November 20, 2015.

Proposed Consent Order for Whispering Winds, LLC

An enforcement action has been proposed for Whispering Winds, LLC for violations at the Whispering Winds Mobile Home Park and the Oak Shades Mobile Home Park. The action seeks to resolve the unpermitted withdrawal of groundwater in a groundwater management area. The consent order describes a settlement to resolve these violations. A description of the proposed action is available online at www.deq.virginia.gov. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or by postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from October 19, 2015, through November 18, 2015.

Total Maximum Daily Loads Development for Kerr River Tributaries for Bacteria

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Kerr River Tributaries for bacteria in Charlotte, Mecklenburg, and Brunswick Counties. These streams are listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for recreation use due to elevated levels of bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

Little Bluestone Creek (VAC-L77R_LNE01A98) is located in Mecklenburg County. It is 9.38 miles in length and begins at the fork upstream of Route 696 to Kerr Reservoir.

Bluestone Creek (VAC-L77R_BST02A06) is located in Charlotte and Mecklenburg Counties. It is 8.25 miles in length and begins from its headwaters to Moddy Creek.

Allen Creek, Unnamed Tributary (VAC-L78R_XUQ01A04) is located in Mecklenburg County. It is 1.24 miles in length and includes the entire tributary located just south of the intersection of Redlawn and Baskerville Roads.

Allen Creek (VAC-L78R_ALN03A04) is located in Mecklenburg County. It is 8.97 miles in length and begins at Layton Creek downstream to Cox Creek.

Allen Creek (VAC-L78R_ALN04A06) is located in Mecklenburg County. It is 15.28 miles in length and begins from its headwaters to Layton Creek.

General Notices/Errata

Layton Creek (VAC-L78R_LYT01A06) is located in Mecklenburg County. It is 8.64 miles in length and begins from its headwaters to its confluence with Allen Creek.

Cotton Creek (VAC-L78R_CTT01A08) is located in Mecklenburg County. It is 4.39 miles in length and begins from its headwaters to its mouth on the Roanoke River.

Kettles Creek (VAC-L78R_KTT01A12) is located in Mecklenburg County. It is 5.48 miles in length and begins from its headwaters to the mouth.

Smith Creek (VACL79R_SMI01A08) is located in Mecklenburg County. It is 1.89 miles in length and begins at the Virginia/North Carolina state line to its mouth on Kerr Reservoir.

Lizard Creek (VAC-L81R_LIZ01A10) is located in Brunswick County. It is 2.73 miles in length and begins from its headwaters to Lake Gaston.

The first public meeting on the development of the TMDL to address the primary contact use for these segments will be held on October 28, 2015, 6:30 p.m. until 8:30 p.m., 461 Madison Street, Council Chambers, Boydton, VA 23917. In case of inclement weather, the alternate meeting date is October 29, 2015, 6:30 p.m. until 8:30 p.m., 461 Madison Street, Council Chambers, Boydton, VA 23917.

The public comment period begins on October 29, 2015, and ends November 30, 2016.

An advisory committee to assist in development of this TMDL will be established. Persons interested in assisting should notify the DEQ contact person by the end of the comment period and provide name, address, phone number, email address and the organization represented (if any). Notification of the composition of the panel will be sent to all applicants.

A component of a TMDL is the wasteload allocation (WLA); therefore, this notice is provided pursuant § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDL WLAs.

Information on the development of the TMDLs for the impairments is available upon request. Questions or information requests should be addressed to the DEQ contact person listed below. Please note, all written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Paula Nash, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216, or email paula.nash@deq.virginia.gov.

Notice of Public Meeting and Public Comment for a Total Maximum Daily Load Implementation Plan for the Banister River, Winn Creek, and Terrible Creek Watersheds

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan for the Banister River, Winn Creek, and Terrible Creek watersheds in Halifax County. The Banister River and Winn Creek were first listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2008. Terrible Creek was first listed as impaired on the Virginia's § 303(D) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria in 2014. The streams have remained on the § 303(d) list for these impairments since then.

The impaired segment of the Banister River extends 2.39 miles from the confluence of Wolf Trap Creek to the mouth on the Dan River. The impaired segment of Winn Creek extends 6.94 miles from the headwaters to the mouth on the Banister River. The impaired segment of Terrible Creek extends 4.77 miles from the confluence of Little Terrible Creek to the mouth on the Banister River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires expeditious implementation of total maximum daily loads when appropriate. The implementation plan (IP) should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. DEQ completed bacteria TMDLs for the Banister River and Winn Creek watershed in May 2013. The TMDLs were approved by the Environmental Protection Agency on July 2013. The TMDL report is available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

The final public meeting will be held to finalize the development of this TMDL implementation plan Tuesday, October 27, 2015, from 6:30 p.m. until 8:30 p.m. at the Mary Bethune Administration Building Board Room, 1030 Cowford Road, Halifax, VA 24558.

In case of inclement weather, the alternate meeting date is Thursday, October 29, 2015, from 6:30 p.m. until 8:30 p.m. at the Mary Bethune Administration Building Board Room, 1030 Cowford Road, Halifax, VA 24558.

The public comment period begins on October 28, 2015, and ends on November 30, 2015. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Paula Nash, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216, or email paula.nash@deq.virginia.gov.

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.

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.

