



# VIRGINIA

## REGISTER OF REGULATIONS

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# VIRGINIA REGISTER INFORMATION PAGE

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

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

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### August 2016 through August 2017

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
33:6	October 26, 2016	November 14, 2016
33:7	November 9, 2016	November 28, 2016
33:8	November 22, 2016 ( <b>Tuesday</b> )	December 12, 2016
33:9	December 7, 2016	December 26, 2016
33:10	December 19, 2016 ( <b>Monday</b> )	January 9, 2017
33:11	January 4, 2017	January 23, 2017
33:12	January 18, 2017	February 6, 2017
33:13	February 1, 2017	February 20, 2017
33:14	February 15, 2017	March 6, 2017
33:15	March 1, 2017	March 20, 2017
33:16	March 15, 2017	April 3, 2017
33:17	March 29, 2017	April 17, 2017
33:18	April 12, 2017	May 1, 2017
33:19	April 26, 2017	May 15, 2017
33:20	May 10, 2017	May 29, 2017
33:21	May 24, 2017	June 12, 2017
33:22	June 7, 2017	June 26, 2017
33:23	June 21, 2017	July 10, 2017
33:24	July 5, 2017	July 24, 2017
33:25	July 19, 2017	August 7, 2017
33:26	August 2, 2017	August 21, 2017

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF NURSING

#### Agency Decision

**Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing.**

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

**Name of Petitioner:** Greg Huber.

**Nature of Petitioner's Request:** To eliminate the allowance for a person to reactivate or reinstate a license by payment of the required fee within one renewal cycle. The regulation appears to allow a person to let his license lapse and then pay the reinstatement fee without meeting the requirements for continued competency for renewal of licensure.

**Agency Decision:** Request granted.

**Statement of Reason for Decision:** At its meeting on July 19, 2016, the board decided to issue a Notice of Intended Regulatory Action in response to the petition. The board recognized that there was some inconsistency between regulations for renewal of licensure and those for reactivation and reinstatement. The intent is to add the requirement for continuing competency for those who reinstate or reactivate within one renewal cycle.

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

VA.R. Doc. No. R16-22; Filed July 20, 2016, 9:53 a.m.

### BOARD OF OPTOMETRY

#### Agency Decision

**Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry.**

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

**Name of Petitioner:** Joseph Spivey.

**Nature of Petitioner's Request:** Add a requirement for an optometrist to provide a patient's pupillary distance as measured by the optometrist to the patient upon request.

**Agency Decision:** Request denied.

**Statement of Reason for Decision:** The board decided to take no action on the petition for rulemaking because the measurement of pupillary distance is not required for an eye examination. Therefore, it would not be appropriate for regulations to require an optometrist to furnish the patient's pupillary distance upon request by a patient. The pupillary distance is part of the fitting for eye glasses and is typically

performed by an optician. If an optometrist chooses to measure pupillary distance as part of an eye examination, such information would be part of the medical record, a copy of which can be requested by a patient.

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

VA.R. Doc. No. R16-20; Filed July 18, 2016, 12:37 p.m.

### BOARD OF PHARMACY

#### Initial Agency Notice

**Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

**Name of Petitioner:** Roger St. Clair.

**Nature of Petitioner's Request:** To authorize use of electronic devices in lieu of manual emergency drug kits and stat-drug boxes to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. Current regulation does not designate electronic devices being utilized as unit dose systems purely for first dose non-routine versus automated dispensing devices utilized for full or routine dispensing in long term care facilities.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition has been filed with the Registrar of Regulations and will be published on August 8, 2016. Comment on the petition may be sent by email, regular mail, or posted on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Comment will be requested until August 31, 2016. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in Regulations Governing the Practice of Pharmacy. This matter will be on the board's agenda for its meeting scheduled for September 7, 2016, and the petitioner will be informed of the board's decision after that meeting.

**Public Comment Deadline:** August 31, 2016.

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

VA.R. Doc. No. R16-32; Filed July 15, 2016, 1:20 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Safety and Health Codes Board intends to consider amending **16VAC25-50, Boiler and Pressure Vessel Regulations**. The purpose of the proposed action is to provide increased protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia by adopting the most current version of industry standards to take advantage of the latest technical advances in safety.

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

Statutory Authority: § 40.1-51.6 of the Code of Virginia.

Public Comment Deadline: September 7, 2016.

Agency Contact: Ed Hilton, Director, Boiler Safety Compliance, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3169, FAX (804) 371-2324, or email [ed.hilton@doli.virginia.gov](mailto:ed.hilton@doli.virginia.gov).

VA.R. Doc. No. R16-4679; Filed July 8, 2016, 4:19 p.m.

Agency Contact: Trisha L. Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 350-5354, or email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

VA.R. Doc. No. R16-4423; Filed July 11, 2016, 4:17 p.m.

### BOARD OF OPTOMETRY

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC105-20, Regulations Governing the Practice of Optometry**, which was published in [32:7 VA.R. 1136 November 30, 2015](#). The amendments described in the Notice of Intended Regulatory Action were included in amendments to § 54.1-3219 of the Code of Virginia by Chapter 89 of the 2016 Acts of Assembly. Therefore, the board can amend regulations by an exempt action and withdraw this Notice of Intended Regulatory Action.

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

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email [leslie.knachel@dhp.virginia.gov](mailto:leslie.knachel@dhp.virginia.gov).

VA.R. Doc. No. R16-4466; Filed July 19, 2016, 1:55 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors has WITHDRAWN the Notice of Intended Regulatory Action for **18VAC15-40, Virginia Certified Home Inspectors Regulations**, which was published in [32:1 VA.R. 4 September 7, 2015](#). As a result of legislative changes enacted by Chapters 161 and 436 of the 2016 Acts of Assembly, the amendments in this action will be incorporated into a new regulatory action slated to be effective July 1, 2017. This new regulatory action will (i) incorporate the language from this regulatory action that establishes the new training requirements for new residential structure inspections and (ii) include other amendments to convert the current voluntary certification program to a mandatory licensing program.

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

# 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 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** **4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

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

**Effective Date:** July 30, 2016.

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

**Summary:**

*Pursuant to § 28.2-226.2 of the Code of Virginia, the amendment separates the five crab pot recreational license into two categories, one with a terrapin excluder device (\$36) and one without such device (\$46).*

**4VAC20-1090-30. License fees.**

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year. The fees listed below include a \$1.00 agent fee.

1. COMMERCIAL LICENSES	
Commercial Fisherman Registration License	\$190.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00
Delayed Entry Registration	\$190.00
Delayed Entry Registration License for a person 70 years or older	\$90.00
Seafood Landing License for each boat or vessel	\$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00

Seafood Buyer's License -- For each boat or motor vehicle	\$63.00
Seafood Buyer's License -- For each place of business	\$126.00
Clam Aquaculture Product Owner's Permit	\$10.00
Oyster Aquaculture Product Owner's Permit	\$10.00
Clam Aquaculture Harvester's Permit	\$5.00
Oyster Aquaculture Harvester's Permit	\$5.00
Nonresident Harvester's License	\$444.00
<b>2. OYSTER RESOURCE USER FEES</b>	
Any licensed commercial fisherman harvesting oysters by hand	\$50.00
For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	\$300.00
On any business shucking or packing no more than 1,000 gallons of oysters	\$500.00
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	\$1,000.00
On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	\$2,000.00
On any business shucking or packing more than 25,000 gallons of oysters	\$4,000.00
On any oyster buyer using a single truck or location	\$100.00
On any oyster buyer using multiple trucks or locations	\$300.00
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	\$50.00
<b>3. OYSTER HARVESTING, SHUCKING, RELAY, AND BUYERS LICENSES</b>	
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	\$50.00

# Regulations

Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with multiple boats or motor vehicles used for buying oysters	\$100.00	<b>5. CRAB POT LICENSES</b>	
For each person taking oysters by hand, or with ordinary tongs	\$10.00	For up to 85 crab pots	\$48.00
For each single-rigged patent tong boat taking oysters	\$35.00	For over 85 but not more than 127 crab pots	\$79.00
For each double-rigged patent tong boat taking oysters	\$70.00	For over 127 but not more than 170 crab pots	\$79.00
Oyster Dredge Public Ground	\$50.00	For over 170 but not more than 255 crab pots	\$79.00
Oyster Hand Scrape	\$50.00	For over 255 but not more than 425 crab pots	\$127.00
To shuck and pack oysters, for any number of gallons under 1,000	\$12.00	<b>6. HORSESHOE CRAB AND LOBSTER LICENSES</b>	
To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00	For each person harvesting horseshoe crabs by hand	\$16.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00	For each boat engaged in fishing for or landing of lobster using less than 200 pots	\$41.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00	For each boat engaged in fishing for or landing of lobster using 200 pots or more	\$166.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00	<b>7. CLAM HARVESTING LICENSES</b>	
To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00	For each person taking or harvesting clams by hand, rake, or with ordinary tongs	\$24.00
To shuck and pack oysters, for 200,000 gallons or over	\$456.00	For each single-rigged patent tong boat taking clams	\$58.00
One-day permit to relay condemned shellfish from a general oyster planting ground	\$150.00	For each double-rigged patent tong boat taking clams	\$84.00
<b>4. BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES</b>		For each boat using clam dredge (hand)	\$19.00
For each person taking or catching crabs by dip nets	\$13.00	For each boat using clam dredge (power)	\$44.00
For ordinary trotlines	\$13.00	For each boat using hydraulic dredge to catch soft shell clams	\$83.00
For patent trotlines	\$51.00	For each person taking surf clams	\$124.00
For each single-rigged crab-scrape boat	\$26.00	Water Rake Permit	\$24.00
For each double-rigged crab-scrape boat	\$53.00	<b>8. CONCH (WHELK) HARVESTING LICENSES</b>	
For up to 210 peeler pots	\$36.00	For each boat using a conch dredge	\$58.00
For up to 20 tanks and floats for shedding crabs	\$9.00	For each person taking channeled whelk by conch pot	\$51.00
For more than 20 tanks or floats for shedding crabs	\$19.00	<b>9. FINFISH HARVESTING LICENSES</b>	
For each crab trap or crab pound	\$8.00	Each pound net	\$41.00
		Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00
		All other gill nets up to 600 feet	\$16.00
		All other gill nets over 600 feet and up to 1,200 feet	\$24.00
		Each person using a cast net or throw net or similar device	\$13.00
		Each fyke net head, weir, or similar device	\$13.00
		For fish trotlines	\$19.00

# Regulations

Each person using or operating a fish dip net	\$9.00	Individual, nonresident	\$25.00
On each haul seine used for catching fish, under 500 yards in length	\$48.00	Temporary 10-Day, resident	\$10.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00	Temporary 10-Day, nonresident	\$10.00
For each person using commercial hook and line	\$31.00	Recreational boat, resident	\$48.00
For each person using commercial hook and line for catching striped bass only	\$31.00	Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	\$76.00
For up to 100 fish pots	\$19.00	Head Boat/Charter Boat, resident, six or less passengers	\$190.00
For over 100 but not more than 300 fish pots	\$24.00	Head Boat/Charter Boat, nonresident, six or less passengers	\$380.00
For over 300 fish pots	\$62.00	Head Boat/Charter Boat, resident, more than six passengers, plus \$5.00 per person, over six persons	\$190.00
For up to 100 eel pots	\$19.00	Head Boat/Charter Boat, nonresident, more than six passengers, plus \$5.00 per person, over six persons	\$380.00
For over 100 but not more than 300 eel pots	\$24.00	Rental Boat, resident, per boat, with maximum fee of \$703	\$14.00
For over 300 eel pots	\$62.00	Rental Boat, nonresident, per boat, with maximum fee of \$1270	\$18.00
<b>10. MENHADEN HARVESTING LICENSES</b>		Commercial Fishing Pier (Optional)	\$632.00
Any person purchasing more than one of the following licenses, as described in this subsection, for the same vessel, shall pay a fee equal to that for a single license for the same vessel.		Disabled Resident Lifetime Saltwater License	\$10.00
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	\$249.00	Disabled Nonresident Lifetime Saltwater License	\$10.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	\$996.00	Reissuance of Saltwater Recreational Boat License	\$5.00
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	\$249.00	<b>13. COMBINED SPORTFISHING LICENSE</b>	
On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	\$996.00	This license is to fish in all inland waters and tidal waters of the Commonwealth during open season.	
<b>11. COMMERCIAL GEAR FOR RECREATIONAL USE</b>		Residents	\$39.50
Up to five crab pots <u>with a terrapin excluder device</u>	\$36.00	Nonresidents	\$71.00
<u>Up to five crab pots without a terrapin excluder device</u>	<u>\$46.00</u>	<b>14. COMBINED SPORTFISHING TRIP LICENSE</b>	
Crab trotline (300 feet maximum)	\$10.00	This license is to fish in all inland waters and tidal waters of the Commonwealth during open season for five consecutive days.	
One crab trap or crab pound	\$6.00	Residents	\$24.00
One gill net up to 300 feet in length	\$9.00	Nonresidents	\$31.00
Fish dip net	\$7.00	<b>15. TIDAL BOAT SPORTFISHING LICENSE</b>	
Fish cast net	\$10.00	Residents	\$126.00
Up to two eel pots	\$10.00	Nonresidents	\$201.00
<b>12. SALTWATER RECREATIONAL FISHING LICENSE</b>			
Individual, resident	\$17.50		

# Regulations

16. LIFETIME SALTWATER RECREATIONAL FISHING LICENSES	
Individual Resident Lifetime License	\$276.00
Individual Nonresident Lifetime License	\$500.00
Individual Resident Lifetime License age 45 - 50	\$132.00
Individual Nonresident Lifetime License age 45 - 50	\$240.00
Individual Resident Lifetime License age 51 - 55	\$99.00
Individual Nonresident Lifetime License age 51 - 55	\$180.00
Individual Resident Lifetime License age 56 - 60	\$66.00
Individual Nonresident Lifetime License age 56 - 60	\$120.00
Individual Resident Lifetime License age 61 - 64	\$35.00
Individual Nonresident Lifetime License age 61 - 64	\$60.00
Individual Resident Lifetime License age 65 and older	\$5.00

VA.R. Doc. No. R16-4787; Filed July 27, 2016, 12:38 p.m.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Fast-Track Regulation

**Title of Regulation:** 4VAC25-35. Certification Requirements for Mineral Miners (amending 4VAC25-35-110).

**Statutory Authority:** § 45.1-161.292:19 of the Code of Virginia.

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

**Public Comment Deadline:** September 7, 2016.

**Effective Date:** September 22, 2016.

**Agency Contact:** Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

**Basis:** Section 45.1-161.292:19 of the Code of Virginia allows the Department of Mines, Minerals and Energy (DMME) to require certification of persons who work in mineral mines and to promulgate regulations necessary to the certification process.

**Purpose:** The purpose of this regulation is to allow coal miners and mine inspectors to easily transition to other areas of the mining industry. Promoting economic development is

one of the core functions of DMME, and increasing the number of certified mineral mine inspectors could help support the mineral mine industry and thus the welfare of the Commonwealth's citizens. Other existing regulations serve to protect public health and safety.

**Rationale for Using Fast-Track Rulemaking Process:** This rulemaking is noncontroversial because it removes unnecessary and duplicative barriers to certification. The training needed to properly inspect a coal mine is virtually identical to the training needed to safely inspect a mineral mine site. This regulatory action would give coal mine inspectors the opportunity to seamlessly obtain DMME certification.

**Substance:** The only substantive change in this regulation allows for coal mine inspectors with a valid certification to obtain mineral mine inspector certification without going through training they have already received.

**Issues:** The primary advantages to the Commonwealth are removing unnecessary and duplicative barriers to certification and allowing for employees in a depressed industry to more smoothly transition to another industry. There are no known disadvantages. The primary advantages to the welfare of the citizens of the Commonwealth are removing unnecessary and duplicative barriers to certification and allowing for employees in a depressed industry to more smoothly transition to another industry. There are no known disadvantages to public health, safety, and welfare.

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

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy proposes to amend this regulation to specify that applicants who already possess a valid coal mine inspector certification will be deemed to also have met the requirements for mineral mine inspector certification.

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

Estimated Economic Impact. Under the current regulation all applicants for mineral mine inspector certification must pass an examination demonstrating knowledge and competence in the various systems of working and ventilating underground mineral mines and working surface mineral mines, the control of mine roof and ground control, methods of rescue and recovery in mining operations, application of electricity and mechanical loading in mining operations, equipment and explosives used in mining; and mine haulage. The proposed amendment to specify that applicants who already possess a valid coal mine inspector certification will be deemed to also have met the requirements for mineral mine inspector certification will enable certified coal mine inspectors to become certified mineral mine inspectors without taking this examination.

According to the Department of Mines, Minerals and Energy (DMME), the knowledge and competence needed to properly inspect a coal mine is virtually identical to that needed to safely inspect a mineral mine site. Coal mine inspector certification, among other requirements, does require the passing of an examination. Thus the proposal will save certified coal mine inspectors who wish to become certified mineral mine inspectors the time involved for preparing and taking an additional examination (and a \$10 fee), without putting the public at risk of having inspectors who have not demonstrated the necessary knowledge and competence needed to properly inspect mineral mines. Therefore the proposed amendment creates a net benefit.

**Businesses and Entities Affected.** The proposed amendment potentially affects the 34 certified coal mine inspectors in the Commonwealth in that their costs of becoming certified mineral mine inspectors is reduced. Mineral mine inspectors work for DMME; thus the proposal does not directly affect businesses. Lowering the cost of having mineral mine inspectors available may help speed approvals of mineral mine activity by DMME. Therefore indirectly the proposal may also benefit mineral mine firms. There are 444 existing mineral mine permits in Virginia; approximately 150 of those are held by small businesses.<sup>1</sup>

**Localities Particularly Affected.** The proposed amendment could potentially affect all localities in the Commonwealth that have mineral mines. According to DMME, 91% of Virginia's counties have mineral mines.

**Projected Impact on Employment.** The proposed amendment would reduce the cost for certified coal mine inspectors to gain employment as mineral mine inspectors, but would not likely significantly affect total employment.

**Effects on the Use and Value of Private Property.** The proposed amendment does not directly affect the use and value of private property.

**Real Estate Development Costs.** The proposed amendment lowers the cost of having mineral mine inspectors available, and thus may help speed approvals of mineral mine activity. This may moderately reduce the cost of developing mineral mines.

**Small Businesses:**

**Definition.** Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

**Costs and Other Effects.** The proposed amendment does not increase costs for small businesses.

**Alternative Method that Minimizes Adverse Impact.** The proposed amendment does not adversely affect small businesses.

**Adverse Impacts:**

**Businesses.** The proposed amendment does not adversely affect businesses.

**Localities.** The proposed amendment does not adversely affect localities.

**Other Entities.** The proposed amendment does not adversely affect other entities.

<sup>1</sup>Data source: Department of Mines, Minerals and Energy

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

*The amendment specifies that an applicant who possesses a valid coal mine inspector certification is deemed to have met the requirements for mineral mine inspector certification.*

**4VAC25-35-110. Mine inspector.**

In addition to the requirements set forth in § 45.1-161.292:11 of the Code of Virginia, mine inspector applicants shall demonstrate knowledge and competence in those areas specified in § 45.1-161.292:12 of the Code of Virginia through the examination process. A certificate will not be issued until an applicant is employed by the department. Applicants who already possess a valid coal mine inspector certification pursuant to 4VAC25-20-180 shall be deemed to have met the requirements of this section.

VA.R. Doc. No. R16-4677; Filed July 7, 2016, 7:19 a.m.



**TITLE 7. ECONOMIC DEVELOPMENT**

**DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Department of Small Business and Supplier Diversity is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 2 of the Code of Virginia, which exempts regulations relating to the award or denial of state contracts, as well as decisions regarding compliance therewith.

Titles of Regulations: **7VAC10-21. Regulations to Govern the Certification of Small, Women-, and Minority-Owned Businesses (repealing 7VAC10-21-10 through 7VAC10-21-610).**

**7VAC13-20. Regulations to Govern the Certification of Small, Women-Owned, and Minority-Owned Businesses (adding 7VAC13-20-10 through 7VAC13-20-230).**

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Statutory Authority: § 2.2-1606 of the Code of Virginia.

Effective Date: August 8, 2016.

Agency Contact: Reba O'Connor, Regulatory Coordinator, Department of Small Business and Supplier Diversity, 101 North 14th Street, 11th Floor, Richmond, VA 23219, telephone (804) 593-2005, or email reba.oconnor@sbsd.virginia.gov.

Background:

*Chapter 482 of the 2013 Acts of Assembly abolished the Department of Minority Business Enterprise and the Department of Business Assistance effective January 1, 2014, and created the Department of Small Business and Supplier Diversity. The act transferred the regulations adopted by the Director of the Department of Minority Business Enterprise to the Department of Small Business and Supplier Diversity and provided that regulations in effect as of July 1, 2013, and that pertain to the subject of the act remain in full force and effect until altered, amended, or rescinded by the Director of the Department of Small Business and Supplier Diversity (7VAC13).*

*Through this action, the Department of Small Business and Supplier Diversity is repealing 7VAC10-21 adopted by the Department of Minority Business Enterprise and adopting 7VAC13-20, Regulations to Govern the Certification of Small, Women-Owned, and Minority-Owned Businesses.*

Summary:

*This regulatory action (i) repeals Regulations to Govern the Certification of Small, Women- and Minority-Owned Businesses (7VAC10-21) and (ii) creates a new regulation with provisions (a) establishing minimum requirements for the certification of small, women-owned, and minority-owned businesses pursuant to Chapter 16.1 (§ 2.2-1603 et seq.) of Title 2.2 of the Code of Virginia and (b) providing a process for evaluating local, state, private sector, and federal certification programs that meet those requirements.*

CHAPTER 20

REGULATIONS TO GOVERN THE CERTIFICATION OF SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESSES

7VAC13-20-10. Definitions.

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

"Affiliate" means a business that is connected in some way, whether financially or legally, to a business that has applied to the department for certification as a small, women-owned, or minority-owned business (see the federal Small Business Administration regulations, 13 CFR Part 121). The following requirements, conditions, and factors are applicable:

1. Businesses are affiliates of each other when, either directly or indirectly:

a. One business controls or has the power to control the other;

b. A third party controls or has the power to control both;

c. An identity of interest between or among parties exists such that affiliation may be found; or

d. One business or company has ownership, direct or indirect, of 10% or more of the voting stock of another business. (See the Investment Company Act, 15 USC § 80a-2.)

2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the small, women-owned, or minority-owned business certification program.

"Agent" means a person that (i) has the authority to act on behalf of a principal in transactions with third parties; (ii) is subject to the principal's control; and (iii) does not have title to the principal's property.

"Appeal" means a written request by an applicant to reconsider a denial or revocation of certification.

"Applicant" means any business that applies to the department for certification or recertification as a small, women-owned, or minority-owned business.

"Application" means the documents the department requires the applicant to submit in the course of certification or recertification, including the application form the applicant submits under penalty of perjury, which may include any additional documentation that the department requests that the applicant submit, and any information or report that the department generates during or upon completion of an onsite visit.

"Broker" means a person who acts as an intermediary between a buyer and seller.

"Business" means any legal entity organized in the United States or a commonwealth or territory of the United States that regularly engages in lawful commercial transactions for profit.

"Certification" means the same as that term is defined in § 2.2-1604 of the Code of Virginia.

"Certified" means the status accorded to an applicant upon the department's determination that the applicant has satisfied the requirements for certification as a small, women-owned, or minority-owned business.

"Control" means the power to direct the operation and management of a business as evidenced through governance documents and actual day-to-day operation.

"Corporation" means a legal entity that is incorporated under the law of a state, the United States, or a commonwealth or territory of the United States.

"Day" means any day except Saturday, Sunday, and legal state holidays unless otherwise noted.

"Dealer" means a person or business that has the exclusive or nonexclusive authority to sell specified goods or services on behalf of another business.

"Department" means the Department of Small Business and Supplier Diversity.

"Director" means the Director of the Department of Small Business and Supplier Diversity or his designee.

"Expiration" means the date on which the director specifies that a certified business will cease to be certified.

"Franchise" means a contractual arrangement characterized by the authorization granted to someone to sell or distribute a company's goods or services in a certain area.

"Franchisee" means a business or group of businesses established or operated under a franchise agreement.

"Individual" means a natural person.

"Joint venture" means a formal association of two or more persons or businesses for the purpose of carrying out a time-limited, single business enterprise for profit, in which the associated persons or businesses combine their property, capital, efforts, skills, or knowledge, and in which the associated persons or businesses exercise control and management and share in profits and losses in proportion to their contribution to the business enterprise.

"Limited liability company" means a specific type of legal entity that is in compliance with the applicable requirements of the law of its state of formation.

"Manufacturer's representative" means an agent whose principal is a manufacturer or group of manufacturers.

"Minority individual" means the same as that term is defined in § 2.2-1604 of the Code of Virginia.

"Onsite visit" means a visit by department representatives to the applicant's physical place of business to verify the applicant's representations submitted to the department in the course of certification or recertification.

"Ownership" means an equity, a partnership, or a membership interest in a business.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit.

"Person" means a natural person or a business.

"Principal" means a person who contracts with another to act on the contracting person's behalf subject to that person's control.

"Principal place of business" means the physical business location where the business maintains its headquarters, where the business's books and records are kept, and where the natural persons who direct, control, and manage the business's day-to-day operations are located. If the offices from which management is directed and where the business records are

kept are in different locations, the department will determine the principal place of business.

"Pro forma" means as a matter of form or assumed information.

"Recertification" means the process by which a business applies to the department for renewed or continued status as a certified business.

"Record" means the materials submitted in support of an application for certification or recertification, which may include the application, supporting documentation, and additional materials obtained by the department in the course of the application, certification, or recertification process.

"Sole proprietorship" means a business whose assets are wholly owned by a single person.

"Virginia-based business" means a business that has its principal place of business in Virginia.

## **7VAC13-20-20. Confidentiality.**

A. The department shall take necessary steps to ensure the confidentiality of documents submitted in support of an application for certification that are not public records within the definition of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

B. Any financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq. of the Code of Virginia), provided to the department as part of any application for certification or recertification as a small, women-owned or minority-owned business are excluded from the provisions of the Virginia Freedom of Information Act pursuant to § 2.2-3705.6 of the Code of Virginia, but may be disclosed by the department in its discretion where such disclosure is not prohibited by law.

C. In order for such financial records or trade secrets to be excluded from the Virginia Freedom of Information Act, the business shall (i) invoke such exclusion upon submission of data or other materials for which protection from disclosure is sought; (ii) identify the data or other materials for which protection is sought; and (iii) state the reason why protection is necessary.

## **7VAC13-20-30. False or misleading information.**

A. Any applicant that knowingly provides false or misleading information on an application for certification or recertification or in supporting documentation shall be denied certification and shall not be permitted to reapply for certification.

B. In addition, the applicant may be referred to the Commonwealth's Attorney for the City of Richmond for possible criminal prosecution for a misdemeanor or a felony under § 18.2-213.1 or 18.2-498.3 of the Code of Virginia.

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## **7VAC13-20-40. Eligible small business.**

In general, a business may be certified as a small business if it meets the definition of small business provided in § 2.2-1604 of the Code of Virginia.

## **7VAC13-20-50. Eligible micro business.**

A business may be certified as a micro business if it is first certified as a small business pursuant to 7VAC13-20-40 and, together with its affiliates, has 25 or fewer employees and average annual gross receipts of \$3 million or less averaged over the previous three years.

## **7VAC13-20-60. Eligible women-owned business.**

In general, a business may be certified as a women-owned business if it meets the definition of women-owned business as provided in § 2.2-1604 of the Code of Virginia.

## **7VAC13-20-70. Eligible minority-owned business.**

A. In general, a business may be certified as a minority-owned business if:

1. It meets the definition of minority-owned business provided in § 2.2-1604 of the Code of Virginia; and
2. The minority owner is regarded as such by the community of which the person claims to be a part.

B. Being born in a country does not, by itself, define an individual as a minority individual pursuant to § 2.2-1604 of the Code of Virginia. In making the determination whether a person is a minority individual, the department may be required to determine whether the person is regarded as a minority individual by the community of which he claims to be a part. In making this determination, the department may consider whether:

1. The person regularly describes himself, in printed materials and orally, as a member of the community;
2. Whether the person historically has held himself out as a member of the community;
3. Whether the individual is a member of and actively participates in business, educational, charitable, civic, or community organizations, or activities made up of or traditionally identified with or attended by members of the community; and
4. Whether other members of the community describe the person as a fellow member of the community.

C. The department may request such additional information as it may reasonably need to support an individual's claim that he is a minority individual. In determining whether a minority individual is regarded as such by the community, the department shall consider all the facts in the record viewed as a whole.

## **7VAC13-20-80. Eligible out-of-state business enterprise.**

The department may certify a non-Virginia-based business if:

1. It meets the applicable eligibility standards for certification as a small, women-owned, or minority-owned business; and

2. The state in which the business has its principal place of business does not deny a like certification to a Virginia-based small, women-owned, or minority-owned business or provide a preference to small, women-owned, or minority-owned firms that is not available to Virginia-based businesses.

## **7VAC13-20-90. General provisions.**

A. In determining ownership and control, the department will consider all the facts in the record, viewed as a whole, as they appear at the time of the application.

B. An eligible applicant will not be refused certification based solely on historical information indicating a lack of 51% ownership or control of the applicant by individuals in the case of a small business or by a woman or women or by a minority individual or individuals at some time in the past if the applicant meets the ownership and control standards at the time of application. A business will not be certified, however, if it appears from the record that the business was organized or its ownership structure or control changed for the purpose of qualifying for certification as a small, women-owned, or minority-owned business.

C. An eligible applicant will not be refused certification solely on the basis that it is a newly formed business.

## **7VAC13-20-100. Ownership.**

A. The ownership by women, minority, or individual owners (in the case of a small business) must be real, substantial, and continuing going beyond the pro forma ownership of the business.

B. Records of the applicant's business arrangements must demonstrate that the women, minority, or individual owners who the applicant claims to have ownership interests in the applicant's business share in all risks and profits in proportion to their ownership interests.

C. Women, minority, or individual owners who the applicant claims to have an ownership interest in the applicant's business as evidenced by securities must hold the securities directly or in a trust as described in subsection I of this section.

D. Contribution of capital or expertise.

1. Contribution of capital, expertise, or both by women, minority, or individual owners to acquire their ownership interest shall be real and substantial and be in proportion to the interests acquired.

2. Insufficient contributions shall include promises to contribute capital or expertise in the future; a note or notes payable to the business or its owners who are not themselves women, minority, or individual owners; or the mere participation as an employee.

E. In a sole proprietorship, the woman, minority, or individual applying for certification must own 100% of the business and its assets.

## F. Corporations.

1. In a corporate form of organization, women, minority, or individual owners must own at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.

2. Any voting agreements among the shareholders must not dilute the beneficial ownership, the rights, or the influence of the women, minority, or individual owners of the stock or classes of stock of the corporation.

3. Women, minority, or individual owners shall possess the right to all customary incidents of ownership (e.g., ability to transfer stock, title possession, enter binding agreements, etc.).

## G. Partnerships.

1. General partnership. In a general partnership, women, minority, or individual owners must own at least 51% of the partnership interests.

### 2. Limited partnership.

a. In a limited partnership, the women, minority, or individual owners who are general partners must own at least 51% of the general partnership interest and exert at least 51% of the control among general partners. The women, minority, or individual owners who are general partners must receive at least 51% of the profits and benefits, including tax credits, deductions, and postponements distributed or allocable to the general partner.

b. In addition, the women, minority, or individual owners who are limited partners must own at least 51% of the limited partnership interests and receive at least 51% of the profits and benefits, including tax credits, deductions, and postponements distributed or allocable to the limited partners.

## H. Limited liability companies.

1. In a limited liability company, women, minority, or individual owners must own at least 51% of membership interests and have at least 51% of the management and control among the members.

2. The women, minority, or individual owners must also participate in all risks and profits of the organization at a rate commensurate with their membership interests.

I. Trusts. In order to be counted as owned by women, minority, or individual owners, securities held in a trust must meet the following requirements, as applicable:

1. Irrevocable trusts. The beneficial owner of securities held in an irrevocable trust is a woman, a minority individual, or an individual who is not a minor and all the trustees are women, minority individuals, or individuals provided that a financial institution may act as trustee.

2. Revocable trusts. The beneficial owner of securities held in a revocable trust is a woman, a minority individual, or an individual who is not a minor; all the grantors are women, minority individuals, or individuals; and all the trustees are women, minority individuals, or individuals provided that a financial institution may act as trustee.

3. Employee stock ownership plans (ESOPs). Securities owned by women, minority individuals, or individuals who are participants in an employee stock ownership plan qualified under 26 USC § 401, Internal Revenue Code, 1986, as amended, and held in a trust where all or at least 51% or more of the trustees are women, minority individuals, or individuals provided that a financial institution may act as trustee.

4. Other requirements. Businesses whose securities are owned in whole or part in a trust are not thereby exempt from the other requirements of this chapter.

J. Joint venture. In a joint venture, the women, minority, or individual owners must own at least 51% of the business venture, exert at least 51% of the control of the venture, and have made at least 51% of the total investment.

## **7VAC13-20-110. Control.**

The applicant must show evidence that the women, minority, or individual owners have control of the business. The following factors will be examined in determining who controls an applicant's business:

### 1. Governance.

a. The organizational and governing documents of an applicant (e.g., limited liability company operating agreements, partnership agreements, or articles of incorporation and bylaws) must not contain any provision that restricts the ability of the women, minority, or individual owners from exercising managerial control and operational authority of the business.

b. In reviewing governance documents and issues, special attention shall be given to:

(1) The composition of the business's governing body (e.g., board of directors or management committee);

(2) The functioning of the governing body;

(3) The content of shareholder's agreements, bylaws, or state incorporation statutes, and the extent to which such agreements, bylaws, or statutes affect the ability of the women, minority, or individual owners to direct the management and policy of the business; and

(4) In a business seeking certification as a women-owned or minority-owned business, a woman or a minority owner must hold the highest executive officer position in the company by whatever title.

### 2. Operation and management.

a. The women, minority, or individual owners must possess the power to direct or cause the direction of the

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management and policies of the business and to make the day-to-day decisions as well as major decisions on matters of management, policy, and operations. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the women, minority, or individual business owners.

b. A previous or continuing employer-employee relationship between or among present owners shall be carefully reviewed to ensure that the woman, minority, or individual employee-owner has management responsibilities and capabilities.

c. In the event that the actual management of the business is contracted or carried out by individuals other than the women, minority, or individual owners, those persons who have the ultimate power and expertise to hire and fire the managers can for this purpose be considered as controlling the business.

d. The applicants must show evidence that the women, minority, or individual owners have operational authority and managerial control of the applicant.

(1) Operational authority. For purposes of this section, "operational authority" means the extent to which the women, minority, or individual owners actually operate the day-to-day business. Assessments of operational control will rest upon the peculiarities of the industry of which the business is a part. In order to ascertain the level of operational control of the women, minority, or individual owners, the following will be considered:

(a) Experience. The women, minority, or individual owners shall have education, demonstrable working knowledge, or experience in the area of specialty or industry claimed in the certification application.

(b) Responsibility for decision making. The women, minority, or individual owners shall be able to demonstrate a role in making basic decisions pertaining to the daily operation of the business.

(c) Technical competence. The women, minority, or individual owners shall have technical competence in the industry or specialty of the applicant business or a working knowledge of the technical requirements of the business sufficient enough to critically evaluate the work of subordinates.

(2) Managerial control. For purposes of this section, "managerial control" is the demonstrated ability to make independent and unilateral business decisions necessary to guide the future and destiny of the business. Managerial control may be demonstrated in a number of ways. For women, minority, or individual owners to demonstrate the extent of their managerial control, the department will consider the following (not intended to be all inclusive) areas of routine business activity:

(a) The women, minority, or individual owners must produce documents that clearly indicate control of basic

business functions (e.g., authority to sign payroll checks and letters of credit, signature responsibility for insurance or bonds, authority to negotiate and execute contracts and financial services).

(b) Agreements for support services that do not impair the woman, minority, or individual owner's control of the company are permitted as long as the owner's power to manage the company is not restricted or impaired as determined by the department in its sole administrative discretion.

### 3. Independence.

#### a. Performance.

(1) The woman, minority, or individual owner's expertise must be indispensable to the business's potential success.

(2) The woman, minority, or individual owner shall have the ability to perform in the applicant's area of specialty or expertise without substantial reliance upon finances and resources (e.g., equipment, automobiles, facilities, etc.) of businesses that are not eligible for certification.

b. Test of independence. Recognition of the applicant as a separate and distinct entity by governmental taxing authorities shall not be a sole determinant of any applicant's assertions of independence. Test criteria include the following:

(1) Applicant's use of employees, equipment, expertise, facilities, etc., "shared" with or obtained from a company not eligible for certification.

(2) Financial transactions, such as accounts receivable, accounts payable, billing, order processing, are performed by a business that is not eligible for certification.

(3) Applicant's relationship with a business that is not eligible for certification that involves any long-term contract or lease agreements.

(4) Applicant's status as a party to any contract or lease agreement on terms at variance with industry standards or prudent business practices.

(5) Interlocking ownership of the applicant and a business not eligible for certification in the same industry.

(6) Common directors, officers, or members between the applicant and a business not eligible for certification.

(7) Receipt by the business not eligible for certification of financial benefits (i.e., profits, wages, etc.) that are not commensurate with the duties performed.

(8) Dependence on licenses, permits, insurance, or all three held by a business not eligible for certification in order to operate; failure to possess all legal requirements necessary to legally conduct business.

c. An agent, broker, dealer, or manufacturer's representative, unless it is the standard for the industry, generally does not qualify for certification.

d. A business that adds no material value or does not perform a commercially useful function in the provision of the products or services being supplied; has no ownership, financial responsibility, or legal liability; or does not possess or handle the item being procured with its own employees, equipment, or facilities generally does not qualify for certification, unless the business structure is the standard in the industry.

**7VAC13-20-120. Certifying franchises.**

A business operating under a franchise or license agreement may be certified if it meets the eligibility requirements. In addition:

1. The franchise agreement between the franchisor and the franchisee seeking certification must not contain any provision that unreasonably restricts the ability of the women, minority, or individual owners from exercising managerial control and operational authority of the business.

2. In reviewing the franchise agreement, special attention shall be given to circumstances that, for certification purposes, shall be considered as restricting control and authority of the women, minority, or individual owners. These include:

- a. Termination of the franchise agreement by the franchisor without cause;
- b. Lack of ownership of receivables by the franchisee;
- c. Exclusive ownership of account receivables, contracts, or both by the franchisor;
- d. Restrictions on the sale of the business below market value;
- e. Terms and conditions not related to the brand or systems that can be altered without franchisee's notification, approval, or both;
- f. Contracts are prepared and approved by the franchisor;
- g. Management decisions cannot be made independently by the franchisee;
- h. No financial risk is borne by the franchisee;
- i. Hiring and firing decisions cannot be made independently by the franchisee; or
- j. Equity interest in the franchise is owned by the franchisor.

3. Where there are inconsistencies between the standards and procedures in this section and other sections within this regulation, this section will prevail.

**7VAC13-20-130. General provisions.**

A. Applications for certification or recertification and other forms are available from and should be submitted to the Virginia Department of Small Business and Supplier Diversity at its principal place of business or through the department's website if available.

B. A business may withdraw its application for certification or recertification without prejudice at any time prior to the department's determination. The request to withdraw the application must be in writing and addressed to the director. An application for certification or recertification may be administratively closed or placed in inactive status by the department when:

- 1. The applicant has submitted insufficient information or failed to submit information in response to a written request for information by the department;
- 2. The applicant has voluntarily withdrawn its application; or
- 3. The business has been closed or is no longer operating.

**7VAC13-20-140. Procedures for initial certification of businesses previously certified by other qualifying local, state, private sector, or federal certification programs.**

A. A business certified by the department under this section shall be certified for a period of up to three years unless:

- 1. The certification is revoked by the department or the program issuing the original certification;
- 2. The business is no longer in business; or
- 3. The business is no longer eligible as a small, women-owned, or minority-owned business.

B. A business certified under this section is responsible for notifying the department of any change in legal structure, ownership, control, management, or status of the business or its certification within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

C. It shall be the responsibility of the certified business to notify the department of any change of name, address, or contact information and to keep the department informed of its current address and contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification. The department shall not be liable or responsible if a certified business fails to receive notices, communications, or correspondence based upon the certified business's failure to notify the department of any change of address or to provide correct address and contact information.

**7VAC13-20-150. Procedures for initial certification.**

A. Any business that meets the criteria for certification may file an official application with the department.

B. The application will be reviewed initially for completeness. The department may conduct an onsite visit of the business to obtain or clarify any information. The onsite visit may be scheduled or unannounced.

C. The department may request the applicant to provide additional information or documentation to provide clarification and substantiation of certain criteria or to resolve any ambiguities or inconsistencies in an application.

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D. The department may impose a time limit in which the applicant must provide the requested information. A reasonable extension may be given by the department for good cause shown by the applicant. Requests for time extensions must be made to the department in writing and should specify the length of time for which the extension is being requested and the reasons for the request. Failure to provide such information or documentation shall render the application administratively closed.

E. After reviewing the application, the department shall issue either a notice of certification or a notice of denial of certification stating the reasons for denial and offering the applicant the opportunity for an informal hearing pursuant to § 2.2-4019 of the Code of Virginia.

F. A business certified by the department under this section shall be certified for a period of three years unless (i) the certification is revoked before the end of the three-year period, (ii) the business is no longer in business, or (iii) the business is no longer eligible as a small, women-owned, or minority-owned business.

G. The applicant shall be responsible for notifying the department immediately of any change in legal structure, ownership, control, management, or status of the business within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

H. It shall be the responsibility of the applicant, the certified business, or both to notify the department of any change of name, address, or contact information and to keep the department informed of the current address and contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so within 30 calendar days of such change may be grounds for revocation of certification. The department shall not be liable or responsible if a certified business fails to receive notices, communications, or correspondence based upon the certified business's failure to notify the department of any change of address or to provide correct address and contact information.

## **7VAC13-20-160. Procedures for renewal of certification or recertification.**

A. To maintain its certification status, a certified business must apply to renew its certification prior to the end of the three-year certification period using the forms and procedures specified by the department.

B. The certification of a business that fails to apply for renewal or recertification prior to the end of the three-year certification period shall terminate automatically on the expiration of the certification.

C. The department may, but in no event shall be required to, notify the business of the pending expiration of its certification prior to the certification expiration.

## **7VAC13-20-170. Department-initiated evaluation.**

The department may at its discretion evaluate any local, state, private sector, or federal certification program to determine whether it meets the minimum eligibility, ownership, and control requirements for certification of small, women-owned, and minority-owned businesses as set forth in this chapter.

## **7VAC13-20-180. Denial of certification.**

The department may deny an application for certification or recertification for any of the following reasons:

1. The department determines that the applicant fails to meet the eligibility, ownership, or control standards for certification;
2. The applicant fails to furnish the department with requested information within the allotted time; or
3. The applicant knowingly provides false or misleading information to the department.

## **7VAC13-20-190. Notice of denial.**

The department shall notify the applicant of the denial of its application for certification or recertification in writing no later than 15 days from the date of the decision by the department. The notice shall state the reasons for the denial of certification or recertification and offer the applicant the opportunity to appeal the decision as provided in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

## **7VAC13-20-200. Criteria for revocation of certification.**

The department may revoke the certification of a business that it finds no longer qualifies as a small, women-owned, or minority-owned business. Grounds for revocation of certification may include the following:

1. The organization, structure, management, or control of the certified women-owned or minority-owned business has changed to the extent that it no longer satisfies the requirement of ownership, control, and active management of the business by women or minority individuals.
2. The number of employees or revenues exceeds the requirements for certification of a small business or the small business no longer satisfies the requirements to be independently owned and operated.
3. The business fails to submit the required documentation or to comply with a reasonable request from the department for records or information within the allotted time.
4. The business knowingly provides false or misleading information in support of its initial application or its application for recertification or in response to the department's request for records or information.
5. The business is based in a state that denies like certifications to Virginia-based small, women-owned, or minority-owned businesses or that provides a preference

for small, women-owned, or minority-owned businesses that is not available to Virginia-based businesses.

**7VAC13-20-210. Revocation procedure.**

**A. Initiation of the revocation process.**

1. The department may, at the request of any state agency or at its own discretion, examine any certified business to verify that it continues to meet the applicable eligibility requirements for certification as a small, women-owned, or minority-owned business.

2. Any individual or firm that believes that a business certified by the department does not qualify under the standards of eligibility for certification may request that the department undertake a review to verify that the certified business continues to meet the eligibility requirements for certification. Such requests must be written and signed and must contain specific identification of the affected business and the basis for the belief that the business does not meet the eligibility standards. After reviewing the request, the department shall determine whether to conduct a review of the business. The department's decision may not be appealed by the party seeking such verification. Written requests for verification of continued eligibility of a certified business for certification should be sent to the Virginia Department of Small Business and Supplier Diversity at its principal place of business.

**B. Review procedure.**

1. If the department determines to conduct a review of a business's certification, the department shall notify the business in writing that the department is reviewing its certification, explaining the basis for its decision to conduct a review.

2. The department may request records or other documentation from the business, may conduct an onsite visit of the business facilities, and may question other parties during its review.

3. The department may impose a time limit of not less than 15 days in which the business must respond to a request for records or other documentation. A reasonable extension may be given by the department for good cause shown by the business. Requests for time extensions should be made in writing to the department and should specify the length of time for which the extension is being requested and the reason for the request. If the business fails to provide the information in the time requested, the department shall issue a notice of intent to revoke the certification.

4. Upon completion of the review, a written report shall be prepared, which shall include:

- a. A statement of the facts leading to the review;
- b. A description of the process followed in the review;
- c. The findings of the review; and
- d. A conclusion that contains a recommendation for disposition of the matter.

**7VAC13-20-220. Reapplication.**

A. A business whose application for certification has been denied may reapply for the same category of certification 12 months after the date on which the business receives the notice of denial if no appeal is filed or 12 months after the appeal is exhausted. An applicant denied certification as a women-owned or minority-owned business may reapply for certification as a small business without delay if otherwise eligible.

B. The applicant may request a waiver of the 12-month reapplication period from the department director by submitting a written request for reconsideration and providing a reasonable basis for the waiver. The director or his designee, in his discretion, shall render a final decision regarding the request for reconsideration and waiver within 30 days, which determination shall not constitute a case decision subject to appeal.

C. A business whose certification has been revoked may not reapply for certification in the same classification.

**7VAC13-20-230. Appeals from a denial of recertification or revocation of certification.**

A. An applicant whose application for recertification has been denied by the department, or a certified business whose certification has been revoked by the department (complainant), shall have the right to an informal fact-finding proceeding before the designated representative of the department to present the grounds upon which the complainant believes the denial of certification should be reconsidered. A decision of the department will only be reconsidered if the complainant can demonstrate that a material mistake of fact formed the basis for the department's review of the application or other relevant record, or if the department's decision was not in accordance with applicable laws or regulations.

B. Any request for an informal fact-finding proceeding pursuant to subsection A of this section must be submitted in writing to the department within 10 days of the date on which the notice of denial of recertification or the notice of revocation was sent by the department. The request for an informal fact-finding proceeding shall include a clear, brief summary of all factual errors and legal grounds upon which the complainant intends to rely. Within 30 days of the receipt of a timely request for an informal fact-finding proceeding, the department shall issue a notice stating the date and time of the informal fact-finding proceeding. The informal fact-finding proceeding will not be scheduled less than seven and not more than 45 days from the date of the notice. Within 60 days from the date on which the informal fact-finding proceeding was held, the department shall issue a notice, in writing, stating the final decision of the department.

C. Either party to the informal fact-finding proceeding is entitled to have counsel present, but no party shall be required to be represented by counsel at or in connection with the informal fact-finding proceeding.

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**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 (7VAC13-20)

[Documents Required for All Certification Applicants \(rev. 3/2016\)](#)

[Online Certification Application - complete online at https://egov1.virginia.gov/mbe\\_cert/cgi-bin/intro.cgi](https://egov1.virginia.gov/mbe_cert/cgi-bin/intro.cgi)

[Owner Title Sheet - SWaM and Micro Business Certification Program \(rev. 1/2015\)](#)

[Third Party Challenges or Complaints - Form A: Preliminary Information \(undated\)](#)

[Request for Informal Hearing \(rev. 7/2015\)](#)

[Notice of Change of Contact Information \(rev. 1/2016\)](#)

[Request for Additional Certified SWaM Type \(undated\)](#)

[Virginia Employment Service Organization Certification Application \(rev. 7/2015\)](#)

VA.R. Doc. No. R16-4774; Filed July 15, 2016, 9:20 a.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Fast-Track Regulation

**Title of Regulation:** **9VAC25-610. Groundwater Withdrawal Regulations (Rev. A15) (amending 9VAC25-610-10; adding 9VAC25-610-42).**

**Statutory Authority:** § 62.1-256 of the Code of Virginia.

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

**Public Comment Deadline:** September 7, 2016.

**Effective Date:** September 22, 2016.

**Agency Contact:** Gary Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4019, or email gary.graham@deq.virginia.gov.

**Basis:** Section 62.1-44.15 of the State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia) and subdivision 8 of § 62.1-256 of the Virginia Groundwater Management Act (Chapter 25 of Title 62.1 of the Code of Virginia) authorize the State Water Control Board to adopt such regulations as it deems necessary to administer and enforce the provisions of these chapters.

Subdivision 3 of § 62.1-256 of the Code of Virginia provides that the State Water Control Board shall study, investigate, and assess groundwater resources and all problems concerned with the quality and quantity of groundwater located within the Commonwealth.

Subdivision 4 of § 62.1-256 of the Code of Virginia allows the board to require any person withdrawing groundwater for any purpose anywhere in the Commonwealth, whether or not declared to be a groundwater management area, to furnish to the board such information with regard to such groundwater withdrawal and the use thereof as may be necessary to carry out the provisions of Chapter 25.

Subdivision 9 of § 62.1-256 of the Code of Virginia provides that the board has the power to delegate to its executive director, with some exceptions, any of the powers and duties invested in it to administer and enforce the provisions of Chapter 25.

Chapter 465 of the 2015 Acts of Assembly amended § 62.1-258 of the Code of Virginia to require that each private well, as defined in § 32.1-176.3 of the Code of Virginia, that is constructed in a groundwater management area be registered by the certified water well systems provider with the board within 30 days of the completion of the construction and that such registration shall be in a format prescribed by the board. It further requires the board and the State Board of Health to develop joint registration forms and processes.

**Purpose:** The purpose of this regulation is to protect the water quality and quantity in aquifers within the Commonwealth of Virginia and thereby to protect the health, safety, and welfare of its citizens.

The purpose of this regulatory action is to incorporate the statutory changes in Chapter 465 of the 2015 Acts of Assembly, which amended § 62.1-258 of the Code of Virginia to require registration of private wells constructed in groundwater management areas. Private well withdrawals make up an estimated one-third of all groundwater withdrawn from the aquifer system. These withdrawals are growing at a faster rate than all other uses of groundwater. The information provided will identify the location of the wells and the aquifer from which the private wells are taking groundwater, allowing the impact of these withdrawals to be evaluated and taken into consideration in future groundwater management decisions. The proposed amendment will also provide some necessary implementation and information provisions.

**Rationale for Using Fast-Track Rulemaking Process:** Except for the specific information to be required on the registration form and some minor implementation provisions, the language of Chapter 465 of the 2015 Acts of Assembly allows little leeway in developing the regulatory requirements. Certified water well systems providers are already familiar with the types of registration information required of other types of wells and the Department of Environmental Quality (DEQ) and the Department of Health have already reached agreement concerning the information

to be required for registration of private wells. Controversy is not expected.

**Substance:** A new section is added to 9VAC25-610 to require registration of private wells to specify who must submit the registration and to whom it must be submitted, to specify in what time period the registration must be submitted, and to list the minimum information that DEQ needs to identify the wells in the field and to evaluate the impact of private well water withdrawals. In addition, two definitions are added to an existing section, which are necessary to support the new requirements.

**Issues:** There are no advantages or disadvantages for the public at large resulting from this amendment. The amendment will ensure that the resource is better managed for all users and the public in areas where the sustainability of groundwater is threatened.

The advantage to the department is better information about the potential for private well water withdrawals resulting in better management of groundwater resources. There is no disadvantage to the department resulting from this amendment.

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

Summary of the Proposed Amendments to Regulation. Chapter 465 of the 2015 Acts of Assembly amended § 62.1-258 of the Code of Virginia, in part, to add a requirement that private wells constructed in a ground water management area be registered with the State Water Control Board (Board) by the certified water well systems provider within 30 days of the completion of well construction. Consequently, the Board proposes to amend this regulation to: 1) include the above statutory requirement for registration, 2) specify that the registration be submitted to the Department of Environmental Quality (DEQ) on a form, paper or electronic, provided by DEQ, 3) list the information required for registration, and 4) add relevant definitions.

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

**Estimated Economic Impact.** Including the statutory requirement for registration, specifying that the registration be submitted to DEQ, list the information required for registration, and adding relevant definitions all are beneficial in improving clarity and do not add costs. The required registration of private wells constructed in a ground water management area enables DEQ to track the growth of private well water withdrawals and evaluate the relative impact of private wells on the aquifer system. This will result in a more robust understanding of the demands on the aquifers in areas where the sustainability of groundwater is threatened, and it will help ensure that the resource is better managed for all users and the public.

Water well systems providers must already obtain a pre-construction permit from the Virginia Department of Health

(VDH) prior to construction of a new well. The process of getting a well drilled requires that the provider collect information at many parts of that process. Much of the required information is known before drilling starts, since it is determined by well owner's needs, what is known in advance about the water table and substrate, the detail necessary for a contract, and professional well construction standards. Other required information is collected during the well drilling process and some is collected after the well is drilled. Thus the majority of the information required for the registration form falls into one of these categories and would either be known or easily obtained as part of that process. In most cases, the providers already collect this information.

The information that is most likely new and something that may have to be researched is the well location information. But nowadays, latitude, longitude, map numbers, and sometimes subdivision plat information are either available using a GPS phone or are readily available on the Internet. Additionally, according to DEQ staff, VDH and DEQ staff are prepared to readily assist with obtaining this location information, so it is not expected that the provider would have to spend a large amount of time doing new research to collect the required information.

Thus, considering the benefit for managing aquifers in areas where the sustainability of groundwater is threatened and the relatively small additional time cost for water well systems providers, the benefits likely exceed the costs for all proposed changes.

**Businesses and Entities Affected.** The proposed amendments affect water well systems providers that construct private wells. There are approximately 50 such firms, all of which qualify as small businesses, in the Commonwealth.<sup>1</sup>

**Localities Particularly Affected.** The proposed amendments particularly affect localities within ground water management areas. Two ground water management areas are established in 9VAC25-600-20, the Eastern Virginia Groundwater Management Area and the Eastern Shore of Virginia Groundwater Management Area. The Eastern Virginia Groundwater Management Area consists of the Counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford Counties east of Interstate 95; and the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg. The Eastern Shore of Virginia Groundwater Management Area consists of the Counties of Accomack and Northampton.

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

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

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Costs and Other Effects. Chapter 465 of the 2015 Acts of Assembly amended § 62.1-258 of the Code of Virginia, in part, to add a requirement that private wells constructed in a ground water management area be registered with the State Water Control Board. The proposed amendments to the regulation specify registration requirements that will require small water well systems providers to fill out and submit a registration form (online in practice) for each such completed well. This introduces a time cost for these small firms; but since the required information should in most cases be readily available, the time cost will in most cases be small.

Alternative Method that Minimizes Adverse Impact. There is no apparent alternative method that will meet the intended policy goal at a smaller cost for small businesses.

Adverse Impacts:

Businesses. Pursuant to legislation, the proposed amendments to the regulation specify registration requirements that will require water well systems providers to fill out and submit a registration form (online in practice) for each such completed well. This introduces a time cost for these firms; but since the required information should in most cases be readily available, the time cost will in most cases be small.

Localities. The proposed amendments are unlikely to adversely affect localities.

Other Entities. The proposed amendments are unlikely to adversely affect other entities.

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<sup>1</sup>Data Source: DEQ

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:

*Chapter 465 of the 2015 Acts of Assembly requires that private wells constructed in a groundwater management area be registered with the State Water Control Board by the certified water well systems provider within 30 days of the completion of well construction. To conform to the chapter, the amendments (i) require registration of private wells; (ii) specify that the registration be submitted to the*

*Department of Environmental Quality on a form, paper or electronic, within 30 calendar days of completion of well construction; (iii) establish the minimum information necessary for the department to identify the wells in the field and to evaluate the impact of private well water withdrawals; and (iv) add two definitions to support the new requirements.*

Part I

General

## **9VAC25-610-10. Definitions.**

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm operations, but does not include withdrawals for landscaping activities or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of groundwater, without recycle of said waters to their source of origin.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

~~"Director" means the Director of the Department of Environmental Quality.~~

"Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with such investigations do not result in unmitigated adverse impacts to existing groundwater users. Geophysical investigations include, but are not limited to, pump tests and aquifer tests.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Human consumption" means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person ~~who~~ that currently has an effective groundwater withdrawal permit issued under the Ground Water Act of 1992.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Private well" means, as defined in § 32.1-176.3 of the Code of Virginia, any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use or other nonpublic water well.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to § 62.1-44.15:02 of the Code of Virginia.

"Salt water intrusion" means the encroachment of saline waters in any aquifer that creates adverse impacts to existing groundwater users or is counter to the public interest.

"Special exception" means a document issued by the board for withdrawal of groundwater in unusual situations where requiring the user to obtain a groundwater withdrawal permit

would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Supplemental drought relief well" means a well permitted to withdraw a specified amount of groundwater to meet human consumption needs during declared drought conditions after mandatory water use restrictions have been implemented.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Water well systems provider" means any individual who is certified by the Board for Contractors in accordance with § 54.1-1128 et seq. of the Code of Virginia and who is engaged in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source heat exchangers, and other equipment associated with the construction, removal, or repair of water wells, water well systems, and ground source heat pump exchangers to the point of connection to the ground source heat pump.

"Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn.

"Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties.

## **9VAC25-610-42. Private well registration.**

A. Each certified water well systems provider shall register with the board each private well, as defined in 9VAC25-610-10, that is constructed in a groundwater management area after September 22, 2016.

B. The registration shall be made within 30 calendar days of the completion of well construction.

C. Such registration shall be submitted to the department on a form, paper or electronic, provided by the department for registration purposes.

D. The following information, at a minimum, shall be required for each registration:

### 1. Contact information, including:

a. The well owner's name and mailing address; and

b. The certified water well system provider's name and mailing address.

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2. The well location, including:
  - a. The physical address, tax map number, or grid parcel identification number (GPIN) of the property at which the well is located;
  - b. The subdivision name and appropriate section, block and lot numbers, if applicable; and
  - c. The latitude, longitude, and datum of the well.
3. The type of use of the well water.
4. Well construction information, including:
  - a. The well designation name or number;
  - b. The start and completion dates of well construction;
  - c. The depth of the well and borehole depth;
  - d. Borehole sizes;
  - e. Height of casing above the land surface, if applicable;
  - f. Size, depth, and material weight per foot or wall thickness of the casing, if applicable;
  - g. Size, type, and mesh of the screen or water zones, if applicable; and
  - h. The type of grout, grouting method, and type of seal, if applicable.
5. If a pump test is conducted, the pump test information, including:
  - a. Date and duration of test;
  - b. Pre-pumped static water level; and
  - c. Stabilized measured pumping level and yield.
6. Production pump intake depth, if applicable.
7. Drillers log.
8. The certified water well system provider's certification statement.

VA.R. Doc. No. R16-4469; Filed July 8, 2016, 1:41 p.m.

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## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Fast-Track Regulation

**Title of Regulation: 12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-110).**

**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: September 7, 2016.**

**Effective Date: September 22, 2016.**

**Agency Contact: Emily McClellan, Regulatory Supervisor, 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, and § 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.**

**Purpose: The purpose of this action is to incorporate into the Virginia Administrative Code the current reimbursement practices for targeted case management. The reimbursement methodologies were required and approved by the Centers for Medicare and Medicaid Services (CMS) effective September 10, 2013, and have been in place since that time.**

In addition, references to community mental health services that used to include targeted case management, but no longer do, have been removed to correct a conflict between the community mental health regulations and the case management regulations. These regulations protect the health, safety, and welfare of the public in that they clarify reimbursement for targeted case management services that coordinate health care for high risk pregnant women, infants, and children; individuals with serious mental illness; and individuals with intellectual or developmental disabilities.

**Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track action because it is expected to be noncontroversial. The reimbursement practices contained in this regulation have been in place since September 2013 and were required and approved by CMS.**

**Substance: Currently, the Virginia Administrative Code does not include information on reimbursement practices for targeted case management for (i) high risk pregnant women, infants, and children up to age two years; (ii) seriously mentally ill adults, emotionally disturbed children, or youth at risk of serious emotional disturbance; (iii) individuals with intellectual disability; and (iv) individuals with developmental disability.**

This regulatory action describes the reimbursement practices for each of these types of targeted case management. The regulations contain a description of how reimbursement for each service is calculated, a description of the unit of service, a statement that private and governmental providers are reimbursed according to the same methodology, a prohibition of billing of overlapping case management services, and a requirement for providers to maintain information to support future rate updates. Including this information in the Virginia

Administrative Code will make these reimbursement practices transparent to Medicaid providers, Medicaid members, and the public.

In addition, references to community mental health services that used to include targeted case management, but no longer do, have been removed to correct a conflict between the community mental health regulations and the case management regulations.

**Issues:** The primary advantage of this regulatory action is that it will make current DMAS reimbursement practices for targeted case management transparent to Medicaid providers, Medicaid members, and the public. The changes will also remove a conflict between community mental health regulations and targeted case management regulations. This regulatory action does not create any disadvantages to the public, the agency, or the Commonwealth, as it does not change reimbursement practices that have been in effect since September 2013.

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

**Summary of the Proposed Amendments to Regulation.** The proposed regulation will clarify reimbursement methodology for targeted case management for certain groups and remove obsolete language.

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

**Estimated Economic Impact.** Prior to September 2013, the Centers for Medicare and Medicaid Services (CMS) required the Department of Medical Assistance Services (DMAS) to specifically address the reimbursement methodology for targeted case management for high risk pregnant women, infants, and children up to age two; seriously mentally ill adults, emotionally disturbed children, and youth at risk of serious emotional disturbance; and individuals with intellectual or developmental disability. DMAS adopted specific language in the state plan reflecting the reimbursement methodologies for these groups and CMS approved the changes on September 10, 2013. The changes requested by CMS simply clarified then existing methodology in practice and had no effect on reimbursement rates. DMAS now proposes to incorporate the specific language that has been in the state plan and that has been followed in practice since 2013 into the regulation. Thus, no significant economic effect is expected other than improving the clarity of the regulation.

In addition, the proposed changes will remove obsolete references to community mental health services in the targeted case management section. The community mental health services and regulations included targeted case management in the past, but both the services and regulations have been amended to remove those references on January 30, 2015.<sup>1</sup> However, the references to targeted case management have been inadvertently left in the current regulation. The obsolete references to community mental

health services are now being removed from these case management regulations to remove the conflict between the sections. This change is also not expected to create any significant economic effect other than improving the clarity of the regulation.

**Businesses and Entities Affected.** The providers of targeted case management include Virginia Department of Health, 40 Community Services Boards, and approximately 98 private support coordinators.

**Localities Particularly Affected.** The proposed changes apply statewide.

**Projected Impact on Employment.** No impact on employment is expected.

**Effects on the Use and Value of Private Property.** No impact on the use and value of private property is expected.

**Real Estate Development Costs.** No impact on real estate development costs is expected.

**Small Businesses:**

**Definition.** Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

**Costs and Other Effects.** Most of the support coordinators are small providers. The proposed amendments do not impose costs on them but will benefit them by improving the clarity of the regulation.

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

**Adverse Impacts:**

**Businesses.** The proposed amendments do not have an adverse impact on non-small businesses.

**Localities.** The proposed amendments will not adversely affect localities.

**Other Entities.** The proposed amendments will not adversely affect other entities.

<sup>1</sup>See <http://townhall.virginia.gov/ViewStage.cfm?stageid=6536>

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

**Summary:**

*The amendments incorporate the reimbursement methodology for targeted case management for (i) high risk pregnant women, infants, and children up to age two years; (ii) seriously mentally ill adults, emotionally disturbed children, or youth at risk of serious emotional disturbance; (iii) individuals with intellectual disability; and (iv) individuals with developmental disability. The amendments also remove obsolete references to community*

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*mental health services to resolve a conflict between the community mental health regulations and the case management regulations.*

## **12VAC30-80-110. Fee-for-service: case management.**

~~A. Targeted case management for high risk pregnant women and infants up to two years of age, for community mental health and intellectual disability services, and for individuals who have applied for or are participating in the Individual and Family Developmental Disability Support Waiver program (IFDDS Waiver) shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.~~

~~B. A. Targeted case management for early intervention (Part C) children.~~

~~1. Targeted case management for children from birth to three years of age who have developmental delay and who are in need of early intervention is reimbursed at the lower of the state agency fee schedule or the actual charge (charge to the general public). The unit of service is monthly one month. All private and governmental fee-for-service providers are reimbursed according to the same methodology. The agency's rates are effective for services on or after October 11, 2011. Rates are published on the agency's website at [www.dmas.virginia.gov](http://www.dmas.virginia.gov).~~

~~2. Case management shall not be billed when it is an integral part of another Medicaid service including, but not limited to, intensive community treatment services and intensive in-home services for children and adolescents.~~

~~3. 2. Case management defined for another target group shall not be billed concurrently with this case management service except for case management services for high risk infants provided under 12VAC30-50-410. Providers of early intervention case management shall coordinate services with providers of case management services for high risk infants, pursuant to 12VAC30-50-410, to ensure that services are not duplicated.~~

~~4. 3. Each entity receiving payment for services as defined in 12VAC30-50-415 shall be required to furnish the following to DMAS, upon request:~~

~~a. Data, by practitioner, on the utilization by Medicaid beneficiaries of the services included in the unit rate; and~~

~~b. Cost information used by practitioner.~~

~~5. 4. Future rate updates will be based on information obtained from the providers. DMAS monitors the provision of targeted case management through post-payment review (PPR). PPRs ensure that paid services were rendered appropriately, in accordance with state and federal policies and program requirements, provided in a timely manner, and paid correctly.~~

B. Reimbursement for targeted case management for high risk pregnant women and infants and children.

1. Targeted case management for high risk pregnant women and infants up to two years of age defined in 12VAC30-50-410 shall be reimbursed at the lower of the state agency fee schedule or the actual charge (charge to the general public). The unit of service is one day. All private and governmental fee-for-service providers are reimbursed according to the same methodology. The agency's rates were set as of September 10, 2013, and are effective for services on or after that date. Rates are published on the agency's website at [www.dmas.virginia.gov](http://www.dmas.virginia.gov).

2. Case management may not be billed when it is an integral part of another Medicaid service.

3. Case management defined for another target group shall not be billed concurrently with the case management service under this subsection except for case management for early intervention provided under 12VAC30-50-415. Providers of case management for high risk pregnant women and infants and children shall coordinate services with providers of early intervention case management to ensure that services are not duplicated.

4. Each provider receiving payment for the service under this subsection will be required to furnish the following to the Medicaid agency, upon request:

a. Data on the hourly utilization of this service furnished to Medicaid members; and

b. Cost information used by practitioners furnishing this service.

5. Rate updates will be based on utilization and cost information obtained from the providers.

C. Reimbursement for targeted case management for seriously mentally ill adults and emotionally disturbed children and for youth at risk of serious emotional disturbance.

1. Targeted case management services for seriously mentally ill adults and emotionally disturbed children defined in 12VAC30-50-420 or for youth at risk of serious emotional disturbance defined in 12VAC30-50-430 shall be reimbursed at the lower of the state agency fee schedule or the actual charge (charge to the general public). The unit of service is one month. All private and governmental fee-for-service providers are reimbursed according to the same methodology. The agency's rates were set as of September 10, 2013, and are effective for services on or after that date. Rates are published on the agency's website at [www.dmas.virginia.gov](http://www.dmas.virginia.gov).

2. Case management for seriously mentally ill adults and emotionally disturbed children and for youth at risk of serious emotional disturbance may not be billed when it is an integral part of another Medicaid service.

**TITLE 14. INSURANCE**

**STATE CORPORATION COMMISSION**

**Final Regulation**

3. Case management defined for another target group shall not be billed concurrently with the case management services under this subsection.

4. Each provider receiving payment for the services under this subsection will be required to furnish the following to the Medicaid agency, upon request:

- a. Data on the hourly utilization of these services furnished to Medicaid members; and
- b. Cost information used by the practitioner furnishing these services.

5. Rate updates will be based on utilization and cost information obtained from the providers.

D. Reimbursement for targeted case management for individuals with intellectual disability or developmental disability.

1. Targeted case management for individuals with intellectual disability defined in 12VAC30-50-440 and individuals with developmental disabilities defined in 12VAC30-50-450 shall be reimbursed at the lower of the state agency fee schedule or the actual charge (the charge to the general public). The unit of service is one month. All private and governmental fee-for-service providers are reimbursed according to the same methodology. The agency's rates were set as of September 10, 2013, and are effective for services on or after that date. Rates are published on the agency's website at [www.dmas.virginia.gov](http://www.dmas.virginia.gov)

2. Case management for individuals with intellectual disability or developmental disability may not be billed when it is an integral part of another Medicaid service.

3. Case management defined for another target group shall not be billed concurrently with the case management service under this subsection.

4. Each provider receiving payment for the service under this subsection will be required to furnish the following to the Medicaid agency, upon request:

- a. Data on the hourly utilization of this service furnished to Medicaid members; and
- b. Cost information by practitioners furnishing this service.

5. Rate updates will be based on utilization and cost information obtained from the providers.

VA.R. Doc. No. R16-4522; Filed July 11, 2016, 12:44 p.m.



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

**Title of Regulation:** **14VAC5-345. Rules Governing Rate Stabilization in Property and Casualty Insurance (adding 14VAC5-345-10 through 14VAC5-345-70).**

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

**Effective Date:** September 1, 2016.

**Agency Contact:** Phyllis Oates, Principal Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9279, FAX (804) 371-9279, or email [phyllis.oates@scc.virginia.gov](mailto:phyllis.oates@scc.virginia.gov).

**Summary:**

*The new rules implement the provisions of § 38.2-1906 F of the Code of Virginia, including the amendments enacted in Chapter 277 of the 2016 Acts of Assembly, that allow limits on rate increases and decreases. The new rules establish uniform standards for all rate stabilization plans, filing requirements, and prohibited actions for insurers that elect to set limits on rates.*

AT RICHMOND, JULY 14, 2016

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00071

Ex Parte: In the matter of Adopting  
New Rules Governing Rate Stabilization  
In Property and Casualty Insurance

**ORDER ADOPTING RULES**

By Order to Take Notice ("Order") entered May 5, 2016, all interested parties were ordered to take notice that subsequent to July 1, 2016, the State Corporation Commission ("Commission") would consider the entry of an order to adopt new rules at Chapter 345 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Rate Stabilization in Property and Casualty Insurance," which are to be set out at 14 VAC 5-345-10 through 14 VAC 5-345-70 with forms ("Rules").

The Rules were proposed by the Commission's Bureau of Insurance ("Bureau") to implement the provisions of § 38.2-1906 F of the Code of Virginia, in particular the amendments to enacted Chapter 277 of the 2016 Acts of Assembly (HB

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324) that allow limits on rate increases and rate discounts. The Rules establish standards, filing requirements and prohibited actions for insurers who wish to set limits on rates.

The Order required that any person requesting a hearing on the Rules shall have filed such request for a hearing with the Clerk of the Commission ("Clerk") on or before July 1, 2016, and that all interested persons file with the Clerk their comments in support of or in opposition to the amendments to the Rules on or before this same date. No request for a hearing was filed with the Clerk.

On July 1, 2016, general comments were filed by representatives for Nationwide Mutual Insurance Company and the Property Casualty Insurers Association of America. These comments did not request changes to the proposed new Rules, but instead, sought to clarify several terms used in the proposed new Rules as well as several requirements pertaining to the capping of individual rating factors. The Bureau provided clarification of these issues in its Response to Comments, which it filed with the Clerk on July 11, 2016, and recommends that no changes be made to the Rules and that they be adopted as proposed.

NOW THE COMMISSION, having considered this matter, is of the opinion that the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Rate Stabilization in Property and Casualty Insurance which are set out at 14 VAC 5-345-10 through 14 VAC 5-345-70 with forms, which are attached hereto and made a part hereof, are hereby ADOPTED to be effective September 1, 2016.

(2) AN ATTESTED COPY hereof, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Rebecca Nichols, who forthwith shall give further notice of the adopted rules by mailing a copy of this Order to all insurers licensed in the Commonwealth of Virginia to sell property and casualty insurance, and to all interested parties.

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

(4) This Order and the attached adopted Rules shall be posted on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

## CHAPTER 345 RULES GOVERNING RATE STABILIZATION IN PROPERTY AND CASUALTY INSURANCE

### **14VAC5-345-10. Purpose and applicability.**

A. The purpose of this chapter is to establish rules for the implementation of the provisions of § 38.2-1906 F of the Code of Virginia that allows an insurer to file with the commission rate or supplementary rate information to limit rate increases or rate decreases on (i) its renewal policies; (ii) policies acquired by an insurer from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or (iii) policies acquired by an agent book of transfer. This practice shall be known as a rate stabilization plan or capping.

B. This chapter shall apply to the classes of insurance defined in §§ 38.2-110 through 38.2-118, 38.2-120, 38.2-121, 38.2-122, 38.2-124 through 38.2-128, and 38.2-130 through 38.2-133 of the Code of Virginia and all insurers subject to the scope of Chapter 19 (§ 38.2-1900 et seq.) of Title 38.2 of the Code of Virginia as identified in § 38.2-1902 of the Code of Virginia. This chapter does not apply to workers' compensation and employers' liability insurance.

### **14VAC5-345-20. Definitions.**

"Commission" means the State Corporation Commission.

"Rate" means any rate of premium, policy fee, membership fee, or any other charge made by an insurer for or in connection with a contract or policy of insurance. The term "rate" shall not include a membership fee paid to become a member of an organization or association, one of the benefits of which is the purchasing of insurance coverage.

"Rate stabilization plan" or "capping" means a way to control or cap the impact of premium changes to renewals due to the insurer's (i) revision of its own rating plan; (ii) introduction of a new rating plan that replaces an existing rating plan; (iii) acquisition from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or (iv) acquisition by an agent book of transfer.

"Rate stabilization rule" means the rating methodology filed by an insurer to describe the application of a rate stabilization plan.

"Renewal" means the continuation of an insurer's current policies; policies acquired by an insurer from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or policies transferred by an agent or agency pursuant to an agent book of transfer.

"Supplementary rate information" includes any manual or plan of rates, experience rating plan, statistical plan, classification, rating schedule, minimum premium, or minimum premium rule, policy fee, rating rule, rate-related underwriting rule, and any other information not otherwise inconsistent with the purposes of Chapter 19 (§ 38.2-1900 et

seq.) of Title 38.2 of the Code of Virginia, this chapter, or as required by the commission.

"Tier" means mutually exclusive pricing levels within the same insurer that are based on an indivisible group of risk characteristics.

**14VAC5-345-30. General standards.**

A. An insurer may utilize rate capping to stabilize insurance rates charged to (i) its renewal policies; (ii) policies acquired from another insurer pursuant to a written agreement of acquisition, merger, or sale that transfers all or part of the other insurer's book of business; or (iii) policies acquired by an agent book of transfer.

B. A rate stabilization plan shall be unambiguous and applied uniformly and fairly to all renewal policies affected by such plan.

C. A rate stabilization plan may cap increases in premium only or increases and decreases in premium, but not decreases only. Caps on increases and decreases are not required to be equivalent.

D. A rate stabilization plan is expected to result in individual policy premiums converging with the insurer's uncapped rates. A rate stabilization plan shall achieve this result within five years unless the insurer initially requests a shorter period or justifies a longer period in the rate stabilization plan filing.

E. A rate stabilization rule may be amended within the original rate stabilization plan period.

F. A rate stabilization rule may be filed in conjunction with a routine rate filing or as a separate rule filing.

G. In each rate filing subsequent to the implementation of a rate stabilization plan, the insurer shall demonstrate that the actuarial indication does not redundantly measure rate need by demonstrating that premiums at current rate level underlying the actuarial indication are on an uncapped basis.

H. An insurer may file a rate level change or modify rating factors or other supplementary rate information while a rate stabilization plan is in effect. The insurer shall explain whether:

1. The existing rate stabilization plan will continue to apply for the filed duration; or
2. The rate stabilization plan will be amended.

**14VAC5-345-40. Filing requirements.**

A. A rate stabilization rule shall be filed as supplementary rate information in accordance with the provisions of § 38.2-1906 of the Code of Virginia.

B. A rate stabilization rule shall detail the application of the rate stabilization plan. This rule shall be clear and shall specify:

1. The source of the renewals subject to the rate stabilization plan;
2. The process to be used for the rate stabilization, including an example to illustrate the process;

3. The amount of the rate increase or increase and decrease to be limited;

4. Whether the rate stabilization plan is designed to converge with uncapped rates in subsequent rate filings;

5. The effect, if any, of the rate stabilization rule on any midterm changes;

6. Any limitations on tier movement that will be utilized for rate stabilization;

7. The commencement date of the rate stabilization plan;

8. The duration of the rate stabilization plan; and

9. The expiration date of the rate stabilization plan.

C. The filing shall clearly identify that a rate stabilization plan is included.

D. The insurer shall file and certify to the commission using the Rate Stabilization Plan Certification (Form 345-A), the impact of the proposed capped rate changes over future renewal periods until the capping period ends. The filing should include projections of the effects of the caps on premiums, percentage changes, dollar changes, and the number of policies impacted for each future renewal period. In calculating the impact, the insurer may make the assumption that its current book of business is fully retained and renewed into the future until the rate stabilization period ends.

E. If a rate stabilization plan exceeds five years, an explanatory memorandum shall be filed demonstrating the need for such plan. The explanatory memorandum shall contain details to justify the period of time identified in which the uncapped rates for each policyholder will be achieved.

**14VAC5-345-50. Prohibited actions.**

A. A rate stabilization rule shall not apply to any changes impacting an individual's premium other than insurer initiated rate increases or decreases.

B. A rate stabilization rule shall not apply to any decrease as a result of the application of the provisions of § 38.2-1904 D of the Code of Virginia.

C. A rate stabilization plan shall not be designed to generate more total revenue than would otherwise be generated in the absence of the plan, resulting in an undue benefit to the insurer.

D. A rate stabilization rule shall not apply to any decrease as a result of the application of the provisions of §§ 38.2-2126 (property) and 38.2-2234 (personal auto) of the Code of Virginia.

E. A rate stabilization plan shall not apply for an undefined or unlimited period of time.

F. No more than one rate stabilization plan shall apply to any one policy at any given time.

G. A rate stabilization plan shall not be used to control increases or decreases in rates or premiums based on

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predicted price elasticity of demand on individual policyholders.

## **14VAC5-345-60. Certification.**

A. In any filing proposing a rate stabilization plan, the insurer shall complete, certify, and include the Rate Stabilization Plan Certification (Form 345-A).

B. In any rate filing made subsequent to the implementation of a rate stabilization plan where historical premiums have been capped (whether increases or decreases), the insurer's actuary shall provide a signed statement certifying that the actuarial indication does not redundantly measure rate need.

## **14VAC5-345-70. Severability.**

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

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

## **FORMS (14VAC5-345)**

[Rate Stabilization Plan Certification, Form 345-A. \(eff. 9/2016\)](#)

VA.R. Doc. No. R16-4678; Filed July 15, 2016, 11:21 a.m.

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## **TITLE 17. LIBRARIES AND CULTURAL RESOURCES**

### **BOARD OF HISTORIC RESOURCES**

#### **Final Regulation**

**Title of Regulation: 17VAC5-20. Regulations Governing Permits for the Archaeological Removal of Human Remains (amending 17VAC5-20-30 through 17VAC5-20-60).**

**Statutory Authority: §§ 10.1-2205 and 10.1-2305 of the Code of Virginia.**

**Effective Date: September 20, 2016.**

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

## **Summary:**

*Pursuant to Chapter 588 of the 2014 Acts of Assembly, the amendments revise the regulations so that permit applications include (i) proof of ownership of the property of the archaeological site upon which the field investigation will be conducted, (ii) a signed statement confirming both financial and other resources for reburial in an appropriate location, and (iii) a current email address.*

*The amendments also require the permit applicant to (i) publish notice in a local newspaper, post notice of the planned activity and other information at the investigation site, and provide notice to local historical and genealogical commissions and societies; (ii) provide notice of at least one public hearing; and (iii) include in the notice a statement regarding the reason for the proposed relocation and the street address of one or more locations in the project vicinity where a copy of the complete application can be viewed by members of the general public during regular business hours.*

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

## **17VAC5-20-30. General provisions.**

Any person conducting any field investigation involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall first obtain a permit from the director.

1. No field investigation involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall be conducted without a permit.
2. In cases where a field investigation may reasonably be anticipated to involve the excavation and removal of human remains or associated artifacts, the person conducting such investigation may obtain a permit prior to the actual discovery of human burials.
3. In any case where human remains are encountered in a field investigation without having received a permit, all work on the burial or burials shall cease until a permit has been obtained.
4. No field investigation involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall be performed except under the supervision and control of an archaeologist meeting the qualifications stated in 17VAC5-20-40.
5. Any human remains removed in the course of field investigations shall be examined by a skeletal biologist or other specialist meeting the qualifications stated in 17VAC5-20-40.
6. Any approved field investigation shall include an interim progress report summarizing the field portion of the permitted investigation within 60 days of completion of the removal of all human remains and associated artifacts.

Reports indicating progress on analysis and report preparation shall be submitted to the department at 90-day intervals until the final report and disposition are accomplished.

7. The applicant shall make the site and laboratory available to the department for purposes of monitoring progress and compliance with this chapter as requested by the department.

8. A copy of the final report including the analysis of materials removed from the burial shall be delivered to the director according to the timetable described in the application.

9. Documentation of final disposition as required by the permit shall be delivered to the department within 15 days of such disposition.

10. Work conducted under a permit will not be considered complete until all reports and documentation have been submitted to and reviewed by the department to meet all conditions cited in this chapter or specified as part of an approved permit.

11. Failure to complete the conditions of the permit within the permitted time limit may result in revocation of the permit and constitute grounds for denial of future applications.

~~11.~~ 12. The applicant may apply for an extension or change to the conditions of the permit, including changes in research design, principal personnel or disposition, for good cause. Granting such an extension or alteration will be at the discretion of the director, after consultation with interested parties.

**17VAC5-20-40. Permit application.**

A. Application for a permit shall be in such form as required by the director, but shall include the following basic information:

1. Name, address, email address, phone number, and institutional affiliation of the applicant.

2. Location and description of the archaeological site for which field investigation is proposed, including site number if assigned.

3. Proof of ownership of the archaeological site or the property on which the field investigation is to be conducted.

~~3.~~ 4. A written statement of the landowner's permission both to conduct such research and to remove human remains on ~~his~~ the landowner's property, and allowing the director or ~~his~~ the director's designee access to the field investigation site at any reasonable time for the duration of the permit. The landowner's signature ~~should~~ to the written statement shall be notarized.

~~4.~~ 5. Applicant shall provide ~~evidence indicating a signed statement confirming~~ that adequate resources (financial and otherwise) are available to carry out the approved

research design including respectful reburial in an appropriate location.

~~5.~~ 6. Applicant shall indicate whether or not this permit is being requested as part of a federal, state, or local government undertaking and, if so, shall provide a brief description of the undertaking.

B. A statement of goals and objectives of the project and proposed research design shall be provided as part of the permit application. The research design shall, at a minimum, address the following:

1. How the research design adheres to professionally accepted methods, standards, and processes used to obtain, evaluate, and analyze data on mortuary practices in particular and cultural practices in general.

2. Field documentation which shall include, but not be limited to (i) photographs, (ii) maps, (iii) drawings, and (iv) written records. Collected information shall include, but not be limited to (i) considerations of containment devices, (ii) burial shaft or entombment configuration, (iii) burial placement processes, (iv) skeletal positioning and orientation, (v) evidence of ceremonialism or religious practices, and (vi) grave items or artifacts analyses.

To the extent possible, the cultural information shall be examined at the regional level with appropriate archival research. The results of the evaluation, along with the osteological analysis, will be submitted in report form to the director for review, comment, and final acceptance.

3. The planned osteological examination of the human skeletons which shall include determinations of age, sex, racial affiliation, dental structure, and bone inventories for each individual in order to facilitate comparative studies of bone and dental disease. Said inventories shall provide to the extent possible a precise count of all skeletal elements observed, as well as the degree of preservation (complete or partial); separate tabulation of the proximal and distal joint surfaces for the major long bones should be recorded.

The research design should also address at a minimum the following additional analytical techniques and when they will be used: under what circumstances will bone be examined and x-rayed if necessary, to detect lesions or conditions resulting from disease, malnutrition, trauma, or congenital defects; the presence of dental pathological conditions including carious lesions, premortem tooth loss, and alveolar abscessing to be recorded: craniometric and postcraniometric data to be obtained in a systematic format that provides basic information such as stature; and other techniques as appropriate. Although the initial focus concerns description and documentation of a specific sample, the long-term objective is to obtain information that will facilitate future comparative research. The report based on the osteological analysis should identify the research objectives, method of analysis, and results. Specific data (e.g., measurements, discrete trait observations) supplementing those traits comprising the

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main body of the report may be provided in a separate file including, for example, tables, graphs, and copies of original data collection forms. Unique pathological specimens should be photographed as part of basic documentation.

4. The expected timetable for excavation, analysis and preparation of the final report on the entire investigation.

C. A resume, vitae, or other statement of qualification shall be provided as part of the permit application demonstrating that the persons planning and supervising the field investigation and subsequent analysis meet the minimum qualifications consistent with the federal standards as cited in 36 CFR 61 and 43 CFR 7, as follows:

1. The qualifications of the archaeologist performing or supervising the work shall include a graduate degree in archaeology, anthropology, or closely related field plus:

- a. At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration, or management;
- b. At least four months of supervised field and analytic experience in general North American archaeology; and
- c. Demonstrated ability to carry research to completion.

In addition, a prehistoric archaeologist shall have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the prehistoric period. An historic archaeologist shall have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the historic period.

2. The qualifications of the skeletal biologist needed to undertake the types of analyses outlined in subdivision B 3 of this section should have at least a Masters degree with a specialization in human skeletal biology, bioarchaeology, forensic anthropology, or some other field of physical anthropology, plus two years of laboratory experience in the analysis of human skeletal remains. The individual must be able to develop a research design appropriate to the particular circumstances of the study and to conduct analyses of skeletal samples (including age, sex, race, osteometry, identification of osteological and dental disease, and the like), employing state-of-the-art technology. The individual must have the documented ability to produce a concise written report of the findings and their interpretation.

D. Under extraordinary circumstances, the director shall have the authority to waive the requirements of research design and professional qualifications.

E. The permit application shall also include a statement describing the curation, which shall be respectful, and the proposed disposition of the remains upon completion of the research. When any disposition other than reburial is proposed, then the application shall also include a statement of the reasons for alternative disposition and the benefits to be gained thereby. In the absence of special conditions,

including those that may come to light during excavation or analysis, this disposition shall be reburial within a two-year period from the date of removal unless requested otherwise by next of kin or other closely affiliated party.

F. When a waiver of public notice or other requirement based on an emergency situation is requested by the applicant then the permit application must include:

1. A statement describing specific threats facing the human skeletal remains or associated artifacts. This statement must make it clear why the emergency justifies the requested waiver.
2. A statement describing the known or expected location of the burials or the factors that suggest the presence of burials.
3. A statement describing the conservation methods that will be used, especially for skeletal material. Note that conservation treatment of bones should be reversible.

### **17VAC5-20-50. Public comment.**

A. Upon receiving notice from the director that the permit application is complete, the applicant shall arrange for public notification as deemed appropriate by the department.

B. In all cases, the applicant shall publish, or cause to be published, ~~a notice in a newspaper of general circulation in the area where the field investigation will occur~~ written notice in the following manners: notice in at least one local newspaper of general circulation in the area where the field investigation will occur; notice posted at the site of the graveyard or burial; notice to any historic preservation or other such commission, as well as area historical and genealogical societies; and notice of at least one public hearing. ~~This~~ Each notice shall include:

1. ~~Name~~ The name and address of applicant-;
2. ~~Brief~~ A brief description of proposed field investigation-;
3. A statement regarding the reason for the proposed relocation;
4. A statement informing the ~~public reader~~ that they the reader can request a public meeting-;
4. 5. A contact name, address, email address, and the phone number where ~~they the reader~~ can get more information, ~~including a location in the project vicinity where a copy of the complete application can be viewed-;~~
6. The street address of one or more locations in the project vicinity where a copy of the complete application can be viewed by members of the general public during regular business hours;
5. 7. A statement that the complete application can also be reviewed and copied at the department- or on the department's website;
6. ~~When any disposition other than reburial is proposed, this must be stated in the public notice. The notice should contain a~~ 8. A statement of regarding the proposed

disposition ~~and~~ of any human remains and associated funerary objects recovered during the permitted recovery process. If any disposition other than reburial is proposed, the notice must specifically request public comment on this aspect of the application-; and

~~7. Deadline~~ 9. The deadline for receipt of comments.

The notice shall be of a form approved by the director and shall invite interested persons to express their views on all aspects of the proposed field investigation to the director by a date certain prior to the issuance of the permit. Such notice shall be published once each week for four consecutive weeks.

C. ~~Such~~ The public notice requirement may be waived:

~~1. If the applicant can document that the family of the deceased has been contacted directly and is in agreement with the proposed actions.~~

~~2. 1.~~ In cases where the applicant has demonstrated that, due to the rarity of the site or its scientific or monetary value and where security is not possible, ~~there is a likelihood~~ it is likely that looting or other damage to the burial or surrounding site would occur as a result of the public notice.

~~3. If 2.~~ In the case of an emergency and if, in the opinion of the director, the severity of a demonstrated emergency is such that compliance with the above public notice requirements may result in vandalism, looting, or the loss of significant information, or that the publication of such notice may substantially increase the threat of such loss through vandalism, the director, in such cases, may issue a permit prior to completion of the public notice and comment requirements. ~~In such cases the~~ The applicant shall provide for such public notice and comment as determined by the director to be appropriate under the circumstances.

D. In cases of marked burials where a permit is sought pursuant to a court order subject to § 57-38.1 or 57-39 of the Code of Virginia, and in accordance with § 10.1-2305 C of the Code of Virginia, the applicant shall provide evidence of a reasonable effort to identify and notify next of kin.

E. In addition to the notification described in subsection B of this section, in the case of both prehistoric and historic Native American burials, the department shall inform ~~the Virginia Council on Indians and~~ the appropriate tribal leaders of state-recognized and federally recognized tribes.

F. The department shall maintain a list of individuals and organizations who have asked to be notified of permit actions. This list will be updated annually and notices sent to all parties currently listed. In all cases notification shall be sent to the appropriate local jurisdiction.

G. Prior to the issuance of a permit, the director may elect to hold a public meeting on the permit application. The purpose of the public meeting shall be to obtain public comment on the proposed field investigations. The director shall decide

whether or not to hold a public meeting on a case-by-case basis, and will include any requests following from the public notice in such considerations.

**17VAC5-20-60. Issuance or denial of permit.**

A. Upon completion of the public comment period, the director shall decide whether to issue the permit within a 30-day review period. In the event the director received no adverse public comment, no further action is required prior to decision.

B. The director shall consider any comment received and evaluate it in the light of the benefits of the proposed investigation, the severity of any emergency, or the amount of scientific information which may be lost in the event no permit is issued. The director may also take such comments into account in establishing any conditions of the permit. In considering such comment, the director shall give priority to comments and recommendations made by individuals and parties most closely connected with the human burials subject to the application.

C. In making his a decision on the permit application, the director shall consider the following:

1. The level of threat facing the human skeletal remains and associated cultural resources.
2. The appropriateness of the goals, objectives, research, design, and qualifications of the applicants to complete the proposed research in a scientific fashion. The director shall consider the United States Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, set out at 48 FR 44716 (September 29, 1983), in determining the appropriateness of the proposed research and in evaluating the qualifications of the applicants.
3. Comments received from the public.
4. The appropriateness of the proposed disposition of remains upon completion of the research. The director may specify a required disposition as a condition of granting the permit.
5. The performance of the applicant on any prior permitted investigation.
6. The applicability of other federal, state and local laws and regulations.

D. Failure to adequately meet all conditions in a previous permit shall be grounds for denial of any subsequent permit applications.

E. In the event the director proposes to deny a permit application, the director shall conduct an informal conference in accordance with ~~§ 9-6.14:11~~ 2.2-4019 of the Administrative Process Act.

F. The permit shall contain such conditions which, in the judgment of the director, will protect the excavated human remains or associated artifacts.

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G. A permit shall be valid for a period of time to be determined by the director as appropriate under the circumstances.

H. The director may extend or change the period or conditions of the permit or the period of analysis as noted in subdivision ~~44~~ 12 of 17VAC5-20-30. In order to obtain such an extension or change the applicant must submit a written request demonstrating good cause. "Good cause" may include but not be limited to situations in which many more burials were encountered than were expected in the original permit application or where a new analytical technique or question will be applied within an expanded term of the permit. In making any decision to extend a permit, the director will consult with appropriate interested parties as identified in the initial public review.

I. The director may revoke any permit issued under this chapter for good cause shown. Such revocation shall be in accordance with the provisions of the Administrative Process Act.

VA.R. Doc. No. R14-3990; Filed July 6, 2016, 4:03 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Notice of Objection to Fast-Track Rulemaking Action

**REGISTRAR'S NOTICE:** Pursuant to § 2.2-4012.1 of the Code of Virginia, the Board of Medicine has filed a notice of objection to the fast-track rulemaking action published in [32:21 VA.R. 2695-2697 June 13, 2016](#). The board intends to proceed with the normal promulgation process set out in Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of the Administrative Process Act with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

**Title of Regulation:** **18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-71).**

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

The Virginia Board of Medicine is hereby filing a notice of objection to the fast-track rulemaking for regulation **18VAC85-80, Regulations Governing the Licensure of Occupational Therapists**. The proposed fast-track regulation was published in Volume 32, Issue 21, page 2695-2697 of the Virginia Register of Regulations, dated June 13, 2016. A 45-day comment period was provided and public comment was received through July 13, 2016.

The fast-track regulation was intended to (i) allow occupational therapists and occupational therapy assistants to fulfill licensure continued competency requirements by maintenance of current certification by the National Board of Certification in Occupational Therapy and (ii) clarify that licensees are not required to complete the Continued Competency Activity and Assessment Form to renew licensure biennially.

The board received the requisite 10 or more objections to the amendments; commenters do not believe this action has been adequately discussed by stakeholders. There were questions about the process of audits and the interpretation of competency assessment activities. Finally, the commenters believe there are differences between the National Board for Certification in Occupational Therapy requirements and state requirements for continuing competency.

Due to the objections, the board is terminating the fast-track rulemaking process and intends to promulgate the amendments under the Administrative Process Act, utilizing the fast-track notice as its Notice of Intended Regulatory Action.

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

VA.R. Doc. No. R16-4544; Filed July 13, 2016, 3:00 p.m.

### BOARD OF PHARMACY

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § [54.1-3443](#) of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

**Effective Date:** September 7, 2016.

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

**Summary:**

*The amendments place 17 compounds into Schedule I of the Drug Control Act. The added compounds will remain in effect for 18 months or until the compounds are placed in Schedule I by action of the General Assembly. The*

amendments also remove the listings of compounds scheduled in the Drug Control Act by the General Assembly in 2016.

### 18VAC110-20-322. Placement of chemicals in Schedule I.

~~A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following substances in Schedule I of the Drug Control Act:~~

#### ~~1. Cannabimimetic agents:~~

- ~~a. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other names: ADB-CHMINACA, MAB-CHMINACA);~~
- ~~b. Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (other name: 5-fluoro-AMB);~~
- ~~c. 1-naphthalenyl-1-(5-fluoropentyl)-1H-indole-3-carboxylate (other name: NM-2201); and~~
- ~~d. 1-(4-fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropylmethanone)indole (other name: FUB-144).~~

#### ~~2. Substituted cathinones:~~

- ~~a. 4-bromomethcathinone (other name: 4-BMC); and~~
- ~~b. 4-chloromethcathinone (other name: 4-CMC).~~

~~The placement of drugs in this subsection shall remain in effect until February 11, 2017, unless enacted into law in the Drug Control Act.~~

~~B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

- ~~1. Acetyl fentanyl (other name: desmethyl fentanyl).~~
- ~~2. Etizolam.~~
- ~~3. 4-Iodo-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]benzeneethanamine (other name: 25I-NBOH).~~
- ~~4. Cannabimimetic agent:  
1-(5-fluoropentyl)-3-(4-methyl-1-naphthoyl)indole (MAM-2201).~~
- ~~5. Substituted cathinones:  
a. Alpha-Pyrrolidinohectiphenone (other name: alpha-PHP); and  
b. Alpha-Pyrrolidinoheptiphenone (other name: PV8).~~

~~The placement of drugs listed in this subsection shall remain in effect until June 1, 2017, unless enacted into law in the Drug Control Act.~~

~~C. A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

- ~~1. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]butanamide (other name: butyryl fentanyl).~~
- ~~2. Flubromazolam.~~

~~3. 5-methoxy-N,N-methylisopropyltryptamine (Other name: 5-MeO-MIPT).~~

#### ~~4. Cannabimimetic agents:~~

- ~~a. N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide (other name: ADB-FUBINACA);~~
- ~~b. Methyl 2-[1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: MDMB-FUBINACA); and~~
- ~~c. Methyl 2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other names: 5-fluoro-ADB, 5-Fluoro-MDMB-PINACA).~~

~~The placement of drugs listed in this subsection shall remain in effect until December 14, 2017, unless enacted into law in the Drug Control Act.~~

~~B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

- ~~1. Beta-keto-N,N-dimethylbenzodioxolylbutanamine (other names: Dibutylone, bk-DMBDB);~~
- ~~2. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-1-pentanone (other name: N-ethylpentylone);~~
- ~~3. 1-[1-(3-methoxyphenyl)cyclohexyl]piperidine (other name: 3-methoxy PCP);~~
- ~~4. 1-[1-(4-methoxyphenyl)cyclohexyl]piperidine (other name: 4-methoxy PCP);~~
- ~~5. 4-Chloroethcathinone (other name: 4-CEC);~~
- ~~6. 3-Methoxy-2-(methylamino)-1-(4-methylphenyl)-1-propanone (other name: Mexedrone);~~
- ~~7. 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide (other name: U-47700);~~
- ~~8. 3,4-dichloro-N-[[1-(dimethylamino)cyclohexylmethyl]benzamide (other name: AH-7921);~~
- ~~9. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-pentanamide (other name: Pentanoyl fentanyl);~~
- ~~10. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2-furancarboxamide (other name: Furanyl fentanyl);~~
- ~~11. N-(3-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide (other name: 3-fluorofentanyl); and~~
- ~~12. Clonazolam; and~~
- ~~13. Cannabimimetic agents:  
a. Methyl 2-((1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonyl)amino)-3-methylbutanoate (other names: AMB-FUBINACA, FUB-AMB);  
b. N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (other name: FUB-AKB48);  
c. N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (other name: 5F-AKB48);~~

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d. Naphthalen-1-yl 1-pentyl-1H-indazole-3-carboxylate (other name: SDB-005); and

e. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide (other name: AB-CHMICA).

The placement of drugs listed in this subsection shall remain in effect until March 7, 2018, unless enacted into law in the Drug Control Act.

V.A.R. Doc. No. R16-4753; Filed July 12, 2016, 2:41 p.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Final Regulation

**REGISTRAR'S NOTICE:** The Department of Professional and Occupational Regulation is claiming an exclusion 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 Department of Professional and Occupational Regulation will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC120-40. Virginia Professional Boxing and Wrestling Events Regulations (amending 18VAC120-40-10 through 18VAC120-40-85, 18VAC120-40-110 through 18VAC120-40-140, 18VAC120-40-170, 18VAC120-40-180, 18VAC120-40-190, 18VAC120-40-210, 18VAC120-40-220, 18VAC120-40-411.1, 18VAC120-40-411.5, 18VAC120-40-411.7).**

**Statutory Authority:** § 54.1-831 of the Code of Virginia.

**Effective Date:** September 7, 2016.

**Agency Contact:** 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 [boxing@dpor.virginia.gov](mailto:boxing@dpor.virginia.gov).

**Summary:**

*To conform to Chapter 756 of the 2016 Acts of Assembly, the amendments exempt amateur boxing from requirements of the chapter and revise the requirements for sanctioning organizations to receive authorization from the director of the agency to oversee amateur martial arts events.*

Part I  
Scope

#### 18VAC120-40-10. Scope.

This chapter contains procedures and requirements for the licensure of individuals and firms to engage in the conduct of professional boxing, martial arts, and wrestling events as provided for in Chapter 8.1 (§ 54.1-828 et seq.) of Title 54.1 of the Code of Virginia.

The director of the department is empowered to (i) promulgate this chapter, (ii) issue licenses, (iii) investigate to determine compliance with this chapter, and (iv) take disciplinary action, in accordance with the Virginia Administrative Process Act, against those who fail to comply with this chapter. Furthermore, to the extent applicable, this chapter shall be construed in accordance with and governed by Virginia's Administrative Process Act. The director is also empowered to contract with a vendor to perform certain tasks on the director's behalf. These tasks include examining and recommending licensure, investigating and ensuring that events are conducted in compliance with statutes and regulations, performing clerical duties, collecting fees, maintaining records, developing proposed regulations, and recommending enforcement actions.

#### 18VAC120-40-15. Applicability.

~~As referenced in this chapter and in § 54.1-828 of the Code of Virginia, boxing includes boxing, kick boxing, mixed martial arts, or similar contests. Individuals participating in these events are required to be licensed as a boxer. Requirements to obtain a boxer license are set forth in 18VAC120-40-70 and 18VAC120-40-80. Event licensing and conduct standards for boxing are set forth in 18VAC120-40-85; and 18VAC120-40-230 through 18VAC120-40-410. Event licensing and conduct standards for kick boxing and other similar contests, including mixed martial arts, are set forth in 18VAC120-40-85; and 18VAC120-40-411 through 18VAC120-40-411.21.~~

Individuals participating in wrestling events are required to be licensed as a wrestler. Requirements to obtain a wrestler license are set forth in 18VAC120-40-70 and 18VAC120-40-90. Event licensing and conduct standards for wrestling are set forth in 18VAC120-40-415 through 18VAC120-40-415.3.

### Part II General Provisions

#### 18VAC120-40-20. Definitions.

A. Section 54.1-828 of the Code of Virginia provides definitions of the following terms:

Boxer  
Boxing  
Cable television system  
Contractor  
Department  
Director  
Event  
~~License~~  
Manager  
Martial artist  
Martial arts or mixed martial arts  
Matchmaker  
Person

Promote  
 Promoter  
Regulant  
 Trainer, second, or cut man  
 Wrestler  
 Wrestling

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

"Assistant event inspector" means the individual assigned to assist the event inspector.

"Boxer registry" or "martial artist registry" means any entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers and martial artists.

"Charity event" means an event where all or a portion of the proceeds are donated to a charitable organization that is tax-exempt under § 501(c)(3) of the Internal Revenue Code.

"Contest," "bout," or "match" means the portion of an event wherein specific individuals (two boxers, two martial artists, or two or more wrestlers) engage in boxing or wrestling which ends when a decision is reached.

"Event," as defined in § 54.1-828 of the Code of Virginia, begins when a promoter takes possession or control of a facility or area as specified in the contract between the promoter and the facility and lasts until the promoter releases control of the facility or area. One event shall not exceed one 24-hour period.

"Event inspector" means the individual assigned to be in overall charge of the conduct of an event to assure compliance with this chapter.

"Event license" means a method of regulation whereby any promoter arranging or conducting a boxing or wrestling event is required to obtain a prior authorization from the department.

"Event officials" means those individuals assigned to carry out the duties of an event inspector, assistant event inspector, inspector, referee, timekeeper, judge, or ringside physician as established by this chapter.

"Firm" means any sole proprietorship, general partnership, limited partnership, limited liability company, association, corporation, or other business entity.

"Inspector" means the individual assigned to assist the event inspector as provided for in this chapter.

"Judge" means an individual assigned to score a boxing or martial arts contest as provided for in this chapter.

"Licensed event" means an event that has been issued a license from the department in accordance with this chapter.

"Rabbit punch" means a blow delivered by a boxer or martial artist against his opponent that strikes the back of the opponent's neck or head with a chopping motion or punch.

"Referee" means the event official assigned to a boxing or martial arts contest to assure the proper conduct of the contest and the safety of the contestants or the licensed wrestler assigned to a wrestling contest to assure the safety of the spectators as provided for in this chapter.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The general partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company; or
6. The officers and directors of an association.

"Ringside physician" means the medical doctor assigned to assure the medical health and safety of each boxer or martial artist as provided for in this chapter.

"Task force" means the professional boxing, martial arts, and wrestling task force.

"Ten point must system" means the winner of the round must receive 10 points.

"Timekeeper" means the individual assigned to time each round and the interval between rounds, and to count for knockdowns as provided for in this chapter.

**18VAC120-40-40. License expiration and renewal.**

A. Except as set out in subsection B of this section, each license, other than an event license or a limited boxer, martial artist, or wrestler license, shall expire on December 31 of the year in which the license was issued, except that licenses issued during the last 45 days of any calendar year shall expire on December 31 of the following calendar year.

B. Each license to conduct a boxing, martial arts, or wrestling event issued to a licensed promoter shall be valid only for the duration of the event described in the application for licensure. Each limited license issued to a boxer, martial artist, or wrestler shall be valid only for the duration of one specifically identified event or two specifically identified events held on consecutive days at the same location.

C. Prior to the expiration date shown on the license, each licensee desiring to renew the license shall cause the department or its contractor to receive a photocopy of his license and the fee specified in 18VAC120-40-50.

D. The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a current licensee.

**18VAC120-40-50. Fees.**

A. Each applicant shall submit the following fee along with the application for licensure:

Boxer	\$40
Boxer--limited	\$30

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<u>Martial artist</u>	\$40
<u>Martial artist--limited</u>	\$30
Wrestler	\$40
Wrestler--limited	\$30
Manager	\$50
Promoter	\$500
Trainer, second, and <del>cutman</del> <u>cut man</u>	\$40
Matchmaker	\$50

B. Each application for a boxing event license shall be accompanied by the following fee:

1. Scheduled events of 42 rounds or fewer, with no more than one nontitle ~~40-~~ 10-round or 12-round bout—\$1,500.
2. Scheduled events exceeding 42 rounds, with more than one nontitle ~~40-~~ 10-round or 12-round bout or any event with a title bout—\$2,000.

C. Each application for a wrestling event license shall be accompanied by a fee of \$125.

D. All fees are nonrefundable.

### **18VAC120-40-70. Application requirements.**

A. Applicants shall apply on forms supplied by the department or its contractor.

B. Individual applicants shall be at least 18 years of age.

C. The applicant shall disclose the following information about himself, in the case of an individual, or about the firm and every member of the responsible management of the firm, in the case of a firm:

1. Any guilty finding by the department, or by a court of any competent jurisdiction, of any material misrepresentation while engaged in boxing, martial arts, wrestling, or other athletic activities, or any conviction, guilty plea, or finding of guilty, regardless of adjudication or deferred adjudication, of any felony or misdemeanor;
2. Any disciplinary action taken by the department or another jurisdiction in connection with the applicant's participation in or promotion of professional athletic contests or activities including, but not limited to, monetary penalty, fine, suspension, revocation, or surrender of a license in connection with a disciplinary action; and
3. Any currently or previously held boxing, martial arts, or wrestling licenses issued by this Commonwealth or any other jurisdiction.

Any plea of nolo contendere shall be considered a conviction for the purposes of this subsection. A certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction or discipline. Subject to

the provisions of § 54.1-204 of the Code of Virginia, the department may deny an application for a license if, in its judgment, the actions disclosed in subdivisions 1 and 2 of this subsection would render the applicant unfit or unsuited to engage in boxing, wrestling, or other athletic activities.

D. Each individual applicant shall disclose his physical address and each firm applying for licensure shall disclose the physical addresses of the firm and the firm's responsible management. A post office box shall not be accepted in lieu of a physical address.

E. The fee established by 18VAC120-40-50 A shall accompany the application and shall not be refunded.

F. The receipt of an application and the deposit of fees in no way ~~indicates~~ indicate approval by the department.

### Part III

#### Individual Licensing Standards

### **18VAC120-40-80. Entry requirements for boxer and martial artist.**

Each applicant for a license as a boxer or martial artist shall submit a completed application as described in 18VAC120-40-70 and shall:

1. Have a satisfactory record of professional boxing, professional martial arts, or, in the case of applicants who have participated in fewer than five professional boxing or professional martial arts bouts, evidence of competency in the elements of offense and defense. Such evidence may take the form of signed statements from individuals who have provided training to the applicant or records of the applicant's conduct in amateur as well as professional boxing or professional martial arts competition and shall be sufficient to satisfy the department that the applicant has the ability to compete.
2. Submit the following certification:

"I understand as a professional boxer or professional martial artist I should be aware that this sport includes many health and safety risks, in particular the risk of brain injury. As such I will take the necessary medical exams that detect brain injury. If I need further information about these exams I will ask my doctor or staff of the department."

3. Submit a complete professional record or, if amateur just turning professional, an amateur record, an amateur passbook recognized by USA Boxing for boxers, or a letter from the applicant's trainer certifying the applicant's boxing or martial arts experience, skill level, physical condition, and current training program.

4. Submit a certification from a licensed physician within the past six months certifying that the applicant is in good physical health and that the physician has not observed any abnormalities or deficiencies that would prevent the applicant from participation in a boxing or martial arts event or endanger the applicant, the public, officials, or other licensees participating in the event. The department

may require additional medical tests to determine the fitness of a boxer or martial artist upon receipt of reliable information of a preexisting condition that may present a danger to the boxer or martial artist.

**18VAC120-40-85. Requirements for boxer, martial artist, or contestant prior to an event or contest.**

Each boxer or contestant shall provide the department a negative test for the following prior to an event or contest:

1. Antibodies to the human immunodeficiency virus;
2. Hepatitis B surface antigen (HBsAg); and
3. Antibodies of virus hepatitis C.

Such tests shall be conducted within the 180 days preceding the event. A boxer, martial artist, or contestant who fails to provide the department with the required negative test results shall not be permitted to compete in the event or contest. The provisions of this section shall not apply to participants in a wrestling or martial arts event.

**18VAC120-40-110. Entry requirements for matchmaker.**

Each applicant for a license as a matchmaker shall submit a completed application as described in 18VAC120-40-70 and a statement that the applicant does not employ and does not otherwise have a financial interest in or commercial connection with any wrestler, boxer, martial artist, manager, trainer, or second, except that which may be necessary to arrange a wrestler's ~~or~~, boxer's, or martial artist's participation in a specific event. The department shall approve and issue all licenses in accordance with the standards established by the federal Professional Boxing Safety Act of 1996 (15 USC § 6301 et seq.), as amended.

**18VAC120-40-120. Entry requirements for promoter.**

Each applicant for a license as a promoter shall submit a completed application as described in 18VAC120-40-70, a statement that the applicant possesses knowledge of this chapter, and the following certification:

"I understand that I am not entitled to compensation in connection with a boxing or martial arts match, including gate fees, until I provide the department with a copy of any agreement in writing to which I and any boxer or martial artist participating in the match are parties; a statement made under penalty of perjury that there are no other agreements; a statement of fees, charges, and expenses that will be assessed by or through me on the boxer or martial artist, including any portion of the boxer's or martial artist's purse that I receive and training expenses; all payments, gifts, or benefits I am providing to any sanctioning organization affiliated with the event; and any reduction in the boxer's or martial artist's purse contract to a previous agreement between myself and the boxer or martial artist. Further, I understand that I am not entitled to compensation in connection with a boxing or martial artist match until I provide the boxer or martial artist I promote with the amounts of any compensation or consideration that I have contracted to receive from such match; all fees, charges,

and expenses that will be assessed by or through me on the boxer or martial artist pertaining to the event, including any portion of the boxer's or martial artist's purse that I will receive and training expenses; and any reduction in a boxer's or martial artist's purse contract to a previous agreement between myself and the boxer or martial artist."

The department shall approve and issue all licenses in accordance with the standards established by the federal Professional Boxing Safety Act of 1996 (15 USC § 6301 et seq.), as amended.

**18VAC120-40-130. Entry requirements for trainer, second, or cut man.**

Each applicant for a license as a trainer, second, or cut man shall submit a completed application as described in 18VAC120-40-70 and evidence of a knowledge of:

1. This chapter;
2. The treatment of injuries;
3. Physical conditioning, health care, nutrition, training, first aid, and the effects of alcohol as it relates to boxing and martial arts; and
4. The bandaging of a boxer's or martial artist's hand.

The required evidence may take the form of the applicant's official record from a state regulatory agency, signed statements from current or former client or clients, or other documentary evidence that establishes that the applicant is competent. The department shall approve and issue all licenses in accordance with the standards established by the federal Professional Boxing Safety Act of 1996 (15 USC § 6301 et seq.), as amended.

Part IV

Official Approval and Assignment to Events

**18VAC120-40-140. Requirements for approval to act as an event official.**

A. To qualify to act on the department's behalf as an event official, a person must:

1. Be at least 18 years of age;
2. Not have been convicted or found guilty, regardless of adjudication, of any felony or other crime involving lying, cheating, or stealing, or involving illegal drugs or other acts involving the sport of boxing or martial arts. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of conviction, authenticated in such form as to be admissible as evidence under the laws of the jurisdiction where convicted, shall be admissible as prima facie evidence of such conviction; and
3. Submit verifications from three persons of his proficiency as an event inspector, locker room inspector, referee, judge, or timekeeper, whichever is appropriate. Evidence of approval by the department, its contractor, or another jurisdiction with a regulatory program substantially equivalent to this chapter, may be submitted in lieu of the verifications from three persons.

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B. In addition to requirements set forth in subsection A of this section, each referee or judge shall submit the following certification:

"I understand that I am not entitled to receive any compensation in connection with a boxing or martial arts match until I provide the department a statement of all consideration, including reimbursement for expenses that will be received from any source for participation in the match."

## Part V

### Duties of Event Officials for Boxing, Kick Boxing and Similar Contests

#### **18VAC120-40-170. Duties of event inspectors.**

A. An event inspector shall be assigned by the department or its contractor to each event and shall be in overall charge of the conduct of the event and shall assure that all assigned inspectors, referees, timekeepers, judges, and ringside physicians are present and perform their duties.

B. The event inspector shall officiate at weigh-in to assure that all boxers or martial artists are properly weighed and licensed; and shall assure that the boxers or martial artists have no weights or other objects which could influence the accuracy of the weighing.

C. The assigned event inspector shall comply with all procedures established by the department and assure compliance with Chapter 8.1 (§ 54.1-828 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

D. The assistant event inspector shall perform all duties assigned by the event inspector.

#### **18VAC120-40-180. Duties of locker room inspectors.**

A. Locker room inspectors shall be assigned to each event to assist the event inspector in the discharge of his duties.

B. Locker room inspectors shall be assigned by the event inspector to be in charge of the locker room and the corners and shall accompany the boxers or martial artists to the corner. A locker room inspector shall remain in each corner and assure compliance with this chapter.

C. A locker room inspector shall assist the event inspector during the weigh-in and, when requested, assist the ringside physician during the physical examination.

D. Locker room inspectors shall comply with all procedures established by the department and perform other duties as assigned to assure compliance with this chapter.

#### **18VAC120-40-190. Duties of referees.**

An assigned referee shall pass a prefight physical performed by the ringside physician in accordance with 18VAC120-40-220, comply with all procedures established by the department, perform other duties as assigned to assure compliance with this chapter, and perform the following duties before, during, and after each assigned contest:

1. Provide the prefight instructions to boxers or martial artists;

2. Assure that each boxer or martial artist is properly gloved and wearing the required safety equipment;

3. Exercise supervision over the conduct of the contest to assure compliance with this chapter and to take immediate corrective action when a failure to comply is observed;

4. Immediately stop any contest when, in his judgment, one of the boxers or martial artists is outclassed by the other, injured, or otherwise unable to safely continue to participate in the contest;

5. Endeavor to perform his duties in a manner which does not impede the fair participation of either boxer or martial artist;

6. Consult, when he feels it appropriate, with the ringside physician on the advisability of stopping the contest if either boxer or martial artist appears injured or unable to continue;

7. Count for knockdowns and knockouts ~~as provided for in 18VAC120 40 340~~;

8. Determine fouls and stop contests ~~as provided in 18VAC120 40 342 and 18VAC120 40 350~~;

9. Immediately stop any contest and notify the department's representative or contractor present at the event if one or both of the boxers or martial artists is not putting forth his best effort; and

10. Assure the health and well-being of the boxers and martial artists to the greatest extent possible.

#### **18VAC120-40-210. Duties of timekeepers.**

An assigned boxing or martial arts timekeeper shall comply with all procedures established by the department, perform other duties as assigned to assure compliance with this chapter, and perform the following duties before, during, and after each assigned contest:

1. Provide a chronometer of a type suitable for timing the rounds of a boxing or martial arts contest;

2. Assure that a warning is sounded 10 seconds before the start of each round by blowing a whistle or other sound easily heard by the boxers and martial artists and distinct from the sound signaling the beginning and end of each round;

3. Assure that each round and the interval between each round ~~is~~ are correctly and uniformly timed and that a bell or gong with a distinctive tone which is easily heard by the boxers or martial artists is sounded at the beginning and end of each round;

4. Assist the referee in the counting for a knockdown to assure the downed boxer or martial artist receives the correct amount of time allowed by this chapter to return to the contest; and

5. Report to the event inspector or his designee promptly at the time directed.

**18VAC120-40-220. Duties of ringside physicians.**

The assigned ringside physician shall comply with all procedures established by the department and perform the following duties before, during, and after each assigned contest:

1. Conduct a physical examination of each referee immediately before the contest to assure his fitness to act as a referee.
2. Conduct a physical examination and take a medical history of each boxer or martial artist immediately before the contest to assure his fitness to compete;
3. Report to the event inspector or his designee promptly at the time directed and remain at ringside during the entire duration of all contests assigned;
4. Signal the referee immediately in the event an injury is observed which the referee has not observed and enter the ring only after the referee has stopped or suspended the action;
5. Render immediate medical aid to any boxer or martial artist injured during a contest and, where appropriate, accompany the boxer or martial artist to the hospital or other place where competent medical aid may be delivered. In no case shall the assigned ringside physician cease the direct application of his skills as a physician to an injured boxer or martial artist until such time as the ringside physician, in his best medical judgment, determines that his services are no longer necessary or the injured boxer or martial artist is under the care of other medically competent individuals;
6. Assure all substances in the possession of seconds, trainers, or cut men are appropriate for use on boxers or martial artists during the course of the contest; and
7. Report immediately to the department or its contractor his determination of the fitness of each boxer or martial artist to participate in the boxing or martial arts contest. A written report summarizing the results of his examination of each boxer or martial artist shall be provided to the department or its contractor within 24 hours after the date of the licensed boxing or martial arts event.

**18VAC120-40-411.1. Equipment to be provided by promoters.**

The promoter shall assure that each event shall have the following:

1. A fighting ring that will be in the shape of a square, a hexagon, or an octagon. A square ring shall not be less than 18 feet square inside the ropes and shall not exceed 20 feet square inside the ropes. A hexagon or octagon ring shall not be less than 18 feet (from any side to the opposite side) inside the ropes and shall not exceed 32 feet (from any side to the opposite side) inside the ropes.

The ring floor shall be padded with ensolite one inch ~~thick~~ thick or another similar closed-cell foam. The padded ring

floor must extend at least 18 inches beyond the ropes and over the edge of the platform with a top covering of canvas or other similar material tightly stretched and laced to the ring platform. Material that tends to gather in lumps or ridges shall not be used.

The ring platform shall not be more than five feet above the floor of the building and shall have suitable steps for use of the contestants in their corners and by the ringside physician in a neutral corner.

Ring posts shall be of metal, not more than three inches in diameter, extending from the floor of the building to a height of 58 inches above the ring floor. The ring posts shall be at least 18 inches away from the ring ropes.

There shall be four ring ropes, no more than one inch in diameter, evenly spaced, with the bottom ring rope not less than 18 inches above the ring floor and the top ring rope not more than 52 inches above the ring floor. The bottom ring rope must be padded with a padding of closed cell padding of not less than 1/2 inch ~~(recommended~~ (it is recommended that all ring roped be padded of the same thickness and material). Ropes are to be connected with soft rope ties six feet apart. All ring ropes are to be tight and approved.

All corners must be padded with approved pads. All turnbuckles are to be covered with a protective padding.

A ring stool and bucket shall be provided for each contestant's corner. The ring shall have bright lights and light all four corners and middle of the ring equally. No lights shall shine into the face of the contestants or ringside judges, lights may only shine downward and not shine at any angle directly into the fighting ring area that may blind the contestants or judges.

The promoter shall provide a ringside restrictive barrier between the first row of ringside seats and the event official's area that will prevent the crowd from confronting either the contestants or event officials. The ringside barrier must be a minimum of eight feet from the outside edge of the ring.

2. A bell or gong located at the ring no higher than the floor level of the ring. The bell or gong must produce a clear tone easily heard by the contestants.

3. Locker rooms adequate in number and equipment to reasonably facilitate the contestant's activities before and after the contest. Separate locker rooms shall be provided when both male and female contestants are scheduled to compete. Locker rooms shall have restroom facilities easily available.

4. A fully equipped ambulance with a currently trained ambulance crew at the site of any event for the entire duration of the event.

5. A notice to the nearest hospital and the persons in charge of its emergency room of the date, time, and location of event.

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6. ~~Boxing gloves~~ Gloves of the proper weight that are set by weight classification by rule. ~~Boxing gloves~~ Gloves must have laces to secure proper fit. Gloves must have an attached thumb to the body of the glove. Gloves must be clean, free of cuts, and have good laces, with no displacement or lumping of padding material. Gloves used in world title fights shall be new and taken from the package just prior to issuing to the contestants. Gloves shall be inspected by the event inspector or his designee before each contest and those found defective shall be replaced before the contest.

7. A clear plastic water bottle, a bucket containing ice, surgeon's adhesive tape, and surgical gauze for each contestant.

8. A sealed ~~OTC~~ over-the-counter pregnancy test kit, approved by the Food and Drug Administration, for each female boxer that will be given to the event inspector or his designee.

9. A solution of one part bleach and nine parts water for disinfecting blood on the ring canvas or ropes shall be available ringside for use by staff stationed ringside to clean the ring canvas and ropes as needed.

10. The promoter shall provide each corner with biohazardous material bags and, after the event, shall discard all regulated medical waste in the proper manner in accordance with the Regulated Medical Waste Management Regulations (9VAC20-120) issued by the Virginia Waste Management Board and available from the Department of Environmental Quality.

## **18VAC120-40-411.5. Contest approval; request for reconsideration.**

A. The department or its contractor shall obtain information on each contestant from a ~~boxer~~ martial arts registry and examine that information, for records, experience, and consecutive losses. Boxers or martial artists with 10 or more consecutive losses must obtain a special exception before being placed on the fight card. The results of the prefight physical, and any other pertinent information available including the boxing or martial arts severity index, will be used to determine, to the extent possible, that both contestants are substantially equal in skills and ability and are medically fit to compete. No contest shall take place without the approval of the event inspector and the ringside physician assigned to the event by the department or its contractor.

B. No contestant shall participate in a contest who has:

1. Been knocked out in the 60 days immediately preceding the date of the contest;
2. Been technically knocked out in the 30 days preceding the date of the contest;
3. Been a contestant in a boxing, kick boxing, or martial arts event of more than six rounds during the 15 days preceding the date of the contest or six or fewer rounds during the seven days preceding the date of the contest;

4. Suffered a cerebral hemorrhage;

5. Suffered a serious head injury or other serious physical injury. The department or its contractor may require an additional, specific medical examination to determine the contestant's suitability;

6. Been found to be blind in one eye or whose vision in one eye is so poor that a physician recommends the contestant not participate in the contest. A boxer or martial artist who is totally unsighted (uncorrected vision worse than 20/400) in one or both eyes shall be prohibited from competing; or

7. Been denied a license or approval to fight by another jurisdiction for medical reasons.

C. No contestant shall participate in an event while under suspension from a commission of another jurisdiction of the United States due to:

1. A recent knockout or series of consecutive losses;
2. An injury, requirement for a medical procedure, or physician denial of eligibility to compete;
3. Failure of a test for drugs or controlled substances; or
4. The use of false aliases or falsifying, or attempting to falsify, official identification cards or documents.

D. Any promoter or contestant may request reconsideration by the director of the event inspector's decision by immediately providing in writing additional information or contradictory evidence concerning the contestant's skill, ability, or medical fitness.

E. A contestant who is suspended by a commission of another jurisdiction of the United States may be allowed to compete if:

1. The contestant was suspended for a knockout, technical knockout, series of consecutive losses, an injury, a requirement of a medical procedure, or physician denial of certification and the time interval for knockouts and technical knockouts in subsection B of this section has been met and further proof of sufficiently improved, medical or physical condition has been furnished;
2. The contestant was suspended for the failure of a drug test or the use of false aliases or falsifying, or attempting to falsify, official identification cards or documents and that a suspension was not, or is no longer, merited by the facts; or
3. The contestant was suspended for any reason other than those mentioned in subdivisions 1 and 2 of this subsection and the department or the department's contractor notifies the suspending commission in writing and consults with the designated official of the suspending commission prior to the grant of approval for such contestant to participate in a contest.

**18VAC120-40-411.7. Weight classes, weigh-ins and prefight meeting.**

A. Weight classes are as follows:

Weight Class	Weight in Lbs	Weight in KG	Max Weight Spread	Glove sizes
Atomweight	112 & below	50.9 & below	3 lbs - 1.36kg	8-10 oz
Flyweight	112.1 - 117	50.95 - 53.18	3 lbs - 1.36 kg	8-10 oz
Bantamweight	117.1 - 122	53.22 - 55.45	4 lbs - 1.8 kg	8-10 oz
Featherweight	122.1 - 127	55.50 - 57.72	4 lbs - 1.8 kg	8-10 oz
Lightweight	127.1 - 132	57.77 - 60	4 lbs - 1.8 kg	8-10 oz
Super Lightweight	132.1 - 137	60.04 - 62.27	5 lbs - 2.3 kg	8-10 oz
Light Welterweight	137.1 - 142	62.31 - 64.51	5 lbs - 2.3 kg	8-10 oz
Welterweight	142.1 - 147	64.59 - 66.8	7 lbs - 3.2 kg	8-10 oz
Super Welterweight	147.1 - 153	66.9 - 69.5	7 lbs - 3.2 kg	10 oz
Light Middleweight	153.1 - 159	69.6 - 72.3	7 lbs - 3.2 kg	10 oz
Middleweight	159.1 - 165	72.4 - 75	7 lbs - 3.2 kg	10 oz
Super Middleweight	165.1 - 172	75.1 - 78.2	7 lbs - 3.2 kg	10 oz
Light Heavyweight	172.1 - 179	78.3 - 81.4	7 lbs - 3.2 kg	10 oz
Light Cruiserweight	179.1 - 186	81.5 - 84.5	7 lbs - 3.2 kg	10 oz
Cruiserweight	186.1 - 195	84.6 - 88.6	12 lbs - 5.5 kg	10 oz
Heavyweight	195.1 - 215	88.7 - 97.7	20 lbs - 9.1 kg	10 oz
Super Heavyweight	215.1 and up	97.8 and up	No limit	10 oz

B. No contestant may engage in a contest without the approval of the department or its contractor if the difference in weight between the contestants exceeds the allowance in subsection A of this section.

C. If one of the two boxers contestants in a contest is above or below the weights shown in subsection A of this section, both boxers contestants shall wear the gloves of the higher weight.

D. When weigh-ins occur within 24 hours, but not less than 12 hours prior to the event's scheduled start time, the boxer contestant shall not exceed the weight specified in his contract with the promoter. If a boxer contestant exceeds the weight specified in the contract he shall not compete unless he:

1. Loses the weight exceeded in the contract at least 12 hours prior to the event's scheduled start time;
2. Loses all but two pounds of the weight exceeded in the contract at least 12 hours prior to the event's scheduled start time and loses the final two pounds at least six hours prior to the event's scheduled start time; or
3. Renegotiates the contract.

Boxers Contestants who weigh-in 24 hours prior to the scheduled event shall be required to re-weigh two hours prior to the event's scheduled start time and will not be permitted to exceed the weight specified in the contract by more than 10 pounds.

E. When weigh-ins occur less than 12 hours prior to an event's scheduled start time, the boxer contestant shall not exceed the weight specified in the contract. No boxer contestant shall be permitted to lose more than two pounds within 12 hours of a contest. If a boxer contestant weighs more than two pounds over the weight specified in the contract, he shall not compete unless he:

1. Loses up to two pounds at least six hours prior to the event's scheduled start time; or
2. Renegotiates his contract.

F. All contestants and their seconds must be present at the official weigh-in. The time, date, and location of the weigh-in will be approved by the department. Contestants will be allowed to witness their opponent's weigh-in. All contestants and their seconds must be present at the prefight meeting. Any second who does not attend the prefight meeting will not be permitted in the corner of their contestant.

G. All contestants will report to the event location and their locker rooms at the specified time on the night of the event. Once the contestant reports to the event facility and to the locker room he will be disqualified if he leaves the locker room before time for the bout or leaves the facility before the end of the bout.

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

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# Regulations

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Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

## FORMS (18VAC120-40)

[Wrestling License Application, A511-4101LIC-v2 \(eff. 1/2015\)](#)

[Boxing License Application, A511-4102LIC-v2 \(eff. 1/2015\)](#)

[Boxing Manager/Matchmaker License Application, A511-4103\\_04LIC \(eff. 9/2012\)](#)

[Trainer, Second or Cut Man License Application, A511-4105LIC-v2 \(eff. 1/2015\)](#)

[Wrestling Promoter License Application, A511-4106LIC-v2 \(eff. 9/2013\)](#)

[Wrestling Event License Application, A511-4107LIC-v2 \(eff. 1/2014\)](#)

[Boxing Event License Application, A511-4108LIC-v2 \(eff. 1/2014\)](#)

[Boxing Promoter License Application, A511-4110LIC-v1 \(eff. 9/2012\)](#)

[Limited \(Temporary\) Wrestling License Application, A511-4121LIC-v2 \(eff. 1/2015\)](#)

[Limited \(Temporary\) Boxing License Application, A511-4122LIC-v2 \(eff. 1/2015\)](#)

~~[Martial Arts Boxing License Application, A511-4123LIC-v2 \(eff. 1/2015\)](#)~~

~~[Amateur Boxing — Sanctioning Organization Approval Application, A511-4130AB\\_SO v1 \(eff. 10/2015\)](#)~~

~~[Amateur Martial Arts — Sanctioning Organization Approval Application, A511-4130AMA\\_SOA v1 \(eff. 10/2015\)](#)~~

~~[Amateur Event Notification Form, A511-4130EVE v1 \(eff. 10/2015\)](#)~~

~~[Amateur — Sanctioning Organization — Experience Verification Form, A511-4130EXP v1 \(eff. 10/2015\)](#)~~

[Martial Arts License Application, A511-4123LIC-v4 \(rev. 8/2016\)](#)

[Martial Arts License Application - Onsite, A511-4123LIC-v5 \(rev. 8/2016\)](#)

[Amateur Martial Arts - Sanctioning Organization Approval Application, A511-4130AMA\\_SOA-v3 \(rev. 7/2016\)](#)

[Amateur Sanctioning Organization - Experience Verification Form, A511-4130EXP-v2 \(rev. 7/2016\)](#)

[Event Cash Bond Form, A511-41ECBOND \(eff. 9/2012\)](#)

[Event Surety Bond Form, A511-41EVBOND \(eff. 9/2012\)](#)

[Event Card Additions and/or Deletions Form, A511-41EVCHG \(eff. 9/2012\)](#)

[Promoter Payout Report, A511-41PAYREP \(eff. 9/2012\)](#)

[Promoter's Fee Report, A511-41PFR \(eff. 9/2012\)](#)

[Gate Fee Report, A511-41GFR-v2 \(eff. 10/2015\)](#)

[Criminal Conviction Reporting Form, A406-01CCR-v1 \(eff. 5/2015\)](#)

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

[Denial of Licensure Reporting Form, A406-01DEN-v1 \(eff. 5/2015\)](#)

VA.R. Doc. No. R16-4781; Filed July 8, 2016, 3:38 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 57 (2016)

### **Development of Carbon Reduction Strategies for Electric Power Generation Facilities**

#### Part I -Importance of the Initiative

Though our coastal communities may be the first to witness the effects of climate change, the risks presented by increasingly fierce storms, severe flooding, and other extreme weather events are not confined to a single geographic area. Neither are their causes. The economic implications are significant, and we must do all we can to protect our critical military infrastructure, our ports, our homes, and our businesses. It is only by acting together with common purpose that the Commonwealth can effectively adapt and stave off the most severe consequences of climate change.

One key step forward is to continue with a strategic goal of reducing carbon emissions. Virginia has already made meaningful strides - between 2005 and 2014, Virginia reduced its carbon emissions from power plants by 21 percent. However, the electric sector is still responsible for approximately 30 percent of the carbon dioxide pollution in the Commonwealth. Moreover, electric companies are including carbon regulation projections in their long-term plans. The electric sector is changing rapidly through increasing reliance on low and zero carbon resources. As such, it is vital that the Commonwealth continue to facilitate and engage in a dialogue on carbon reduction methods while simultaneously creating a pathway for clean energy initiatives that will grow jobs and help diversify Virginia's economy.

Accordingly, by virtue of the authority vested in the Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, I hereby direct the Secretary of Natural Resources to convene a Work Group, chaired by the Secretary, to study and recommend methods to reduce carbon emissions from electric power generation facilities. The Secretary shall receive input from interested stakeholders.

Such methods shall align with the Virginia Air Pollution Control Board's power to promulgate regulations abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth.

#### Part II -Scope and Guidance

In preparing their recommendations, the Secretary and the Work Group shall consider the following:

- (1) the establishment of regulations for the reduction of carbon pollution from existing electric power generation facilities pursuant to existing authority under Virginia Code § 10.1-1300 et seq.;
- (2) the carbon reduction requirements for existing electric power generation facilities established under § 111(d) of the federal Clean Air Act, which are currently stayed pending final disposition;

(3) the interaction between electric utilities and regional markets, including PJM Interconnection;

(4) the impact any reduction requirements place on the reliability of the electric system;

(5) the impact any reduction of carbon pollution may have on electric rates and electric bills;

(6) the impact of reducing carbon pollution on low income and vulnerable communities;

(7) the cost effectiveness of pollution reduction technologies that may be deployed;

(8) the economic development opportunities associated with deployment of new carbon reduction technologies;

(9) the implementation and administration of carbon reduction regulations; and

(10) flexibility in achieving the goals of any carbon reduction regulation.

The Secretary of Natural Resources shall complete her work, including the development of recommendations as to viable carbon reduction methods for the electric power generation facilities by April 30, 2017.

The Secretary of Natural Resources shall provide a report on the recommendations to the Governor by May 31, 2017.

#### Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect for one year after its signing unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 28th Day of June, 2016.

/s/ Terence R. McAuliffe  
Governor

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **Sappony Solar LLC Notice of Intent - Small Renewable Energy Project (Solar) Permit by Rule**

Sappony Solar LLC has notified the Department of Environmental Quality of its intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Sussex County, Virginia, pursuant to 9VAC15-60. The project will be located on 371 acres, across multiple parcels, on land south of Route 40 between the two intersections with Booth Road. The site continues south across Booth Road to Palestine Road. The solar project conceptually consists of 88,209 320-watt panels plus nine 2.5-megawatt inverters, which will provide a maximum 20 megawatts of nameplate capacity.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **Scott-II Solar LLC Notice of Intent - Small Renewable Energy Project (Solar) Permit by Rule**

Scott-II Solar LLC has notified the Department of Environmental Quality of its intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Powhatan County, Virginia, pursuant to 9VAC15-60. The project will be located on a portion of a 720-acre across parcel, on land surrounded by Old Buckingham Road to the north and west, Pierce Road to the south, and Mill Quarter to the east. The solar project conceptually consists of 88,209 320-watt panels plus 10 2.2-megawatt inverters, which will provide a maximum 20 megawatts of nameplate capacity.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## VIRGINIA INFORMATION TECHNOLOGIES AGENCY

### **Proposed IMSAC Guidance Documents on Electronic Authentication and Authenticators and Lifecycle Management**

Notice of action: The Virginia Information Technologies Agency (VITA) is announcing an opportunity for public comment on two proposed guidance documents that were developed by the Identity Management Standards Advisory Council (IMSAC) (§ 2.2-437 of the Code of Virginia). IMSAC was established by the Virginia General Assembly in 2015 and advises the Secretary of Technology on the adoption of identity management standards and the creation

of guidance documents pursuant to § 2.2-436 of the Code of Virginia.

Regulations affected: There are no regulations affected or proposed by this action.

Purpose of notice: IMSAC is seeking comment on whether the two proposed guidance documents should be submitted as is, or if revisions should be made before the final posting. The guidance documents have been developed by VITA, acting on behalf of the Secretary of Technology and at the direction of IMSAC. IMSAC recommends to the Secretary of Technology guidance documents relating to (i) nationally recognized technical and data standards regarding the verification and authentication of identity in digital and online transactions; (ii) the minimum specifications and standards that should be included in an identity trust framework, as defined in § 59.1-550 of the Code of Virginia, so as to warrant liability protection pursuant to the Electronic Identity Management Act (§ 59.1-550 et seq. of the Code of Virginia); and (iii) any other related data standards or specifications concerning reliance by third parties on identity credentials, as defined in § 59.1-550.

Purpose statement for [Electronic Authentication Guidance Document](#):

The purpose of this document is to establish minimum specifications for electronic authentication within an identity management system. The document assumes that the identity management system will be supported by a trust framework, compliant with applicable law. The minimum specifications have been stated based on language in NIST SP 800-63-3.

The document defines minimum requirements, components, process flows, assurance levels, and privacy and security provisions for electronic authentication. The document assumes that specific business, legal, and technical requirements for electronic authentication will be established in the trust framework for each distinct identity management system, and that these requirements will be designed based on the identity assurance level and authenticator assurance level requirements for the system.

The document limits its focus to electronic authentication. Minimum specifications for other components of an identity management system will be defined in separate IMSAC guidance documents in this series, pursuant to §§ 2.2-436 and 2.2-437 of the Code of Virginia.

Purpose statement for [Authenticators & Lifecycle Management Guidance Document](#):

The purpose of this document is to establish minimum specifications for authenticators and lifecycle management within an identity management system. The document assumes that the identity management system will be supported by a trust framework, compliant with applicable

law.\* The minimum specifications have been stated based on language in NIST SP 800-63B.

The document defines minimum requirements, assurance levels, and privacy and security provisions for authenticators and lifecycle management. The document assumes that specific business, legal and technical requirements for authenticators will be established in the trust framework for each distinct identity management system, and that these requirements will be designed based on the identity assurance level and authenticator assurance level requirements for the system.

The document limits its focus to authenticators and lifecycle management. Minimum specifications for other components of an identity management system will be defined in separate IMSAC guidance documents in this series, pursuant to §§ 2.2-436 and 2.2-437 of the Code of Virginia.

The proposed guidance documents are also available with comments and proposed changes by the IMSAC council on the VITA website at <https://www.vita.virginia.gov/About/default.aspx?id=6442474173>.

Public comment period: August 8, 2016, through September 9, 2016.

Public hearing: A public meeting will be held on September 12, 2016, at 11 a.m. The meeting will be held at the Commonwealth Enterprise Solutions Center, 11751 Meadowville Lane, Chester VA 23836.

Public comment stage: The two guidance documents were developed by the IMSAC and are being posted as general notices pursuant to § 2.2-437 C of the Code of Virginia. Proposed guidance documents and general opportunity for oral or written submittals as to those guidance documents shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations as a general notice following the processes and procedures set forth in § 2.2-4031 B of the Code of Virginia. IMSAC shall allow at least 30 days for the submission of written comments following the posting and publication of the notice and shall hold at least one meeting dedicated to the receipt of oral comment no less than 15 days after the posting and publication.

For the purpose of defining the timeframe for public participation and comment, VITA is defining "days" as "calendar days." IMSAC will receive public comment at its September 2016 meeting. For additional information in the definition of "days," please reference page 6 of 15 of VITA's Information Technology Resource Management (ITRM), Policies, Standards and Guidelines (PSGs) Briefs and Supporting Documents found at [https://www.vita.virginia.gov/uploadedFiles/VITA\\_Main\\_Public/Library/PSGs/ITRMPDG\\_Brief\\_Supportdocs.pdf](https://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/Library/PSGs/ITRMPDG_Brief_Supportdocs.pdf).

IMSAC will hold a meeting dedicated to the receipt of oral comment on September 12, 2016. Meeting details will be posted on the Commonwealth Calendar and the VITA website at <https://www.vita.virginia.gov/About/default.aspx?id=6442474171>.

Description of proposal: The proposed guidance documents are being posted for review by the general public with an opportunity for public comment.

Federal information: No federal information.

How to comment: IMSAC accepts written comments by email and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by VITA by the last day of the comment period. All materials received are part of the public record.

To review regulation documents: The proposed guidance documents and any supporting documents are available on the VITA website at <https://www.vita.virginia.gov/About/default.aspx?id=6442474173>. The documents may also be obtained by contacting the VITA representative named below.

Contact Information: Janice Akers, Virginia Information Technologies Agency, 11751 Meadowville Lane, Chester, VA 23836, telephone (804) 416-6083, or email [janice.akers@vita.virginia.gov](mailto:janice.akers@vita.virginia.gov).

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\*For the purpose of this guidance document, the term "Applicable Law" shall mean laws, statutes, regulations and rules of the jurisdiction in which each participant in an identity management system operates.

## BOARD OF PHARMACY

### Scheduling Chemicals in Schedule I

Pursuant to subsection D of § 54.1-3443, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The public hearing will be conducted at 9 a.m. on September 7, 2016, at the Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233. Public comment may also be submitted electronically or in writing prior to June 10, 2016, to the contact listed at the end of this notice.

As specified in § 54.1-3443, the Virginia Department of Forensic Science (DFS) has identified six compounds for recommended inclusion by the Board of Pharmacy into Schedule I in the Code of Virginia. A brief description and chemical name for each compound is as follows:

The following compounds are classified as research chemicals. Drugs of this type have been placed in Schedule I

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## General Notices/Errata

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(subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1-propionyl lysergic acid diethylamide (other name: 1P-LSD)

(2-Methylaminopropyl)benzofuran (other name: MAPB)

The following compounds are classified as stimulants. Other drugs of this type have been placed in Schedule I (subdivision 5 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

Ethyl phenyl(piperidin-2-yl)acetate (other name: Ethylphenidate)

2-(3-fluorophenyl)-3-methylmorpholine (other name: 3-fluorophenmetrazine)

The following compounds are powerful synthetic opioids. DFS recommends placing these compounds into Schedule I (subdivision 6 of § 54.1-3446 of the Code of Virginia).

N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: para-fluorobutyrylfentanyl)

4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]-benzenesulfonamide (other name: W-18)

If approved by the Board of Pharmacy, the placement of these substances in Schedule I in the Virginia Drug Control Act shall remain in effect for a period of 18 months from the date of board action and shall then be de-scheduled unless the Drug Control Act is amended by enactment of legislation by the General Assembly.

A 31-day comment forum will begin on August 1, 2016, and will end at midnight on September 1, 2016,

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

### STATE WATER CONTROL BOARD

#### Proposed Enforcement Action for Lake Chesdin Camp Ground, LLC

An enforcement action has been proposed for Lake Chesdin Camp Ground, LLC, for Lake Chesdin Camp Ground in Dinwiddie County, Virginia, for violations of the State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Russell Deppe will accept comments by email at [russell.deppe@deq.virginia.gov](mailto:russell.deppe@deq.virginia.gov), FAX at (804) 698-4277, or

postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from July 11, 2016, to August 11, 2016.

#### Proposed Consent Order for the City of Manassas in Prince William County

An enforcement action has been proposed for the City of Manassas in Prince William County, Virginia. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the City of Manassas Water Treatment Plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov), FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from August 9, 2016, through September 8, 2016.

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.