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REGISTER OF REGULATIONS

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Virginia Code Commission

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James M. LeMunyon**, Vice Chair; **Gregory D. Habeeb**; **Ryan T. McDougle**; **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.

PUBLICATION SCHEDULE AND DEADLINES

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

October 2016 through August 2017

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Tuesday)	December 12, 2016
33:9	December 7, 2016	December 26, 2016
33:10	December 19, 2016 (Monday)	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, 2014
33:26	August 2, 2017	August 21, 2017

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Initial Agency Notice

Title of Regulation: 9VAC25-260. Water Quality Standards.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq.; 40 CFR Part 131.

Name of Petitioner: McChesney Goodall, IV.

Nature of Petitioner's Request: Designate a segment of Laurel Fork in Highland County, the majority of which is within the property boundary of Rifle Ridge Farm, LP as Exceptional State Waters.

Agency Plan for Disposition of Request: Public comment will be accepted until November 7, 2016. The State Water Control Board will decide whether or not to move forward with the rulemaking at either its last quarterly meeting of 2016 or first quarterly meeting of 2017.

Public Comment Deadline: November 7, 2016.

Agency Contact: David Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R17-04; Filed September 23, 2016, 2:56 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry.

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

Name of Petitioner: Deborah R. Blanchard, DDS.

Nature of Petitioner's Request: The request is to eliminate the requirement for posting of a copy of a dentist's registration issued by the Drug Enforcement Administration to avoid opportunity for individuals to use the number for illegal purposes.

Agency Decision: Request granted.

Statement of Reason for Decision: The request to amend regulations relating to the posting of a dentist's registration from the Drug Enforcement Administration (DEA) was considered by the board at its meeting on September 16,

2016. Board members were also given copies of public comment on the petition. The board decided to initiate rulemaking to amend the requirement for posting of a dentist's DEA registration. The amendment will require a dentist to maintain a copy of the DEA registration in a readily retrievable manner at each practice location. While the amendment will be submitted as a "fast-track" action, it is likely that the regulatory process will take several months before it becomes final. The board will notify licensees when the amended regulation is effective.

Agency Contact: Sandra Reen, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R16-28; Filed September 21, 2016, 11:05 a.m.

BOARD OF NURSING

Initial Agency Notice

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

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

Name of Petitioner: Rachel Warrick.

Nature of Petitioner's Request: To amend 18VAC90-20-35 to replace the requirement that nurses include first and last name on identification badges with a requirement for only first name and last initial.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition to amend 18VAC90-20-35 was posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. It has also been filed with the Registrar of Regulations for publication on October 17, 2016. Comment on the petition from interested parties is requested until November 8, 2016. Following receipt of all comments on the petition, the request will be considered by the Board of Nursing at its meeting on November 15, 2016, to decide whether to make any changes to the regulatory language.

Public Comment Deadline: November 8, 2016.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4515, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R17-05; Filed September 19, 2016, 12:25 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider promulgating **2VAC5-115, Regulations for Determining Whether a Private Animal Shelter Meets the Purpose of Finding Permanent Adoptive Homes for Animals**. The purpose of the proposed action is to promulgate a regulation in accordance with Chapter 319 of the 2016 Acts of Assembly, which requires the Board of Agriculture and Consumer Services to adopt a regulation for use in determining whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals.

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

Statutory Authority: § 3.2-109 of the Code of Virginia; Chapter 319 of the 2016 Acts of Assembly.

Public Comment Deadline: November 16, 2016.

Agency Contact: Dr.Carolynn Bissett, Interim Program Manager, Animal Care and Emergency Response, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 692-4001, FAX (804) 371-2380, or email carolynn.bissett@vdacs.virginia.gov.

VA.R. Doc. No. R17-4927; Filed September 26, 2016, 10:44 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

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 Juvenile Justice intends to consider amending **6VAC35-101, Regulation Governing Juvenile Secure Detention Centers**. The purpose of the proposed action is to amend the regulation to reflect changes in practices and procedures in secure juvenile detention centers; update the definitions section and terms used for clarity and consistency with other regulations; remove references to obsolete regulations; and incorporate appropriate cross references to statutes, regulations, and guidance documents.

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

Statutory Authority: §§ 16.1-322.7 and 66-10 of the Code of Virginia.

Public Comment Deadline: November 16, 2016.

Agency Contact: Kristen Peterson, Regulatory Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 588-3902, FAX (804) 371-6497, or email kristen.peterson@djj.virginia.gov.

VA.R. Doc. No. R17-4832; Filed September 23, 2016, 5:36 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-520, Regulations Governing the State Dental Scholarship and Loan Repayment Programs**. The purpose of the proposed action is to comprehensively review and revise the regulation, which has not been done in over a decade. This regulatory action is also necessary to amend the regulation to conform to similar regulatory chapters. There are several scholarship and loan repayment programs administered by the Virginia Department of Health, and this regulation as currently written does not resemble those other programs. The proposed amendments are intended to make the regulatory chapter consistent with similar programs.

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

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

Statutory Authority: §§ 32.1-12 and 32.1-122.9 of the Code of Virginia.

Public Comment Deadline: November 16, 2016.

Agency Contact: Susan Puglisi, Policy Analyst, Department of Health, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7175, FAX (804) 864-7647, or email susan.puglisi@vdh.virginia.gov.

VA.R. Doc. No. R17-4924; Filed September 23, 2016, 5:33 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

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 intends to consider amending **18VAC15-20, Virginia Asbestos Licensing Regulations**. The purpose of the proposed action is to amend the regulations to (i) clarify how asbestos analytical laboratories and their branch or firm locations are licensed; (ii) simplify the requirements for entities that change their organizational status; and (iii) clarify requirements for final clearance reporting by project monitors. The board may make other changes it identifies as necessary during the regulatory review process.

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

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

Public Comment Deadline: November 16, 2016.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R17-4855; Filed September 23, 2016, 4:29 p.m.

BOARD OF NURSING

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 Nursing intends to consider amending **18VAC90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to require all precicensure registered nursing education programs in Virginia to have accreditation or candidacy status with a national accrediting agency recognized by the U.S. Department of Education by the year 2020.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Comment Deadline: November 16, 2016.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R17-4925; Filed September 23, 2016, 9:15 p.m.

BOARD OF VETERINARY MEDICINE

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 Veterinary Medicine intends to consider amending **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. In accordance with provisions of Chapter 306 of the 2016 Acts of the Assembly, the purpose of the proposed action is to promulgate regulations for a faculty license and an intern or resident license for persons providing clinical care to animals at the veterinary college at Virginia Polytechnic Institute and State University.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3804 of the Code of Virginia.

Public Comment Deadline: November 16, 2016.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4468, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R17-4926; Filed September 23, 2016, 9:16 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-30, 1VAC20-60-40, 1VAC20-60-50).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: October 4, 2016.

Agency Contact: Brooks Braun, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8924, or email brooks.braun@elections.virginia.gov.

Summary:

The amendments (i) clarify the use of electronic devices in the polling place and (ii) establish the process for emptying an overfull ballot container during an election. A proposed amendment, establishing that a ballot is cast for provisional ballots when the voter relinquishes possession of a completed provisional ballot envelope containing the ballot to the possession of an officer of election, was removed for the final stage of the regulation.

1VAC20-60-30. Electronic devices in polling place.

A. [~~Representatives of candidates and political parties authorized to observe the election may use cell phones or other electronic devices provided that the~~] device contains no camera or video recording capacity [~~camera function is not used within the polling place. The officers of election are~~] responsible [authorized to monitor the use of electronic devices for observation of the election and may regulate or prohibit any use the officers determine will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election.

~~Whether a particular call or calls by any authorized representative is deemed to interfere or disrupt the voting process is within the discretion of the officers of election at each] precinct [polling place as a majority. Any authorized representative may be required to cease the call, make or receive any such calls outside the] precinct [polling place, or be removed from the polling] precinct [The use of electronic~~

devices inside the polling place is generally permitted. However, representatives of candidates and political parties authorized to observe the election are prohibited from taking photos or video within the polling] place.

~~B. Use of cell phones and other electronic devices by other persons at polling places shall be monitored by the officers of election who may regulate or prohibit any use the officer determines will hinder or delay a voter or officer of election or otherwise impede the orderly conduct of the election. Use of electronic devices may not interfere nor disrupt the voting process, nor attempt to solicit or attempt to influence any person in casting his vote. At no time may any person use a camera or the camera function on an electronic device to film, digitally capture, or take pictures within the polling place unless such person is an authorized member of the media filming in accordance with § 24.2-604 J of the Code of Virginia. Once a voter enters the prohibited area at the polls as designated in § 24.2-604 of the Code of Virginia, the use of a cell phone or other electronic communication device may be prohibited if deemed a violation of § 24.2-1006 of the Code of Virginia, or if otherwise deemed disruptive to the voting process. [Voters are permitted to use cameras or audio or visual recording devices inside the polling place. Officers of election may regulate or restrict the use of these devices by voters if the use hinders, delays, or disrupts the voting process, or the voter attempts to intimidate other voters through use of the device.~~

Whether a voter's use of a device is deemed in violation of this subsection is within the discretion of the officers of election at each polling place as a majority. Any voter may be required to cease using the device, but no voter may be removed from the polling place for using a device until after the voter has cast his ballot. Officers of election are authorized to monitor the use of an electronic device by any individual in the polling place. Officers of election may restrict the use of an electronic device by any individual if that use hinders, delays, or disrupts the voting process; if that use attempts to solicit or in any manner attempts to influence any person in casting his vote; or if the individual attempts to intimidate another individual through use of an electronic device. Whether use of an electronic device by an individual is deemed in violation of this section is within the discretion of the majority of officers of election at each polling place. Upon determination of a violation of this section, the officers of election may (i) require any individual to cease the use of an electronic device, (ii) require any individual to limit the use of an electronic device to outside the polling place, or (iii) remove any individual from the polling place.]

~~C. [Grounds for regulating] or prohibiting [the use of electronic devices by authorized representatives of candidates and political parties include] but are not limited to [(i) the making or receiving of calls that interfere with or become disruptive to the voting process; (ii) the making or receiving of calls in an attempt to solicit or influence any person in casting his vote; or (iii) the] usage of the camera function to film within the polling place or beyond the 40-foot prohibited area; or (iv) the [person using the device is conducting himself in a noisy or riotous manner at or about the polls so as to disturb the election. No voter may be removed from the polling place for the use of an electronic device until after the voter has cast his ballot.]~~

~~D. An officer of election may require any individual using an electronic device subject to regulation under subsection C of this section to cease such use, make or receive calls outside the precinct polling place, or remove the use of the device from the polling place. [No policy disallowing use of all electronic devices by all voters is allowed. The determination of the officers of election of any dispute concerning the use of an electronic device shall be subject to immediate appeal to the local electoral board.]~~

~~[E.] Any action taken pursuant to this section is within the judgment of the officers of election as a majority. [An electoral board may not enact any policy that disallows the use of any electronic device by all individuals.]~~

~~F. [E. The determination of the officers of election of any dispute concerning the use of electronic devices shall be subject to immediate appeal to the local electoral board.]~~

1VAC20-60-40. When ballot cast.

A. A voter, voting in person on election day or voting absentee in-person, has not voted until a permanent record of the voter's intent is preserved.

B. A permanent record is preserved by a voter (i) pressing the vote or cast button on a direct recording electronic machine, (ii) inserting an optical scan ballot into an electronic counter, [or] (iii) placing a paper ballot in an official ballot container [~~or (iv) relinquishing possession of a completed provisional ballot envelope containing the ballot to the possession of an officer of election~~].

C. A vote has not been cast by the voter unless and until the voter or an officer of election or assistant at the direction of and on behalf of the voter pursuant to § 24.2-649 of the Code of Virginia completes these actions to preserve a permanent record of the vote.

D. If any voter's ballot was not so cast by or at the direction of the voter, then the ballot cannot be cast by any officer of election or other person present. Notwithstanding the previous sentence, if a voter inserts a ballot into an optical scanner and departs prior to the ballot being returned by the scanner due to an undervote or overvote, the officer of election may cast the ballot for the absent voter.

E. An absentee voter who votes other than in person shall be deemed to have cast his ballot at the moment he personally delivers the ballot to the general registrar or electoral board or relinquishes control over the ballot to the [~~United States U.S.~~] Postal Service or other authorized carrier for returning the ballot as required by law.

1VAC20-60-50. Overfull optical scan ballot container.

If an optical scan reader in use in a registrar's office or a polling place malfunctions because the connected ballot container includes too many ballots, election officials may open the ballot container and empty the ballots with the following safeguards:

1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall remain in plain sight in the polling place.
2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the Code of Virginia.
3. ~~A~~ In a general, special, or dual-party primary election, a minimum of two officers of election, not representing ~~both the same political parties~~ party, shall execute such a transfer of ballots. In a single-party primary election, the transfer shall be conducted by a minimum of two officers of election who may [be members of represent] the same party.

VA.R. Doc. No. R14-3932; Filed October 3, 2016, 3:58 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-80. Recounts and Contested Elections (amending 1VAC20-80-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: October 4, 2016.

Agency Contact: Brooks Braun, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8949, FAX (804) 786-0760, or email brooks.braun@elections.virginia.gov.

Summary:

The amendments (i) modify the duties and responsibilities of the State Board of Elections, the Department of Elections, and the Commissioner of Elections and (ii) update certain terminology. The amendments conform to changes in the Code of Virginia enacted by Chapter 542 of the 2013 Acts of Assembly and Chapters 540 and 576 of the 2014 Acts of Assembly.

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1VAC20-80-20. Recounts and contested elections.

A. Standards for any recounts or contests requested in the Commonwealth of Virginia shall be governed by Chapter 8 (§ 24.2-800 et seq.) of Title 24.2 of the Code of Virginia.

B. Upon notification by the court that a recount request has been filed pursuant to § 24.2-801 of the Code of Virginia, the ~~State Board~~ Department of Elections shall promptly transmit to the appropriate court and electoral board or boards copies of the instructions corresponding to the types of ballots and equipment used in each county or city involved in the recount.

C. In preparation for the recount and pursuant to § 24.2-802 A of the Code of Virginia, the clerks of the circuit courts shall:

1. Secure all ~~paper~~ printed ballots and other election materials in sealed boxes;
2. Place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and his staff;
3. Cause such vault or room to be securely locked except when access is necessary for the clerk and his staff; and
4. Certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.

D. After a recount has been requested pursuant to § 24.2-801 of the Code of Virginia, and prior to the preliminary hearing specified in § 24.2-802 B of the Code of Virginia, the electoral board of each county or city in which the recount is to be held shall provide the court and all parties to the recount with:

1. The recommended location and number of recount teams needed to recount ~~paper~~ printed ballots and to redetermine the votes cast on direct recording electronic devices of the type that prints returns for the election district at large in which the recount is being held.
2. The recommended location and number of recount teams needed to insert the ballots read by ~~an electronic counting device~~ a ballot scanner machine into one or more ~~counting devices~~ scanners that have been programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount. Such machines shall also be programmed to reject all undervoted and overvoted ballots as required by § 24.2-802 D of the Code of Virginia. The examination of undervoted and overvoted ballots may take place at the same location before the votes are totaled for that precinct, if so directed by the court. If a different team of officers would be used to examine the undervoted and overvoted ballots, such teams shall be included in the total number recommended for this item.
3. A complete list of all officers of election who served at the election to be recounted, with the political party they represented at that election listed beside their names, the precinct where each officer served, each officer's address and phone number or numbers, and an indication of which

officers served as chief or assistant chief officers. Such list shall note recommended recount officials who the court may appoint if the officials and alternates recommended by the parties to the recount are not of sufficient number to conduct the recount within a reasonable period. Such list shall be provided by the local electoral boards for both parties to the recount, or by the ~~Secretary Commissioner~~ Secretary Commissioner of the ~~State Board~~ Department of Elections in the case of a recount for federal or statewide office or a statewide ballot issue, prior to the preliminary hearing, or as soon thereafter as possible, to assist them in preparing their selections of officers to be recount officials or alternates.

4. A list of the members of the electoral board and the political parties they represent. Such list shall be provided by the local electoral boards to both parties to the recount or by the ~~Secretary Commissioner~~ Secretary Commissioner of the ~~State Board~~ Department of Elections in the case of a recount for federal or statewide office or a statewide ballot issue.

E. To facilitate the conduct of any pending or expected recount for a federal or statewide office or statewide ballot issue, the ~~Secretary Commissioner~~ Secretary Commissioner of the ~~State Board~~ Department of Elections may coordinate the gathering of the recommendations and information from the electoral boards and provide such recommendations and information to the court prior to the preliminary hearing specified in § 24.2-802 B of the Code of Virginia on behalf of the electoral boards. The electoral board of each county or city in which the recount is to be held shall provide the requested information to the ~~Secretary Commissioner~~ Secretary Commissioner of the ~~State Board~~ Department of Elections [or directly to the court if so requested].

F. Pursuant to § 24.2-802 A of the Code of Virginia, the procedures issued by the State Board of Elections, and any other procedures directed by the court, shall be as uniform as possible throughout the entire district in which the recount is being conducted, given the differences in types of equipment and ballots used in the election.

G. For any [~~paper~~ printed] ballot that is to be counted manually and can be counted manually, the guidelines adopted by the State Board of Elections for hand-counting shall be used in determining the voter's intent ("Ballot Examples for Handcounting Paper or Paper-Based Ballots for Virginia Elections or Recounts").

H. The State Board of Elections, Department of Elections, and the appropriate electoral boards shall provide any other assistance requested by the court.

VA.R. Doc. No. R16-4650; Filed October 3, 2016, 3:58 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: 4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Agency Contact: Alicia Nelson, Fisheries Management, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-8155, or email alicia.nelson@mrc.virginia.gov.

Effective Dates: October 3, 2016, through November 1, 2016.

Preamble:

The amendments establish the landing units for the fall 2016 summer flounder season.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, and E of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection J of this section.

C. From the second Wednesday in March through June 6, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivisions 3 and 4 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land summer flounder in Virginia for commercial purposes more than twice during each consecutive period, with the initial period beginning on the second Wednesday in March.

3. Land in Virginia more than a total of 7,500 pounds of summer flounder during the initial 30-day period beginning on the second Wednesday in March.

4. Land in Virginia more than a total of 5,000 pounds of summer flounder during the 60-day period beginning on April 8.

5. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From November 1 through December 31 of each year, ~~or until it has been projected and if it has not been announced~~ that 85% of the allowable landings have been taken, it shall be ~~unlawful~~ lawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in ~~subdivisions 3 and 4~~ subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.

~~2. Land summer flounder in Virginia for commercial purposes more than twice during each consecutive 30 day period, with the first 30 day period beginning on November 1.~~

~~3. 2. Land in Virginia more than a total of 10,000 7,500 pounds of summer flounder during the first 30 day period, with the first 30 day period beginning on~~ from November 4 ~~10 through December 31.~~

~~4. Land in Virginia more than a total of 5,000 pounds of summer flounder during the second 30 day period with the second 30 day period beginning on December 1.~~

~~5. 3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.~~

E. From January 1 through December 31 of each year, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

F. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

G. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading

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or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection J of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

H. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

J. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

K. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

L. When it is projected and announced that 85% of the allowable landings have been taken, it shall be unlawful to land summer flounder in Virginia, except as described in subsection A of this section.

M. It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

VA.R. Doc. No. R17-4935; Filed September 28, 2016, 4:18 p.m.

Final Regulation

<p>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.</p>

Title of Regulation: 4VAC20-650. Establishment of Oyster Sanctuary Areas (amending 4VAC20-650-30).

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

Effective Date: October 1, 2016.

Agency Contact: Alicia Nelson, Fisheries Management, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-8155, or email alicia.nelson@mrc.virginia.gov.

Summary:

The amendment specifies that the gear that is prohibited in the oyster sanctuary area is hand scrape, dredge, or patent tong gear.

4VAC20-650-30. Closure of sanctuary areas.

A. All Oyster Sanctuary Areas shall be closed to the harvest of oysters, except that Seaside of the Eastern Shore Oyster Sanctuary Areas shall be closed to the harvest of all shellfish. Any person harvesting oysters or shellfish from the specified areas shall be guilty of a violation of this chapter.

B. It shall be unlawful for any person to possess any hand scrape, dredge, or patent tong gear that could be used to harvest shellfish on public or unassigned oyster grounds within 100 feet of any oyster sanctuary area, and such possession shall be considered as prima facie evidence of a violation of this chapter.

VA.R. Doc. No. R17-4934; Filed September 28, 2016, 12:38 p.m.

Emergency Regulation

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-15).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Agency Contact: Alicia Nelson, Fisheries Management, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-8155, or email alicia.nelson@mrc.virginia.gov.

Effective Dates: October 3, 2016, through November 1, 2016.

Preamble:

The amendments clarify the transfer eligibility of the oyster resource user fee.

4VAC20-720-15. Control date, license moratorium, transferability, and agents.

A. The commission hereby establishes July 1, 2014, as the control date for management of all public oyster fisheries in Virginia. Participation by any individual in any public oyster fishery after the control date may not be considered in the calculation or distribution of oyster fishing rights should entry limitations be established. Any individual entering the public oyster fishery after the control date will forfeit any right to future participation in the public oyster fishery should further entry limitations be established by the commission.

B. Beginning February 23, 2016, only individuals who have paid the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia in previous years may pay that fee for the current year. Those individuals who are eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia shall do so by April 30, 2017, in 2017 and by January 1 in subsequent years in order to maintain their eligibility.

C. Should the number of people eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia in any given year fall below 600, a random drawing shall be held to award eligibility to pay that oyster resource user fee to individuals who were not previously eligible until the number of persons eligible to pay the fee reaches 600. Any Commercial Fisherman Registration Licensee may apply for the random drawing.

D. Any person eligible to pay the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia, or such person's legal representative, may transfer the eligibility to pay such user fee, ~~provided to:~~

1. ~~The A transferee who~~ is the transferor's spouse, sibling, parent, child, grandparent, or grandchild and who possesses a current Commercial Fisherman Registration License and intends to participate in the public oyster fishery.
2. ~~The A transferee other than a person described in subdivision 1 of this subsection if the~~ transferor ~~shall have~~ has documented by mandatory reporting and buyers reports 40 days or more of public oyster harvest during the previous calendar year. ~~All transfers shall be documented on a form provided by Marine Resources Commission.~~
3. ~~In the case of death or incapacitation, the licensee may transfer such eligibility to an individual who meets the requirements found in subdivision 1 or 2 of this subsection.~~

All transfers under this subsection shall be documented on a form provided by the Marine Resources Commission.

E. Exceptions to subsection B of this section shall only apply to those individuals who previously paid the oyster resource user fee described in clause (ii) of subsection A of § 28.2-541 of the Code of Virginia and shall be based on documented medical hardships or active military leave that prevented the fisherman from fully satisfying the requirements of subsection B of this section.

F. No person shall serve as an agent for any public oyster gear licensee.

VA.R. Doc. No. R17-4937; Filed September 28, 2016, 4:14 p.m.

◆ ————— ◆
TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Criminal Justice Services Board is claiming an 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 Criminal Justice Services Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6VAC20-90. Rules Relating to Regional Criminal Justice Training Academies (amending 6VAC20-90-20).**

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

Effective Date: July 1, 2017.

Agency Contact: Barbara Peterson-Wilson, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcs.virginia.gov.

Summary:

The amendment adds the Skyline Regional Criminal Justice Academy, a new regional criminal justice academy serving the Counties of Clarke, Frederick, and Warren; the City of Winchester; the Towns of Berryville, Front Royal, Middletown, Stephens City, and Strasburg; the Northwestern Adult Detention Center; and the Frederick County Emergency Communications Center, to the list of regional academies eligible to receive state funding. The amendment conforms the regulation to Item 398 of Chapter 780 of the 2016 Acts of Assembly.

6VAC20-90-20. Designation.

A. The regional academies set forth below are designated as regional academies and are eligible to receive allocated funds from the department.

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Cardinal Criminal Justice Academy
Salem, Virginia
Central Shenandoah Criminal Justice Training Academy
Waynesboro, Virginia
Central Virginia Criminal Justice Academy
Lynchburg, Virginia
Crater Criminal Justice Academy
Petersburg, Virginia
Hampton Roads Regional Academy of Criminal Justice
Newport News, Virginia
New River Criminal Justice Training Academy
Radford, Virginia
Northern Virginia Criminal Justice Academy
Ashburn, Virginia
Piedmont Regional Criminal Justice Training Academy
Martinsville, Virginia
Rappahannock Regional Criminal Justice Academy
Fredericksburg, Virginia
Skyline Regional Criminal Justice Academy
Front Royal, Virginia
Southwest Law Enforcement Academy
Bristol, Virginia
~~Piedmont Regional Criminal Justice Training Academy~~
~~Martinsville, Virginia~~

B. Jurisdictions may operate their own independent training academies; however, no state funds will be available for such academies. A jurisdiction, within or without the Commonwealth, may join a regional academy at any time subject to complying with the policies established by the board.

C. A regional academy site may be changed by the academy governing body with the approval of the board.

D. Training, where practical, shall be conducted at designated satellite locations throughout the geographical confines of the regional academy to ensure minimum travel for student officers.

E. The board shall define geographical boundaries of designated regional academies.

VA.R. Doc. No. R17-4750; Filed September 22, 2016, 3:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Criminal Justice Services Board 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 Criminal Justice Services Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6VAC20-230. Regulations Relating to Special Conservator of the Peace (amending 6VAC20-230-40, 6VAC20-230-60, 6VAC20-230-70, 6VAC20-230-120, 6VAC20-230-140, 6VAC20-230-150).**

Statutory Authority: § 9.1-150.2 of the Code of Virginia.

Effective Date: November 16, 2016.

Agency Contact: Shannon Dion, Director of Policy and Legislative Affairs, Department of Criminal Justice Services, 1100 East Bank Street, Richmond, VA 23219, telephone (804) 225-4300, FAX (804) 786-0588, or email shannon.dion@dcjs.virginia.gov.

Summary:

Pursuant to Chapter 551 of the 2016 Acts of Assembly, the amendments (i) require each individual seeking an initial or renewal registration as a special conservator of the peace (SCOP) to submit a fingerprint card, fingerprint application, fingerprint fee, and all necessary documentation for a criminal history records background search; (ii) disqualify an individual who is prohibited from possessing, transporting, or purchasing a firearm from registering or continuing to serve as a SCOP; and (iii) require an individual to notify the department and the chief law-enforcement officer of all the localities in which he is authorized to serve as a SCOP within three days of becoming ineligible for registration or appointment.

6VAC20-230-40. Fingerprint processing.

A. ~~Before appointment by the circuit court, each~~ Each individual applying for seeking an initial or renewal registration as a special conservator of the peace shall submit to the department:

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

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the individual has a record of conviction or is prohibited from possessing, transporting, or purchasing a firearm.

C. Fingerprint cards that are found to be unclassifiable will suspend action on the application pending the resubmittal of a classifiable fingerprint card. The applicant shall be notified in writing and shall submit a new fingerprint card before the processing of his application will resume. However, the applicable, nonrefundable fee may be required if the department is assessed additional processing fees.

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

6VAC20-230-60. Application procedures and requirements.

Every applicant for special conservator of the peace shall submit all requirements for a criminal history records background search and initial or renewal registration requirements.

6VAC20-230-70. Renewal registration application.

A. Applications for registration renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the registered individual. However, if the individual does not receive a renewal notification, it is the responsibility of the individual to ensure that renewal requirements are filed with the department. Registration renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees.

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

1. Successfully complete the in-service training, and firearms retraining if applicable, pursuant to the in-service training requirements set forth by this chapter; and
2. Be in good standing in every jurisdiction where appointment is granted. This subdivision shall not apply to any probationary periods during which the individual is eligible to operate under the registration.

C. The department may renew a registration when the department receives the following:

1. A properly completed renewal application provided by the department;
2. The applicable, nonrefundable registration renewal fee; ~~and~~
3. Fingerprint card, application form, and applicable nonrefundable fee pursuant to 6VAC20-230-40; and
4. A copy of the court order granting special conservator of the peace authority and jurisdiction if changed from the original filed with the department.

D. Upon completion of the renewal registration application requirements, the department may issue a registration letter for a period not to exceed 12 months. This registration letter shall be submitted by the applicant to a specified entity for a state-issued photo identification card, or a decal will be provided by the department.

E. Any renewal application received by the department shall meet all renewal requirements prior to the expiration date of a registration or shall be subject to the reinstatement requirements set forth in 6VAC20-230-90.

6VAC20-230-120. Denial, probation, suspension and revocation.

A. The department may deny a registration for any person with a criminal conviction for a misdemeanor involving (i) moral turpitude, (ii) assault and battery, (iii) damage to real or personal property, (iv) controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, (v) prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, (vi) firearms, or (vii) any felony. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

B. The department may deny a registration in which any individual has not maintained good standing in the jurisdiction where appointed by the circuit court; had a registration that was denied upon initial application, suspended, revoked, surrendered, or not renewed; or has otherwise been disciplined in connection with a disciplinary action prior to applying for registration in Virginia.

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

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

E. The department may deny a registration for any individual who tests positive on the submitted drug and alcohol screening.

F. The department shall deny a registration for any person who is prohibited from possessing, transporting, or purchasing a firearm.

6VAC20-230-140. Registered individual administrative requirements.

A. A registered individual shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter;
2. Maintain at all times with the department his mailing address, ~~e-mail~~ email and phone number, if applicable. Written notification of any address change, ~~e-mail~~ email address or phone number shall be in writing and received by the department no later than 10 days after the effective date of the change;
3. Inform the department in writing within 10 days after pleading guilty or nolo contendere or being convicted or found guilty of any felony or a misdemeanor;

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4. Inform the department in writing within 10 days after having been found guilty by any court or administrative body of competent jurisdiction to have violated the special conservator of the peace statutes or regulations of that jurisdiction, there being no appeal therefrom or the time for appeal having elapsed;

5. Inform the department of any incident in which any registrant has discharged a firearm while on duty, excluding any training exercise. This report shall be made within 24 hours of the incident;

6. Within 10 days, inform the department and circuit court where the individual was appointed that the individual has left employment; ~~and~~

7. Submit documentation of jurisdiction of appointment to the department within 30 days from appointment of the circuit court; ~~and~~

8. Notify the department and the chief law-enforcement officer of all localities in which he is authorized to serve within three days of becoming prohibited from possessing, transporting, or purchasing a firearm, or otherwise becoming ineligible for registration or appointment as a special conservator of the peace.

B. An individual's appointment from the circuit court shall not exceed four years under any one appointment.

6VAC20-230-150. Registered individual standards of conduct.

A. A registered individual shall:

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

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

3. Not commit any act or omission that results in a registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction;

4. Not obtain a special conservator of the peace registration or registration renewal through any fraud or misrepresentation;

5. Carry a valid registration or valid temporary authorization letter at all times while on duty;

6. Carry the private security state authorized identification card at all times while on duty once the authorization has been approved from the department;

7. Perform those duties authorized by the circuit court only while employed and in the jurisdiction of appointment, and perform only those duties authorized in the circuit court ordered appointment;

8. Maintain a valid firearms verification if he carries or has immediate access to firearms while on duty and is authorized by the circuit court. He may carry only those firearms that he has been trained on and is qualified to carry;

9. Carry a firearm concealed while on duty only with the expressed authorization of the circuit court that appoints the registrant and only in compliance with § ~~18.2-308~~ 18.2-308.01 of the Code of Virginia;

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

11. Make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest;

12. Display his registration while on duty in response to the request of a law-enforcement officer, department personnel or client;

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

14. If a uniform is required, wear the uniform required by the employer. If wearing a uniform while employed as a special conservator of the peace, the uniform must:

a. Only have the title "police" on any badge or uniform when the circuit court order indicates and to the extent the displayed words accurately represent a special conservator of the peace; and

b. Have a name plate or tape bearing, as a minimum, the individual's last name attached on the outermost garment, except on rainwear worn only to protect from inclement weather.

15. Act only in such a manner that does not endanger the public health, safety and welfare;

16. Not represent as one's own a special conservator of the peace registration issued to another individual;

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

18. Not engage in acts of unprofessional conduct in the practice of special conservator of the peace services;

19. Not engage in acts of negligent ~~and/or~~ or incompetent special conservator of the peace services; and

20. Maintain at all times current liability coverage at least in the amount prescribed by the Code of Virginia.

B. No person with a criminal conviction for a misdemeanor involving (i) moral turpitude, (ii) assault and battery, (iii) damage to real or personal property, (iv) controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, (v) prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, (vi) firearms or (vii) any felony from which no appeal is pending, the time for appeal having elapsed, shall be registered as a conservator of the peace. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

C. No person who is prohibited from possessing, transporting, or purchasing a firearm shall be registered as a special conservator of the peace.

VA.R. Doc. No. R17-4912; Filed September 26, 2016, 9:11 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Fast-Track Regulation

Title of Regulation: **8VAC20-160. Regulations Governing Secondary School Transcripts (amending 8VAC20-160-30).**

Statutory Authority: §§ 22.1-16 and 22.1-253.13.3 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 16, 2016.

Effective Date: December 1, 2016.

Agency Contact: Joseph A. Wharff, School Counseling Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-3370, or email joseph.wharff@doe.virginia.gov.

Basis: Section 22.1-253.13:3 of the Code of Virginia authorizes the Board of Education to promulgate regulations governing standards for accrediting public schools. The board's overall regulatory authority to promulgate regulations as may be necessary to carry out the board's powers and duties and the provisions of Title 22.1 of the Code of Virginia is found in § 22.1-16 of the Code of Virginia.

Purpose: The amendment to add an opt-out policy is a result of numerous educator and constituent calls expressing concern with the mandate to send standardized test scores as a part of the official transcript. Parents and students want the ability to choose whether the standardized test scores are sent by the school or through the College Board, or at all, based on college admission requirements. There is no impact on the public's health, safety, or welfare.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is for regulations expected to be noncontroversial. This revision is noncontroversial because its only purpose is to add flexibility to an already existing transcript item. Time is of the essence in amending this regulation because students send transcripts to postsecondary institutions continuously throughout the year, and some postsecondary institutions have already omitted the requirement for sending standardized scores. In addition, it is probable that more postsecondary institutions will omit this requirement in the future.

Substance: Changes in professional practice in postsecondary institutions have necessitated a change to one item in the

regulation governing secondary school transcripts. The amendment allows for flexibility in the mandate regarding sending standardized test scores to postsecondary institutions by adding language to information for transcripts that requires each local school board to adopt a policy setting forth the procedure by which parents, guardians, or others having legal control or charge can elect in writing to have their child's test record excluded from the student transcript.

Issues: There are no disadvantages to the public, the agency, or the Commonwealth. The advantages to the agency is that the amendment adds flexibility to an already existing transcript mandate. The opt-out policy will allow students and parents the ability to choose whether they have their standardized test scores sent to postsecondary institutions based on local policy rather than it being mandatory that the scores are sent.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to amend the list of required information for secondary school transcripts to allow parents, guardians, or others having legal control or charge to elect in writing to have their child's college performance-related standardized test results for the SAT and ACT excluded from the student transcript.

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

Estimated Economic Impact. The current regulation includes the following on the list of required information for secondary school transcripts: "25. Test record, to include at least the highest score earned, if applicable, on college performance-related standardized tests such as SAT and ACT, excluding Standards of Learning (SOL) test scores;" The Board proposes to add the following language to the end of this item: "except that each local school board shall adopt a policy setting forth the procedure by which parents, guardians, or others having legal control or charge can elect in writing to have their child's test record excluded from the student transcript (opt out);".

The proposed amendment will be beneficial for individuals who believe their scores on college performance-related standardized tests do not reflect as well on their aptitude than do the other elements of their high school transcript such as courses taken and grades. In applying for jobs or other purposes where a high school transcript is required, but SAT scores are not, this would allow such individuals to make their best case without adding unasked for information that may detract from their presentation. Not including college performance-related standardized test scores such as from the SAT and ACT on the transcripts for students who have opted out will not likely significantly increase required staff time or other costs for local school boards. Thus the benefits likely exceed the costs for the proposed amendment.

Regulations

Businesses and Entities Affected. The proposed amendment pertains to all 132 local school divisions in the Commonwealth.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not affect employment.

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

Real Estate Development Costs. The proposed amendment does not 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. The proposed amendment does not affect 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.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis completed by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the regulatory process.

Summary:

The amendment adds an opt-out provision to the list of required information for secondary school transcripts that allows parents, guardians, or others having legal control or charge to elect in writing to have their child's college performance-related standardized test results for the SAT and ACT excluded from the student transcript.

8VAC20-160-30. Format options.

Localities have options for the secondary school transcript format. They may use the Department of Education model or develop their own following board regulations. Localities may also use a digital data exchange format for electronic transcript transmission. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers.

The required information is as follows:

1. Name of school division;
2. Student legal name;
3. State Testing Identifier (STI);
4. Birthdate;
5. Gender;
6. Home address;
7. Home telephone number;
8. Graduation date;
9. Type of diploma, to include "Advanced Studies," "Standard," or "Other Diplomas Authorized by the Board of Education";
10. Type of industry certification credential and date of completion, if applicable;
11. Certificate of Program Completion and award date, if applicable;
12. Notation of Early College Scholar Designation;
13. Notation of Commonwealth Scholar Designation;
14. Name, address, email address, and telephone number of schools student attended each year;
15. Number of days absent within given school year;
16. Course work listed by year with grades;
17. Total credits earned by year;
18. A list of verified credits earned, including any credits earned by substitution;
19. Credits to date;
20. Grade point average;
21. Credit summary for entire school experience;
22. Key to symbols and abbreviations used to denote accelerated courses, advanced-level courses, Commonwealth College Course Collaborative course courses, honors courses, and summer school courses, or credits earned by substitution;
23. Notification of whether school/program ranks students; if so, the rank in class with given number of semesters used for computation;
24. Final driver education grade;
25. Test record, to include at least the highest score earned, if applicable, on college performance-related standardized tests such as SAT and ACT, excluding Standards of Learning (SOL) test scores, except that each local school board shall adopt a policy setting forth the procedure by which parents, guardians, or others having legal control or charge can elect in writing to have their child's test record excluded from the student transcript (opt out);
26. Signature and title of school official;
27. Date of school official signature;
28. School name;

29. School address;
30. Telephone number of school;
31. Fax number of school;
32. The school's Department of Education 7-digit code number.

VA.R. Doc. No. R17-4751; Filed September 15, 2016, 2:02 p.m.

Fast-Track Regulation

Title of Regulation: **8VAC20-521. Regulations Governing Reduction of State Aid When Length of School Term below 180 Teaching Days or 990 Teaching Hours (amending 8VAC20-521-40, 8VAC20-521-50).**

Statutory Authority: § 22.1-98 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 16, 2016.

Effective Date: December 1, 2016.

Agency Contact: Melissa Luchau, Director for Board Relations, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2924, FAX (804) 225-2524, or email melissa.luchau@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. Section 22.1-98 of the Code of Virginia prescribes the circumstances under which state aid to school divisions shall be reduced when the length of the school term falls below 180 teaching days or 990 teaching hours. Chapter 706 of the 2015 Acts of Assembly amended § 22.1-98 to permit the Board of Education to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from severe weather conditions or other emergency situations. At present, the authority to waive the requirement only extends to school closings resulting from a declared state of emergency.

Purpose: Amendments to these regulations are necessary in order to comport with changes made by Chapter 706 of the 2015 Acts of Assembly, which expanded the circumstances under which the Board of Education is authorized to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings, to include closings resulting from severe weather conditions or other emergency situations. At present, such waiver authority is only applicable to school closings resulting from a declared state of emergency. The regulations were revised to reflect amendments to the Code of Virginia, and there is no direct impact to the public health, safety, or welfare. The regulations simply address the scheduling needs of localities impacted by severe weather.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is for regulations expected to be

noncontroversial. This revision is noncontroversial because its only purpose is to address legislation that was adopted during the 2015 Session of the General Assembly.

Substance: The amendments to this regulation simply expand the circumstances under which the Board of Education is authorized to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings. These amendments are necessary to comport with Chapter 706 of the 2015 Acts of Assembly. Virginia law specifies the minimum number of instructional hours or days required for local school divisions to receive basic aid funding from the state. Section 22.1-98 of the Code of Virginia requires the length of every school's term in every school division to be at least 180 teaching days or 990 teaching hours in any school year but specifies certain exceptions to the minimum days or hours. When severe weather conditions or other emergency situations have resulted in school closings, the schedule of make-up days in this section requires (i) full make up of lost days when lost instructional time has been for five or fewer days, (ii) make up of the first five days plus one day for each additional two days missed when lost time equals six days or more, (iii) instructional hours equivalent to such missed teaching days to meet the minimum 990 teaching hour requirement, or (iv) a Board of Education waiver from providing additional teaching days or teaching hours if the closings resulted from a declared state of emergency or severe weather conditions or other emergency situations.

While Chapter 706 expanded the circumstances under which the board may grant a waiver, to include closings resulting from severe weather conditions or other emergency situations, the Board of Education must still determine whether school division requests meet that standard. In addition, school divisions must still provide evidence of efforts to reschedule as many days as possible and certification by the division superintendent and chairman of the local school board that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver. If the waiver is approved, the regulations authorize the Superintendent of Public Instruction to approve reductions in the school term without a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund.

It is important to note that § 22.1-98 of the Code of Virginia, as well as the regulations currently in effect, contain the following definitions that are pertinent to this regulatory action: "'Declared state of emergency" means the declaration of an emergency before or after an event by the Governor or by officials in a locality that requires the closure of any or all schools within a school division. "Severe weather conditions or other emergency situations" means those circumstances presenting a threat to the health or safety of students that result from severe weather conditions or other emergencies, including, but not limited to, natural and man-made disasters, energy shortages or power failures."

Regulations

Issues: There are no disadvantages to the public, the agency, or the Commonwealth. The amendments are required by changes in the Code of Virginia adopted by the Virginia General Assembly. The advantage to all parties is that the amended regulation will comport with the Code of Virginia by specifying that the Board of Education has the authority to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings resulting from severe weather conditions or other emergency situations. When the length of the school term falls below 180 teaching days or 990 teaching hours, there is a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund unless the school division is able to secure a waiver from the Board of Education.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to 2015 legislation, the Board of Education (Board) proposes to indicate in this regulation that it may waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for closings resulting from severe weather conditions or other emergency situations.

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

Estimated Economic Impact. Chapter 706 of the 2015 Virginia Acts of Assembly¹ expanded the circumstances under which the Board is authorized to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for school closings to include closings resulting from severe weather conditions or other emergency situations. Prior to the legislation, such waiver authority was only applicable to school closings resulting from a declared state of emergency. The proposed additional language for the regulation does not expand upon that which is explicitly stated in the Code of Virginia.² Thus the proposed addition to the regulation does not affect rules in practice, but may be beneficial in that members of the public who only read the regulation and not the statute will be better informed concerning the Board's authority to waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for closings.

Businesses and Entities Affected. The proposed amendment pertains to all 132 local school divisions in the Commonwealth.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not affect employment.

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

Real Estate Development Costs. The proposed amendment does not 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. The proposed amendment does not affect 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.

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?151+ful+CHAP0706>

² See § 22.1-98.E: <http://law.lis.virginia.gov/vacode/22.1-98>

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

Summary:

Pursuant to Chapter 706 of the 2015 Acts of Assembly, the amendments (i) expand the board's waiver authority to include school closings resulting from severe weather conditions or other emergency situations in addition to a declared state of emergency and (ii) eliminate the proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division obtains a waiver for closings resulting from severe weather conditions or other emergency situations.

8VAC20-521-40. Waivers for a declared state of emergency, severe weather conditions, or other emergency situations.

A. The Board of Education may waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for closings resulting from a declared state of emergency, severe weather conditions, or other emergency situations.

B. If the local school board desires a waiver for days missed as the result of a declared state of emergency, severe weather conditions, or other emergency situations, it shall submit a request for a waiver to the Board of Education. The request shall include evidence of efforts that have been made by the school division to reschedule as many days as possible.

C. The division superintendent and the chair of the local school board shall certify that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver of the requirement.

D. The Board of Education authorizes the Superintendent of Public Instruction to approve, in compliance with ~~these regulations~~ this chapter, reductions in the school term for a school or the schools in a school division.

E. If the waiver is denied, the school division shall make up the missed instructional time in accordance with 8VAC20-521-30 and § 22.1-98 of the Code of Virginia.

8VAC20-521-50. Funding.

A. There shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division:

1. Completes instructional time in accordance with 8VAC20-521-30 and § 22.1-98 of the Code of Virginia; or
2. Obtains a waiver for closings resulting from a declared state of emergency, severe weather conditions, or other emergency situations in accordance with 8VAC20-521-40.

B. The local appropriations for educational purposes necessary to fund 180 teaching days or 990 teaching hours shall not be proportionally reduced by any local governing body due to a reduction in the length of the term of any school if the missed days are made up in accordance with 8VAC20-521-30 or the schools in a school division have been granted a waiver in accordance with 8VAC20-521-40.

VA.R. Doc. No. R17-4578; Filed September 15, 2016; 2:04 p.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-20. General Provisions (Rev. G16) (amending 9VAC5-20-204).**

9VAC5-30. Ambient Air Quality Standards (Rev. G16) (amending 9VAC5-30-55).

9VAC5-151. Regulation for Transportation Conformity (Rev. G16) (amending 9VAC5-151-20).

9VAC5-160. Regulation for General Conformity (Rev. G16) (amending 9VAC5-160-30).

Statutory Authority:

§ 10.1-1308 of the Code of Virginia; §§ 110 and 182 of the federal Clean Air Act; 40 CFR Part 51 (9VAC5-20-204).

§ 10.1-1308 of the Code of Virginia; §§ 108, 109, 110, 182, and 302 of the federal Clean Air Act; 40 CFR Parts 50, 51, 53, and 58 (9VAC5-30-55).

§ 10.1-1308 of the Code of Virginia; §§ 110, 176(c), and 182 of the federal Clean Air Act; 40 CFR Part 51 (9VAC5-151-20).

§ 10.1-1308 of the Code of Virginia; §§ 110, 176(c), and 182 of the federal Clean Air Act; 40 CFR Part 51 (9VAC5-160-30).

Effective Date: November 16, 2016.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

On March 6, 2015 (80 FR 12264), the U.S. Environmental Protection Agency (EPA) established a final rule for implementing the 2008 ozone national ambient air quality standards (NAAQS). This rule addresses a range of nonattainment area state implementation plan (SIP) requirements for the 2008 ozone NAAQS, including how to address the revoked 1997 ozone NAAQS. The board's ambient air quality regulation must be amended accordingly, as well as the list of nonattainment areas, to reflect this change. Clarifying text has also been added to the Regulation for Transportation Conformity and the Regulation for General Conformity.

9VAC5-20-204. Nonattainment areas.

A. Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each ozone nonattainment area, in parentheses, is the classification assigned pursuant to § 181(a) of the federal Clean Air Act (42 USC § 7511(a)), 40 CFR 51.903(a), and 40 CFR 51.1103(a).

1. Ozone (1-hour).

Northern Virginia Ozone Nonattainment Area (severe).

- Arlington County
- Fairfax County
- Loudoun County
- Prince William County
- Stafford County
- Alexandria City
- Fairfax City
- Falls Church City
- Manassas City
- Manassas Park City

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2. Ozone (8-hour, 0.08 ppm).

Northern Virginia Ozone Nonattainment Area (moderate).

Arlington County
Fairfax County
Loudoun County
Prince William County
Alexandria City
Fairfax City
Falls Church City
Manassas City
Manassas Park City

3. Ozone (8-hour, 0.075 ppm).

Northern Virginia Ozone Nonattainment Area (marginal).

Arlington County
Fairfax County
Loudoun County
Prince William County
Alexandria City
Fairfax City
Falls Church City
Manassas City
Manassas Park City

4. All other pollutants.

None.

B. Subdivision A 1 of this section shall not be effective after June 15, 2005.

C. Subdivision A 2 of this section shall not be effective after April 6, 2015.

9VAC5-30-55. Ozone (8-hour, 0.08 ppm).

A. The primary and secondary ambient air quality standard is 0.08 parts per million, daily maximum 8-hour average.

B. Ozone shall be measured by the reference method described in Appendix D of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I of 40 CFR Part 50.

D. The standard set forth in subsection A of this section shall no longer apply to an area for transportation conformity purposes after July 20, 2013 April 6, 2015. ~~The standard set forth in subsection A of this section shall continue to remain applicable to all areas for all other purposes notwithstanding the standard set forth in 9VAC5-30-56 A or the designation of areas for the standard set forth in 9VAC5-30-56 A 3.~~ Area designations and classifications with respect to the revoked standard set forth in subsection A of this section are set forth in 9VAC5-20-204 A 2.

Part II

General Provisions

9VAC5-151-20. Applicability.

A. The provisions of this chapter shall apply to the following actions:

1. Except as provided for in subsection C of this section or 40 CFR 93.126, conformity determinations are required for:

a. The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT;

b. The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT; and

c. The approval, funding, or implementation of FHWA/FTA projects.

2. Conformity determinations are not required under this chapter for individual projects that are not FHWA/FTA projects. However, 40 CFR 93.121 applies to the projects if they are regionally significant.

3. This chapter shall apply to conformity determinations for which the final decision is made on or after the program approval date. For purposes of applying this subdivision, the program approval date of the regulation adopted by the board on March 26, 2007, shall be the date 30 days after the date on which a notice is published in the Virginia Register acknowledging that the administrator has approved the regulation adopted by the board on March 26, 2007.

B. The provisions of this chapter shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan. The provisions of this chapter shall not apply in nonattainment and maintenance areas that were designated nonattainment or maintenance under a federal standard that has been revoked (see 9VAC5-20-204 B).

1. The provisions of this chapter apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}).

2. The provisions of this chapter also apply with respect to emissions of the following precursor pollutants:

a. Volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in ozone areas;

b. NO_x in nitrogen dioxide areas;

c. VOCs or NO_x or both, in PM₁₀ areas;

(1) If the EPA Regional Administrator or the DEQ Director has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT; or

(2) If the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

d. NO_x in PM_{2.5} areas:

(1) Unless both the EPA Regional Administrator and the DEQ Director have made a finding that transportation-related emissions of NO_x within the nonattainment area are not a significant contributor to the PM_{2.5} nonattainment problem and have so notified the MPO and USDOT, or

(2) The applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

e. VOC, sulfur dioxide (SO₂) and/or ammonia (NH₃) in PM_{2.5} areas either:

(1) If the EPA Regional Administrator or the DEQ Director has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and USDOT, or

(2) If the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

3. The provisions of this chapter apply to PM_{2.5} nonattainment and maintenance areas with respect to PM_{2.5} from re-entrained road dust if the EPA Regional Administrator or the DEQ Director has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and USDOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

4. The provisions of this chapter apply to maintenance areas through the last year of the area's maintenance plan approved under § 175A(b) of the federal Clean Air Act,

unless the applicable implementation plan specifies that the provisions of this chapter shall apply for more than 20 years.

C. In order to receive any FHWA/FTA approved or funding actions, including NEPA approvals, for a project phase subject to this chapter, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in 40 CFR 93.114, except as provided by 40 CFR 93.114(b).

D. For areas or portions of areas that have been continuously designated attainment or not designated for any National Ambient Air Quality Standard for ozone, CO, PM₁₀, PM_{2.5} or NO₂ since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any National Ambient Air Quality Standard for any of these pollutants, the provisions of this chapter shall not apply with respect to that National Ambient Air Quality Standard for 12 months following the effective date of final designation to nonattainment for each National Ambient Air Quality Standard for such pollutant.

Part II General Provisions

9VAC5-160-30. Applicability.

A. The provisions of this regulation chapter shall apply in all nonattainment and maintenance areas for criteria pollutants for which the area is designated nonattainment or has a maintenance plan. Conformity requirements for newly designated nonattainment areas are not applicable until one year after the effective date of the final nonattainment designation for each national ambient air quality standard and pollutant in accordance with § 176(c)(6) of the federal Clean Air Act.

B. The provisions of this chapter apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀), and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}). The provisions of this chapter shall not apply in nonattainment and maintenance areas that were designated nonattainment or maintenance under a federal standard that has been revoked (see 9VAC5-20-204 B).

C. The provisions of this chapter apply with respect to emissions of the following precursor pollutants:

1. For ozone:

a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and

b. Volatile organic compounds.

2. For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable implementation plan as significant contributors to the PM₁₀ levels.

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3. For PM_{2.5}, (i) sulfur dioxide in all PM_{2.5} nonattainment and maintenance areas, (ii) nitrogen oxides in all PM_{2.5} nonattainment and maintenance areas unless both the department and EPA determine that it is not a significant precursor, and (iii) volatile organic compounds and ammonia only in PM_{2.5} nonattainment or maintenance areas where either the department or EPA determines that they are significant precursors.

D. Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC § 5301 et seq.) shall meet the procedures and criteria of 9VAC5-151 (Regulation for Transportation Conformity), in lieu of the procedures set forth in this chapter.

E. For federal actions not covered by subsection D of this section, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subdivision 1 or 2 of this subsection.

1. For the purposes of this subsection, the following rates apply in nonattainment areas:

	Tons per year
Ozone (VOCs or NO _x):	
Serious nonattainment areas	50
Severe nonattainment areas	25
Extreme nonattainment areas	10
Other ozone nonattainment areas outside an ozone transport region	100
Other ozone nonattainment areas inside an ozone transport region:	
VOC	50
NO _x	100
Carbon monoxide, all nonattainment areas	100
Sulfur dioxide or nitrogen dioxide, all nonattainment areas	100
PM ₁₀ :	
Moderate nonattainment areas	100
Serious nonattainment areas	70
PM _{2.5} :	
Direct emissions	100
Sulfur dioxide	100

Nitrogen oxides (unless determined not to be significant precursors)	100
Volatile organic compounds or ammonia (if determined to be significant precursors)	100
Lead, all nonattainment areas	25

2. For the purposes of this subsection, the following rates apply in maintenance areas:

	Tons per year
Ozone (NO _x), sulfur dioxide, or nitrogen dioxide, all maintenance areas	100
Ozone (VOCs):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide, all maintenance areas	100
PM ₁₀ , all maintenance areas	100
PM _{2.5} :	
Direct emissions	100
Sulfur dioxide	100
Nitrogen oxides (unless determined not to be a significant precursor)	100
Volatile organic compounds or ammonia (if determined to be significant precursors)	100
Lead, all maintenance areas	25

F. The requirements of this section shall not apply to the following federal actions:

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection E of this section.

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

- a. Judicial and legislative proceedings.
- b. Continuing and recurring activities such as permit renewals where activities conducted shall be similar in scope and operation to activities currently being conducted.
- c. Rulemaking and policy development and issuance.

- d. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
- e. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law-enforcement personnel.
- f. Administrative actions such as personnel actions, organizational changes, debt management, internal agency audits, program budget proposals, and matters relating to administration and collection of taxes, duties, and fees.
- g. The routine, recurring transportation of materiel and personnel.
- h. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and for repair or overhaul or both.
- i. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal shall be at an approved disposal site.
- j. With respect to existing structures, properties, facilities, and lands where future activities conducted shall be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
- k. The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted shall be similar in scope and operation to activities currently being conducted.
- l. Planning, studies, and provision of technical assistance.
- m. Routine operation of facilities, mobile assets, and equipment.
- n. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
- o. The designation of empowerment zones, enterprise communities, or viticultural areas.
- p. Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking

organizations or to any state, agency, or instrumentality of the United States.

q. Actions by the Board of Governors of the federal reserve system or any federal reserve bank to effect monetary or exchange rate policy.

r. Actions that implement a foreign affairs function of the United States.

s. Actions or portions thereof associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601 et seq., and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

t. Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity, and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity, for subsequent deeding to eligible applicants.

u. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

v. Air traffic control activities and adopting approach, departure, and en route procedures for aircraft operations above the mixing height specified in the applicable implementation plan. Where the applicable implementation plan does not specify a mixing height, the federal agency may use the 3,000 feet above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the federal action is de minimis.

3. Actions where the emissions are not reasonably foreseeable, such as the following:

a. Initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

b. Electric power marketing activities that involve the acquisition, sale, and transmission of electric energy.

4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a conforming land management plan, that has been found to conform to the applicable implementation plan. The land management plan shall have been found to conform within the past five years.

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G. Notwithstanding the other requirements of this section, a conformity determination is not required for the following federal actions or portions thereof:

1. The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review program.
2. Actions in response to emergencies that are typically commenced on the order of hours or days after the emergency and, if applicable, that meet the requirements of subsection H of this section.
3. Research, investigations, studies, demonstrations, or training (other than those exempted under subdivision F 2 of this section), where no environmental detriment is incurred, or the particular action furthers air quality research, as determined by the department.
4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions).
5. Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent the emissions either comply with the substantive requirements of the new source review program, or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

H. Federal actions which are part of a continuing response to an emergency or disaster under subdivision G 2 of this section and which are to be taken more than six months after the commencement of the response to the emergency or disaster under subdivision G 2 of this section are exempt from the requirements of this subsection only if:

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or
2. For actions which are to be taken after those actions covered by subdivision H 1 of this section, the federal agency makes a new determination as provided in subdivision H 1 of this section, and:
 - a. Provides a draft copy of the written determinations required to affected EPA regional offices, the affected states and air pollution control agencies, and any federally recognized Indian tribal government in the nonattainment or maintenance area. Those organizations shall be allowed 15 days from the beginning of the extension period to comment on the draft determination; and

- b. Within 30 days after making the determination, publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

3. If additional actions are necessary in response to an emergency or disaster under subdivision G 2 of this section beyond the specified time period in subdivision 2 of this subsection, a federal agency may make a new written determination as described in subdivision 2 of this subsection for as many six-month periods as needed, but in no case shall this exemption extend beyond three six-month periods except where an agency provides information to EPA and the department stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

I. Notwithstanding other requirements of this chapter, actions specified by individual federal agencies that have met the criteria set forth in subdivision J 1, J 2, or J 3 of this section and the procedures set forth in subsection K of this section are presumed to conform, except as provided in subsection M of this section. Actions specified by individual federal agencies as presumed to conform shall not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in ~~subdivisions~~ subdivision E 1 or E 2 of this section.

J. The federal agency shall meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subdivision 1, 2, or 3 of this subsection.

1. The federal agency shall clearly demonstrate, using methods consistent with this regulation, that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

- a. Cause or contribute to any new violation of any standard in any area;
- b. Interfere with the provisions in the applicable implementation plan for maintenance of any standard;
- c. Increase the frequency or severity of any existing violation of any standard in any area;
- d. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of:
 - (1) A demonstration of reasonable further progress;
 - (2) A demonstration of attainment; or
 - (3) A maintenance plan.

2. The federal agency shall provide documentation that the total of direct and indirect emissions from the future

actions would be below the emission rates for a conformity determination that are established in subsection B of this section, based, for example, on similar actions taken over recent years.

3. The federal agency shall clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable implementation plan and the department provides written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the applicable implementation plan.

K. In addition to meeting the criteria for establishing exemptions set forth in subdivision J 1, J 2, or J 3 of this section, the following procedures shall also be complied with to presume that activities shall conform:

1. The federal agency shall identify through publication in the Federal Register its list of proposed activities that are presumed to conform, and the basis for the presumptions. The notice shall clearly identify the type and size of the action that would be presumed to conform and provide criteria for determining if the type and size of action qualifies it for the presumption;

2. The federal agency shall notify the appropriate EPA regional office or offices, department, and local air quality agencies and, where applicable, the lead planning organization, and the metropolitan planning organization and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform. If the presumed to conform action has regional or national application (e.g., the action will cause emission increases in excess of the de minimis levels identified in subsection E of this section in more than one EPA region), the federal agency, as an alternative to sending it to EPA regional offices, may send the draft conformity determination to EPA, Office of Air Quality Planning and Standards;

3. The federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

4. The federal agency shall publish the final list of such activities in the Federal Register.

L. Emissions from the following actions are presumed to conform:

1. Actions at installations with facility-wide emission budgets meeting the requirements in 9VAC5-160-181 provided that the department has included the emission budget in the EPA-approved applicable implementation plan and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget.

2. Prescribed fires conducted in accordance with a smoke management program that meets the requirements of EPA's

Interim Air Quality Policy on Wildland and Prescribed Fires (April 1998) or an equivalent replacement EPA policy.

3. Emissions for actions that the department identifies in the EPA-approved applicable implementation plan as presumed to conform.

M. Even though an action would otherwise be presumed to conform under subsection I or L of this section, an action shall not be presumed to conform and the requirements of 9VAC5-160-110 through 9VAC5-160-180, 9VAC5-160-182 through 9VAC5-160-184, and 9VAC5-160-190 shall apply to the action if EPA or a third party shows that the action would:

1. Cause or contribute to any new violation of any standard in any area;

2. Interfere with provisions in the applicable implementation plan for maintenance of any standard;

3. Increase the frequency or severity of any existing violation of any standard in any area; or

4. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of (i) a demonstration of reasonable further progress, (ii) a demonstration of attainment, or (iii) a maintenance plan.

N. Any measures used to affect or determine applicability of this chapter, as determined under this section, shall result in projects that are in fact de minimis, shall result in the de minimis levels prior to the time the applicability determination is made, and shall be state or federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose shall be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of the measures and tracking of the emission reductions) and enforcement of the measures shall be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination shall obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making the determinations. The written commitment shall describe the mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this regulation is approved by EPA, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability shall apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

VA.R. Doc. No. R17-4815; Filed September 14, 2016, 1:46 p.m.

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Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-20. General Provisions (Rev. F16) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. F16) (amending 9VAC5-40-6250, 9VAC5-40-6440, 9VAC5-40-6520).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Effective Date: November 16, 2016.

Agency Contact: Karen G. Sabastanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabastanski@deq.virginia.gov.

Summary:

On June 23, 2016 (81 FR 40956), the U.S. Environmental Protection Agency (EPA) amended the emissions guidelines for commercial/industrial/solid waste incinerators at Subpart DDDD of 40 CFR Part 60. The amendments were made to (i) revise the definitions of "continuous emission monitoring system data during startup and shutdown periods" and "kiln," (ii) revise the particulate matter limit for the waste-burning kiln subcategory, (iii) revise the fuel variability factor for coal-burning energy recovery units, and (iv) remove the provisions for affirmative defense. Virginia implements Subpart DDDD in Article 45 (9VAC5-40-6250 et seq.) of 9VAC5-40, Existing Stationary Sources. Although the provisions of Subpart DDDD are adopted by reference into Article 45, some revisions to Article 45 are necessary for the regulation to accurately track the EPA revisions.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (~~2014~~) (2016) in effect July 1, ~~2014~~ 2016. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50 -- National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

- (h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.
- (i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.
- (j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.
- (k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.
- (l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.
- (m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as PM_{2.5} in the Atmosphere.
- (n) Appendix M -- Reserved.
- (o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for PM_{2.5}.
- (p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.
- (q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.
- (r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM₁₀ Collected from Ambient Air.
- (s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.
- (t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).
- (u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).
- (v) Appendix U -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.
- (2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.
 - (a) Appendix M -- Recommended Test Methods for State Implementation Plans.
 - (b) Appendix S -- Emission Offset Interpretive Ruling.
 - (c) Appendix W -- Guideline on Air Quality Models (Revised).
 - (d) Appendix Y -- Guidelines for BART Determinations Under the Regional Haze Rule.
- (3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations.

- (4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.
 - Appendix A -- Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.
- (5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.
 - (a) Subpart C -- National Volatile Organic Compound Emission Standards for Consumer Products.
 - (b) Subpart D -- National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.
- (6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).
- (7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).
- (8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).
- (9) 40 CFR Part 64 -- Compliance Assurance Monitoring.
- (10) 40 CFR Part 72 -- Permits Regulation.
- (11) 40 CFR Part 73 -- Sulfur Dioxide Allowance System.
- (12) 40 CFR Part 74 -- Sulfur Dioxide Opt-Ins.
- (13) 40 CFR Part 75 -- Continuous Emission Monitoring.
- (14) 40 CFR Part 76 -- Acid Rain Nitrogen Oxides Emission Reduction Program.
- (15) 40 CFR Part 77 -- Excess Emissions.
- (16) 40 CFR Part 78 -- Appeal Procedures for Acid Rain Program.
- (17) 40 CFR Part 152 Subpart I -- Classification of Pesticides.
- (18) 49 CFR Part 172 -- Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

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(19) 29 CFR Part 1926 Subpart F -- Fire Protection and Prevention.

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this section, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this section, may be obtained from U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this section may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/index.html>. Copies of the document identified in subdivision E 2 a (3) of this section are only available online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/emc/guidlnd.html>.

3. United States government.

a. The following document from the United States government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; telephone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

- (23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).
- (24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."
- (25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).
- (26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."
- (27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).
- b. Copies may be obtained from American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; telephone (610) 832-9585.
5. American Petroleum Institute (API).
- a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.
- b. Copies may be obtained from American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005; telephone (202) 682-8000.
6. American Conference of Governmental Industrial Hygienists (ACGIH).
- a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).
- b. Copies may be obtained from ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, OH 45240; telephone (513) 742-2020.
7. National Fire Prevention Association (NFPA).
- a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.
- (1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.
- (2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.
- (3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.
- b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101; telephone (617) 770-3000.
8. American Society of Mechanical Engineers (ASME).
- a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.
- (1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).
- (2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).
- (3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.
- b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016; telephone (800) 843-2763.
9. American Hospital Association (AHA).
- a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.
- b. Copies may be obtained from American Hospital Association, One North Franklin, Chicago, IL 60606; telephone (800) 242-2626.
10. Bay Area Air Quality Management District (BAAQMD).
- a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:
- (1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).
- (2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).
- b. Copies may be obtained from Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, telephone (415) 771-6000.
11. South Coast Air Quality Management District (SCAQMD).
- a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:
- (1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in

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Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, telephone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, telephone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, telephone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; telephone (336) 884-5000.

15. Petroleum Equipment Institute.

a. The following document from the Petroleum Equipment Institute is incorporated herein by reference: Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09 (2009).

b. Copies may be obtained from Petroleum Equipment Institute, 6931 S. 66th E. Avenue, Suite 310, Tulsa, OK 74133; telephone (918) 494-9696; www.pei.org.

16. American Architectural Manufacturers Association (AAMA).

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2604-05.

(2) Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2605-05.

b. Copies may be obtained from American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173-4268; telephone (847) 303-5774.

Article 45

Emission Standards for Commercial/Industrial Solid Waste Incinerators (Rule 4-45)

9VAC5-40-6250. Applicability and designation of affected facility.

A. The affected facilities to which the provisions of this article apply are (i) commercial/industrial solid waste incinerator (CISWI) units and air curtain incinerators that commenced construction on or before November 30, 1999; (ii) CISWI units and air curtain incinerators that commenced construction after November 30, 1999, but no later than on or before June 4, 2010, or that commenced reconstruction or modification on or after June 1, 2001, but no later than August 7, 2013; or (iii) CISWI units other than incinerator units that commenced construction ~~on or before June 4, 2010, or commenced modification after June 4, 2010, but no later than August 7, 2013.~~

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this article are those units that meet the criteria listed in 40 CFR 60.2555.

D. The provisions of this article do not apply to a CISWI unit if the owner makes changes that meet the definition of modification or reconstruction after August 7, 2013, at which point the CISWI unit becomes subject to subpart CCCC of 40 CFR Part 60.

E. If the owner makes physical or operational changes to an existing CISWI unit primarily to comply with this article, subpart CCCC of 40 CFR Part 60 does not apply to that unit. Such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR Part 60.

F. Each owner shall submit an application for a federal operating permit in accordance with the provisions of 40 CFR 60.2805. Owners to whom this section applies should contact the appropriate regional office for guidance on applying for a federal (Title V) operating permit.

G. The requirement under 40 CFR 60.2555(g)(1) with regard to obtaining a permit under § 3005 of the Solid Waste Disposal Act (42 USC § 6901 et seq.) may be met by obtaining a permit from the department as required by 9VAC5-60 (~~Virginia Hazardous Waste Management Regulations~~ Air Pollutant Sources).

9VAC5-40-6440. Facility and control equipment maintenance or malfunction.

A. With regard to the emission standards set forth in 9VAC5-40-6360 A, 9VAC5-40-6370 A, 9VAC5-40-6380, and 9VAC5-40-6390, the provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

B. With regard to the emission limits in 9VAC5-40-6270, 9VAC5-40-6360 B, and 9VAC5-40-6370 B, the ~~following provisions apply: 1. of 9VAC5-20-180 apply,~~ with the exception of subsections E, F, and G; ~~and 2. 40 CFR 60.2685.~~

9VAC5-40-6520. Documents incorporated by reference.

A. The ~~United States U.S.~~ Environmental Protection Agency (EPA) regulations promulgated at Subpart DDDD (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration ~~Units that Commenced Construction On or Before November 30, 1999~~ Units) of 40 CFR Part 60 and designated in subsection B of this section are incorporated by reference into this article. The 40 CFR section numbers appearing in subsection B of this section identify the specific provisions incorporated by reference. The specific version of the provisions incorporated by reference shall be that contained in the CFR in effect as specified in 9VAC5-20-21 B.

B. The following documents from the ~~United States U.S.~~ Environmental Protection Agency are incorporated herein by reference:

Model Rule, Increments of Progress

§ 60.2575, What are my requirements for meeting increments of progress and achieving final compliance?

§ 60.2580, When must I complete each increment of progress?

§ 60.2585, What must I include in the notifications of achievement of increments of progress?

§ 60.2590, When must I submit the notifications of achievement of increments of progress?

§ 60.2595, What if I do not meet an increment of progress?

§ 60.2600, How do I comply with the increment of progress for submittal of a control plan?

§ 60.2605, How do I comply with the increment of progress for achieving final compliance?

§ 60.2610, What must I do if I close my CISWI unit and then restart it?

§ 60.2615, What must I do if I plan to permanently close my CISWI unit and not restart it?

Model Rule, Waste Management Plan

§ 60.2620, What is a waste management plan?

§ 60.2625, When must I submit my waste management plan?

§ 60.2630, What should I include in my waste management plan?

Model Rule, Operator Training and Qualification

§ 60.2635, What are the operator training and qualification requirements?

§ 60.2640, When must the operator training course be completed?

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- § 60.2645, How do I obtain my operator qualification?
- § 60.2650, How do I maintain my operator qualification?
- § 60.2655, How do I renew my lapsed operator qualification?
- § 60.2660, What site-specific documentation is required?
- § 60.2665, What if all the qualified operators are temporarily not accessible?

Model Rule, Emission Limitations and Operating Limits

- § 60.2670, What emission limitations must I meet and by when?
- § 60.2675, What operating limits must I meet and by when?
- § 60.2680, What if I do not use a wet scrubber, fabric filter, activated carbon injection, selective noncatalytic reduction, an electrostatic precipitator, or a dry scrubber to comply with the emission limitations?
- ~~§ 60.2685, Affirmative Defense for Violation of Emission Standards During Malfunction.~~

Model Rule, Performance Testing

- § 60.2690, How do I conduct the initial and annual performance test?
- § 60.2695, How are the performance test data used?

Model Rule, Initial Compliance Requirements

- § 60.2700, How do I demonstrate initial compliance with the amended emission limitations and establish the operating limits?
- § 60.2705, By what date must I conduct the initial performance test?
- § 60.2706, ~~Reserved~~ By what date must I conduct the initial air pollution control device inspection?

Model Rule, Continuous Compliance Requirements

- § 60.2710, How do I demonstrate continuous compliance with the amended emission limitations and the operating limits?
- § 60.2715, By what date must I conduct the annual performance test?
- § 60.2716, ~~Reserved~~ By what date must I conduct the annual air pollution control device inspection?
- § 60.2720, May I conduct performance testing less often?
- § 60.2725, May I conduct a repeat performance test to establish new operating limits?

Model Rule, Monitoring

- § 60.2730, What monitoring equipment must I install and what parameters must I monitor?
- § 60.2735, Is there a minimum amount of monitoring data I must obtain?

Model Rule, Recordkeeping and Reporting

- § 60.2740, What records must I keep?

- § 60.2745, Where and in what format must I keep my records?
- § 60.2750, What reports must I submit?
- § 60.2755, When must I submit my waste management plan?
- § 60.2760, What information must I submit following my initial performance test?
- § 60.2765, When must I submit my annual report?
- § 60.2770, What information must I include in my annual report?
- § 60.2775, What else must I report if I have a deviation from the operating limits or the emission limitations?
- § 60.2780, What must I include in the deviation report?
- § 60.2785, What else must I report if I have a deviation from the requirement to have a qualified operator accessible?
- § 60.2790, Are there any other notifications or reports that I must submit?
- § 60.2795, In what form can I submit my reports?
- § 60.2800, Can reporting dates be changed?

Model Rule, Title V Operating Permits

- § 60.2805, Am I required to apply for and obtain a Title V operating permit for my unit?

Model Rule, Air Curtain Incinerators

- § 60.2810, What is an air curtain incinerator?
- § 60.2815, What are my requirements for meeting increments of progress and achieving final compliance?
- § 60.2820, When must I complete each increment of progress?
- § 60.2825, What must I include in the notifications of achievement of increments of progress?
- § 60.2830, When must I submit the notifications of achievement of increments of progress?
- § 60.2835, What if I do not meet an increment of progress?
- § 60.2840, How do I comply with the increment of progress for submittal of a control plan?
- § 60.2845, How do I comply with the increment of progress for achieving final compliance?
- § 60.2850, What must I do if I close my air curtain incinerator and then restart it?
- § 60.2855, What must I do if I plan to permanently close my air curtain incinerator and not restart it?
- § 60.2860, What are the emission limitations for air curtain incinerators?
- § 60.2865, How must I monitor opacity for air curtain incinerators?

§ 60.2870, What are the recordkeeping and reporting requirements for air curtain incinerators?

Model Rule, Definitions

§ 60.2875, What definitions must I know?

TABLES

Table 2 to Subpart DDDD of Part 60, Model Rule, Emission Limitations that Apply to Incinerators ~~on or after~~ Before February 7, 2018.

Table 3 to Subpart DDDD of Part 60, Model Rule, Operating Limits for Wet Scrubbers.

Table 4 to Subpart DDDD of Part 60, Model Rule, Toxic Equivalency Factors.

Table 5 to Subpart DDDD of Part 60, Model Rule, Summary of Reporting Requirements.

Table 6 to Subpart DDDD of Part 60, Emission Limitations that Apply to Incinerators on and after February 7, 2018.

Table 7 to Subpart DDDD of Part 60, Emission Limitations that Apply to Energy Recovery Units After May 20, 2011, on or after February 7, 2018.

Table 8 to Subpart DDDD of Part 60, Emission Limitations that Apply to Waste-Burning Kilns after February 7, 2018.

Table 9 to Subpart DDDD of Part 60, Emission Limitations that Apply to Small, Remote Incinerators after February 7, 2018.

VA.R. Doc. No. R17-4814; Filed September 14, 2016; 1:43 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 b of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-80. Permits for Stationary Sources (Rev. E16) (amending 9VAC5-80-250, 9VAC5-80-650).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 112, 165, 173, and 182, and Title V of the Clean Air Act; 40 CFR Parts 51, 61, 63, 70, and 72.

Effective Date: November 16, 2016.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Summary:

On June 12, 2015, the U.S. Environmental Protection Agency (EPA) issued a final state implementation plan call concerning treatment of excess emissions in state rules by sources during periods of startup, shutdown, or malfunction (SSM), including Virginia's SSM rules at 9VAC5-20-180 G. The U.S. Court of Appeals for the District of Columbia Circuit in NRDC v. EPA (No. 10-1371) reviewed the EPA's action and held that the affirmative defense provisions were impermissible because they exceeded EPA's statutory authority. Therefore, state plans must be amended accordingly. EPA's Title V operating permit program at 40 CFR Part 70 contains affirmative defense provisions that the EPA is now proposing to remove. Virginia's operating permit regulations (Articles 1 and 3 of Part II of 9VAC5-80), which are based on 40 CFR Part 70, also contain an affirmative defense for malfunctions that also must now be removed. A number of minor administrative amendments are also made for more consistency with 9VAC5-20-180.

9VAC5-80-250. Malfunction.

~~A. A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology based emission limitations if~~ In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

~~B. The affirmative defense of malfunction shall be demonstrated by the permittee~~ may, through properly signed, contemporaneous operating logs, or other relevant evidence ~~that~~, show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.
2. The permitted facility was at the time being properly operated.
3. During the period of the malfunction, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.
4. The permittee notified the board of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification ~~shall~~ should include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. ~~The notification may be delivered by electronic mail, facsimile transmission, telephone, telegraph, or any other method that allows the permittee to comply with the deadline.~~ This notification fulfills the requirements of 9VAC5-80-110 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.

Regulations

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9VAC5-80-650. Malfunction.

A. ~~A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology based emission limitations if~~ In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

B. ~~The affirmative defense of malfunction shall be demonstrated by the permittee may,~~ through properly signed, contemporaneous operating logs, or other relevant evidence ~~that,~~ show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.
2. The permitted facility was at the time being properly operated.
3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
4. The permittee notified the board of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification ~~shall~~ should include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. ~~The notification may be delivered by electronic mail, facsimile transmission, telephone, telegraph, or any other method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-490 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.~~

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

VA.R. Doc. No. R17-4804; Filed September 14, 2016, 1:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 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 and (ii) § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-140. Regulation for Emissions Trading Programs (Rev. D16) (repealing 9VAC5-140-1010 through 9VAC5-140-3880).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110 and 302 of the Clean Air Act; 40 CFR Part 51.

Effective Date: November 16, 2016.

Agency Contact: 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, TTY (804) 698-4021, or email mary.major@deq.virginia.gov.

Summary:

The Clean Air Interstate Rule (CAIR) was an emissions trading program intended to control nitrogen oxides (NO_x) and sulfur dioxide (SO₂), which contribute to harmful levels of fine particle matter and ozone in downwind states. On August 8, 2011, the Environmental Protection Agency (EPA) replaced CAIR with the Cross-State Air Pollution Rule (CSAPR), which is being implemented in Virginia under the associated federal implementation plan (FIP). Chapter 291 of the 2011 Acts of Assembly requires that §§ 10.1-1327 and 10.1-1328 of the Code of Virginia and any regulations implementing CAIR be repealed when facilities in the Commonwealth become subject to the requirements of a FIP adopted by EPA in response to the remand of CAIR. Because CAIR has been replaced by CSAPR, and Virginia is subject to the CSAPR FIP, Virginia may now, as required by Chapter 291, repeal its CAIR regulations.

VA.R. Doc. No. R17-4727; Filed September 14, 2016, 1:33 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board 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 State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-840. Erosion and Sediment Control Regulations (amending 9VAC25-840-40).

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Effective Date: November 17, 2016.

Agency Contact: Frederick Cunningham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4285, FAX (804) 698-4032, or email frederick.cunningham@deq.virginia.gov.

Summary:

Pursuant to Chapter 66 of the 2016 Acts of Assembly, the amendments clarify that erosion and sediment control plans approved on and after July 1, 2014, and that are in accordance with the grandfathering or time limits on applicability of approved design criteria provisions of the Virginia Stormwater Management Program (VSMP) Regulation shall meet the flow rate capacity and velocity requirements of the Virginia Erosion and Sediment Control Program.

9VAC25-840-40. Minimum standards.

A VESCP must be consistent with the following criteria, techniques and methods:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.
2. During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.
3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.
4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.
5. Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.
6. Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.
 - a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.
 - b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.
7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.
8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.
9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.
10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.
11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.
12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.
13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.
14. All applicable federal, state and local requirements pertaining to working in or crossing live watercourses shall be met.
15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.
16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

Regulations

- a. No more than 500 linear feet of trench may be opened at one time.
- b. Excavated material shall be placed on the uphill side of trenches.
- c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.
- d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.
- e. Restabilization shall be accomplished in accordance with this chapter.
- f. Applicable safety requirements shall be complied with.

17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels:

- a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.
- b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is ~~one hundred~~ 100 times greater than the contributing drainage area of the project in question; or

(2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

(b) All previously constructed man-made channels shall be analyzed by the use of a 10-year storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and

(c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:

(1) Improve the channels to a condition where a 10-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel, the bed, or the banks; or

(2) Improve the pipe or pipe system to a condition where the 10-year storm is contained within the appurtenances;

(3) Develop a site design that will not cause the pre-development peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a 10-year storm to increase when runoff outfalls into a man-made channel; or

(4) Provide a combination of channel improvement, stormwater detention or other measures which is satisfactory to the VESCP authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention, he shall obtain approval from the VESCP of a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.

h. All on-site channels must be verified to be adequate.

i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be diverted to a stable outlet, adequate channel, pipe or pipe system, or to a detention facility.

j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial or industrial development shall not be considered to be separate development projects. Instead, the development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate development condition shall be used in all engineering calculations.

k. All measures used to protect properties and waterways shall be employed in a manner which minimizes impacts on the physical, chemical and biological integrity of rivers, streams and other waters of the state.

l. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to § 62.1-44.15:54 or 62.1-44.15:65 of the Act.

m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Act and this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and attendant regulations, unless such land-disturbing activities (i) are in accordance with provisions for time limits on applicability of approved design criteria in 9VAC25-870-47 or grandfathering in 9VAC25-870-48 of the Virginia Stormwater Management Program (VSMP) Regulation, in which case the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Act shall apply, or (ii) are exempt pursuant to subdivision C 7 of § 62.1-44.15:34 C 7 of the Act.

n. Compliance with the water quantity minimum standards set out in 9VAC25-870-66 of the Virginia

Stormwater Management Program (VSMP) Regulation shall be deemed to satisfy the requirements of this subdivision 19.

VA.R. Doc. No. R17-4916; Filed September 23, 2016, 12:21 p.m.

TITLE 11. GAMING

BOARD OF CHARITABLE GAMING

Final Regulation

Title of Regulation: **11VAC15-40. Charitable Gaming Regulations (amending 11VAC15-40-10, 11VAC15-40-30, 11VAC15-40-50, 11VAC15-40-60, 11VAC15-40-70, 11VAC15-40-80, 11VAC15-40-110, 11VAC15-40-120, 11VAC15-40-130, 11VAC15-40-147, 11VAC15-40-150, 11VAC15-40-210, 11VAC15-40-280; adding 11VAC15-40-440, 11VAC15-40-450, 11VAC15-40-460, 11VAC15-40-470, 11VAC15-40-480, 11VAC15-40-490, 11VAC15-40-500, 11VAC15-40-510, 11VAC15-40-520, 11VAC15-40-600, 11VAC15-40-610; repealing 11VAC15-40-420, 11VAC15-40-430).**

Statutory Authority: § 18.2-340.15 of the Code of Virginia.

Effective Date: November 17, 2016.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.

Summary:

Pursuant to Chapters 36 and 350 of the 2013 Acts of Assembly, the amendments establish a new bingo game called "network bingo." The regulations (i) prescribe the conditions under which organizations may conduct network bingo; (ii) establish a percentage of the proceeds derived from network bingo sales that must be allocated to prize pools, the organization conducting the network bingo, and the network bingo provider; and (iii) establish procedures for retaining and distribution of any unclaimed prize.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I Definitions

11VAC15-40-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

Regulations

"Agent" means any person authorized by a supplier, network bingo provider, or manufacturer to act for or in place of such supplier, network bingo provider, or manufacturer.

"Board" means the Virginia Charitable Gaming Board.

"Board of directors" means the board of directors, managing committee, or other supervisory body of a qualified organization.

"Calendar day" means the period of 24 consecutive hours commencing at 12:00:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:00:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

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

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face.

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to (i) selling bingo cards or packs, electronic bingo devices, instant bingo or pull-tab cards, electronic pull-tab devices, electronic pull-tabs, network bingo cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; and (iv) any other services provided by game workers.

"Control program" means software involved in any critical game function.

"Daubing" means covering a square containing a number called with indelible ink or otherwise marking a number called on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs, or seal cards with the same serial number.

"Decision bingo" means a bingo game where the cost to a player to play is dependent on the number of bingo numbers called and the prize payout is in direct relationship to the number of participants and the number of bingo numbers called, but shall not exceed statutory prize limits for a regular bingo game.

"Department" means the Virginia Department of Agriculture and Consumer Services, ~~Division of Consumer Protection, Office of Charitable Gaming~~.

"Designator" means an object used in the bingo number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Discount" means any reduction in cost of admission or game packs or any other purchases through use of coupons, free packs, or other similar methods.

"Disinterested player" means a player who is unbiased.

"Disposable paper card" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Distributed pull-tab system" means a computer system consisting of a computer or computers and associated equipment for the use of distributing a finite number of electronic pull-tabs, a certain number of which entitle a player to prize awards at various levels.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number based solely on attendance at a charitable gaming activity.

"Electronic bingo device" means an electronic unit that uses proprietary software or hardware or, in conjunction with commonly available software and computers, displays facsimiles of bingo cards and allows a player to daub such cards or allows for the automatic daubing of such cards.

"Electronic games of chance system" means a distributed pull-tab system.

"Electronic pull-tabs" means an electronic version of a single instant bingo card or pull-tab. An electronic pull-tab is a predetermined game outcome in electronic form, distributed on-demand from a finite number of game outcomes by a distributed pull-tab system.

"Electronic pull-tab device" means an electronic unit used to facilitate the play of an electronic pull-tab. An electronic pull-tab device may take the form of an upright cabinet or a handheld device or may be of any other composition as approved by the department.

"Equipment and video systems" means equipment that facilitates the conduct of charitable gaming such as ball blowers, flashboards, electronic verifiers, and replacement parts for such equipment. Equipment and video systems shall not include dispensing devices, electronic bingo devices, and electronic pull-tab devices.

"Event game" means a bingo game that is played using instant bingo cards or pull-tabs in which the winners include both instant winners and winners who are determined by the random draw of a bingo ball, the random call of a bingo number, or the use of a seal card, and that is sold in its entirety and played to completion during a single bingo session.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a printed or electronic display that bears information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, number of prizes to be awarded, and specific prize amounts in a deal of instant bingo, pull-tab, seal cards, or electronic pull-tabs.

"Free space number," "perm number," "center number," "card number," or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played including, but not limited to, the sales price of all

bingo paper, network bingo cards, and electronic bingo devices, pack configuration, prize amounts to be paid during a session for each game, and an indication whether prize amounts are fixed ~~or are~~ based on attendance.

"Game set" means the entire pool of electronic pull-tabs that contains predefined and randomized game results assigned under a unique serial number. This term is equivalent to "deal" or "deck."

"Game subset" means a division of a game set into equal sizes.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"Interested persons" means the president, an officer, or a bingo game manager of any qualified organization that is exempt or is a permit applicant or holds a permit to conduct charitable gaming; or the owner, director, officer, or partner of an entity engaged in supplying charitable gaming supplies to organizations, engaged in providing network bingo supplies to organizations, or engaged in manufacturing any component of a distributed pull-tab system that is distributed in the Commonwealth.

"IRS" means the ~~United States~~ U.S. Internal Revenue Service.

"Management" means the provision of oversight of a gaming operation, which may include, but is not limited to, the responsibilities of applying for and maintaining a permit or authorization; compiling, submitting, and maintaining required records and financial reports; and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person who or entity that assembles from raw materials or subparts a completed piece of bingo equipment or supplies, a distributed pull-tab system, or other charitable gaming equipment or supplies. "Manufacturer" also means a person who or entity that modifies, converts, adds, or removes parts to or from bingo equipment or supplies, a distributed pull-tab system, or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

~~"OCG number" means a unique identification number issued by the department.~~

"Operation" means the activities associated with production of a charitable gaming activity, which may include, but is not limited to, (i) the direct on-site supervision of the conduct of charitable gaming; (ii) coordination of game workers; and (iii) all responsibilities of charitable gaming designated by the organization's management.

"Organization number" means a unique identification number issued by the department.

"Owner" means any individual with financial interest of 10% or more in a supplier, network bingo provider, or a

manufacturer of a distributed pull-tab system distributed in the Commonwealth.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This shall not include any raffle.

"Prize" means cash, merchandise, certificate, or other item of value awarded to a winning player.

"Progressive bingo" means a bingo game in which the prize is carried forward to the next game if a predetermined pattern is not completed within a specified number of bingo numbers called.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number that contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter, or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device used to randomly select bingo numbers.

"Serial number" means a unique number assigned by the manufacturer to each set of bingo cards or network bingo cards; each instant bingo, pull-tab, or seal card in a deal; each electronic bingo device; each door prize ticket; each game set and game subset of electronic pull-tabs; and each electronic pull-tab device.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards, network bingo cards, or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted, and during which instant bingo, pull-tabs, seal cards, or electronic pull-tabs may be sold and redeemed. A session begins with the sale of instant bingo, pull-tabs, seal cards, electronic pull-tabs, electronic bingo devices, network bingo cards, or bingo cards or packs.

"Treasure chest" means a raffle including a locked treasure chest containing a prize that a participant, selected through some other authorized charitable game, is afforded the chance to select from a series of keys a predetermined key that will open the locked treasure chest to win a prize.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities, which are disbursed for those lawful religious, charitable, community, or educational purposes. This includes expenses relating to the acquisition, construction, maintenance, or repair of any interest in the real property involved in the operation of the organization and used for lawful religious, charitable, community, or educational purposes.

Regulations

"Voucher" means a printed ticket tendered to the player, upon request, for any unused game plays and/or winnings that remain on the electronic pull-tab device.

"WINGO" means a variation of a traditional bingo game that uses visual devices rather than a verbal caller and is intended for play by hearing impaired persons.

11VAC15-40-30. Permit application process.

A. Any organization anticipating gross gaming receipts that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia shall complete a department-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. Organizations shall submit a nonrefundable fee payable to the Treasurer of Virginia in the amount of \$200 with the application, unless the organization is exempt from such fee pursuant to § 18.2-340.23 of the Code of Virginia.

B. The department may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of charitable gaming laws or this chapter.

C. Permit holders requiring a special permit pursuant to § 18.2-340.27 E of the Code of Virginia shall convey their request on a form prescribed by the department. Organizations shall submit a fee payable to the Treasurer of Virginia in the amount of \$50 with the request for a special permit, unless the organization is exempt from such fee pursuant to § 18.2-340.23 of the Code of Virginia.

D. Permits shall be valid for a period of one year from the date of issuance or for a period specified on the permit. The department may issue permits for periods of less than one year.

E. Permits shall be granted only after a background investigation of an organization or interested persons, or both, to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity, and the potential harm to public safety and welfare of any criminal offenses. The investigation may include, but shall not be limited to, the following:

1. A search of criminal history records for the chief executive officer and chief financial officer of the organization. Information and authorization to conduct these records checks shall be provided in the permit application. In addition, the department shall require that the organization provides assurances that all other members involved in the management, operation, or conduct of charitable gaming meet the requirements of subdivision 13 of § 18.2-340.33 of the Code of Virginia. Applications may be denied if:

- a. Any person participating in the management of any charitable gaming has ever been:

- (1) Convicted of a felony; or

- (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

- b. Any person participating in the conduct of charitable gaming has been:

- (1) Convicted of any felony in the preceding 10 years; or

- (2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years;

2. An inquiry as to whether the organization has been granted tax-exempt status pursuant to § 501(c) by the Internal Revenue Service and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating, or conducting any charitable gaming activity;

4. Inquiries into the finances and activities of the organization and the sources and uses of funds; and

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization.

F. The permit application for an organization that has not previously held a permit shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling. A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as they occur;

3. A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent a facility where bingo is or will be conducted. Information on the lease shall include name, address, and phone number of the landlord; maximum occupancy of the building; and the rental amount per session; and

4. An authorization by an officer or other appropriate official of the organization to permit the department to determine whether the organization has been investigated or examined by the IRS in connection with charitable gaming activities during the previous three years.

G. Copies of minutes of meetings of the organization and any contracts with landlords ~~or~~ suppliers, network bingo providers, or manufacturers to which the organization is or

may be a party may be requested by the department prior to rendering a permitting decision.

H. Organizations applying to renew a permit previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document, and IRS determination letter only if there are any amendments or changes to these documents that are directly related to the management, operation, or conduct of charitable gaming.

I. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia.

1. In the case of a joint game, each organization shall file a permit application.
2. The nonrefundable permit fee for joint games shall be a total of \$200. However, no permit application fee is due if each of the organizations is exempt from the application fee pursuant to § 18.2-340.23 of the Code of Virginia.
3. A single permit shall be issued in the names of all the organizations conducting a joint game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.
4. No charitable gaming shall be conducted prior to the issuance of a joint permit.
5. Applications for joint games shall include an explanation of the division of manpower, costs, and proceeds for the joint game.

J. An organization wishing to change dates, times, or locations of its charitable gaming shall request an amendment to its permit. Amendment requests shall be made in writing on a form prescribed by the department in advance of the proposed effective date.

K. An organization may cancel its charitable gaming due to inclement weather, disasters, or other circumstances outside the organization's control without an amendment to its permit.

L. An organization may sell raffle tickets for a drawing to be held outside of the Commonwealth of Virginia in the United States provided:

1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization that is licensed to conduct raffles outside the Commonwealth of Virginia;
2. The raffle is conducted in accordance with [~~these regulations~~ this chapter] and the laws and regulations of the state where the drawing is to be held; and
3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the department.

M. Any permitted organization that ceases to conduct charitable gaming shall immediately notify the department in writing and provide the department a report as to the

disposition of all unused gaming supplies on a form prescribed by the department.

Article 2

Conduct of Games, Rules of Play, Electronic Bingo

11VAC15-40-50. Conduct of bingo, instant bingo, pull-tabs, seal cards, event games, network bingo, and raffles.

A. Organizations subject to this chapter shall post their permit at all times on the premises where charitable gaming is conducted.

B. No individual shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any charitable game.

C. Individuals under 18 years of age may play bingo provided such persons are accompanied by a parent or legal guardian. It shall be the responsibility of the organization to ensure that such individuals are eligible to play. An organization's house rules may further limit the play of bingo or purchase of raffle tickets by minors.

D. Individuals under the age of 18 may sell raffle tickets for a qualified organization raising funds for activities in which they are active participants.

E. No individual under the age of 18 may participate in the management or operation of bingo games. Individuals 14 through 17 years of age may participate in the conduct of a bingo game provided the organization permitted for charitable gaming obtains and keeps on file written parental consent from the parent or legal guardian and verifies the date of birth of the minor. An organization's house rules may further limit the involvement of minors in the conduct of bingo games.

F. No qualified organization shall sell any network bingo cards, instant bingo, pull-tab, seal card, or electronic pull-tab to any individual under 18 years of age. No individual under 18 years of age shall play or redeem any network bingo cards, instant bingo, pull-tab, seal card, or electronic pull-tab.

G. Unless otherwise prohibited by the Code of Virginia or this chapter, nonmembers who are under the direct supervision of a bona fide member may participate in the conduct of bingo.

H. All game workers shall have in their possession a picture identification, such as a driver's license or other government-issued identification, and shall make the picture identification available for inspection upon request by a department agent while participating in the management, operation, or conduct of a bingo game.

I. A game manager who is a bona fide member of the organization and is designated by the organization's management as the person responsible for the operation of the bingo game during a particular session shall be present any time a bingo game is conducted.

J. Organizations shall ensure that all charitable gaming equipment is in working order before charitable gaming activities commence.

Regulations

K. Any organization selling bingo, instant bingo, pull-tabs, seal cards, network bingo supplies, or electronic pull-tabs shall:

1. Maintain a supplier's, network bingo provider's, or manufacturer's invoice or a legible copy thereof at the location where the gaming is taking place and cards are sold. The original invoice or legible copy shall be stored in the same storage space as the gaming supplies. All gaming supplies shall be stored in a secure area that has access limited only to bona fide members of the organization; and
2. Pay for all gaming supplies only by a check drawn on the charitable gaming account of the organization.

A complete inventory of all such gaming supplies shall be maintained by the organization on the premises where the gaming is being conducted.

L. A bingo session game worker may receive complimentary food and nonalcoholic beverages provided on premises, as long as the retail value of such food and beverages does not exceed \$15 for each session.

M. Permitted organizations shall not commingle records, supplies, or funds from permitted activities with those from instant bingo, pull-tabs, seal cards, or electronic pull-tabs sold in social quarters in accordance with § 18.2-340.26:1 of the Code of Virginia.

N. Individuals who are not members of an organization or are members who do not participate in any charitable gaming activities may be paid reasonable fees for preparation of quarterly and annual financial reports.

O. Except as allowed pursuant to § 18.2-340.34:1 of the Code of Virginia, no free packs, free electronic bingo devices, free network bingo cards, discounts, or remuneration in any other form shall be provided directly or indirectly to game workers, members of their family, or individuals residing in their household. The reduction of tuition, dues, or any fees or payments due as a result of a member or shareholder, or anyone in their household, working bingo games or raffles is prohibited.

P. Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity and shall not be compensated with charitable gaming supplies or network bingo cards or with rentals of electronic bingo devices or electronic pull-tab devices.

Q. No organization shall award any prize money or any merchandise valued in excess of the amounts specified by the Code of Virginia.

R. Multiple bingo sessions shall be permitted in a single premises as long as the sessions are distinct from one another and are not used to advertise or do not result in the awarding of more in prizes than is permitted for a single qualified organization. All leases for organizations to conduct charitable gaming in a single premises shall ensure each session is separated by an interval of at least 30 minutes.

Bingo sales for the subsequent session may take place during the 30-minute break once the building is cleared of all patrons and workers from the previous session.

S. All bingo and instant bingo, pull-tabs, seal card, or electronic pull-tab sales, play, and redemption must occur within the time specified on the charitable gaming permit. Network bingo card sales must occur within the time specified on the charitable gaming permit.

T. Instant bingo, pull-tabs, seal cards, or electronic pull-tabs shall only be sold in conjunction with a bingo session, except as authorized by § 18.2-340.26:1 or 18.2-340.26:2 of the Code of Virginia. No instant bingo, pull-tabs, seal card, or electronic pull-tab sales shall take place more than two hours before the selection of the first ball for the first bingo game or more than two hours after the selection of the last ball for the last bingo game. If multiple sessions are held at the same location, no instant bingo, pull-tab, seal card, or electronic pull-tab sales shall be conducted during the required 30-minute break between sessions. The department may take action if it believes that a bingo session is not legitimate or is being conducted in a manner such that instant bingo, pull-tabs, seal cards, or electronic pull-tabs are not being sold in conjunction with a bingo session.

U. Only a game worker for a qualified organization may rent, exchange, or otherwise provide electronic bingo devices or electronic pull-tab devices to players.

V. A qualified organization shall conduct only bingo games, network bingo, and raffles listed on a game program for that session. The program shall list all prize amounts. If the prize amounts are determined by attendance or at the end of a game, the game program shall list the attendance required for the prize amount or disclose that prizes shall be determined at the end of a game and the method for determining the prize amount. In such case, the organization shall announce the prize amount at the end of the game. The percentage of the gross receipts from network bingo cards allocated to the prize pool shall be listed on the game program along with the maximum allowable prize amount for network bingo.

W. A qualified organization selling instant bingo, pull-tabs, seal cards, or electronic pull-tabs shall post a flare provided by the manufacturer at the location where such cards are sold. All such sales and prize payouts shall be in accordance with the flare for that deal.

X. Only qualified organizations, facilities in which qualified organizations play bingo, network bingo providers, and suppliers permitted by the department shall advertise a bingo game. Providing players with information about network bingo or bingo games through printed advertising is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises, the hall, or the word "bingo." Printed advertisements shall identify the use of proceeds percentage reported in the past quarter or fiscal year.

Y. Raffles that award prizes based on a percentage of gross receipts shall use prenumbered tickets.

Z. The following rules shall apply to instant bingo, pull-tab, or seal card dispensing devices:

1. A dispensing device shall only be used at a location and time during which a qualified organization holds a permit to conduct charitable gaming. Only cards purchased by an organization to be used during the organization's charitable gaming activity shall be in the dispensing device.
2. Keys to the dispensing area and coin/cash box shall be in the possession and control of the game manager or designee of the organization's board of directors at all times. Keys shall at all times be available at the location where the dispensing device is being used.
3. The game manager or designee shall provide access to the dispensing device to a department agent for inspection upon request.
4. Only a game worker of an organization may stock the dispensing device, remove cash, or pay winners' prizes.

AA. Organizations shall only rent, lease, or purchase charitable gaming supplies from a supplier, network bingo supplies from a network bingo provider, or electronic pull-tabs from a manufacturer or supplier who has a current permit issued by the department.

BB. An organization shall not tamper with bingo paper received from a supplier.

CC. The total amount of all discounts given by any organization during any fiscal year shall not exceed 1.0% of the organization's gross receipts.

11VAC15-40-60. Rules of play.

A. Each organization shall adopt "house rules" regarding conduct of the game session. The "house rules" for the network bingo game shall be adopted by a mutual agreement among all of the organizations participating in a particular network bingo or by the network bingo provider. Such rules shall be consistent with the provisions of the law and this chapter. "House rules" shall be conspicuously posted or printed on the game program.

B. All players shall be physically present at the location where the bingo numbers for a bingo game are drawn to play the game or to claim a prize, except when the player, who has purchased a network bingo card, is participating in network bingo. Seal card prizes that can only be determined after a seal is removed or opened must be claimed within 30 days of the close of a deal. All other prizes must be claimed on the game date.

C. The following rules of play shall govern the sale of instant bingo, pull-tabs, and seal cards:

1. No cards that have been marked, defaced, altered, tampered with, or otherwise constructed in a manner that tends to deceive the public or affect the chances of winning or losing shall be placed into play.

2. Winning cards shall have the winning symbol or number defaced or punched immediately after redemption by the organization's authorized representative.

3. An organization may commingle unsold instant bingo cards and pull-tabs with no more than one additional deal. The practice of commingling deals shall be disclosed to the public via house rules or in a similar manner. Seal card deals shall not be commingled.

4. If a deal is not played to completion and unsold cards remain, the remaining cards shall be sold at the next session the same type of ticket is scheduled to be sold. If no future date is anticipated, the organization shall, after making diligent efforts to sell the entire deal, consider the deal closed or completed. The unsold cards shall be retained for a minimum of three years following the close of the fiscal year and shall not be opened.

5. All seal card games purchased shall contain the sign-up sheet, the seals, and the cards packaged together in each deal.

6. Progressive seal card prizes not claimed within 30 days shall be carried forward to the next progressive seal card game in progress and paid to the next progressive seal card game prize winner.

D. No one involved in the conduct of bingo may play bingo, play network bingo, or purchase network bingo cards at any session they have worked or intend to work. No one involved in the sale or redemption of any instant bingo, pull-tabs, seal cards, or electronic pull-tabs may purchase directly or through others instant bingo, pull-tab, seal card, or electronic pull-tab products from organizations they assist on the day they have worked or from any deal they have helped sell or redeem, whichever occurs later.

E. Electronic bingo.

1. Electronic bingo devices may be used by bingo players in the following manner:

- a. Players may input into the device each number called or the device may automatically daub each number as the number is called;
- b. Players must notify the game operator or caller of a winning pattern of bingo by a means other than use of the electronic bingo device;
- c. Players are limited to playing a maximum of 54 card faces per device per game;
- d. Electronic bingo devices shall not be reserved for players. Each player shall have an equal opportunity to use the available electronic bingo devices on a first come, first served basis;
- e. Each electronic bingo device shall produce a player receipt with the organization name, date, time, location, sequential transaction or receipt number, number of electronic bingo cards loaded, cost of electronic bingo cards loaded, and date and time of the transaction.

Regulations

Images of cards or faces stored in an electronic bingo device must be exact duplicates of the printed faces if faces are printed;

f. Department agents may examine and inspect any electronic bingo device and related system. Such examination and inspection shall include immediate access to the electronic bingo device and unlimited inspection of all parts and associated systems and may involve the removal of equipment from the game premises for further testing;

g. All electronic bingo devices must be loaded or enabled for play on the premises where the game will be played;

h. All electronic bingo devices shall be rented or otherwise provided to a player only by an organization and no part of the proceeds of the rental of such devices shall be paid to a landlord, or his employee, agent, or member of his immediate family; and

i. If a player's call of a bingo is disputed by another player, or if a department agent makes a request, one or more cards stored on an electronic bingo device shall be printed by the organization.

2. Players may exchange a defective electronic bingo device for another electronic bingo device provided a disinterested player verifies that the device is not functioning. A disinterested player shall also verify that no numbers called for the game in progress have been keyed into the replacement electronic bingo device prior to the exchange.

F. The following rules of play shall govern the conduct of raffles:

1. Before a prize drawing, each stub or other detachable section of each ticket sold shall be placed into a receptacle from which the winning tickets shall be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

2. All prizes shall be valued at fair market value.

G. The following rules shall apply to "decision bingo" games:

1. Decision bingo shall be played on bingo cards in the conventional manner.

2. Players shall enter a game by paying a predetermined amount for each card face in play.

3. Players shall pay a predetermined fee for each set of three bingo numbers called for each card in play.

4. The prize amount shall be the total of all fees not to exceed the prize limit set forth for regular bingo in § 18.2-340.33 of the Code of Virginia. Any excess funds shall be retained by the organization.

5. The predetermined amounts in subdivisions 2 and 3 of this subsection shall be printed in the game program. The prize amount for a game shall be announced before the prize is paid to the winner.

H. The following rules shall apply to "treasure chest" games:

1. The organization shall list the treasure chest game on the bingo game program as a "Treasure Chest Raffle."

2. The organization shall have house rules posted that describe how the game is to be played.

3. The treasure chest participant shall only be selected through some other authorized charitable game at the same bingo session.

4. The organization shall account for all funds as treasure chest/raffle sales on the session reconciliation form.

5. If the player does not open the lock on the treasure chest, the game manager or his designee shall proceed to try every key until the correct key opens the treasure chest lock to show all players that one of the keys will open the lock.

I. The following rules shall apply to progressive bingo games:

1. Bingo paper sold for use in progressive bingo games shall conform to the standards set forth in 11VAC15-40-130.

2. Organizations shall not include in admission packs the bingo paper intended for use in progressive bingo games.

3. Any progressive bingo game, its prize, and the number of bingo numbers to be called shall be clearly announced before the progressive bingo game is played and shall be posted on the premises where the progressive bingo game is played during each session that a progressive bingo game is played.

4. Pricing for a progressive bingo game card or sheet shall be listed on the game program.

5. If the predetermined pattern is not covered within the predetermined number of bingo numbers to be called, then the number of bingo numbers called will increase by one number for each subsequent session the progressive bingo game is played.

6. If the predetermined pattern is not covered within the predetermined number of bingo numbers to be called for that progressive bingo game, then the game will continue as a regular bingo game until the predetermined pattern is covered and a regular bingo prize is awarded.

7. The prize for any progressive bingo game shall be in accordance with the provisions of subdivision 10 of § 18.2-340.33 of the Code of Virginia.

J. The following rules shall apply to "WINGO":

1. "WINGO" shall be played only for the hearing-impaired players.

2. "WINGO" shall utilize a visual device such as an oversized deck of cards in place of balls selected from a blower.

3. A caller must be in an area visible to all players and shall randomly select cards or other visual devices one at a time and display them so that all players can see them.
4. The organization must have house rules for "WINGO" and the rules shall identify how players indicate that they have won.
5. All financial reporting shall be consistent with reporting for a traditional bingo game.

K. The following rules of play shall apply to event games:

1. No instant bingo cards or pull-tabs that have been marked, defaced, altered, tampered with, or otherwise constructed in a manner that tends to deceive the public or affect the chances of winning or losing shall be placed into play.
2. Instant bingo cards and pull-tabs used in an event game shall not be offered for sale or sold at a purchase price other than the purchase price indicated on the flare for that particular deal.
3. The maximum prize amount for event games shall not exceed the amount set forth in subdivision 9 of § 18.2-340.33 of the Code of Virginia for instant bingo, pull-tab, or seal card.
4. A sign-up sheet is not required for event games in which the winner or winners are determined using a seal card.
5. Organizations shall determine the winner or winners of event games during the same bingo session in which the instant bingo cards or pull-tabs are sold.
6. An authorized representative of the organization shall deface or punch the winning instant bingo cards or winning pull-tabs immediately after redemption.
7. If unsold bingo cards or unsold pull-tabs remain, the unsold cards shall be retained for a minimum of three years following the close of the fiscal year and shall not be opened.

Article 3

Bank Accounts, Recordkeeping, Financial Reporting, Audits, Fees

11VAC15-40-70. Bank accounts.

A. A qualified organization shall maintain a charitable gaming bank account that is separate from any other bank account and all gaming receipts shall be deposited into the charitable gaming bank account.

B. Disbursements for expenses other than prizes and reimbursement of meal expenses shall be made by check directly from a charitable gaming account. However, expenses related to a network bingo game may be disbursed through an electronic fund transfer to the network bingo provider provided that such an arrangement is agreed upon by both the qualified organization and the network bingo provider. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

C. All charitable gaming bank account records, including but not limited to monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, shall be maintained for a minimum of three years following the close of a fiscal year.

D. All receipts from each session of bingo games and instant bingo, network bingo games, pull-tabs, seal cards, or electronic pull-tabs shall be deposited by the second business day following the session at which they were received.

E. Raffle proceeds shall be deposited into the qualified organization's charitable gaming bank account no later than the end of the calendar week following the week during which the organization received the proceeds.

11VAC15-40-80. Recordkeeping.

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations conducting bingo shall maintain a system of records for a minimum of three years from the close of the fiscal year, unless otherwise specified, for each gaming session on forms prescribed by the department, or reasonable facsimiles of those forms approved by the department, that include:

1. Charitable gaming supplies or network bingo supplies purchased and used;
2. A session reconciliation form, an instant bingo, pull-tab, or seal card reconciliation form, and an electronic pull-tab reconciliation form completed and signed within 48 hours of the end of the session by the bingo game manager;
3. All discounts provided;
4. A reconciliation to account for cash received from floor workers for the sale of extra bingo sheets for any game, or network bingo cards;
5. The summary report that electronic bingo systems are required to maintain pursuant to 11VAC15-40-130 D 11;
6. An admissions control system that provides a cross-check on the number of players in attendance and admission sales. This may include a ticket control system, cash register, or any similar system;
7. All operating expenses including rent, advertising, and security. Copies of invoices for all such expenses shall also be maintained;
8. Expected and actual receipts from games played on hard cards and number of games played on hard cards;
9. A record of the name and address of each winner for all seal cards; in addition, the winning ticket and seal card shall be maintained for a minimum of 90 days after the session;
10. A record of all door prizes awarded; and
11. For any prize or jackpot of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, the name and address of each individual to whom any such prize or jackpot is awarded and the amount of the award.

Regulations

B. Qualified organizations conducting raffles shall have a recordkeeping system to account for cash receipts, cash disbursements, raffle tickets purchased or sold, and prizes awarded. All records shall be maintained for a minimum of three years from the close of the fiscal year. The recordkeeping system shall include:

1. Invoices for the purchase of raffle tickets, which shall reflect the following information:
 - a. Name and address of supplier;
 - b. Name of purchaser;
 - c. Date of purchase;
 - d. Number of tickets printed;
 - e. Ticket number sequence for tickets printed; and
 - f. Sales price of individual ticket;
2. A record of cash receipts from raffle ticket sales by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold, and reconciliation of all raffle sales to receipts;
3. Serial numbers of tickets for raffle sales initiated and concluded at a bingo game or sequentially numbered tickets, which shall state the name, address, and telephone number of the organization, the prize or prizes to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket, and the charitable gaming permit number;
4. For any raffle prize of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, receipts on which prize winners must provide printed name, residence address, and the amount and description of the prize received; and
5. Deposit records of the required weekly deposits of raffle receipts.

C. All raffle tickets shall have a detachable section; be consecutively numbered with the detachable section having the same number; provide space for the purchaser's name, complete address, and telephone number; and state (i) the name and address of the organization; (ii) the prize or prizes to be awarded; (iii) the date, time and location of the prize drawing; (iv) the selling price of the ticket; and (v) the charitable gaming permit number. Winning tickets and unsold tickets shall be maintained for a minimum of three years from the close of the fiscal year.

D. All unused charitable gaming supplies or network bingo supplies shall either be returned for refund to the original supplier in unopened original packaging in resalable condition as determined by the supplier or destroyed following notification to the department on a form prescribed by the department. The organization shall maintain a receipt for all such supplies returned to the supplier or destroyed.

Article 4 Rent

11VAC15-40-110. Requirements regarding renting premises, agreements, and landlord participation.

A. No organization shall rent or use any leased premises to conduct charitable gaming unless all terms for rental or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to conduct charitable gaming. A qualified organization that leases a building or other premises that is utilized in whole or in part for the purpose of conducting charitable gaming more frequently than two calendar days in one calendar week shall only lease such premises directly from (i) a qualified organization that is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code or (ii) any county, city, or town.

B. Organizations shall not make payments to a landlord except by check drawn on the organization's charitable gaming account.

C. No landlord, his agent or employee, member of his immediate family, or person residing in his household shall make directly or indirectly a loan to any officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming of an organization in Virginia that leases its charitable gaming facility from the landlord.

D. No landlord, his agent or employee, member of his immediate family, or person residing in his household shall make any direct or indirect payment to any officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming conducted at a facility rented from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

E. No landlord, his agent or employee, member of his immediate family, or person residing in the same household shall at charitable games conducted on the landlord's premises:

1. Participate in the management, operation, or conduct of any charitable games;
2. Sell, lease, or otherwise provide any bingo charitable gaming supplies including, but not limited to, bingo cards, pull-tab cards, electronic pull-tabs, network bingo cards, or other game pieces; or
3. Require as a condition of the lease or contract that a particular manufacturer, distributor, network bingo provider, or supplier of bingo charitable gaming supplies is used by the organization.

"Bingo Charitable gaming supplies" as used in this chapter shall not include glue, markers, or tape sold from concession stands or from a location physically separated from the location where bingo charitable gaming supplies are normally sold.

F. No member of an organization involved in the management, operation, or conduct of charitable gaming shall provide any services to a landlord or be remunerated in any manner by the landlord of the facility where an organization is conducting its charitable gaming.

Part III
Suppliers

11VAC15-40-120. Suppliers of charitable gaming supplies: application, qualifications, suspension, revocation or refusal to renew permit, maintenance, and production of records.

A. Prior to providing any charitable gaming supplies, a supplier shall submit an application on a form prescribed by the department and receive a permit. A \$1,000 application fee payable to the Treasurer of Virginia is required. In addition, a supplier must be authorized to conduct business in the Commonwealth of Virginia, which may include, but not be limited to, registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission. The actual cost of background investigations for a permit may be billed by the department to an applicant.

B. The department may refuse to issue a permit or may suspend or revoke a permit if an officer, director, employee, agent, or owner:

1. Is operating without a valid license, permit, or certificate as a supplier, network bingo provider, or manufacturer in any state in the United States;
2. Fails or refuses to recall a product as directed by the department;
3. Conducts business with unauthorized entities or is not authorized to conduct business in the Commonwealth of Virginia;
4. Has been convicted of or pleaded nolo contendere to any crime as specified by § 18.2-340.34 B of the Code of Virginia; has had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia;
5. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming or the distribution of charitable gaming supplies involving

or concerning the supplier, any officers or directors, employees, agent, or owner during the term of its permit;

6. Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of ~~Justice Gambling Devices Registration Unit Justice~~, if required in accordance with the Gambling Devices Act of 1962 (15 USC 1171-1178) for any device that it sells, distributes, services, or maintains in the Commonwealth of Virginia; or

7. Has been engaged in conduct that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

C. A supplier shall not sell, offer to sell, or otherwise provide charitable gaming supplies for use by anyone in the Commonwealth of Virginia other than to an organization with a permit from the department or another permitted supplier. However, a supplier may:

1. Sell charitable gaming supplies to an organization that expects to gross the amount set forth in § 18.2-340.23 of the Code of Virginia or less in any 12-month period, providing that the amount of such purchase would not be reasonably expected to produce more than the amount set forth in § 18.2-340.23 of the Code of Virginia in gross sales. For each such organization, the supplier shall maintain the name, address, and telephone number. The supplier shall also obtain a written and signed statement from an officer or game manager of such organization confirming that gross receipts are expected to be the amount set forth in § 18.2-340.23 of the Code of Virginia or less. Such statement shall be dated and kept on file for a minimum of three years from the close of a fiscal year.
2. Sell bingo cards and paper to persons or entities other than qualified organizations provided such supplies shall not be sold or otherwise provided for use in charitable gaming activities regulated by the department or in unlawful gambling activities. For each such sale, the supplier shall maintain the name, address, and telephone number of the purchaser. The supplier shall also obtain a written statement from the purchaser verifying that such supplies will not be used in charitable gaming or any unlawful gambling activity. Such statement shall be dated and kept on file for a minimum of three years from the close of a fiscal year. Payment for such sales in excess of \$50 shall be accepted in the form of a check.
3. Sell pull-tabs, seal cards, and electronic pull-tabs to organizations for use only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull-tabs, seal cards, or electronic pull-tabs are sold is open only to members and their guests as authorized by § 18.2-340.26:1 of the Code of Virginia. Each such sale shall be accounted for separately and the accompanying invoice shall be clearly marked: "For Use in Social Quarters Only."

Regulations

All such sales shall be documented pursuant to subsection H of this section and reported to the department pursuant to subsection J of this section. This provision shall not apply to the sale to landlords of equipment and video systems as defined in this chapter.

D. A supplier shall not sell, offer to sell, or otherwise provide charitable gaming supplies to any individual or organization in the Commonwealth of Virginia unless the charitable gaming supplies are purchased or obtained from a manufacturer or another permitted supplier. Suppliers may take back for credit and resell supplies received from an organization with a permit that has ceased charitable gaming or is returning supplies not needed.

E. No supplier, supplier's agent, or employee may be involved in the management, operation, or conduct of charitable gaming in the Commonwealth of Virginia. No member of a supplier's immediate family or person residing in the same household as a supplier may be involved in the management, operation, or conduct of charitable gaming of any customer of the supplier in the Commonwealth of Virginia. No supplier, supplier's agent, or employee may participate in any charitable gaming of any customer of the supplier in the Commonwealth of Virginia. For the purposes of this regulation, servicing of electronic bingo devices or electronic pull-tab devices shall not be considered conduct or participation.

F. The department shall conduct a background investigation prior to the issuance of a permit to any supplier. The investigation may include, but shall not be limited to, the following:

1. A search of criminal history on all officers, directors, and owners; and
2. Verification of current compliance with Commonwealth of Virginia tax laws.

If the officers, directors, or owners are domiciled outside of the Commonwealth of Virginia, or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which they have resided during the previous five years shall be provided by the applicant.

G. Appropriate information and authorizations shall be provided to the department to verify information cited in subsection F of this section.

H. Suppliers shall document each sale or rental of charitable gaming supplies to an organization in the Commonwealth of Virginia on an invoice, which reflects the following:

1. Name, address, and ~~OCG~~ organization number of the organization;
2. Date of sale or rental and location where ~~bingo~~ charitable gaming supplies are shipped if different from the billing address;

3. Name, form number, and serial number of each deal of instant bingo, pull-tabs, seal cards, electronic pull-tabs, or bundles and the quantity of cards in each deal;

4. Quantity of deals sold, the cost per deal, the selling price per card, the cash take-in per deal, and the cash payout per deal;

5. Serial number of the top sheet in each pack of disposable bingo paper, the quantity of sheets in each pack or pad, the cut and color, and the quantity of packs or pads sold;

6. Serial number for each series of uncollated bingo paper and the number of sheets sold;

7. Detailed information concerning the type, quantity, and individual price of any other charitable gaming supplies or related items including, but not limited to, concealed face bingo cards, hard cards, markers or daubers and refills, or any other merchandise. For concealed face bingo cards, the quantity of sets, price per set, and the serial number of each set shall be included;

8. Serial number of each electronic pull-tab device, a description of the physical attributes of the electronic pull-tab device, the quantity of electronic pull-tab devices sold or rented, and the physical address to which each electronic pull-tab device is shipped or delivered;

9. Serial number and description of any other equipment sold or rented that is used to facilitate the distribution, play, and redemption of electronic pull-tabs and the physical address to which the equipment is shipped or delivered; and

10. Any type of equipment, device, or product manufactured for or intended to be used in the conduct of charitable games including, but not limited to, designators, designator receptacles, number display boards, selection devices, dispensing machines, and verification devices.

I. Suppliers shall ensure that two copies of the detailed invoice are provided to the customer for each sale of charitable gaming supplies.

J. Each supplier shall provide a report to the department by March 1 of each year on sales of charitable gaming supplies for the fiscal year ending December 31 of the previous year to each organization in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name ~~and~~, address, and organization number of each organization and the following information for each sale or transaction:

1. Bingo paper sales including purchase price, description of paper to include quantity of sheets in pack and quantity of faces on sheet, and quantity of single sheets or packs shipped;
2. Deals of instant bingo, pull-tabs, seal cards, electronic pull-tabs, or any other raffle sales including purchase price, deal name, deal form number, quantity of tickets in deal,

ticket price, cash take-in per deal, cash payout per deal, and quantity of deals;

3. Electronic bingo device sales including purchase or rental price and quantity of units;

4. Equipment used to facilitate the distribution, play, and redemption of electronic pull-tabs including purchase or rental price, description of equipment, quantity of units of each type of equipment, and the physical address to which the equipment is shipped or delivered; and

5. Sales of miscellaneous items such as daubers, markers, and other merchandise including purchase price, description of product, and quantity of units.

K. The department shall set manufacturing and testing criteria for all electronic bingo devices and other equipment used in the conduct of charitable gaming. An electronic bingo device shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use in the conduct of charitable gaming until an identical sample device containing identical proprietary software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the device conforms, at a minimum, to the restrictions and conditions set forth in these regulations. Once the testing facility reports the test results to the department, the department will either approve or disapprove the submission and inform the manufacturer of the results ~~within 10 business days~~. If any such equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the manufacturer of such equipment.

L. Department employees shall have the right to inspect all electronic and mechanical equipment used in the conduct of charitable gaming.

M. Suppliers, their agents and employees, members of the supplier's immediate family, or persons residing in their household shall not make any loan directly or indirectly to any organization or officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming of a supplier's customer located in the Commonwealth of Virginia.

N. No supplier, supplier's agent, or employee shall directly or indirectly provide a rebate, discount, or refund to any person other than an organization that purchases supplies or leases or purchases equipment from the supplier. All such transactions shall be recorded on the supplier's account books.

O. A supplier shall not rent, sell, or otherwise provide electronic bingo devices or equipment used to distribute, play, or redeem electronic pull-tabs unless the supplier possesses a valid permit in the Commonwealth of Virginia.

P. A written agreement specifying the terms of lease or rental shall be required for any electronic bingo devices or

equipment used to distribute, play, or redeem electronic pull-tabs provided to an organization.

11VAC15-40-130. Construction and other standards for bingo, instant bingo, pull-tabs, seal cards, raffles, electronic bingo devices, and instant bingo, pull-tab, and seal card dispensers.

A. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use ~~bingo charitable gaming~~ supplies unless they conform to the following construction standards:

1. Disposable paper sold shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading, bleeding, or otherwise obscuring other numbers or cards.

2. Each sheet of disposable bingo paper shall be comprised of cards bearing a serial number. No serial number shall be repeated on or in the same style, series, and color of cards within a three-year period.

3. Disposable bingo paper assembled in books or packs shall not be separated except for single-sheet specials. This provision does not apply to two-part cards on which numbers are filled by players and one part is separated and provided to an organization for verification purposes.

4. Each unit of disposable bingo paper shall have an exterior label listing the following information:

- a. Description of product;
- b. Number of packs or loose sheets;
- c. Series numbers;
- d. Serial number of the top sheet;
- e. Number of cases;
- f. Cut of paper; and
- g. Color of paper.

5. "Lucky Seven" bingo cards or electronic facsimiles thereof shall have a single face where seven numbers shall be chosen. "Lucky Seven" sheets or electronic facsimiles thereof shall have multiple faces where seven numbers shall be chosen per face.

B. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use instant bingo, pull-tab, or seal cards unless they conform to the following construction standards:

1. Cards shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the card by using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

2. Deals shall be designed, constructed, glued, and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

Regulations

3. Each card in a deal shall bear the same serial number. Only one serial number shall be used in a deal. No serial number used in a deal shall be repeated by the same manufacturer on that same manufacturer's form within a three-year period. The flare of each deal shall accompany the deal and shall have affixed to it the same serial number as the tickets in such deal.

4. Numbers or symbols on cards shall be fully visible in the window and shall be placed so that no part of a number or symbol remains covered when the tab is removed.

5. Cards shall be glued on all edges and around each window. Glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the card. For banded tickets, the glue must be of sufficient strength and quality to prevent the separation of the band from the ticket.

6. The following minimum information shall be printed on a card:

a. Break open pull-tab and instant bingo cards:

- (1) Name of the manufacturer or its distinctive logo;
- (2) Name of the game;
- (3) Manufacturer's form number;
- (4) Price per individual card or bundle;
- (5) Unique minimum five-digit game serial number printed on the game information side of the card; and
- (6) Number of winners and respective winning number or symbols and specific prize amounts unless accompanied by a manufacturer's preprinted publicly posted flare with that information.

b. Banded pull-tabs:

- (1) Manufacturer;
- (2) Serial number;
- (3) Price per individual card or bundle unless accompanied by a manufacturer's preprinted publicly posted flare with that information; and
- (4) Number of winners and respective winning numbers or symbols and prize amounts or a manufacturer's preprinted publicly posted flare giving that information.

7. All seal card games sold to organizations shall contain the sign-up sheet, seals, and cards packaged together in each deal.

C. Raffle tickets used independent of a ~~bingo game session~~ must conform to the following construction standards:

1. Each ticket shall have a detachable section and shall be consecutively numbered.
2. Each section of a ticket shall bear the same number. The section retained by the organization shall provide space for the purchaser's name, complete address, and telephone number.

3. The following information shall be printed on the purchaser's section of each ticket:

- a. Dates and times of drawings;
- b. Locations of the drawings;
- c. Name of the charitable organization conducting the raffle;
- d. Price of the ticket;
- e. Charitable gaming permit number; and
- f. Prizes.

Exceptions to these construction standards are allowed only with prior written approval from the department.

D. Electronic bingo.

1. The department, at its discretion, may require additional testing of electronic bingo devices at any time. Such additional testing shall be at the manufacturer's expense and shall be a condition of the continued use of such device.

2. All electronic bingo devices shall use proprietary software and hardware or commonly available software and hardware and shall be enabled for play on the premises where the game is to be played.

3. Each electronic bingo device shall have a unique identification number securely encoded into the software of the device. The unique identification number shall not be alterable by anyone other than the manufacturer of the electronic bingo device. Manufacturers of electronic bingo devices shall employ sufficient security safeguards in designing and manufacturing the devices such that it may be verified that all proprietary software components are authentic copies of the approved software components and all functioning components of the device are operating with identical copies of approved software programs. The electronic bingo device must also have sufficient security safeguards so that any restrictions or requirements authorized by the department or any approved proprietary software are protected from alteration by unauthorized personnel. The electronic bingo device shall not contain hard-coded or unchangeable passwords. Security measures that may be employed to comply with these provisions include, but are not limited to, the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and key and callback password systems.

4. A firewall or equivalent hardware device configured to block all inbound and outbound traffic that has not been expressly permitted and is not required for the continued use of the electronic bingo system must exist between the electronic bingo system and any external point of access.

5. Electronic bingo devices shall not allow a player to create a card by the input of specific numbers on each card. Manufacturers shall ensure that an electronic bingo device

does not allow for the play of any bingo card faces other than those verifiably purchased by the patron.

6. Electronic bingo devices shall not accept cash, currency, or tokens for play.

7. Electronic bingo devices shall require the manual entry of numbers as they are called, the manual verification of numbers as they have been electronically transmitted to the device, or the full automatic daubing of numbers as each number is called. During the play of a bingo game, the transmission of data to electronic bingo devices shall be limited to one-way communication to the electronic bingo device and shall consist only of publicly available information regarding the current game.

8. A device shall not allow the play of more than 54 cards per device per game.

9. The electronic bingo device system shall record a sequential transaction number or audit tracking number for each transaction. The system shall not allow the manual resetting or changing of this number.

10. The system shall produce a receipt for each electronic bingo device rented or otherwise provided containing the following:

- a. Organization name;
- b. Location of bingo game;
- c. Date and time of the transaction;
- d. Sequential transaction or receipt number;
- e. Description of each electronic bingo product loaded. The description must include the quantity of bingo card faces that appear on each electronic bingo product (i.e., 9 Jackpot) and the sales price of each electronic bingo product;
- f. Quantity of each electronic bingo product loaded; and
- g. Total sales price of the transaction.

11. The system shall maintain and make available on demand a summary report for each session that includes the following:

- a. Organization name;
- b. Location of bingo game;
- c. Date and time of each transaction;
- d. Sequential transaction or receipt number of each transaction;
- e. Description of each electronic bingo product loaded each session. The description must include the quantity of bingo card faces that appear on each electronic bingo product and the sales price of each electronic bingo product;
- f. Quantity of each electronic bingo product loaded;
- g. Total sales price of each electronic bingo product loaded; [~~and~~]
- h. Total sales price for each transaction;

i. A transaction history correlating the sequential transaction number of each electronic bingo device sale to the unique identification number of the electronic bingo device on which the sale was played;

j. Sufficient information to identify voids and returns, including the date and time of each voided transaction and return, the sequential transaction number, and the cost of voided transactions and returns; and

k. Total gross receipts for each session.

12. Each electronic bingo device shall be programmed to automatically erase all stored electronic bingo cards at the end of the last game of a session, within a set time from their rental to a player, or by some other clearance method approved by the department.

13. All electronic bingo devices shall be reloaded with another set of electronic bingo cards at the beginning of each session if the devices are to be reused at the same location.

E. In instances where a defect in packaging or in the construction of deals or electronic bingo devices is discovered by or reported to the department, the department shall notify the manufacturer of the deals or electronic bingo devices containing the alleged defect. Should the department, in consultation with the manufacturer, determine that a defect exists, and should the department determine the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to deals or electronic bingo devices for use still located within the Commonwealth of Virginia, require the supplier to:

- 1. Recall the deals or electronic bingo devices affected that have not been sold or otherwise provided; or
- 2. Issue a total recall of all affected deals or electronic bingo devices.

F. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use an instant bingo, pull-tab, or seal card dispenser unless the dispenser conforms to the following standards:

- 1. Each dispenser shall be manufactured in a manner that ensures a pull-tab ticket is dispensed only after insertion of United States currency or coinage into the dispenser. Such ticket and any change due shall be the only items dispensed from the machine.
- 2. Each dispenser shall be manufactured in a manner that ensures the dispenser neither displays nor has the capability of displaying or otherwise identifying an instant bingo, pull-tab, or seal card winning or nonwinning ticket.
- 3. Each dispenser shall be manufactured in such a manner that any visual animation does not simulate or display rolling or spinning reels or produce audible music or enhanced sound effects.
- 4. Each dispenser shall be equipped with separate locks for the instant bingo, pull-tab, or seal card supply modules and

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money boxes. Locks shall be configured so that no one key will operate both the supply modules and money boxes.

G. The department may require testing of a dispensing device at any time to ensure that it meets construction standards and allows for fair play. Such tests shall be conducted at the cost of the manufacturer of such dispensing devices.

H. The face value of the instant bingo, pull-tab, or seal cards being dispensed shall match the amount deposited in the currency/coin acceptor less change provided.

I. A dispensing device shall only dispense instant bingo, pull-tab, or seal cards that conform to the construction standards established in subsection B of this section and the randomization standards established in 11VAC15-40-140.

J. Suppliers and manufacturers of instant bingo, pull-tab, or seal card dispensers shall comply with the requirements of the Gambling Devices Act of 1962 (15 USC §§ 1171-1178).

Part IV Electronic Games of Chance Systems

Article 1 Manufacturers

11VAC15-40-147. Manufacturers of electronic games of chance systems: application, qualifications, suspension, revocation or refusal to renew permit, maintenance, and production of records.

A. As used in this section, "manufacturer" means a person or entity that assembles from raw materials or subparts an electronic games of chance system.

B. Prior to providing any electronic games of chance system, a manufacturer shall submit an application on a form prescribed by the department and receive a permit. A \$1,000 application fee payable to the Treasurer of Virginia is required. In addition, a manufacturer must be authorized to conduct business in the Commonwealth of Virginia, which may include, but not be limited to, registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission. The actual cost of background investigations for a permit may be billed by the department to an applicant.

C. The department may refuse to issue a permit or may suspend or revoke a permit if an officer, director, employee, agent, or owner:

1. Is operating without a valid license, permit, or certificate as a supplier, network bingo provider, or manufacturer in any state in the United States;
2. Fails or refuses to recall a product as directed by the department;
3. Conducts business with unauthorized entities or is not authorized to conduct business in the Commonwealth of Virginia;
4. Has been convicted of or pleaded nolo contendere to any crime as specified by § 18.2-340.34 B of the Code of

Virginia; has had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia;

5. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming or the distribution of electronic games of chance systems involving or concerning the manufacturer, any officers or directors, employees, agent, or owner during the term of its permit;

6. Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of Justice —~~Gambling Devices Registration Unit~~ [;] if required in accordance with the Gambling Devices Act of 1962 (15 USC §§ 1171-1178) for any device that it distributes in the Commonwealth of Virginia; or

7. Has been engaged in conduct that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

D. A manufacturer shall not distribute electronic games of chance systems for use by anyone in the Commonwealth of Virginia other than to a permitted charitable gaming organization or a permitted supplier. However, a manufacturer may:

1. Distribute an electronic games of chance system to an organization that expects to gross the amount set forth in § 18.2-340.23 of the Code of Virginia or less in any 12-month period, providing that the amount of such purchase would not be reasonably expected to produce more than the amount set forth in § 18.2-340.23 of the Code of Virginia in gross sales. For each such organization, the manufacturer shall maintain the name, address, and telephone number. The manufacturer shall also obtain a written and signed statement from an officer or game manager of such organization confirming that gross receipts are expected to be the amount set forth in § 18.2-340.23 of the Code of Virginia or less. Such statement shall be dated and kept on file for a minimum of three years from the close of a fiscal year.

2. Distribute electronic games of chance systems to an organization for use only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which electronic pull-tabs

are sold is open only to members and their guests as authorized by § 18.2-340.26:1 of the Code of Virginia. Each such distribution shall be accounted for separately and the accompanying invoice shall be clearly marked: "For Use in Social Quarters Only."

All such distributions shall be documented pursuant to subsection H of this section and reported to the department pursuant to subsection J of this section.

E. No manufacturer of electronic games of chance systems, the manufacturer's agent, or the manufacturer's employee may be involved in the management, operation, or conduct of charitable gaming in the Commonwealth of Virginia. No member of a manufacturer's immediate family or person residing in the same household as a manufacturer may be involved in the management, operation, or conduct of charitable gaming of any customer of the manufacturer in the Commonwealth of Virginia. No manufacturer of electronic games of chance systems, the manufacturer's agent, or the manufacturer's employee may participate in any charitable gaming of any customer of the manufacturer in the Commonwealth of Virginia. For the purposes of this regulation, servicing of electronic games of chance systems shall not be considered conduct or participation.

F. The department shall conduct a background investigation prior to the issuance of a permit to any manufacturer. The investigation may include, but shall not be limited to, the following:

1. A search of criminal history records on all officers, directors, and owners; and
2. Verification of current compliance with Commonwealth of Virginia tax laws.

If the officers, directors, or owners are domiciled outside of the Commonwealth of Virginia, or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which they have resided during the previous five years shall be provided by the applicant.

G. Appropriate information and authorizations shall be provided to the department to verify information cited in subsection F of this section.

H. Manufacturers shall document each distribution an electronic games of chance system to any person for use in the Commonwealth of Virginia on an invoice, which reflects the following:

1. Name, address, and ~~OCG~~ organization number of the organization or supplier;
2. Date of sale or rental and location where the electronic games of chance system is shipped or delivered, if different from the billing address;
3. Name, form number, and serial number of each deal of electronic pull-tabs;

4. Quantity of deals sold, the cost per deal, the selling price per card, the cash take-in per deal, and the cash payout per deal;

5. Serial number of each electronic pull-tab device, a description of the physical attributes of the electronic pull-tab device, the quantity of electronic pull-tab devices sold or rented, and the physical address to which each electronic pull-tab device is shipped or delivered; and

6. Serial number and description of any other equipment sold or rented that is used to facilitate the distribution, play, and redemption of electronic pull-tabs and the physical address to which the equipment is shipped or delivered.

I. Manufacturers shall ensure that two copies of the detailed invoice are provided to the customer for each distribution of electronic games of chance systems.

J. Each manufacturer shall provide a report to the department by March 1 of each year on distribution of electronic games of chance systems for the fiscal year ending December 31 of the previous year to each organization and permitted supplier in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name ~~and~~, address, and organization number of each organization and permitted supplier and the following information for each sale or transaction:

1. Deals of electronic pull-tabs including purchase price, deal name, deal form number, quantity of electronic pull-tabs in deal, electronic pull-tab price, cash take-in per deal, cash payout per deal, and quantity of deals; and
2. Equipment used to facilitate the distribution, play, and redemption of electronic pull-tabs including purchase or rental price, description of equipment, quantity of units of each type of equipment, and the physical address to which the equipment is shipped or delivered.

K. A manufacturer, its agents and employees, members of a manufacturer's immediate family, or persons residing in a manufacturer's household shall not make any loan directly or indirectly to any organization or officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming of the manufacturer's customer located in the Commonwealth of Virginia.

L. A manufacturer, its agent, or its employee shall not directly or indirectly provide a rebate, discount, or refund to any person other than an organization that purchases, rents, or leases an electronic games of chance system from the manufacturer. All such transactions shall be recorded on the manufacturer's account books.

M. A written agreement specifying the terms of lease or rental shall be required for any equipment used to distribute, play, or redeem electronic pull-tabs provided to an organization or permitted supplier.

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Article 2

General Requirements

11VAC15-40-150. Approval of distributed pull-tab systems, validation systems, point-of-sale stations, and redemption terminals; approval of game themes and sounds.

A. The department shall set manufacturing and testing criteria for all distributed pull-tab systems, validation systems, point-of-sale stations, redemption terminals, and other equipment used in the conduct of charitable gaming. A distributed pull-tab system, validation system, point-of-sale station, redemption terminal, or other equipment shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use in the conduct of charitable gaming until an identical sample system or equipment containing identical software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the distributed pull-tab system and associated hardware and software conform, at a minimum, to the requirements set forth in this chapter. Once the testing facility reports the test results to the department, the department will either approve or disapprove the distributed pull-tab system or system components and inform the manufacturer of the results ~~within 10 business days~~. If any such system or equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the manufacturer of such equipment.

B. No supplier or manufacturer shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use a distributed pull-tab system, validation system, point-of-sale station, redemption terminal, or other equipment used to conduct charitable gaming unless it conforms to the requirements set forth in this regulation.

C. If a defect in a distributed pull-tab system, validation system, point-of-sale station, redemption terminal, or other equipment used to conduct charitable gaming is discovered by or reported to the department, the department shall notify the manufacturer of the system or equipment containing the alleged defect. Should the department, in consultation with the manufacturer, determine that a defect exists and should the department determine the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to any distributed pull-tab system, validation system, point of sale station, redemption terminal, or other equipment used to conduct charitable gaming still located within the Commonwealth of Virginia, require the supplier or manufacturer to issue a recall of all affected distributed pull-tab systems, validation systems, point-of-sale stations, redemption terminals, or other equipment.

D. All game themes, sounds, and music shall be approved by the department prior to being available for play on an electronic pull-tab device in the Commonwealth of Virginia.

[11VAC15-40-210. Security requirements.

A. A distributed pull-tab system computer must be in a locked, secure enclosure with key controls in place.

B. A distributed pull-tab system shall provide a means for terminating the game set if information about electronic pull-tabs in an open game set has been accessed or at the discretion of the department. In such cases, traceability of unauthorized access including time and date, users involved, and any other relevant information shall be available.

C. A distributed pull-tab system shall not permit the alteration of any accounting or significant event information that was communicated from the electronic pull-tab device without supervised access controls. In the event financial data is changed, an automated audit log must be capable of being produced to document the following:

1. Data element altered;
2. Data element value prior to alteration;
3. Data element value after alteration;
4. Time and date of alteration; and
5. Personnel that performed alteration.

D. A distributed pull-tab system must provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components through the following means:

1. All programs and data files must only be accessible via the entry of a password that will be known only to authorized personnel;
2. The distributed pull-tab system must have multiple security access levels to control and restrict different classes;
3. The distributed pull-tab system access accounts must be unique when assigned to the authorized personnel and shared accounts amongst authorized personnel must not be allowed;
4. The storage of passwords and PINs must be in an encrypted, nonreversible form; and
5. A program or report must be available that will list all registered users on the distributed pull-tab system including their privilege level.

E. All components of a distributed pull-tab system that allow access to users, other than end-users for game play, must have a password sign-on with two-level codes comprising the personal identification code and a personal password.

1. The personal identification code must have a length of at least six ASCII characters; and
2. The personal password must have a minimum length of six alphanumeric characters, which should include at least one nonalphanumeric character.

F. A distributed pull-tab system must have the capability to control potential data corruption that can be created by multiple simultaneous log-ons by system management personnel.

1. A distributed pull-tab system shall specify which of the access levels allow for multiple simultaneous sign-ons by different users and which of the access levels do not allow for multiple sign-ons, and, if multiple sign-ons are possible, what restrictions, if any, exist; or
2. If a distributed pull-tab system does not provide adequate control, a comprehensive procedural control document must be drafted for the department's review and approval.

G. Distributed pull-tab system software components/modules shall be verifiable by a secure means at the system level. A distributed pull-tab system shall have the ability to allow for an independent integrity check of the components/modules from an outside source, and an independent integrity check is required for all control programs that may affect the integrity of the distributed pull-tab system. This must be accomplished by being authenticated by a third-party device, which may be embedded within the distributed pull-tab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check will provide a means for field verification of the distributed pull-tab system components.

H. A distributed pull-tab system may be used to configure and perform security checks on electronic pull-tab devices, provided such functions do not affect the security, integrity, or outcome of any game and meets the requirements set forth in this regulation regarding program storage devices.

11VAC15-40-280. Point of sale; validation terminal.

A. A distributed pull-tab system may utilize a point-of-sale ~~and/or~~ or validation terminal that is capable of facilitating the sale of the organization's pull tab outcomes or used for the redemption of credits from player accounts or vouchers. The point of sale may be entirely integrated into a distributed pull-tab system or exist as a separate entity.

B. Point-of-sale use is only permissible when the device is linked to an approved validation system or distributed pull-tab system.

C. If a distributed pull-tab system utilizes a point of sale, it shall be capable of printing a receipt for each sale, void, or redemption. ~~+~~ The receipt shall contain the following information:

- a. 1. Date and time of the transaction;
- b. 2. Dollar value of the transaction;
- e. 3. Validation number, if applicable;
- d. 4. Quantity of associated products, if applicable;
- e. 5. Transaction number;
- f. 6. Account number, if applicable; and

~~g.~~ 7. Point-of-sale identification number or name.

D. The following point-of-sale or validation terminal reports shall be generated on demand:

1. Sales ~~Transaction History Report~~ transaction history report shall show all sales and voids by session and include the following information:

- a. Date and time of the transaction;
- b. Dollar value of the transaction;
- c. Quantity of associated products;
- d. Transaction number; and
- e. Point of sale identification number or name;.

2. Voucher ~~Redemption Report~~ redemption report shall detail individual voucher redemptions paid by the validation terminal or point of sale by session and include the following information:

- a. Date and time of the transaction;
- b. Dollar value of the transaction;
- c. Validation number;
- d. Transaction number; and
- e. Point of sale identification number or name.]

**Part V
Administrative Process**

11VAC15-40-420. Procedural rules for the conduct of fact-finding conferences and hearings. (Repealed.)

~~A. As used in this section, "manufacturer" means a person or entity that assembles from raw materials or subparts an electronic games of chance system.~~

~~B. Fact-finding conference; notification, appearance, and conduct.~~

~~1. Unless automatic revocation or immediate suspension is required by law, no permit to conduct charitable gaming, to sell charitable gaming supplies, or to distribute electronic games of chance shall be denied, suspended, or revoked except after review and approval of such proposed denial, suspension, or revocation action by the board, and upon notice stating the basis for such proposed action and the time and place for a fact-finding conference as set forth in § 2.2 4019 of the Administrative Process Act.~~

~~2. If a basis exists for a refusal to renew, suspend, or a revoke a permit, the department shall notify by certified mail or by hand delivery the interested persons at the address of record maintained by the department.~~

~~3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations, suppliers, or manufacturers~~

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who wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If, after consideration of evidence presented during an informal fact finding conference, a basis for action still exists, the interested persons shall be notified in writing within 60 days of the fact finding conference via certified or hand delivered mail of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

C. Hearing; notification, appearance, and conduct.

1. If, after a fact finding conference, a sufficient basis still exists to deny, suspend, or revoke a permit, interested persons shall be notified by certified or hand delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If an organization, supplier, or manufacturer desires to request a hearing, it shall notify the department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

D. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization, supplier, or manufacturer is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference, or similar technology, in order to expedite the hearing process.

E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief, or denial thereof as to each issue.

F. Agency representation. The commissioner's designee may represent the department in an informal conference or at a hearing.

11VAC15-40-430. Reporting violations. (Repealed.)

A. As used in this section, "manufacturer" means a person or entity that assembles from raw materials or subparts an electronic games of chance system.

B. Unless otherwise required by law, the identity of any individual who provides information to the department or its agents regarding alleged violations shall be held in strict confidence.

C. Any officer, director, or game manager of a qualified organization or any officer or director of a supplier or manufacturer shall immediately report to the department any information pertaining to the suspected misappropriation or theft of funds or any other violations of charitable gaming statutes or these regulations.

D. Failure to report the information required by subsection C of this section may result in the denial, suspension, or revocation of a permit.

E. Any officer, director, or game manager of a qualified organization involved in the management, operation, or conduct of charitable gaming shall immediately notify the department upon being convicted of a felony or a crime involving fraud, theft, or financial crimes.

F. Any officer, director, partner, or owner of a supplier or manufacturer shall immediately notify the department upon being convicted or pleading nolo contendere to a felony or a crime involving gambling or an action against any license or certificate held by the supplier in any state in the United States.

G. Failure to report information required by subsection E or F of this section by any officer, director, or game manager of a qualified organization or by any supplier or manufacturer may result in the denial, suspension, or revocation of a permit.

H. Any officer, director, or game manager of a qualified organization involved in charitable gaming shall immediately report to the department any change the Internal Revenue Service makes in the tax status of the organization, or if the organization is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

I. All organizations regulated by the department shall display prominently a poster advising the public of a phone number where complaints relating to charitable gaming may be made. Such posters shall be in a format prescribed by the department.

Part V
Network Bingo

Article 1
Network Bingo Providers

11VAC15-40-440. Network bingo providers: application, qualifications, suspension, revocation or refusal to renew permit, maintenance, and production of records.

A. Prior to providing network bingo, a network bingo provider shall submit an application on a form prescribed by the department and receive a permit. A \$500 application fee payable to the Treasurer of Virginia is required. In addition, a network bingo provider must be authorized to conduct business in the Commonwealth of Virginia, which may include, but not be limited to, registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission. The actual cost of background investigations for a permit may be billed by the department to an applicant.

B. The department may refuse to issue a permit or may suspend or revoke a permit if an officer, director, partner, employee, agent, or owner:

1. Is operating without a valid license, permit, or certificate as a supplier, manufacturer, or network bingo provider in any state in the United States;
2. Fails or refuses to recall a product as directed by the department;
3. Conducts business with unauthorized entities or is not authorized to conduct business in the Commonwealth of Virginia;
4. Has been convicted of or pleaded nolo contendere to any crime as specified by § 18.2-340.34:2 B of the Code of Virginia; has had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia;
5. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming or network bingo involving or concerning the network bingo provider, any officers or directors, employees, agent, or owner during the term of its permit;
6. Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of Justice, if required in accordance with the

Gambling Devices Act of 1962 (15 USC §§ 1171-1178) for any device that it distributes in the Commonwealth of Virginia; or

7. Has been engaged in conduct that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

C. A network bingo provider shall not distribute a network bingo system, network bingo supplies, or other incidental items to perform network bingo to anyone in the Commonwealth of Virginia or to an organization for use upon the premises owned or exclusively leased by the organization in which the portion of the premises are qualified to sell pull-tabs to members and their guests only as authorized by § 18.2-340.26:1 of the Code of Virginia. However, a network bingo provider may:

1. Distribute such a system, supply, or item to a qualified organization authorized to conduct charitable gaming for use during a session that is open to the public and not limited to members and their guests only.
2. Distribute such a system, supply, or item to an organization that expects to gross the amount set forth in § 18.2-340.23 of the Code of Virginia or less in any 12-month period, providing that the amount of such purchase would not be reasonably expected to produce more than the amount set forth in § 18.2-340.23 of the Code of Virginia in gross sales. For each such organization, the network bingo provider shall maintain the name, address, and telephone number. The network bingo provider shall also obtain a written and signed statement from an officer or game manager of such organization confirming that gross receipts are expected to be the amount set forth in § 18.2-340.23 of the Code of Virginia or less. Such statement shall be dated and kept on file for a minimum of three years from the close of a fiscal year.

All such distributions shall be documented pursuant to subsection G of this section and reported to the department pursuant to subsection I of this section.

D. No network bingo provider, its agents, or its employees may be involved in the management, operation, or conduct of charitable gaming in the Commonwealth of Virginia. A network bingo provider, its agents, or its employees may call a network bingo game or distribute network bingo prizes associated with the network bingo provider's network bingo system. No member of a network bingo provider's immediate family or person residing in the same household as a network bingo provider may be involved in the management, operation, or conduct of charitable gaming of any customer of the network bingo provider in the Commonwealth of Virginia. No network bingo provider, its agents, or its employees may participate in any charitable gaming of any customer of the network bingo provider in the Commonwealth of Virginia. For the purposes of this chapter, servicing of the network bingo system shall not be considered conduct or participation.

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E. The department shall conduct a background investigation prior to the issuance of a permit to any network bingo provider. The investigation may include, but shall not be limited to, the following:

1. A search of criminal history records on all officers, directors, and owners; and
2. Verification of current compliance with Commonwealth of Virginia tax laws.

If the officers, directors, owners, or partners are domiciled outside of the Commonwealth of Virginia, or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which they have resided during the previous five years shall be provided by the applicant.

F. Appropriate information and authorizations shall be provided to the department to verify information cited in subsection E of this section.

G. Network bingo providers shall document each sale of network bingo supplies, equipment, and other incidental items to perform network bingo to any person for use in the Commonwealth of Virginia on an invoice, which reflects the following:

1. Name, address, and organization number of the organization;
2. Date of sale, lease, or rental and location where the network bingo supplies, equipment, and other incidental items to perform network bingo is shipped or delivered, if different from the billing address;
3. Form number, serial number, quantity, and purchase or rental price of the network bingo supplies, equipment, and other incidental items to perform network bingo;
4. Quantity of network bingo cards sold, the cost per card, and the selling price per card; and
5. Date of the network bingo game in which the qualified organization participated, the start time and end time of the game, and the number of balls called during the game.

H. Network bingo providers shall ensure that two copies of the detailed invoice are provided to the customer for the sale of network bingo supplies, equipment, and other incidental items to perform network bingo.

I. Each network bingo provider shall provide a report to the department by March 1 of each year on the sale of network bingo supplies, equipment, and other incidental items to perform network bingo for the fiscal year ending December 31 of the previous year to each organization in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name, address, and organization number of each organization and the following information for each sale or transaction:

1. Date of sale, lease, or rental and location where the network bingo supplies, equipment, and other incidental

items to perform network bingo is shipped or delivered, if different from the billing address;

2. Serial number, quantity, and purchase or rental price of the network bingo supplies, equipment, and other incidental items to perform network bingo;

3. Quantity of network bingo cards sold, the cost per card, and the selling price per card;

4. Date of the network bingo game in which qualified organizations participated, the start time and end time of the game, the number of balls called during the game, the total gross receipts for the game; and

5. Prize amount awarded to the winning player and which organization sold the winning network bingo card.

J. A network bingo provider shall maintain documentation on all deposits and disbursements into the prize pool for the network bingo game.

K. A network bingo provider, its agents, and its employees; members of a network bingo provider's immediate family; or persons residing in a network bingo provider's household shall not make any loan directly or indirectly to any organization or officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming of the network bingo provider's customer located in the Commonwealth of Virginia.

L. A network bingo provider, its agent, or its employee shall not directly or indirectly provide a rebate, discount, or refund to any person other than an organization that purchases, rents, or leases network bingo supplies, equipment, and other incidental items to perform network bingo. All such transactions shall be recorded on the network bingo provider's account books.

M. A network bingo provider shall not rent, sell, or otherwise provide network bingo supplies, equipment, and other incidental items to perform network bingo unless the network bingo provider possesses a valid permit in the Commonwealth of Virginia.

N. A written agreement specifying the terms of lease or rental between the network bingo provider and the qualified organization shall be required for any equipment used to perform network bingo.

O. A network bingo provider shall record the following information on each winner of a network bingo game:

1. Name and address of the winner;
2. Name of the qualified organization that sold the winning network bingo card;
3. Date and time when the winning network bingo card was purchased by the winner; and
4. Location where the winning network bingo card was purchased by the winner.

Article 2
General Requirements

11VAC15-40-450. Approval of equipment used to perform network bingo.

A. The department shall set manufacturing and testing criteria for all equipment used to perform network bingo. Equipment used to perform network bingo shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use as part of network bingo until an identical sample [of] equipment containing identical proprietary software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the equipment conforms, at a minimum, to the requirements set forth in this chapter. Once the testing facility reports the test results to the department, the department will either approve or disapprove the equipment and inform the network provider of the results. If any such equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the network provider of such equipment.

B. No network bingo provider shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use equipment to perform network bingo unless it conforms to the requirements set forth in this chapter.

C. If a defect in any equipment used to perform network bingo is discovered by or reported to the department, the department shall notify the network bingo provider that is using the equipment containing the alleged defect. Should the department, in consultation with the network bingo provider, determine that a defect exists and should the department determine the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to any equipment used to perform network bingo still located within the Commonwealth of Virginia, require the network bingo provider to issue a recall of all affected equipment.

D. Department employees shall have the right to inspect all equipment used to perform network bingo. The department, at its discretion, may require additional testing of any equipment to perform network bingo at any time. Such additional testing shall be at the network provider's expense and shall be a condition of the continued use of such equipment.

E. Equipment used to perform network bingo shall have a permanently affixed identification badge that cannot be removed without leaving evidence of tampering. This badge shall be affixed to the exterior of the equipment and shall include the following information:

1. Manufacturer name;
2. A unique serial number;

3. The equipment model number;
4. The date of manufacture; and
5. Any other information required by the department.

Article 3
System Requirements

11VAC15-40-460. Location of equipment.

All equipment used to perform network bingo must be physically located within the boundaries of the Commonwealth of Virginia.

11VAC15-40-470. Communications and network requirements.

A. Where the network bingo system components are linked with one another in a network, communication protocols shall be used that ensure that erroneous data or signals will not adversely affect the operations of any such system components.

B. All data communication shall incorporate error detection and correction scheme to ensure the data is transmitted and received accurately.

C. Connections between all components of the network bingo system shall only be through the use of secure communication protocols that are designed to prevent unauthorized access or tampering, employing Advanced Encryption Standard, or equivalent encryption.

D. A firewall or equivalent hardware device configured to block all inbound and outbound traffic that has not been expressly permitted and is not required for continued use of the network bingo system must exist between the network bingo system and any external point of access.

E. The minimum width (size) for encryption keys is 112 bits for symmetric algorithms and 1024 bits for public keys.

F. There must be a secure method implemented for changing the current encryption key set. It is not acceptable to only use the current key set to "encrypt" the next set.

G. There must be a secure method in place for the storage of encryption keys. Encryption keys must not be stored without being encrypted themselves.

H. If a wireless network is used, wireless products used in conjunction with any gaming system or system component must meet the following minimum standards:

1. Employ a security process that complies with the Federal Information Processing Standard 140-2 (FIPS 140-2); or
2. Employ an alternative method, as approved by the department.

11VAC15-40-480. Backup and recovery.

A. A network bingo system shall have a separate physical medium for securely storing data for the network bingo game, which shall be mirrored in real time by a backup medium.

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B. All data required to be available or reported by this chapter must be retained for a period of not less than three years from the close of the fiscal year.

C. All storage of critical data shall utilize error checking and be stored on a nonvolatile physical medium.

D. The database shall be stored on redundant media so that no single failure of any portion of the system would result in the loss or corruption of data.

E. In the event of a catastrophic failure when the network bingo system cannot be restarted in any other way, it shall be possible to reload the network bingo system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;
2. All accounting information;
3. Auditing information, including all sales and disbursements; and
4. Employee files with access levels.

11VAC15-40-490. Security requirements.

A. A network bingo system shall not permit the alteration of any accounting or significant event information that was communicated from a point-of-sale terminal without supervised access controls. In the event financial data is changed, an automated audit log must be capable of being produced to document the following:

1. Data element altered;
2. Data element value prior to alteration;
3. Data element value after alteration;
4. Time and date of alteration; and
5. Personnel that performed alteration.

B. A network bingo system must provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components through the following means:

1. All programs and data files must only be accessible via the entry of a password that will be known only to authorized personnel;
2. The network bingo system must have multiple security access levels to control and restrict different classes;
3. The network bingo system access accounts must be unique when assigned to the authorized personnel and shared accounts amongst authorized personnel must not be allowed;
4. The storage of passwords and PINs must be in an encrypted, nonreversible form; and
5. A program or report must be available that will list all registered users on the network bingo system including their privilege level.

C. All components of a network bingo system that allow access to users, other than the player, must have a password

sign-on with at least two-level codes comprising the personal identification code and a personal password.

1. The personal identification code must have a length of at least six ASCII characters; and

2. The personal password must have a minimum length of six alphanumeric characters, which should include at least one nonalphanumeric character.

D. A network bingo system must have the capability to control potential data corruption that can be created by multiple simultaneous log-ons by system management personnel.

1. A network bingo system shall specify which of the access levels allow for multiple simultaneous sign-ons by different users and which of the access levels do not allow for multiple sign-ons, and if multiple sign-ons are possible, what restrictions, if any, exist; or

2. If a network bingo system does not provide adequate control, a comprehensive procedural control document must be drafted for the department's review and approval.

E. Network bingo system software components/modules shall be verifiable by a secure means at the system level. A network bingo system shall have the ability to allow for an independent integrity check of the components/modules from an outside source and an independent integrity check is required for all control programs that may affect the integrity of the network bingo system. This must be accomplished by being authenticated by a third-party device, which may be embedded within the network bingo system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check will provide a means for field verification of the network bingo system components.

F. A network bingo system may be used to configure and perform security checks on the point-of-sale terminals, provided such functions do not affect the security, integrity, or outcome of any game and meets the requirements set forth in this chapter regarding program storage devices.

11VAC15-40-500. Randomization.

A. As used in this section, unless the context requires a different meaning:

"Card position" means the first card dealt, second card dealt in sequential order.

"Number position" means the first number drawn in sequential order.

B. A network bingo system shall utilize randomizing procedures in the creation of network bingo cards.

C. Any random number generation, shuffling, or randomization of network bingo cards used in connection with a network bingo system must be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability including but not limited to:

1. Each card position or number position satisfies the 99% confidence limit using the standard chi-squared analysis. "Chi-squared analysis" is the sum of the ratio of the square difference between the expected result and the observed result to the expected result.

2. Each card position or number position does not produce a significant statistic with regard to producing patterns of occurrences. Each card position or number position will be considered random if it meets the 99% confidence level with regard to the "run test" or any similar pattern testing statistic. The "run test" is a mathematical statistic that determines the existence of recurring patterns within a set of data.

3. Each card position or number position is independently chosen without regard to any other card or number drawn within that game play. This test is the "correlation test." Each pair of card positions or number positions is considered random if it meets the 99% confidence level using standard correlation analysis.

4. Each card position or number position is independently chosen without reference to the same card position or number position in the previous game. This test is the "serial correlation test." Each card position or number position is considered random if it meets the 99% confidence level using standard serial correlation analysis.

11VAC15-40-510. Point of sale terminal.

A. A network bingo system may utilize a point-of-sale terminal that is capable of facilitating the sale of network bingo cards. The point of sale may be entirely integrated into a network bingo system or exist as a separate entity.

B. Point-of-sale use is only permissible when the device is linked to an approved network bingo system.

C. If a network bingo system utilizes a point of sale, it shall be capable of printing a receipt for each sale or void. The receipt shall contain the following information:

1. Date and time of the transaction;
2. Dollar value of the transaction;
3. Validation number, if applicable;
4. Quantity of network bingo cards purchased;
5. Transaction number;
6. Point-of-sale identification number or name; and
7. Date and time when the network bingo game will begin.

D. The following point-of-sale [~~reports~~ report] shall be generated on demand. Sales [~~Transaction History Report~~ transaction history report] shall show all sales and voids by session and include the following information:

1. Date and time of the transaction;
2. Dollar value of the transaction;
3. Quantity of network bingo cards sold;
4. Transaction number;

5. Point of sale identification number or name; and
6. Date and time of the network bingo game.

11VAC15-40-520. Game play requirements.

A. Any device that sells network bingo cards shall be clearly labeled so as to inform the public or game worker that no one younger than 18 years of age is allowed to play or redeem a network bingo card.

B. A network bingo provider shall have physical on-site independent supervision while the numbers for a network bingo game are called by a live caller. This independent supervision shall be unbiased in verifying the outcome of the network bingo game and uphold the department's objective of maintaining the highest level of integrity in charitable gaming. A written agreement specifying the terms of any arrangement between the entity or person providing the physical on-site independent supervision and the network bingo provider shall be required prior to any supervision being performed on the network bingo game. This written agreement shall be maintained by the network bingo provider for a minimum of three years from the close of the fiscal year, unless otherwise specified.

C. A network bingo provider shall ensure qualified organizations participating in its network bingo comply with § 18.2-340.28:1 F of the Code of Virginia.

D. A network bingo provider or the live caller shall announce the prize amount and the predetermined pattern to players immediately before the start of the network bingo game. Each location where a qualified organization is selling network bingo cards shall be equipped to visually display the broadcast or signal of the numbers as they are being called by a live caller.

E. Gross receipts from the sale of network bingo cards shall be allocated in the following manner:

1. Up to 50% of such receipts to the organization selling network bingo cards;
2. Up to 50% of gross receipts to the prize pool; and
3. Any remaining amount to the network bingo provider.

However, if the prize pool reaches the maximum prize limitation, then the network bingo provider shall enable the organization to retain those gross receipts normally allocated to the prize pool.

F. All written agreements specifying the terms of any arrangement between the qualified organization and network bingo provider shall be maintained by both parties for a minimum of three years from the close of the fiscal year, unless otherwise specified.

G. Network bingo prizes must be claimed by the player within 30 days of winning the game and if not, the network bingo provider shall roll the unclaimed prize into the prize pool for the next network bingo game. The network bingo provider shall pay the prize by check to the winning player within 30 days. If the outcome of a network bingo game

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results in multiple winning players, then the prize amount shall be equally divided among them.

H. No single network bingo prize shall exceed the prize limitation set forth in § 18.2-340.28:1 I of the Code of Virginia.

Part VI Administrative Process

11VAC15-40-600. Procedural rules for the conduct of fact-finding conferences and hearings.

A. As used in this part, "manufacturer" means a person or entity that assembles from raw materials or subparts an electronic games of chance system.

B. Fact-finding conference; notification, appearance, and conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit to conduct charitable gaming, sell charitable gaming supplies, or distribute electronic games of chance shall be denied, suspended, or revoked except after review and approval of such proposed denial, suspension, or revocation action by the board, and upon notice stating the basis for such proposed action and the time and place for a fact-finding conference as set forth in § 2.2-4019 of the Administrative Process Act.

2. If a basis exists for a refusal to renew, suspend, or a revoke a permit, the department shall notify by certified mail or by hand delivery the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations, suppliers, or manufacturers who wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If, after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested persons shall be notified in writing within 60 days of the fact-finding conference via certified or hand-delivered mail of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

C. Hearing; notification, appearance, and conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend, or revoke a permit, interested persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If an organization, supplier, or manufacturer desires to request a hearing, it

shall notify the department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

D. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization, supplier, or manufacturer is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference, or similar technology, in order to expedite the hearing process.

E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief, or denial thereof as to each issue.

F. Agency representation. The commissioner's designee may represent the department in an informal conference or at a hearing.

11VAC15-40-610. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the department or its agents regarding alleged violations shall be held in strict confidence.

B. Any officer, director, or game manager of a qualified organization or any officer or director of a supplier or manufacturer shall immediately report to the department any information pertaining to the suspected misappropriation or theft of funds or any other violation of charitable gaming statutes or this chapter.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension, or revocation of a permit.

D. Any officer, director, or game manager of a qualified organization involved in the management, operation, or conduct of charitable gaming shall immediately notify the department upon being convicted of a felony or a crime involving fraud, theft, or financial crimes.

E. Any officer, director, partner, or owner of a supplier or manufacturer shall immediately notify the department upon being convicted or of pleading nolo contendere to a felony or a crime involving gambling or an action against any license or certificate held by the supplier in any state in the United States.

F. Failure to report information required by subsection D or E of this section by any officer, director, or game manager of a qualified organization or by any supplier or manufacturer may result in the denial, suspension, or revocation of a permit.

G. Any officer, director, or game manager of a qualified organization involved in charitable gaming shall immediately report to the department any change the IRS makes in the tax status of the organization, or if the organization is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

H. All organizations regulated by the department shall display prominently a poster advising the public of a phone number where complaints relating to charitable gaming may be made. Such posters shall be in a format prescribed by the department.

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 (11VAC15-40)

GAME MANAGEMENT FORMS

- [Bingo Session Reconciliation Summary, Form 103 \(rev. 1/2011\)](#)
- [Admission Sales Reconciliation - Paper, Form 104-A \(rev. 1/2011\)](#)
- [Floor Sales Reconciliation - Paper, Form 104-B \(rev. 1/2011\)](#)
- [Decision Bingo Reconciliation, Form 104-C \(rev. 1/2011\)](#)
- [Raffle/Treasure Chest Sales Reconciliation - Bingo Session, Form 104-D \(rev. 1/2011\)](#)
- [Instant Bingo/Seal Cards/Pull-Tabs Reconciliation, Form 105 \(rev. 1/2011\)](#)
- [Storeroom Inventory Issue - Paper, Form 106-A \(rev. 7/2008\)](#)
- [Storeroom Inventory Issue - Instant Bingo/Seal Cards/Pull-Tabs, Form 106-B \(rev. 7/2008\)](#)
- [List of Volunteer Workers, Form 107 \(rev. 7/2008\)](#)
- [Prize Receipt, Form 108 \(rev. 7/2008\)](#)
- [Storeroom Inventory - Paper, Form 109-A \(rev. 1/2011\)](#)

[Storeroom Inventory - Instant Bingo/Seal Cards/Pull-Tabs, Form 109-B \(rev. 1/2011\)](#)

ORGANIZATION LICENSING FORMS

- [Charitable Gaming Permit Application - New Applicants Only, Form 201 - N \(rev. 1/2011\)](#)
- [Charitable Gaming Permit Application - Renewal Applicants Only, Form 201 - R \(rev. 1/2011\)](#)
- [Permit Amendment \(rev. 1/2011\)](#)
- [Gaming Personnel Information Update \(rev. 7/2008\)](#)
- [Report of Game Termination \(rev. 7/2008\)](#)

MANUFACTURER OF ELECTRONIC GAMES OF CHANCE SYSTEMS AND SUPPLIER AND NETWORK BINGO PROVIDER LICENSING FORMS

- ~~[Manufacturer of Electronic Games of Chance Systems and Charitable Gaming Supplier Permit Application, Form 301 \(rev. 6/12\)](#)~~
- ~~[Annual Supplier/Manufacturer Sales and Transaction Report, Form 302 \(rev. 6/12\)](#)~~
- [Charitable Gaming Supplier Permit Application, Form 301 \(rev. 7/2013\)](#)
- [Annual Supplier/Manufacturer Sales and Transaction Report, Form 302 \(rev. 8/2013\)](#)
- [Certification of Non-Permit Holder, Form 303 \(rev. 7/2013\)](#)
- [Certification of Non-Charitable Gaming/Gambling, Form 304 \(rev. 7/2013\)](#)
- [Manufacturer of Electronic Pull-tab System Permit Application, Form 305 \(rev. 10/2012\)](#)
- [Manufacturer of Electronic Pull-tab System Permit Application - Personal Information, Form 305A \(rev. 10/2012\)](#)
- [Manufacturer of Electronic Pull-tab System Permit Renewal Application, Form 306 \(rev. 10/2013\)](#)
- [Manufacturer of Electronic Pull-tab System Permit Renewal Application - Personal Information, Form 306A \(rev. 10/2013\)](#)
- [Network Bingo Provider Permit Application, Form 307 \(eff. 5/2014\)](#)
- [Network Bingo Provider Permit Application - Personal Information, Form 307A \(eff. 5/2014\)](#)

BINGO MANAGER AND BINGO CALLER REGISTRATION FORMS

- [Charitable Gaming Bingo Caller Certificate of Registration Application, Form 401 \(rev. 1/2011\)](#)
- [Charitable Gaming Bingo Manager Certificate of Registration Application, Form 402 \(rev. 1/2011\)](#)
- [Amendment to Certificate of Registration - Registered Bingo Callers and Bingo Managers \(rev. 1/2011\)](#)

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[Personal Information Update – Registered Bingo Callers and Registered Bingo Managers, Form 404 \(rev. 7/2007\)](#)
[Bona Fide Member Verification, Form 405 \(rev. 5/2011\)](#)

V.A.R. Doc. No. R14-3873; Filed September 26, 2016, 10:37 a.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Title of Regulation: **12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-290; adding 12VAC30-40-370).**

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: December 16, 2016.

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

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

The Item 307 T of Chapter 665 of the 2015 Acts of the Assembly directed DMAS to modify its eligibility regulations to exempt sterilization compensation, awarded to individuals who had been involuntarily sterilized under previous state policy, from consideration during the Medicaid eligibility determination process. Item 313 Q of Chapter 780 of the 2016 Acts of the Assembly continued funding for the sterilization compensation program.

Purpose: The purpose of this action is to allow individuals who are compensated for their involuntary sterilization to accept their monetary compensation without losing their eligibility for Medicaid. This regulation is essential to protect the health, safety, and welfare of the public in that it helps assure that low income individuals are able to maintain their Medicaid benefits if they receive a payment to compensate them for involuntary sterilization.

Substance: The proposed amendments add language to 12VAC30-40-290 and create the new section 12VAC30-40-370 to disregard compensation payments received by individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who are living as of February 1, 2015. Receipt of federal authority to disregard these payments in the Medicaid eligibility determination mean that these payments will have no impact on eligibility for new or current enrollees who receive this payment.

Unless otherwise exempted by state or federal requirements, all income an individual receives must be counted in the Medicaid eligibility determination. Similarly, all money an individual has at the beginning of a month either in his hand or in a financial institution account must be considered a resource in the Medicaid eligibility determination. Money an individual has cannot be counted as both income and a resource in the same month, so payments received by individuals are counted as income the month received, and if the money is retained, counted as a resource in following months.

Current policy would require payments (awards, settlements) made to individuals who had been involuntarily sterilized as a result of the Virginia Eugenical Sterilization Act to be counted as income in the month of receipt of the payment and, if the money was retained, counted as a resource in following months. Counting this payment as income in the month of receipt and a resource thereafter could result in an individual losing Medicaid eligibility.

Issues: There are no advantages or disadvantages to the public of this action. The advantage to the individuals who were subjected to involuntary sterilization is that they will be compensated to some degree for their pain and suffering. In receiving this General Assembly-authorized compensation, individuals will not risk losing their Medicaid eligibility. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Director of the Department of Medical Assistance Services (Director) proposes to amend this regulation to not count payments made to compensate individuals who were involuntarily sterilized as income¹ for the purpose of determining Medicaid eligibility.

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

Estimated Economic Impact. Chapter 665, item 307 T of the 2015 Acts of Assembly² required the Director to exempt involuntary sterilization compensation from Medicaid eligibility determinations through an emergency regulation. Accordingly, the Department of Medical Assistance Services promulgated an emergency regulation on November 23, 2015, which is scheduled to be effective through May 22, 2017. This action replaces that regulation on a permanent basis.

From 1924 to 1979, at least 7,325 individuals were sterilized in Virginia under the Virginia Eugenic Sterilization Act (1924). Of those sterilized about half were deemed "mentally ill" and the other half deemed "mentally deficient." Approximately 62% of those sterilized were female. Some estimate the total number of sterilizations to be as high as 8,300 individuals.³ In 2015, the Virginia Appropriation Act provided compensation to these individuals involuntarily sterilized and who were living as of February 1, 2015. Chapter 780, item 313 Q of the 2016 Acts of Assembly continued the funding for the sterilization compensation program. Each qualified applicant receives \$25,000.

Disregarding payments for the purpose of Medicaid eligibility determinations made to compensate individuals who were involuntarily sterilized increases the likelihood that such individuals will qualify for Medicaid. Thus far 24 individuals have been awarded compensation through the program, while two individuals are currently having their claims reviewed.⁴ The Medicaid applications do not ask applicants to report whether or not they have received sterilization compensation. Consequently it is not known whether any of the 24 compensation recipients have applied for Medicaid while the emergency regulation has been in effect.

The Commonwealth pays approximately fifty percent of Medicaid costs, with the federal government paying for the other fifty percent. The average annual cost for individuals in the Aged, Blind and Disabled category⁵ of Medicaid is approximately \$17,000.⁶ Thus if disregarding the compensation enables a recipient to qualify for Medicaid who otherwise would not have, the additional cost to Virginia would on average be about \$8,500 per such individual.⁷

Businesses and Entities Affected. The proposed amendment applies to individuals involuntarily sterilized and who were living as of February 1, 2015. Thus far 24 individuals have been awarded compensation through the program, while two individuals are currently having their claims reviewed.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not significantly affect employment.

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

Real Estate Development Costs. The proposed amendment does not 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. The proposed amendment does not affect small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment does not affect businesses.

Localities. The proposed amendment does not affect localities.

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

¹ Specifically, the Board proposes to state that "For all aged, blind, or disabled individuals, both categorically needy and medically needy, the Commonwealth shall disregard as resources amounts received as payment for involuntary sterilization under the Virginia Eugenic Sterilization Act, beyond the allowable nine-month exclusion by the SSI program's resource methodologies."

² See <http://budget.lis.virginia.gov/item/2015/1/1/Chapter/1/307/>

³ For more information, see <https://www.uvm.edu/~lkaelber/eugenics/VA/VA.html>

⁴ Source: Department of Behavioral Health and Developmental Services

⁵ All (or almost all) surviving individuals who were sterilized in Virginia under the Virginia Eugenic Sterilization Act are aged, and would therefore fall into the Aged, Blind and Disabled category. Additionally, as stated in note 1 above, the proposed amendment is for "For all aged, blind, or disabled individuals ..."

⁶ Source: 2015 Virginia Medicaid and CHIP Data Book, Department of Medical Assistance Services

⁷ The actual cost for each person can vary widely.

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:

Pursuant to Item 307 T of Chapter 665 of the 2015 Acts of Assembly (and continued as Item 313 Q of Chapter 780 of the 2016 Acts of Assembly), the proposed amendments require that payments made to compensate individuals who were involuntarily sterilized pursuant to the Virginia Eugenic Sterilization Act and who are living as of February 1, 2015, (i) are disregarded for the purpose of Medicaid eligibility determinations and (ii) increase the basic personal needs allowance.

12VAC30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

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1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource. The purchase of a life right in another individual's home is subject to transfer of asset rules. See 12VAC30-40-300.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be

reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person ~~exceeds~~ exceed \$1,500, the cash surrender value of the policies is counted as a resource.

G. Long-term care partnership insurance policy (partnership policy). Resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer through a Virginia issued long-term care partnership insurance policy shall be disregarded. A long-term care partnership insurance policy shall meet the following requirements:

1. The policy is a qualified long-term care partnership insurance policy as defined in § 7702B(b) of the Internal Revenue Code of 1986.
2. The policy meets the requirements of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Regulation and Long-Term Care Insurance Model Act as those requirements are set forth in § 1917(b)(5)(A) of the Social Security Act (42 USC § 1396p).
3. The policy was issued no earlier than May 1, 2007.
4. The insured individual was a resident of a partnership state when coverage first became effective under the policy. If the policy is later exchanged for a different long-term care policy, the individual was a resident of a partnership state when coverage under the earliest policy became effective.
5. The policy meets the inflation protection requirements set forth in § 1917(b)(1)(C)(iii)(IV) of the Social Security Act.
6. The Insurance Commissioner requires the issuer of the partnership policy to make regular reports to the federal Secretary of Health and Human Services that include notification of the date benefits provided under the policy were paid and the amount paid, the date the policy terminates, and such other information as the secretary determines may be appropriate to the administration of such partnerships. Such information shall also be made available to the Department of Medical Assistance Services upon request.
7. The state does not impose any requirement affecting the terms or benefits of a partnership policy that the state does not also impose on nonpartnership policies.
8. The policy meets all the requirements of the Bureau of Insurance of the State Corporation Commission described in 14VAC5-200.

H. Reserved.

I. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)).

For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed \$5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

J. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

K. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

L. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

M. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their personal resources while maintaining eligibility for Medicaid shall establish Work Incentive (WIN) accounts. The Commonwealth will disregard up to the current annual SSI (Social Security Act, § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration) held in WIN accounts for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this resource disregard, WIN accounts are subject to the following provisions:

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1. Deposits to this account shall derive solely from the individual's income earned after electing to enroll in the Medicaid Buy-In (MBI) program.
2. The balance of this account shall not exceed the current annual SSI (Social Security Act § 1619(b)) threshold amount (as established for Virginia by the Social Security Administration).
3. This account will be held separate from nonexempt resources in accounts for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and reporting including deposits, withdrawals, and other information deemed necessary by the department for the proper administration of this provision.
4. A spouse's resources will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.
5. Resources accumulated in the Work Incentive account shall be disregarded in determining eligibility for aged, blind, and disabled Medicaid-covered groups for one year after the individual leaves the Medicaid Buy-In program.
6. In addition, excluded from the resource and asset limit include amounts deposited in the following types of IRS-approved accounts established as WIN accounts: retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts. Assets retained in these WIN accounts shall be disregarded for all future Medicaid eligibility determinations for aged, blind, or disabled Medicaid-covered groups.

N. For all aged, blind, or disabled individuals, both categorically needy and medically needy, the Commonwealth shall disregard as resources amounts received as payment for involuntary sterilization under the Virginia Eugenic Sterilization Act, beyond the allowable nine-month exclusion by the SSI program's resource methodologies.

12VAC30-40-370. Variations from the basic personal needs allowance.

For victims of Virginia's eugenical program, the Commonwealth shall, in addition to the basic personal needs allowance (PNA), increase the basic PNA by amounts received as payments for involuntary sterilization under the Virginia Eugenic Sterilization Act.

VA.R. Doc. No. R16-4351; Filed September 26, 2016, 7:50 a.m.

Fast-Track Regulation

Title of Regulation: 12VAC30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12VAC30-90-44).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 16, 2016.

Effective Date: December 1, 2016.

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

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

The elimination of inflation for nursing facilities is required by Item 301 IIII of Chapter 665 of the 2015 Acts of Assembly, which states that DMAS "shall amend the State Plan for Medical Assistance to eliminate nursing facility inflation for fiscal year 2016. This shall apply to nursing facility operating rates."

The implementation of the "hold harmless provision" is required by Item 301 KKK 6 of Chapter 665 of the 2015 Acts of Assembly, which states that DMAS "shall amend the State Plan for Medical Assistance to reimburse the price-based operating rate rather than the transition operating rate to any nursing facility whose licensed bed capacity decreased by at least 30 beds after 2011 and whose occupancy increased from less than 70 percent in 2011 to more than 80 percent in 2013."

Purpose: The purpose of this action is to prevent additional Medicaid expenditures for nursing facility inflation costs beginning on July 1, 2015, and to implement the "hold harmless provision," which allows nursing facilities with decreased bed capacity but increased demand to be reimbursed at a price-based rate rather than the lower transition operating rate. This regulation is essential to protect the health, safety, and welfare of the public in that it seeks to maintain access to nursing facility providers by creating the fairest distribution of the limited funds that are available for nursing facility reimbursement. This regulatory action seeks to prevent a decrease in the number of nursing facility providers in the Medicaid program, which would cause Medicaid members to have difficulty accessing the health care services that they need.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action was mandated by Chapter 665 of the 2015 Acts of Assembly. The changes have been reviewed and approved by the Centers for Medicare and Medicaid Services,

and the changes have been in effect since July 1, 2015. DMAS has not received any comments, concerns, or other indicators of controversy from providers, members, or the public since the changes went into effect. As a result, this regulatory action is being promulgated via the fast-track rulemaking process because it is not expected to be controversial.

Substance: The amendments eliminate inflation for nursing facilities for the period between July 1, 2015, and June 30, 2016, and allow nursing facilities with decreased bed capacity but increased demand to be reimbursed at a price-based rate rather than the lower transition operating rate. This carve-out for facilities that meet the requirements for bed capacity and occupancy was designed with substantial input from a nursing facility stakeholder group.

Issues: The primary advantages of these changes are that they reduce additional Medicaid expenditures for nursing facility inflation and implement a stakeholder group's recommendation related to reimbursement for nursing facilities with a decrease in the number of beds and an increase in occupancy. There are no disadvantages to the public or the Commonwealth as a result of these changes.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Director of the Department of Medical Assistance Services (DMAS) proposes two changes to its regulation governing payment rates for long term care. The Board proposes to add language to reflect that the inflation adjustment for nursing facility operating rates was set to zero percent for fiscal year 2016 (July 1, 2015 through June 30, 2016) and to allow nursing homes with specified decreased bed capacity, but increased demand, to be reimbursed at a higher, price-based rate¹ rather than at the lower transition operating rate.²

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

Estimated Economic Impact. Item 301 III of Chapter 665, 2015 Acts of the Assembly, required DMAS to "amend the State Plan for Medical Assistance to eliminate nursing facility inflation [adjustments to payments] for fiscal year 2016." Item 301 KKK(6) of this Chapter required the DMAS to "amend the State Plan for Medical Assistance to reimburse the price-based operating rate rather than the transition operating rate to any nursing facility whose licensed bed capacity decreased by at least 30 beds after 2011 and whose occupancy increased from less than 70 percent in 2011 to more than 80 percent in 2013." DMAS submitted these two changes to the Centers for Medicare and Medicaid Services (CMS) and they have been approved. Now the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, proposes to amend this regulation to harmonize it with Chapter 665.

As the elimination of the inflation adjustment for nursing facilities was only in effect from July 1, 2015 to June 30,

2016, no nursing facilities are likely to incur any costs or reduced reimbursements³ after June 30, 2016. Board staff reports that nursing facility reimbursements in fiscal year were reduced by \$19.6 million⁴ on account of the elimination of inflation adjustments for that year. Board staff reports that one nursing facility has thus far seen an increased reimbursement from the expedited changeover to price-based operating rate reimbursement required by Item 301 KKK(6) of Chapter 665. This nursing facility received \$320,000 more in reimbursements in fiscal year 2016 than they would have seen under transition operating rate reimbursement. Board staff reports that they know of no other nursing facilities that would be affected by Item 301 KKK(6) before all nursing facilities would move to 100 percent price-based operating rate reimbursement at the beginning of fiscal year 2018 (July 1, 2017). All affected entities will benefit from this regulation being harmonized with relevant requirements in Chapter 665 as this will eliminate any confusion as to what standards have to be followed.

Businesses and Entities Affected. Board staff reports there are approximately 265 nursing facilities that are affected by changes in reimbursement. Board staff further reports that 220 of these nursing facilities are part of a chain or hospital and would likely not be small businesses. The remaining approximately 40 nursing facilities likely are small businesses.

Localities Particularly Affected. No locality will be particularly affected by these regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to have any impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulation is unlikely to have any impact on the use or value of private property.

Real Estate Development Costs. This proposed regulation is unlikely to 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. No small business is likely to incur ongoing costs on account of these proposed regulatory changes. In fiscal year 2016, nursing facilities were reimbursed \$19.6 million less on account of the elimination of an inflation adjustment for that year. One small business nursing facility thus far has benefited from the early change to price-based reimbursement for nursing homes that experienced reductions in capacity of at least 30 beds after 2011 but whose occupancy increased (from less than 70 percent to greater than 80%) between 2011 and 2013.

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Alternative Method that Minimizes Adverse Impact. No small business is likely to incur compliance costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No business is likely to incur compliance costs on account of these proposed regulatory changes. In fiscal year 2016, nursing facilities were reimbursed \$19.6 million less on account of the elimination of an inflation adjustment for that year. One nursing facility thus far has benefited from the early change to price-based reimbursement for nursing homes that experienced reductions in capacity of at least 30 beds after 2011 but whose occupancy increased (from less than 70 percent to greater than 80%) between 2011 and 2013.

Localities. No locality is likely to be adversely affected by these proposed regulatory changes.

Other Entities. No other entities are likely to suffer any adverse impact on account of this proposed regulation.

¹ Price-based nursing facility reimbursement methodology is described in 12VAC30-90-44 (A) at <http://law.lis.virginia.gov/admincode/title12/agency30/chapter90/section44/>.

² Transition operating rate reimbursement is described in 12VAC30-90-44 (B) at <http://law.lis.virginia.gov/admincode/title12/agency30/chapter90/section44/>. This transition rate will be phased completely out at the end of fiscal year 2017 as all nursing facility will be reimburse 100% at an adjusted price-based rate starting in fiscal year 2018.

³Reduced from what they would have been had they been subject to an inflation adjustment.

⁴This represents a savings of \$9.8 million in state general fund expenditures.

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 (i) eliminate inflation for nursing facilities, pursuant to Item III of Chapter 665 of the 2015 Acts of Assembly, to prevent additional Medicaid expenditures for these inflation costs and (ii) implement the "hold harmless provision" for nursing facilities, pursuant to Item KKK 6 of Chapter 665, which allows nursing facilities with decreased bed capacity but increased demand to be reimbursed at a price-based rate rather than the lower transition operating rate.

12VAC30-90-44. Nursing facility price-based reimbursement methodology.

A. Effective July 1, 2014, DMAS shall convert nursing facility operating rates in 12VAC30-90-41 to a price-based methodology. The department shall calculate prospective operating rates for direct and indirect costs in the following manner:

1. The department shall calculate the cost per day in the base year for direct and indirect operating costs for each nursing facility. The department shall use existing definitions of direct and indirect costs.

2. The initial base year for calculating the cost per day shall be cost reports ending in calendar year 2011. The department shall rebase prices in fiscal year 2018 and every three years thereafter using the most recent, reliable calendar year cost-settled cost reports for freestanding nursing facilities that have been completed as of September 1. No adjustments will be made to the base year data for purposes of rate setting after that date.

3. Each nursing facility's direct cost per day shall be neutralized by dividing the direct cost per day by the raw Medicaid facility case-mix that corresponds to the base year by facility.

4. Costs per day shall be inflated to the midpoint of the fiscal year rate period using the moving average Virginia Nursing Home inflation index for the fourth quarter of each year (the midpoint of the fiscal year). Costs in the 2011 base year shall be inflated from the midpoint of the cost report year to the midpoint of fiscal year 2012 by prorating fiscal year 2012 inflation and annual inflation after that. Annual inflation adjustments shall be based on the last available report prior to the beginning of the fiscal year and corrected for any revisions to prior year inflation. Effective July 1, 2015, through June 30, 2016, the inflation adjustment for nursing facility operating rates shall be 0.0%.

5. Prices will be established for the ~~following~~ peer groups described in this section using a combination of Medicare wage regions and Medicaid rural and bed size modifications based on similar costs.

6. The following definitions shall apply to direct peer groups. The Northern Virginia peer group shall be defined as localities in the Washington DC-MD-VA MSA as published by the Centers for Medicare and Medicaid Services (CMS) for skilled nursing facility rates. The Other MSA peer group includes localities in any MSA defined by CMS other than the Northern Virginia MSA and non-MSA designations. The Rural peer groups are non-MSA areas of the state divided into Northern Rural and Southern Rural peer groups based on drawing a line between the following points on the Commonwealth of Virginia map with the coordinates: 37.4203914 Latitude, 82.0201219 Longitude and 37.1223664 Latitude, 76.3457773 Longitude. Direct peer groups are:

- a. Northern Virginia,
- b. Other MSAs,
- c. Northern Rural, and
- d. Southern Rural.

7. The following definitions shall apply to indirect peer groups. The indirect peer group for Northern Virginia is the same as the direct peer group for Northern Virginia. Rest of State peer groups shall be defined as any localities other than localities in the Northern Virginia peer group for nursing facilities with greater than 60 beds or 60 beds or

less. Rest of State - Greater than 60 Beds shall be further subdivided into Other MSA, Northern Rural and Southern Rural peer groups using the locality definitions for direct peer groups. Indirect peer groups are:

- a. Northern Virginia MSA,
- b. Rest of State - Greater than 60 Beds,
- c. Other MSAs,
- d. Northern Rural, and
- e. Southern Rural.

Rest of State - 60 Beds or Less.

8. Any changes to peer group assignment based on changes in bed size or MSA will be implemented for reimbursement purposes the July 1 following the effective date of the change.

9. The direct and indirect price for each peer group shall be based on the following adjustment factors:

- a. Direct adjustment factor - 105.000% of the peer group day-weighted median neutralized and inflated cost per day for freestanding nursing facilities.
- b. Indirect adjustment factor - 100.735% of the peer group day-weighted median inflated cost per day for freestanding nursing facilities.

10. Facilities with costs projected to the rate year below 95% of the price shall have an adjusted price equal to the price minus the difference between the facility's cost and 95% of the unadjusted price. Adjusted prices will be established at each rebasing. New facilities after the base year shall not have an adjusted price until the next rebasing.

11. Individual claim payment for direct costs shall be based on each resident's Resource Utilization Group (RUG) during the service period times the facility direct price.

12. Resource Utilization Group (RUG) is a resident classification system that groups nursing facility residents according to resource utilization and assigns weights related to the resource utilization for each classification. The department shall use RUGs to determine facility case-mix for cost neutralization as defined in 12VAC30-90-306 in determining the direct costs used in setting the price and for adjusting the claim payments for residents.

- a. The department shall neutralize direct costs per day in the base year using the most current RUG grouper applicable to the base year.
- b. The department shall utilize RUG-III, version 34 groups and weights in fiscal years 2015 through 2017 for claim payments.
- c. Beginning in fiscal year 2018, the department shall implement RUG-IV, version 48 Medicaid groups and weights for claim payments.
- d. RUG-IV, version 48 weights used for claim payments will be normalized to RUG-III, version 34 weights as

long as base year costs are neutralized by the RUG-III 34 group. In that the weights are not the same under RUG-IV as under RUG-III, normalization will ensure that total direct operating payments using the RUG-IV 48 weights will be the same as total direct operating payments using the RUG-III 34 grouper.

B. Transition. The department shall transition to the price-based methodology over a period of four years, blending the adjusted price-based rate with the facility-specific case-mix neutral cost-based rate calculated according to 12VAC30-90-41 as if ceilings had been rebased for fiscal year 2015. The cost-based rates are calculated using the 2011 base year data, inflated to 2015 using the inflation methodology in 12VAC30-90-41 and adjusted to state fiscal year 2015. In subsequent years of the transition, the cost-based rates shall be increased by inflation described in this section.

1. Based on a four-year transition, the rate will be based on the following blend:

- a. Fiscal year 2015 - 25% of the adjusted price-based rate and 75% of the cost-based rate.
- b. Fiscal year 2016 - 50% of the adjusted price-based rate and 50% of the cost-based rate.
- c. Fiscal year 2017 - 75% of the adjusted price-based rate and 25% of the cost-based rate.
- d. Fiscal year 2018 - 100% of the adjusted price-based (fully implemented).

2. During the first transition year for the period July 1, 2014, through October 31, 2014, DMAS shall case-mix adjust each facility's direct cost component of the rates using the average facility case-mix from the two most recent finalized quarters (September and December 2013) instead of adjusting this component claim by claim.

3. Cost-based rates to be used in the transition for facilities without cost data in the base year but placed in service prior to July 1, 2013, shall be determined based on the most recently settled cost data. If there is no settled cost report at the beginning of a fiscal year, then 100% of the price-based rate shall be used for that fiscal year. Facilities placed in service after June 30, 2013, shall be paid 100% of the price-based rate.

4. Effective July 1, 2015, nursing facilities whose licensed bed capacity decreased by at least 30 beds after 2011 and whose occupancy increased from less than 70% in 2011 to more than 80% in 2013 shall be reimbursed the price-based operating rate rather than the transition operating rate.

C. Prospective capital rates shall be calculated in the following manner:

1. Fair rental value (FRV) per diem rates for the fiscal year shall be calculated for all freestanding nursing facilities based on the prior calendar year information aged to the fiscal year and using RS Means factors and rental rates corresponding to the fiscal year as prescribed in 12VAC30-

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90-36. There will be no separate calculation for beds subject to or not subject to transition.

2. Nursing facilities that put into service a major renovation or new beds may request a mid-year fair rental value per diem rate change.

a. A major renovation shall be defined as an increase in capital of \$3,000 per bed. The nursing facility shall submit complete pro forma documentation at least 60 days prior to the effective date, and the new rate shall be effective at the beginning of the month following the end of the 60 days.

b. The provider shall submit final documentation within 60 days of the new rate effective date, and the department shall review final documentation and modify the rate if necessary effective 90 days after the implementation of the new rate. No mid-year rate changes shall be made for an effective date after April 30 of the fiscal year.

3. These FRV changes shall also apply to specialized care facilities.

4. The capital per diem rate for hospital-based nursing facilities shall be the last settled capital per diem.

V.A.R. Doc. No. R17-4649; Filed September 26, 2016, 7:56 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Forms

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

Title of Regulation: 13VAC5-112. Enterprise Zone Grant Program Regulation.

Contact Information: Jordan Snelling, Department of Housing and Community Development, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-7030, or email ezone@dhcd.virginia.gov.

FORMS (13VAC5-112)

~~Tax Credit Qualification Form — Existing Forms (EZ-6E); revised 2006.~~

~~Job Grant Qualification Form (EZ-6J); revised 2006.~~

~~Tax Credit Qualification Form — New Form (EZ-6N); revised 2006.~~

~~Investment Tax Credit Qualification Form (EZ-6I); revised 2006.~~

~~Application for 2005 Enterprise Designation Form (EZ-1); revised 2004.~~

~~Joint Application Agreement Form (EZ-1 JA); revised 2004.~~

~~Enterprise Zone Amendment Application (EZ-2); revised 2005.~~

~~Joint Amendment Application Agreement Form (EZ-2 JA); revised 2005.~~

~~Job Creation Grant Application Form (EZ JCG); revised 2006.~~

~~Real Property Investment Grant Application Form (EZ-RPIG); revised 2006.~~

~~Form EZ-3-AR; revised 2006.~~

[Application for Enterprise Designation Form, EZ-1 \(rev. 2/2015\)](#)

[Joint Application Agreement Form, EZ-1-JA, \(rev. 2/2015\)](#)

[Enterprise Zone Amendment Application, EZ-2 \(undated, filed 9/7/2016\)](#)

[Joint Amendment Application Agreement Form, EZ-2-JA \(undated, filed 9/1/2016\)](#)

[Local Enterprise Zone Annual Report Form, EZ-3-AR \(rev. 5/2016\), online form available at <https://dmz1.dhcd.virginia.gov/camsportal/Login.aspx>](#)

[Form EZ-3-AR Business Activity Worksheet \(rev. 5/2016\)](#)

[Job Creation Grant Application Form, EZ-JCG \(rev. 11/2015\)](#)

[Job Creation Grant Application Form, EZ-JCG-HUA \(rev. 11/2015\)](#)

[Real Property Investment Grant Application Form and Supplements, EZ-RPIG \(rev. 11/2015\)](#)

[General Income Tax Credit Application for Existing Firms, EZ-6E \(undated, filed 9/7/2016\), online form available at <https://dmz1.dhcd.virginia.gov/EZApplication/Application6E.aspx>](#)

[General Income Tax Credit Application for New Firms, EZ-6N \(undated, filed 9/7/2016\), online form available at <https://dmz1.dhcd.virginia.gov/EZApplication/Application6N.aspx>](#)

[Investment Tax Credit Qualification Form, EZ-6I \(rev. 1/2015\)](#)

V.A.R. Doc. No. R17-4890; Filed September 20, 2016, 12:53 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (amending 16VAC25-85-1904.39).**

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

Effective Date: December 1, 2016.

Agency Contact: Holly Raney, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, or email holly.raney@doli.virginia.gov.

Summary:

In a revised final rule, federal Occupational Safety & Health Administration (OSHA) made revisions to 29 CFR 1904.39 to reportable work-related injuries and illness events. Specifically, every inpatient hospitalization resulting from a work-related incident required reporting within 24 hours of the hospitalization and each amputation and loss of an eye resulting from a work-related incident required reporting within 24 hours of the incident. Due to an inadvertent error, the timeframe in 16VAC25-85-1904.39 for these required reports was established as eight hours in 2015. In this regulatory action, the Safety and Health Codes Board is establishing the reporting timeframe as within 24 hours of the hospitalization or the incident to conform to the federal rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On September 13, 2016, the Safety and Health Codes Board adopted federal OSHA's revised final rule for 29 CFR 1904.39, Reporting fatalities,

hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA, as published in 79 FR 56187 and 79 FR 56188 on September 18, 2014, with an effective date of December 1, 2016.

Federal Terms and State Equivalents: When the regulations as set forth in the amendment to 29 CFR 1904.39, Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Area Office	Regional Office
Agency	Department
January 1, 2015	December 1, 2016

VA.R. Doc. No. R17-4907; Filed September 21, 2016, 12:07 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (amending 16VAC85-1904.35, 16VAC85-1904.36, 16VAC85-1904.41; add Appendix A to Subpart E of Part 1904).**

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

Effective Dates:

December 1, 2016, for 16VAC85-1904.35 and 16VAC85-1904.36.

January 1, 2017, for 16VAC85-1904.41 and Appendix A to Subpart E of Part 1904.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, or email regina.cobb@doli.virginia.gov.

Summary:

In a final rule, federal Occupational and Safety Health Administration (OSHA) revised its Recording and

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Reporting Occupational Injuries and Illnesses to require employers in certain industries to submit electronically to OSHA injury and illness data that employers are already required to keep under existing OSHA regulations. The frequency and content of the establishment-specific submissions is dependent on the size and industry of the employer. OSHA intends to post the data from these submissions on its secure, publicly accessible website and to remove personally identifiable information before the data is released to the public. OSHA is phasing in implementation of the data collection system from July 1, 2017, through March 2, 2019.

The final rule also (i) mandates that an employer inform its employees of the employees' right to report work-related injuries and illnesses to the employer free from retaliation, (ii) clarifies that the employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting, and (iii) incorporates explicitly the existing statutory prohibition on retaliating against an employee for reporting work-related injuries or illnesses.

In this regulatory action, the board is adopting the revisions to this final rule. The board also is adopting OSHA's compliance schedule to implement the data collection system.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On September 13, 2016, the Safety and Health Codes Board adopted federal OSHA's amendments to Recording and Reporting Occupational Injuries and Illnesses, as published in 81 FR 29691 through 81 FR 29694 on May 12, 2016, and the correction to 29 CFR 1904.35(b)(2) published in 81 FR 31854 and 81 FR 31855 on May 20, 2016, with an effective date of December 1, 2016, for 16VAC85-1904.35 and 16VAC85-1904.36 and January 1, 2017, for 16VAC85-1904.41.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Recording and Reporting Occupational Injuries and Illnesses is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard

Assistant Secretary

Agency

Effective Dates:

29 CFR 1904.35 - November 1, 2016

29 CFR 1904.36 - August 10, 2016

29 CFR 1904.41 - January 1, 2017

Commissioner of Labor and Industry

Department

Effective Dates:

16VAC85-1904.35 - December 1, 2016

16VAC85-1904.36 - December 1, 2016

16VAC85-1904.41 - January 1, 2017

V.A.R. Doc. No. R17-4910; Filed September 21, 2016, 12:05 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1000, 16VAC25-90-1910.1053).**

16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.1000, 16VAC25-100-1915.1053).

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.55, 16VAC25-175-1926.1153).

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

Effective Date: December 1, 2016.

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

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) revised its existing standards for occupational exposure to respirable crystalline silica. The final rule establishes a new permissible exposure limit of 50 micrograms of respirable crystalline silica per cubic meter of air (50 µg/m³) as an eight-hour time-weighted average in all industries covered by the rule, with the exception of agricultural operations covered under 29 CFR Part 1928. The final rule also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, medical surveillance, hazard

communication, and recordkeeping. OSHA has issued a silica standard for general industry and maritime and a separate silica standard for construction to tailor requirements to the circumstances found in these sectors.

In this regulatory action, the board is adopting the final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyard Employment Standards), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On September 13, 2016, the Safety and Health Codes Board adopted federal OSHA's Final Rule on the Occupational Exposure to Respirable Crystalline Silica, as published in 81 FR 16861 through 81 FR 16890 on March 25, 2016, with an effective date of June 23, 2016.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards, Shipyard Employment Standards, and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
June 23, 2016	December 1, 2016
Startup dates for specific provisions are set in § 1910.1053(l) for general industry and maritime and in § 1926.1153(k) for construction.	Startup dates for specific provisions are set in 16VAC25-90-1910.1053(l) for general industry and maritime and in 16VAC25-175-1926.1153(k) for construction.

VA.R. Doc. No. R17-4904; Filed September 20, 2016; 11:03 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 16VAC25-90. Federal Identical General Industry Standards (amend 16VAC25-90-1910.6, 16VAC25-90-1910.133).

16VAC25-100. Federal Identical Shipyard Employment Standards (amend 16VAC25-100-1915.5, 16VAC25-100-1915.153).

16VAC25-120. Federal Identical Marine Terminals Standards (amend 16VAC25-120-1917.3, 16VAC25-120-1917.91).

16VAC25-130. Federal Identical Longshoring Standards for Hazard Communications (amend 16VAC25-130-1918.3, 16VAC25-130-1918.101).

16VAC25-175. Federal Identical Construction Industry Standards (amend 16VAC25-175-1926.6, 16VAC25-175-1926.102).

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

Effective Date: December 1, 2016.

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

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) updated eye and face protection requirements in OSHA's general industry, shipyard employment, marine terminals, and longshoring standards by incorporating the 2010 ANSI/International Safety Equipment Association (ANSI) standard on occupational and educational eye and face protection devices (ANSI Z87.1-2010) to replace the 1989 version of the standard. Two other prior versions of this consensus standard, ANSI Z87.1-2003 and ANSI Z87.1-1989 (R-1998), were also incorporated as an alternative means of compliance with OSHA's eye and face protection requirements. OSHA also updated the construction industry standard by incorporating ANSI Z87.1-2010, ANSI Z87.1-2003, and ANSI Z87.1-1989 (R-1998) to replace the 1968 version of the standard. In addition, OSHA modified certain existing language to make it nearly identical to the general industry standard's eye and face protection provisions and retained

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provisions unique to the construction standard that are not covered in the incorporated ANSI standards.

In this regulatory action, the board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyards Employment Standards), 29 CFR 1917 (Marine Terminals Standards), 29 CFR 1918 (Safety and Health Regulations for Longshoring), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On September 13, 2016, the Safety and Health Codes Board adopted federal OSHA's Final Rule Updating OSHA Standards Based on National Consensus Standards; Eye and Face Protection for CFR Parts 1910, 1915, 1917, 1918, and 1926, as published in 81 FR 16090 through 81 FR 16093 on March 25, 2016, with an effective date of December 1, 2016.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards; Shipyards Employment Standards; Marine Terminals Standards; Safety and Health Regulations for Longshoring; and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
April 25, 2016	December 1, 2016

VA.R. Doc. No. R17-4902; Filed September 20, 2016, 10:46 a.m.



TITLE 17. LIBRARIES AND CULTURAL RESOURCES

DEPARTMENT OF HISTORIC RESOURCES

Final Regulation

Title of Regulation: **17VAC10-20. Evaluation Criteria and Procedures for Nominations of Property to the National Register or for Designation as a National Historic Landmark (amending 17VAC10-20-130, 17VAC10-20-140, 17VAC10-20-150, 17VAC10-20-200).**

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

Effective Date: November 17, 2016.

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

Summary:

The amendments address the process of owner objection to designation of properties by the State Review Board for inclusion in the National Register of Historic Places or designation as a National Historic Landmark. The amendments (i) clarify that written notification of the nomination and written notification of the public hearing will be sent to property owners listed within 90 days prior to the notification in official land recordation records or tax records; (ii) require property owners to submit their formal objections seven business days prior to the board meeting; (iii) require that the objection letter, in addition to being notarized, be attested and reference the property by address or parcel number, or both; and (iv) require that an objecting party who was not listed on the official land recordation records or tax records submit a copy of the recorded deed evidencing transfer of ownership with the attested and notarized statement to be counted by the director as a property owner.

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

Part IV

Public Notice and Public Hearings

17VAC10-20-130. Written notice of proposed nominations.

In any county, city, or town where the director proposes to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark, the department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent of (i) property proposed to be nominated as a historic landmark building, structure, object, or site, or to be included in a historic district; and ~~to the owners, or their agents, of (ii) all abutting property and property immediately across the street or road or across any railroad or waterway less than 300 feet wide.~~ The

list of such owners shall be obtained from either the official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of the proposal. The department shall send this written notice at least 30 but not more than 75 days before the State Review Board meeting at which the nomination will be considered.

17VAC10-20-140. Public hearing for historic district; notice of hearing.

A. Prior to the nomination of a historic district, the department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the director. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners.

B. The department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than 21 days after the second publication of the notice in such newspaper.

C. In addition to publishing the notice, the department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent of (i) each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of (ii) all abutting property, and property immediately across the street or road, or across any railroad or waterway less than 300 feet wide pursuant to 17VAC10-20-130. Notice required to be given to owners by this section may be given concurrently with the notice required to be given to the owners by 17VAC10-20-130. A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant.

D. The department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

17VAC10-20-150. Mailings and affidavits; concurrent state and federal notice.

The department shall send the required notices by first class mail to the last known address of each person entitled to notice, as shown on the current real estate tax assessment books pursuant to 17VAC10-20-130. A representative of the department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the Virginia Landmarks Register pursuant to designation by the Virginia Board of Historic Resources, the department may provide concurrent notice of the proposed

state designation and the proposed nomination to the National Register.

17VAC10-20-200. Owner objections.

A. Upon receiving the notification required by 17VAC10-20-130, the owners of property proposed for nomination shall have the opportunity to concur in or object to the nomination.

B. Any owner or owners of a private property who wish to object shall submit to the director a written, attested, and notarized statement certifying of objection. The statement of objection shall (i) reference the subject property by address or parcel number, or both; (ii) certify that the objecting party is the sole or partial owner of the private property, as appropriate; and (iii) certify that the objecting party objects to the listing. The statement of objection must be received by the director at least seven business days prior to the meeting of the State Review Board at which the property is considered for nomination

C. If an owner objecting party whose name did not appear on the current real estate tax assessment list official land recordation records or tax records used by the director pursuant to 17VAC10-20-150 certifies in a written, attested, and notarized statement that the party is the sole or partial owner of a nominated private property, such owner shall be counted by the director in determining whether a majority of the owners has objected. The statement of objection must be received by the director at least seven business days prior to the meeting of the State Review Board at which the property is considered for nomination.

D. If (i) the owner of a private property, or (ii) the majority of the owners of a single private property with multiple owners, or (iii) the majority of the owners in a district, have has objected to the nomination prior to the submittal of a nomination, the director shall submit the nomination to the keeper only for a determination of eligibility for the National Register. In accordance with the National Historic Preservation Act, the keeper shall determine whether the property meets the National Register criteria for evaluation; but shall not add the property to the National Register.

E. Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

VA.R. Doc. No. R16-4260; Filed September 26, 2016, 11:59 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Final Regulation

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

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-430).

Statutory Authority: §§ 54.-2400 and 54.1-2708.3 of the Code of Virginia.

Effective Date: November 16, 2016.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

The amendments exempt certain types of clinics (i) operated by federally qualified health centers, (ii) operated by free health clinics or health safety net clinics, and (iii) providing dental services via mobile model from the requirements for registration as a mobile dental clinic or portable dental operation. The amendments conform the regulation to changes to § 54.1-2708.3 of the Code of Virginia enacted by Chapter 78 of the 2016 Acts of Assembly.

18VAC60-21-430. Exemptions from requirement for registration.

The following shall be exempt from requirements for registration as a mobile dental clinic or portable dental operation:

1. All federal, state, or local governmental agencies; ~~and~~
2. Dental treatment that is provided without charge to patients or to any third party payer;
3. Clinics operated by federally qualified health centers with a dental component that provide dental services via mobile model to adults and children within 30 miles of the federally qualified health center;
4. Clinics operated by free health clinics or health safety net clinics that have been granted tax-exempt status pursuant to § 501(c)(3) of the Internal Revenue Code that provide dental services via mobile model to adults and children within 30 miles of the free health clinic or health safety net clinic; and

5. Clinics that provide dental services via mobile model to individuals who are not ambulatory and who reside in long-term care facilities, assisted living facilities, adult care homes, or private homes.

VA.R. Doc. No. R17-4841; Filed September 27, 2016, 7:58 a.m.

Final Regulation

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

Titles of Regulations: 18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-10, 18VAC60-21-110, 18VAC60-21-140).

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-10, 18VAC60-25-60, 18VAC60-25-110).

Statutory Authority: § 54.-2400 of the Code of Virginia.

Effective Date: November 16, 2016.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

The amendments conform to Chapter 497 of the 2016 Acts of Assembly, which authorizes dental hygienists to practice, with certain requirements and restrictions, under the remote supervision of a licensed dentist. The amendments add a definition of remote supervision by dentists of dental hygienists, establish a limitation on employment of dental hygienists under remote supervision, address the delegation of duties under such supervision, and require documentation of remote supervision in the patient's record.

Part I

General Provisions

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

- "Board"
- "Dental hygiene"
- "Dental hygienist"
- "Dentist"
- "Dentistry"
- "License"
- "Maxillofacial"

"Oral and maxillofacial surgeon"

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

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons.

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored

and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Remote supervision" means that a dentist is accessible and available for communication and consultation with a dental hygienist employed by such dentist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Conscious/moderate sedation" or "moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are

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required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes "anxiolysis" (the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness) and includes "inhalation analgesia" (the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness).

"Moderate sedation" (see the definition of conscious/moderate sedation).

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

Part III

Direction and Delegation of Duties

18VAC60-21-110. Utilization of dental hygienists and dental assistants II.

A. A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services, additional dental hygienists to practice under general supervision in a free clinic or a public health program, or on a voluntary basis.

B. In accordance with § 54.1-2724 of the Code of Virginia, no dentist shall employ more than two dental hygienists who practice under remote supervision at one time.

18VAC60-21-140. Delegation to dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers, with any sedation or anesthesia administered.
2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.
3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

B. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with §§ 54.1-2722 D and 54.1-3408 J of the Code to be performed under general supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with or without topical oral anesthetics.
2. Polishing of natural and restored teeth using air polishers.
3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in 18VAC60-21-130, those restricted to indirect supervision in subsection A of this section, and those restricted to delegation to dental assistants II in 18VAC60-21-150.

C. Delegation of duties to a dental hygienist practicing under remote supervision shall be in accordance with provisions of § 54.1-2722 F of the Code. However, delegation of duties to a public health dental hygienist practicing under remote supervision shall be in accordance with provisions of § 54.1-2722 E.

Part I
General Provisions

18VAC60-25-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

- "Board"
- "Dental hygiene"
- "Dental hygienist"
- "Dentist"
- "Dentistry"
- "License"

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

- "Active practice" means clinical practice as a dental hygienist for at least 600 hours per year.
- "ADA" means the American Dental Association.
- "Analgesia" means the diminution or elimination of pain in the conscious patient.
- "CDAC" means the Commission on Dental Accreditation of Canada.
- "CODA" means the Commission on Dental Accreditation of the American Dental Association.
- "Code" means the Code of Virginia.
- "Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.
- "Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Direction" means the level of supervision (i.e., direct, indirect, or general) that a dentist is required to exercise with a dental hygienist or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of Regulations Governing the Practice of Dentistry.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Remote supervision" means that a dentist is accessible and available for communication and consultation with a dental hygienist employed by such dentist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have

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conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-25-60. Delegation of services to a dental hygienist.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining with the patient or his representative the specific treatment the patient will receive, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter, Part III (18VAC60-21-110 et seq.) of the Regulations Governing the Practice of Dentistry, and the Code.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-25-50.

C. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specified time period, not to exceed 10 months from the date the dentist last performed a periodic examination of the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment under general supervision.
2. The dental hygienist shall consent in writing to providing services under general supervision.
3. The patient or a responsible adult shall be informed prior to the appointment that a dentist may not be present, that only topical oral anesthetics can be administered to manage pain, and that only those services prescribed by the dentist will be provided.
4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

D. An order for treatment under general supervision shall not preclude the use of another level of supervision when, in the professional judgment of the dentist, such level of supervision is necessary to meet the individual needs of the patient.

E. Delegation of duties to a dental hygienist practicing under remote supervision shall be in accordance with provisions of § 54.1-2722 F of the Code. However, delegation of duties to a public health dental hygienist practicing under remote

supervision shall be in accordance with provisions of § 54.1-2722 E.

Part III Standards of Conduct

18VAC60-25-110. Patient records; confidentiality.

A. A dental hygienist shall be responsible for accurate and complete information in patient records for those services provided by a hygienist or a dental assistant under direction to include the following:

1. Patient's name on each page in the patient record;
2. A health history taken at the initial appointment, which is updated when local anesthesia or nitrous oxide/inhalation analgesia is to be administered and when medically indicated and at least annually;
3. Options discussed and oral or written consent for any treatment rendered with the exception of prophylaxis;
4. List of drugs administered and the route of administration, quantity, dose, and strength;
5. Radiographs, digital images, and photographs clearly labeled with the patient's name, date taken, and teeth identified;
6. A notation or documentation of an order required for treatment of a patient by a dental hygienist practicing under general supervision as required in 18VAC60-25-60 C; and
7. Notation of each treatment rendered, date of treatment, and the identity of the dentist and the dental hygienist providing service.

B. A dental hygienist shall comply with the provisions of § 32.1-127.1:03 of the Code related to the confidentiality and disclosure of patient records. A dental hygienist shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the hygienist shall not be considered negligent or willful.

C. A dental hygienist practicing under remote supervision shall document in the patient record that he has obtained (i) the patient's or the patient's legal representative's signature on a statement disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for the need for regular dental examinations by a dentist and (ii) verbal or written permission of any dentist who has treated the patient in the previous 12 months and can be identified by the patient.

V.A.R. Doc. No. R17-4680; Filed September 27, 2016, 7:57 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 18 of the Code of Virginia, which exempts regulations for the implementation of the Health Practitioners' Intervention Program, Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 of the Code of Virginia.

Title of Regulation: 18VAC76-10. Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions (amending 18VAC76-10-20 through 18VAC76-10-50, 18VAC76-10-65, 18VAC76-10-70).

Statutory Authority: § 54.1-2516 of the Code of Virginia.

Effective Date: November 16, 2016.

Agency Contact: Peggy Wood, Program Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4418, FAX (804) 527-4475, or email peggy.wood@dhp.virginia.gov.

Summary:

The amendments address (i) the organization of the Health Practitioners' Monitoring Program Committee and authority of its chairperson, (ii) the eligibility criteria for the program and for a stayed disciplinary action, and (iii) the participation contract.

18VAC76-10-20. Organization of committee.

A. Members shall be appointed for a term of four years and shall be eligible for reappointment for one additional four-year term. A member who is appointed to fill a vacancy for the remainder of an unexpired term shall be eligible for two full four-year terms. Terms of appointment shall begin on July 1 of each calendar year.

B. Members of the committee shall not be current members of a health regulatory board within the department.

C. The committee shall schedule meetings as necessary to conduct its business. Four members shall constitute a quorum. The committee may adopt bylaws to govern its operations as it deems necessary to conduct its business and as consistent with law and regulations.

~~D. Except in the event of an emergency, any member who is unable to attend a scheduled meeting shall give notice to the program coordinator as soon as practical but no later than 48 hours prior to that scheduled meeting.~~

~~E. The director shall have the authority to remove a member and shall report such removal to the Board of Health Professions at its next scheduled meeting. Failure of any member to attend two successive meetings without reasonable excuse or failure to give notice as required in subsection D of this section shall constitute grounds for removal.~~

~~F. By December 31 of each calendar year, each~~ D. Each health regulatory board within the department shall designate, in accordance with subdivision 8 of § 54.1-2400 ~~(8)~~ of the Code of Virginia, a liaison to the committee ~~for a term of one year. Likewise, each board shall select an alternate to serve in the absence of the liaison.~~

18VAC76-10-30. Eligibility.

A. In order to become eligible for the program and to maintain eligibility, an impaired practitioner shall hold a current, active license, certification, a registration issued by a health regulatory board in Virginia or a multistate licensure privilege, with the exception that an applicant for initial licensure, certification, or registration or for reinstatement shall be eligible for participation for up to one year from the date of receipt of the application by a health regulatory board.

B. Individuals who are practicing exclusively outside of Virginia shall not participate in the program, except as may be required by specific board order or by permission between party states pursuant to the Nurse Licensure Compact (Article 6 (§ 54.1-3030 et seq.) of Chapter 30 of Title 54.1 of the Code of Virginia).

C. A practitioner who has been previously terminated for noncompliance from this or any other state-sponsored monitoring program may be considered eligible at the discretion of the committee or its designee.

~~D. For the purposes of eligibility for the program, impairment shall not include kleptomania, pyromania, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavioral disorders, homosexuality and bisexuality.~~

~~E. D.~~ The practitioner shall sign a participation contract with the committee. Failure to adhere to the terms of the contract may subject the practitioner to termination from the program.

18VAC76-10-40. Eligibility for stayed disciplinary action.

A. The committee or its designee shall consult with the board liaison for the purpose of determining whether disciplinary action shall be stayed. If an applicant for the program is not eligible for a stay and evidence of a violation has been reported to the committee, the committee shall make a report of the violation to the department. If found ineligible for stayed disciplinary action by the relevant board or the committee, the practitioner may remain eligible for participation in the program.

B. Prior to making a decision on stayed disciplinary action, the committee or its designee shall review any applicable notices or orders and shall consult with the department relevant board on any pending investigations. The relevant board shall have final authority in the granting of a stay of disciplinary action.

C. Disciplinary action may be initiated by the appropriate health regulatory board upon receipt of investigative information leading to a determination of probable cause that

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impairment constitutes a danger to patients or clients or upon a determination that the decision for stayed disciplinary action is not consistent with provisions for a stay pursuant to § 54.1-2516 C of the Code of Virginia.

18VAC76-10-50. Participation contract.

A. The participation contract between the committee and the practitioner shall include:

1. The monitoring plan to be followed by the practitioner;
2. Any provisions for withdrawal from practice or limitations on the scope of practice;
3. Consequences of failure to comply with the terms of the participation contract;
4. Any releases for seeking information or records related to the impairment from family, peers, medical personnel or employers;
5. ~~A brief written history of the~~ The nature of the impairment; and
6. Any other terms or requirements as may be deemed necessary by the committee.

B. The participation contract shall specify that costs accruing to the individual practitioner, including but not limited to treatment and body fluid screens, shall not be the responsibility of the program.

18VAC76-10-65. Authority of the chairperson of the committee.

A. The chairperson of the committee, following consultation with and briefing by the program coordinator, shall ~~have the authority to act, including immediately vacating a stay, in cases where a program participant has been granted a stay or has been placed on probation, or both, by order of a health regulatory board and information has been received that a program participant no longer satisfies the conditions of § 54.1-2516 C of the Code of Virginia. Further, the~~ advise the relevant board that a participant is noncompliant and is no longer eligible for a stay.

B. The chairperson may act on behalf of the committee when a scheduled meeting is canceled due to failure to convene a quorum.

18VAC76-10-70. Procedures for consultation with ~~liaisons~~ of health regulatory boards.

The committee or its designee shall consult with the ~~liaison~~ of the relevant health regulatory board prior to making a determination on stayed disciplinary action; such consultation may include the following:

1. Eligibility of a practitioner for stayed disciplinary action;
2. The implications of the impairment on practice in the profession;
3. The circumstances of the impairment related to a possible violation of laws or regulation; or

4. Any other issues related to disciplinary action or the eligibility, treatment, and recovery of a practitioner.

VA.R. Doc. No. R17-4760; Filed September 23, 2016, 10:20 a.m.

BOARD OF OPTOMETRY

Fast-Track Regulation

Title of Regulation: **18VAC105-11. Public Participation Guidelines (amending 18VAC105-11-50).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-2400 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 16, 2016.

Effective Date: December 5, 2016.

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.

Basis: The Board of Optometry is authorized under § 54.1-2400 of the Code of Virginia to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. The action conforms the board's regulation to Chapter 795 of the 2012 Acts of the Assembly

Purpose: The purpose is clarity and conformity to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Participation by the public in the regulatory process is essential to assist the board in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The amendment was recommended by the Department of Planning and Budget and is intended to merely conform the regulation to the statute. Therefore, there is no controversy in its promulgation.

Substance: The board has amended subsection A of 18VAC105-11-50 to provide that interested persons may be accompanied by and represented by counsel or other representative when presenting their views in the promulgation of any regulatory action.

Issues: Other than conformity and consistency between law and regulation, there are no primary advantages or disadvantages to the public in implementing the amended provisions, since the provisions are already in the Code of Virginia. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of the Assembly,¹ the Board of Optometry (Board) proposes to add language to its public participation guidelines to allow interested parties who are responding to a regulatory action to have counsel or a representative with them.

Result of Analysis. Benefits outweigh costs for all proposed changes.

Estimated Economic Impact. In 2012, the General Assembly passed legislation that allows interested parties who are commenting on proposed regulations to have their counsel or other representative with them while they are presenting "data, views and arguments." The Board now proposes to change its regulation that governs public participation to conform regulation to this statutory change. Benefits likely outweigh costs for this change as it will inform interested parties who turn to this regulation before commenting that they may bring a representative with them when commenting.

Businesses and Entities Affected. This proposed regulatory change will affect all individuals who comment on pending regulatory changes.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed changes will likely not affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

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. No small businesses are likely to incur any additional costs on account of these clarifying changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these clarifying changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these clarifying changes.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

¹<http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795>

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

Summary:

Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment provides that interested persons submitting data, views, and arguments on a regulatory action may be accompanied by and represented by counsel or another representative.

Part III

Public Participation Procedures

18VAC105-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a repropounded regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

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E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

V.A.R. Doc. No. R17-4762; Filed September 23, 2016, 9:20 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: November 16, 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.

Summary:

As specified in § 54.1-3443 of the Code of Virginia, the amendments place five compounds into Schedule I of the Drug Control Act. The placement by regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

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 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)cyclohexyl]methyl]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);
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);
 - 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.

C. 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. 1-propionyl lysergic acid diethylamide (other name: 1P-LSD);
2. (2-Methylaminopropyl)benzofuran (other name: MAPB);
3. Ethyl phenyl(piperidin-2-yl)acetate (other name: Ethylphenidate);
4. 2-(3-fluorophenyl)-3-methylmorpholine (other name: 3-fluorophenmetrazine); and
5. N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: para-fluorobutyrylfentanyl), its optical, positional, and geometric isomers, salts and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until May 10, 2018, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R17-4746; Filed September 22, 2016, 3:10 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy 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 Board of Pharmacy 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 18VAC110-20-680).

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

Effective Date: November 16, 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.

Summary:

The amendments conform to Chapter 88 of the 2016 Acts of Assembly by requiring registration of nonresident medical equipment suppliers.

18VAC110-20-680. Medical equipment suppliers.

A. A medical equipment supplier's location shall be inspected by the board prior to engaging in business. The location shall be clean and sanitary and shall have a system of temperature control to provide for specified storage conditions for any Schedule VI drug or device.

B. Hypodermic needles and syringes and Schedule VI drugs shall not be placed on open display or in an open area where patrons will have access to such items. No Schedule VI devices shall be placed in an area where responsible parties cannot exercise reasonable supervision and control.

C. A medical equipment supplier shall receive a valid order from a practitioner prior to dispensing and shall maintain this order on file on the premises for a period of two years from

date of last dispensing. The original order may be kept at a centralized office as long as it is readily retrievable within 48 hours and a copy of the order is kept on the premises of the dispensing supplier. In lieu of a hard copy, an electronic image of an order may be maintained in an electronic database provided it preserves and provides an exact image of the order that is clearly legible and made available within 48 hours of a request by a person authorized by law to have access to prescription information.

D. Medical equipment suppliers shall make a record at the time of dispensing. This record shall be maintained on the premises for two years from date of dispensing and shall include:

1. Name and address of patient;
2. Item dispensed and quantity, if applicable; and
3. Date of dispensing.

E. A nonresident medical equipment supplier shall register and practice in accordance with § 54.1-3435.3:1 of the Code of Virginia.

VA.R. Doc. No. R17-4831; Filed September 27, 2016, 7:58 a.m.

Proposed Regulation

Title of Regulation: 18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-15, 18VAC110-30-20, 18VAC110-30-30, 18VAC110-30-50 through 18VAC110-30-90; adding 18VAC110-30-21).

Statutory Authority: §§ 54.1-2400, 54.1-3304.1, and 54.1-3307 of the Code of Virginia.

Public Hearing Information:

December 12, 2016 - 9:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA 23233

Public Comment Deadline: December 16, 2016.

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

Basis: Section 54.1-2400 of the Code of Virginia authorizes health regulatory boards to promulgate regulations in accordance with the Administrative Process Act.

The specific authority to issue permits and regulate facilities in which practitioners of the healing arts dispense controlled substances is found in § 54.1-3304.1 of the Code of Virginia, which authorizes the Board of Pharmacy to license and regulate the dispensing of controlled substances by practitioners of the healing arts.

Purpose: The Board of Pharmacy licenses individual physicians to sell controlled substances to their own patients and already has regulations for security, recordkeeping, storage and other requirements relating to the facility from which physicians licensed to sell drugs dispense. Oversight of

Regulations

physicians selling drugs was relatively simple when there were approximately 100 licensees, but the total is now over 600 and continues to increase. The increase is due to an increasingly larger supply of drugs on the market repackaged specifically for physicians to sell, an increase in the number of urgent care centers that dispense drugs when treating patients, and an increase in drugs available to treat popular dermatological issues.

The practice of physicians selling drugs is analogous to pharmacies dispensing drugs. In regulating the practice of pharmacy, the board licenses both pharmacists and pharmacies. This level of oversight for both the individuals and the facility works well, and this proposal seeks to mirror this level of oversight for physicians selling drugs. Additionally, during inspections of facilities where multiple licensed physicians sell drugs, it is reasonable to hold the facility responsible for any possible violations and not an individual physician. This proposed process is also analogous to the inspection process currently used for pharmacies.

Failure to promulgate regulations would perpetuate the Board of Pharmacy's difficulty in overseeing a growing number of physicians who are now licensed to dispense drugs and limit the board's ability for whom it may take disciplinary action when violations are noted during routine inspections. With a facility permit, which is similar to a pharmacy permit, the board can hold the permit holder responsible and accountable for the stock of drugs. Clearer regulation and accountability will foster public protection in assuring the safety and integrity of prescription drugs.

Substance: Regulations set fees for approval of applications, renewal of permits, and reinstatement of lapsed permits. Requirements for inspections, physical standards for the facility, and notification to the board now fall to the facility permit rather than the individual licensee. For an individual license, the fee is reduced from \$240 to \$180, since the facility permit fee will now help cover the cost of inspections. For a facility permit, the application fee is \$240, which is similar to a pharmacy application and is intended to help cover the cost of an initial inspection.

The only change in physical requirements is specificity about the availability of hot and cold water, which must be within 20 feet of the selling and storage area and not located within an examination room or restroom.

Issues: The primary advantage to the public is more accountability and consistency in the maintenance and security of controlled substances in physician practices that are selling drugs to their patients. The primary advantage to the agency is a single entity to hold accountable when there are complaints or inspection violations rather than trying to assign responsibility to a physician within a multi-practitioner group. Also, promulgation of regulations for the issuance of permits to facilities is a statutory mandate. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As mandated by Chapter 117 of the 2015 Acts of the Assembly, the Board of Pharmacy (Board) proposes to promulgate a replacement regulation for an emergency regulation that will expire on June 6, 2017. The emergency and replacement regulations: 1) rearrange portions of the regulation so that classes of fees are grouped together, 2) clarify that required sinks with hot and cold running water must be within 20 feet of the selling and storage area of the facility and may not be in a bathroom or examination room, 3) lower fees for initial individual licensure for doctors of medicine, osteopathic medicine or podiatry¹ to sell control substances, and 4) institute permit fees for most facilities² where practitioners of the healing arts sell controlled substances.

Result of Analysis. For most proposed changes, benefits likely outweigh costs. For one change, there is insufficient information to ascertain whether benefits outweigh costs for all affected entities.

Estimated Economic Impact. Many of the Board's proposed regulatory changes, including rearranging regulatory sections and expanding language outlining the requirement for a sink in the immediate vicinity of a facility's controlled substance selling and storage area, do not change current rules or practice. For instance, the Board already requires a sink within 20 feet of the selling and storage area and does not allow that sink to be in a bathroom³ or an examination room.⁴ For these changes, no entities are likely to incur any costs. Interested parties, however, will likely benefit from the additional clarity these changes bring to the regulation.

Before the emergency changes to this regulation became effective, individual practitioners of the healing arts paid \$240 to be initially licensed to sell controlled substances and \$90 each year to renew that license. Additionally, individuals who missed their renewal date but renewed their license within a year of its expiration date paid a \$30 late renewal fee in addition to their regular renewal fee. Individuals who missed their renewal date by more than a year had to pay a \$210 reinstatement fee in addition to their renewal fee. Because part of these individual fees were meant to cover inspection of the facility from which individuals would be selling controlled substances, and because the Board instituted facility permit fees that would cover the cost of those inspections instead, the Board proposes to lower half of the individual fees.

Under this proposed regulation, individual licensees will pay \$180 for initial licensure to sell controlled substances, \$90 to renew their licenses each year, \$30 for late renewal and \$150 for reinstatement after a license has lapsed for more than a year. Licensees will benefit from these fee reductions as they will either lower individual costs for licensure absolutely and will partially or completely offset new facility permit fees for individual practitioners who are in partnership private

practices where partners are responsible for splitting business expenses.

The Board also proposes to institute new fees for facility permits. The fee for an initial permit is \$240 and annual renewal of that permit is also \$240 so long as the permit is renewed in a timely manner. If business owners renew the their facility permit after the renewal date but within one year, they will have to pay an additional \$40; the reinstatement fee for renewing a facility permit more than a year after it lapsed is \$240 additional to the on time renewal fee.

Both Chapter 117, and this regulation, exempt sole proprietor practitioners from paying permit fees although they still have to obtain a permit and will have to pay to be individually licensed. Because of this exemption, no sole proprietor practitioner is likely to incur any additional fees, either upon initial licensure/permitting or when they renew their licenses or permits, on account of this proposed change.

Partnership practices with two or three partners⁵ will incur net extra costs of \$120⁶ and \$60⁷ respectively to be initially licensed/permitted when comparing higher individual licensure fees paid before the emergency stage of this regulation to lower individual fees plus the newly required facility permit paid under this proposed regulation. Partnership practices with four partner practitioners are at a point of indifference because combined fees to be initially licensed/permitted would be the same \$960 under the old regulation and under this proposed regulation.

All partnerships with more than four partners and where the business is actually owned by the partners will see cost savings on account of lower combined initial fees under the proposed regulation. Board staff reports that many practices are owned by corporations or hospitals; for those practices, all individual practitioners will see lower initial licensure costs and the corporation or hospital practice owner will incur the additional facility permit fee.

All licensed practitioners except for sole practitioners, or the businesses that they work for, will incur additional fee costs upon renewal of their facility permits because individual renewal fees remain the same but permit fees need to additionally be paid. There is insufficient information to ascertain whether the benefits of requiring facility permits will outweigh the higher costs that some individuals or businesses will accrue.

Businesses and Entities Affected. Board staff reports that there are approximately 200 facilities which are permitted to sell controlled substances in the state and that the Board licenses 624 practitioners of the healing arts to sell controlled substances. All of these licensees, all future licensees and all businesses that need facility permits are affected by this proposed regulation.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. The facility permit fees in this regulation will raise total fees costs very marginally for some businesses in the Commonwealth. To the extent that those small costs are not passed on to patients in the form of slightly higher cost of care, those businesses will see a very marginal decrease in value.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

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. Small business partnerships will likely incur additional costs on account of the new facility permit fee in this proposed regulation.

Alternative Method that Minimizes Adverse Impact. There are no alternatives that would both lower costs and meet the legislative mandate for facility permits.

Adverse Impacts:

Businesses. Physician practices will likely incur additional costs on account of the new facility permit fee in this proposed regulation.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

¹ These entities are practitioners of the healing arts for the purposes of this regulation.

² By statute and this regulation, sole practitioners who sell controlled substances must pay individual licensure fees but are exempt from having to pay facility permit fees (although they will have to pay licensure fees).

³ Board staff reports that sinks in bathrooms are not sanitary enough for mixing medications.

⁴ Board staff reports that this is not allowed because doctors may need to access the sink when the examination room is occupied by a patient.

⁵ This math is assuming partnerships where the individual partners own the business and will split business expenses.

⁶ For a partnership with two doctors licensed to sell controlled substances, the doctors paid a \$480 combined to be initially licensed (\$240 for each doctor's individual license x 2) under pre-emergency regulation and now pay \$600 under the proposed regulation to be initially licensed (\$180 for each doctor's individual license plus \$240 for the facility license).

⁷ For partnerships with three doctors licensed to sell control substances, the doctors paid \$720 combined to be initially licensed (\$240 for each doctor's individual license x 3) under pre-emergency regulation and now pay \$780 under the proposed regulation to be initially licensed (\$180 for each doctor's individual license plus \$240 for the facility license).

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Agency's Response to Economic Impact Analysis: In general, the Board of Pharmacy concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.

The cost/benefit analysis fails to take into account the financial benefit that accrues to a facility in which practitioners are selling controlled substances to their patients. The increase in \$120 and \$60 per year for partnerships of two or three practitioners is an insignificant cost for a business that may resemble a small pharmacy in the number of drugs being stored and sold to patients.

The agency also disagrees with the adverse impact notification to the General Assembly. The board has acted in compliance with the second enactment clause of Chapter 117 of the 2015 Acts of the Assembly, which required the board to promulgate regulations to implement the requirement of law that practitioners of the healing arts must dispense controlled substances in permitted facilities. As a nongeneral fund agency, the board establishes a fee schedule intended to cover the cost of administering a regulatory program. Any adverse impact of such regulation was a mandate of the General Assembly and the Code of Virginia, so there should be no need for notification.

Summary:

The Board of Pharmacy is proposing amendments to its regulations to implement the requirements of Chapter 117 of the 2015 Acts of Assembly that practitioners of the healing arts must dispense controlled substances in permitted facilities. The proposed amendments (i) institute permit fees for most facilities where practitioners of the healing arts sell controlled substances; (ii) lower fees for initial individual licensure for doctors of medicine, osteopathic medicine, or podiatry to sell controlled substances; (iii) place requirements for inspections, physical standards for the facility, and notification to the board with the permitted facility rather than the individual licensee; and (iv) clarify that required sinks with hot and cold water must be available within 20 feet of the selling and storage area of the facility and may not be located within an examination room or restroom.

18VAC110-30-15. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

~~B. Fee for initial license for a practitioner of the healing arts to sell controlled substances~~ Initial application fees.

~~1. The application fee for initial licensure shall be \$240~~ License for practitioner of the healing arts to sell controlled substances: \$180.

~~2. The application fee for reinstatement of a license that has been revoked or suspended indefinitely shall be \$500~~ Permit for facility in which practitioners of the healing arts sell controlled substances: \$240.

~~C. Renewal of license for a practitioner of the healing arts to sell controlled substances~~ Annual renewal fees.

~~1. The annual fee for renewal of an active license shall be \$90. For the annual renewal due on December 31, 2009, the fee shall be \$50~~ License for practitioner of the healing arts to sell controlled substances: \$90.

~~2. The late fee for renewal of a license within one year after the expiration date is \$30 in addition to the annual renewal fee~~ Permit for facility in which practitioners of the healing arts sell controlled substances: \$240.

~~3. The fee for reinstatement of a license expired for more than one year shall be \$210.~~

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date.

1. License for practitioner of the healing arts to sell controlled substances: \$30.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: \$40.

E. Reinstatement fees. Any person or entity attempting to renew a license or permit more than one year after the expiration date shall submit an application for reinstatement with any required fees.

1. License for practitioner of the healing arts to sell controlled substances: \$150.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: \$240.

3. Application fee for reinstatement of a license or permit that has been revoked or suspended indefinitely: \$500.

F. Facilities in which only one practitioner of the healing arts is licensed by the board to sell controlled substances shall be exempt from fees associated with obtaining and renewing a facility permit.

~~D. G.~~ The fee for reinspection of any facility shall be \$150.

~~E. H.~~ The fee for a returned check shall be \$35.

Part II

Licensure Requirements

18VAC110-30-20. Application for licensure.

A. Prior to engaging in the sale of controlled substances, a practitioner shall make application on a form provided by the board and be issued a license. After June 7, 2016, the practitioner shall engage in such sale from a location that has been issued a facility permit.

B. In order to be eligible for a license to sell controlled substances, a practitioner shall possess a current, active license to practice medicine, osteopathic medicine, or podiatry issued by the Virginia Board of Medicine. Any disciplinary action taken by the Board of Medicine against the practitioner's license to practice shall constitute grounds for the board to deny, restrict, or place terms on the license to sell.

~~C. For good cause shown, the board may issue a limited-use license, when the scope, degree or type of services provided to the patient is of a limited nature. The license to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:~~

- ~~1. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion must accompany the application. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice; and~~
- ~~2. The issuance and continuation of such license shall be subject to continuing compliance with the conditions set forth by the board.~~

18VAC110-30-21. Application for facility permit.

A. After June 7, 2016, any location at which practitioners of the healing arts sell controlled substances shall have a permit issued by the board in accordance with § 54.1-3304.1 of the Code of Virginia. A licensed practitioner of the healing arts shall apply for the facility permit on a form provided by the board.

B. For good cause shown, the board may issue a limited-use facility permit when the scope, degree, or type of services provided to the patient is of a limited nature. The permit to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of this chapter may be waived.

1. The limited-use facility permit application shall list the regulatory requirements for which a waiver is requested, if any, and a brief explanation as to why each requirement should not apply to that practice.
2. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion shall accompany the application.
3. The issuance and continuation of a limited-use facility permit shall be subject to continuing compliance with the conditions set forth by the board.

C. The executive director may grant a waiver of the security system when storing and selling multiple strengths and formulations of no more than five different topical Schedule VI drugs intended for cosmetic use.

18VAC110-30-30. Renewal of license or permit.

A. A license or facility permit so issued shall be valid until December 31 of the year of issue. Renewal of the license shall be made on or before December 31 of each year.

B. If a practitioner fails to renew his license or facility permit to sell within the Commonwealth by the renewal date, he must pay the renewal fee plus the late fee. He may renew his license or facility permit by payment of these fees for one year from the date of expiration.

C. Failure to renew the license or facility permit to sell within one year following expiration shall cause the license or permit to lapse. The selling of controlled substances with a lapsed license or permit shall be illegal and may subject the practitioner to disciplinary action by the board. To reinstate a lapsed license or permit, a practitioner shall submit an application for reinstatement and pay the reinstatement fee, plus the reinspection fee if a reinspection is required as set forth in subsection D of this section. Reinstatement is at the discretion of the board and may be granted by the executive director on the board's behalf provided no grounds exist to deny said reinstatement.

D. Prior to reinstatement of a license facility permit that has been lapsed for more than one year, a reinspection of the storage and selling area shall be conducted ~~unless another practitioner at the same location has held an active license to sell controlled substances during that period.~~ A practitioner seeking reinstatement of a facility permit shall not stock drugs until approved by the board or its authorized agent.

E. The selling of controlled substances without a current, active license or facility permit is unlawful and shall constitute grounds for disciplinary action by the board.

18VAC110-30-50. Licensees ceasing to sell controlled substances; inventory required prior to disposal.

A. Any licensee who intends to cease selling controlled substances shall notify the board 10 days prior to cessation and surrender his license, and his license will be placed on expired status. If no other practitioner of the healing arts licensed to sell controlled substances intends to sell controlled substances from the same location, the practitioner shall also surrender the facility permit, and the permit will be placed on expired status.

B. Any Schedule II through V controlled substances shall be inventoried and may be disposed of by transferring the controlled substance stock to another licensee or other person authorized by law to possess such drugs or by destruction as set forth in this chapter.

C. The licensee or other responsible person shall inform the board of the name and address of the licensee to whom the controlled substances are transferred.

D. A licensee who has surrendered his license or facility permit pursuant to this section may request that it be made current again at any time within the same renewal year without having to pay an additional fee, provided the licensee is selling from the same location or from another location that has been inspected and approved by the board.

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Part III

Inspection Requirements, Standards, and Security for Storage Areas; Disposal of Controlled Substances

18VAC110-30-70. ~~Maintenance of a common stock of controlled substances~~ Practitioner in charge in a permitted facility.

~~Any two or more licensees who elect to maintain a common stock of A facility with a permit for practitioners of the healing arts to sell~~ controlled substances ~~for dispensing~~ shall:

1. Designate a licensee practitioner with a license to sell controlled substances who shall be the primary person responsible for the stock, the required inventory, the records of receipt and destruction, safeguards against diversion and compliance with this chapter;
2. Report to the board the name of the licensee and the location of the controlled substance stock on a form provided by the board;
3. Upon a change in the licensee so designated, an inventory of all Schedule II through V controlled substances shall be conducted in the manner set forth in § 54.1-3404 of the Drug Control Act of the Code of Virginia and such change shall immediately be reported to the board; and
4. Nothing shall relieve the other individual licensees who sell controlled substances at the location of the responsibility for the requirements set forth in this chapter.

18VAC110-30-80. Inspection and notice required.

A. The area designated for the storage and selling of controlled substances shall be inspected by an agent of the board prior to the issuance of the first license to sell controlled substances from that site. Inspection prior to issuance of subsequent licenses at the same location shall be conducted at the discretion of the board.

B. Applications for ~~licenses which facility permits that~~ indicate a requested inspection date, or requests ~~which that~~ are received after the application is filed, shall be honored provided a 14-day notice to the board is allowed prior to the requested inspection date.

C. Requested inspection dates ~~which that~~ do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

D. At the time of the inspection, the controlled substance selling and storage area shall comply with 18VAC110-30-90, 18VAC110-30-100, 18VAC110-30-110, 18VAC110-30-120, and 18VAC110-30-130.

E. If an applicant substantially fails to meet the requirements for issuance of a license facility permit and a reinspection is required, or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18VAC110-30-15 prior to a reinspection being conducted.

F. No ~~license facility permit~~ shall be issued to sell controlled substances until adequate safeguards against diversion have been provided for the controlled substance storage and selling area and approved by the ~~the~~ inspector or board staff.

G. The licensee shall notify the board of any substantive changes to the approved selling and storage area including moving the location of the area, making structural changes to the area, or making changes to the alarm system for the area prior to the changes being made and pay a reinspection fee. An inspection shall be conducted prior to approval of the new or altered selling and storage area.

18VAC110-30-90. Physical standards.

Physical standards for the controlled substance selling and storage area:

1. The building in which the controlled substances selling and storage area is located shall be constructed of permanent and secure materials. Trailers and other movable facilities shall not be permitted;
2. There shall be an enclosed area of not less than 40 square feet that is designated as the controlled substances selling and storage area, which shall be used exclusively for storage, preparation, and dispensing. Records related to the sale of controlled substances may be maintained outside the selling and storage area with access limited to the licensee and those persons authorized to assist in the area. The work space used in preparation of the drugs shall be contained within the enclosed area. A controlled substance selling and storage area inspected and approved prior to November 3, 1993, shall not be required to meet the size requirement of this chapter;
3. Controlled substances maintained for ultimate sale shall be maintained separately from any other controlled substances maintained for other purposes. Controlled substances maintained for other purposes such as administration or samples may be stored within the selling and storage area provided they are clearly separated from the stock maintained for sale;
4. The selling and storage area, work counter space and equipment in the area shall be maintained in a clean and orderly manner;
5. A sink with hot and cold running water shall be available within ~~the immediate vicinity~~ 20 feet of the selling and storage area and not located within an examination room or restroom; and
6. The entire area described in this chapter shall be well lighted and ventilated; the proper storage temperature shall be maintained to meet official specifications for controlled substance storage.

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 (18VAC110-30)

~~Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts (rev. 8/07).~~

[Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts \(rev. 12/2015\)](#)

[Application for a Facility Permit for Practitioner\(s\) of the Healing Arts to Sell Controlled Substances \(rev. 12/2015\)](#)

VA.R. Doc. No. R16-4532; Filed September 26, 2016, 8:35 a.m.

REAL ESTATE APPRAISER BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-30).**

Statutory Authority: §§ 54.1-201 and 54.1-2013 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

The amendments require that real estate appraiser license applicants submit to fingerprinting and a background check to ensure the applicant does not have a conviction that would call into question the applicant's fitness for licensure. The amendments are necessary to comply with changes to The Real Property Appraiser Qualification Criteria by the Appraiser Qualification Board (AQB), which are set to become effective January 1, 2017. Under § 1116 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, AQB is the body that establishes minimum education, experience, and examination requirements for real property appraisers.

18VAC130-20-30. General qualifications for licensure.

Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential

real estate appraiser license shall meet the following qualifications:

1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of Professional and Occupational Regulation or its agent prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Professional and Occupational Regulation or its agent.
3. The applicant shall sign, as part of the application, a statement verifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.
4. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification that was suspended, revoked or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
5. The applicant ~~may not have~~ shall possess a background that would not call into question the public trust. Each applicant shall submit to fingerprinting. A background investigation shall be conducted, which shall not reveal that he has been convicted, found guilty, or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony or nolo contendere to a crime that would call into question his fitness or suitability to engage in the profession. The applicant must disclose the following:
 - a. All felony convictions; and
 - b. All misdemeanor convictions in any jurisdiction that occurred within five years of the date of application.

Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for purposes of this subdivision. ~~A certified copy of a final order, decree, or case decision, by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction.~~
6. The applicant shall be at least 18 years old.
7. The applicant shall have successfully completed 150 hours for the licensed residential classification, 200 hours for the certified residential classification, and 300 hours for the certified general classification of approved real estate appraisal courses, including the 15-Hour National Uniform Standards of Professional Appraisal Practice course, from

Regulations

accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The required core curriculum for the certified general or certified residential real estate appraiser is a bachelor's degree or higher from an accredited college or university. The required core curriculum for the licensed residential real estate appraiser is an associate's degree or higher from an accredited college, junior college, community college, or university. In lieu of the required degree, the licensed residential real estate appraiser applicant must complete 30 semester hours of college-level education from an accredited college, junior college, community college, or university. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser. The classroom hours required for the certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser.

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

8. The applicant shall, as part of the application for licensure, verify his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In addition, all experience must be acquired within the five-year period immediately preceding the date application is made and be supported by adequate written reports or file memoranda, which shall be made available to the board upon request.

a. Applicants for a licensed residential real estate appraiser license shall have a minimum of 2,000 hours appraisal experience, in no fewer than 12 months. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience.

b. Applicants for a certified residential real estate appraiser license shall have a minimum of 2,500 hours of appraisal experience obtained during no fewer than 24 months. Hours may be treated as cumulative in order to achieve the necessary 2,500 hours of appraisal experience.

c. Applicants for a certified general real estate appraiser license shall have a minimum of 3,000 hours of appraisal experience obtained during no fewer than 30 months. Hours may be treated as cumulative in order to achieve the necessary 3,000 hours of appraisal experience. At least 50% of the appraisal experience required (1,500 hours) must be in nonresidential appraisal assignments and include assignments that demonstrate the use and

understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties that do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser that include the use of the income approach. The applicant must have substantially contributed to the development of the income approach in such reports and shall provide evidence or verification of such contribution.

9. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination developed or endorsed by the Appraiser Qualifications Board and provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

10. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 5 of this section may be approved for licensure following consideration of their application by the board.

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 (18VAC130-20)

~~Appraiser License Application, A461-4001LIC v4 (rev. 8/15)~~

[Appraiser License Application, A461-4001LIC-v5 01-01-2017 \(rev. 1/2017\)](#)

[Experience Log, A461-40EXP-v1 \(rev. 7/13\)](#)

[Appraiser Trainee License Application, A461-4004TRLIC-v4 \(rev. 8/15\)](#)

[Trainee Supervisor Verification Form, A461-40TRSUP-v2 \(rev. 1/15\)](#)

[Business Registration Application, A461-4008BUS-v2 \(rev. 8/15\)](#)

[Pre-License Education Course Application, A461-4006CRS-v2 \(rev. 8/15\)](#)

[Pre-License Education Course Renewal Application, A461-4006RENCRS-v2 \(rev. 8/15\)](#)

[Instructor Certification Application, A461-4002INSTR-v2 \(rev. 8/15\)](#)

[Activate License Application, A461-4001AT-v1 \(rev. 7/13\)](#)

[Temporary Appraiser License Application, A461-4005TLIC-v2 \(rev. 8/15\)](#)

V.A.R. Doc. No. R17-4892; Filed September 15, 2016, 2:09 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 59 (2016)

Declaration of a State of Emergency for the Commonwealth of Virginia as a Measure for Uninterrupted Gasoline Distribution

Importance of the Issue

On September 9, 2016, Colonial Pipeline shut down its main lines in Shelby County, Alabama to investigate a potential system integrity issue. The investigation uncovered a pipeline breach resulting in a spill of 252,000 gallons of gasoline in a remote area of the county. This pipeline will remain shut down until repairs can be made, the system tested, and cleanup complete. The shutdown of this pipeline may result in gasoline supply disruptions to various retailers throughout the Commonwealth, since the pipeline is the only source of gasoline into Virginia for many of these retailers. While current gasoline reserves in the Commonwealth are sufficient to address any immediate supply concerns, it is necessary, in accordance with § 44-146.17, that the Commonwealth take appropriate measures to prevent any resource shortage occasioned by this disaster.

The health and general welfare of the citizens of Virginia require that state action be taken to help prevent any potential resource shortages or fuel supply disruptions caused by this situation. The effects of this incident constitute a disaster, as defined in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on this day, September 16, 2016, whereby I proclaimed that a state of emergency exists, and I directed that appropriate assistance be rendered by agencies of state government to alleviate any impediments to the transport of gasoline.

In order to marshal public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following measures:

A. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting gasoline in any area of the Commonwealth in order to support delivery of this commodity, regardless of its point of origin or destination. Such exemptions shall not be valid on posted structures for restricted weight.

All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia

Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes vehicles in route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

Authorization of the State Coordinator of Emergency Management to grant limited exemption of hours of service worked by any carrier when transporting gasoline in any area of the Commonwealth in order to support delivery of this commodity, regardless of its point of origin or destination, pursuant to § 52-8.4 of the Code of Virginia and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3. In no event shall the relief from hours of service last more than fifteen (15) days, unless a new declaration is issued. Motor carriers that have a Federal Out of Service Order in effect cannot take advantage of the relief from regulations that this declaration provides under 49 CFR 390.23.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in 19VAC30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect until November 1, 2016, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety and Homeland Security in consultation with the Secretary of Transportation, whichever is earlier.

The authorization of the Department of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in emergency regulation 2VAC5-425 et seq., and to prescribe a vapor pressure limit it deems reasonable. The temporary waiver shall remain in effect until November 1, 2016, or until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.

B. The discontinuance of provisions authorized in paragraph A above may be implemented and disseminated by publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet-level Secretaries, the authority to implement this order as set forth in § 2.2-104 of the Code of Virginia.

C. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of gasoline. I make the same request of the Office of the

Governor

Attorney General and appropriate local officials. I further request that all appropriate executive branch agencies exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this resource shortage.

Effective Date of this Executive Order

This Executive Order shall be effective September 16, 2016, and shall remain in full force and effect until November 1, 2016, or whenever the emergency no longer exists, which ever time is shorter, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 16th day of September, 2016.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Emergency Waiver of Reid Vapor Pressure Requirements in Virginia

Effective date: September 16, 2016

Expiration date: October 1, 2016, or until emergency relief is no longer necessary as determined by the Commissioner of Agriculture.

Purpose: The purpose of this order is to provide a waiver to the ASTM Reid Vapor Pressure specifications for ethanol blended gasoline due to an emergency situation involving the Colonial Pipeline.

Background: On September 16, 2016, Governor Terence R. McAuliffe declared a state of emergency for the Commonwealth of Virginia as a measure for uninterrupted gasoline distribution following an incident in Alabama requiring Colonial Pipeline to shut down its Pipeline 1, which routes gasoline to the East Coast. In Executive Order 59, Governor McAuliffe, pursuant to his authority under § 44-146.17 of the Code of Virginia, authorizes the Department of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure requirement prescribed in emergency regulation 2VAC5-425, Vapor Pressure Requirements for Gasoline Ethanol Blends, and to prescribe a vapor pressure limit it deems reasonable. Executive Order 59 (2016) provides that the temporary waiver shall remain in effect until October 1, 2016, or until emergency relief is no longer necessary as determined by the Commissioner of Agriculture.

Definitions: "Volatility class C" means fuel with a vapor pressure and distillation designation of "C" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM D4814-16d.

"Volatility class D" means fuel with a vapor pressure and distillation designation of "D" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM D4814-16d.

Required vapor pressure limits for September 16, 2016, through September 30, 2016:

Pursuant to the authority granted in Executive Order 59 (2016), the Department of Agriculture and Consumer Services waives the vapor pressure limit for gasoline ethanol blends prescribed by reference to ASTM D4814-16d in emergency regulation 2VAC5-425, Vapor Pressure Requirements for Gasoline Ethanol Blends, for the period of September 16, 2016, through September 30, 2016.

For the period of September 16, 2016, through September 30, 2016, when gasoline is blended with ethanol, the blend's maximum vapor pressure shall not exceed the ASTM D4814-16d limits for volatility class C or volatility class D.

By Order of: Sandra Adams, Commissioner, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3501, FAX (804) 371-2945, TDD (800) 828-1120.

BOARD OF CORRECTIONS

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Corrections is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

6VAC15-11, Public Participation Guidelines

6VAC15-70, Standards for Community Residential Programs

The comment period begins October 17, 2016, and ends November 16, 2016.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Jim Bruce, Agency Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23261-6963, telephone (804) 887-8215, or email james.bruce@vadoc.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on September 28, 2016. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

General Notices/Errata

Director's Order Number One Hundred Sixteen (16)

"Redskins Hospitality Tickets Contest" Virginia Lottery Retailer Incentive Program Requirements (effective October 1, 2016)

Director's Order Number One Hundred Seventeen (16)

Virginia Lottery's Scratch Game 1705 "Amazing 8s" Final Rules for Game Operation (effective September 14, 2016)

Director's Order Number One Hundred Eighteen (16)

Virginia Lottery's Scratch Game 1710 "Million \$\$ Match" Final Rules for Game Operation (effective September 20, 2016)

Director's Order Number One Hundred Nineteen (16)

Virginia Lottery's Scratch Game 1716 "Tripling Bonus Crossword" Final Rules for Game Operation (effective September 20, 2016)

Director's Order Number One Hundred Twenty (16)

Virginia Lottery's "Game Guy Player Experience Promotion" Final Rules for Operation (effective September 16, 2016)

Director's Order Number One Hundred Twenty-One (16)

Virginia Lottery's Scratch Game 1739 "2017" Final Rules for Game Operation (effective September 20, 2016)

Director's Order Number One Hundred Twenty-Two (16)

Virginia Lottery's Scratch Game 1753 "CH-CH-CH-CHIA CASH" Final Rules for Game Operation (effective September 20, 2016)

Director's Order Number One Hundred Twenty-Three (16)

Virginia Lottery's Scratch Game 1726 "Season's Winnings" Final Rules for Game Operation (effective September 20, 2016)

Director's Order Number One Hundred Twenty-Four (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack" Final Rules for Game Operation (effective October 9, 2016)

Director's Order Number One Hundred Twenty-Five (16)

Virginia's Computer-Generated Lottery Game "Print 'n Play Bonus Bingo" Final Rules for Game Operation (effective October 9, 2016)

Director's Order Number One Hundred Twenty-Six (16)

Virginia's Computer-Generated Lottery Game "Print 'n Play Daily Crossword" Final Rules for Game Operation (effective October 9, 2016)

Director's Order Number One Hundred Twenty-Seven (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Extreme Crossword" Final Rules for Game Operation (effective October 9, 2016)

Director's Order Number One Hundred Twenty-Eight (16)

Virginia Lottery's Computer-Generated Game "Print 'n Play Platinum Crossword" Final Rules for Game Operation (effective October 9, 2016)

Director's Order Number One Hundred Thirty-Five (16)

Virginia Lottery's "Q2 FY17 eXTRA Chances Scratcher Promotion" Final Rules for Operation (effective October 1, 2016)

Director's Order Number One Hundred Forty-Six (16)

Virginia Lottery's "Social Media Promotion" Final Rules for Operation (effective September 26, 2016)

Director's Order Number One Hundred Forty-Eight (16)

Virginia Lottery's "We're Game for Education" Promotion Final Rules for Operation (effective October 1, 2016)

BOARD OF MEDICAL ASSISTANCE SERVICES

Application Available for New Graduate Medical Education Program for Primary Care and High Need Specialties

Item 306 of Chapter 780 of the 2016 Acts of Assembly authorizes the Department of Medical Assistance Services (DMAS) to make supplemental payments for new graduate medical education (GME) residency slots effective July 1, 2017. Supplemental payments shall be made for up to 25 new medical residencies in state fiscal year (SFY) 2018. The supplemental payment for each new qualifying residency slot will be \$100,000 annually for three years. Payments will be made quarterly. Thirteen of the slots will be for primary care and 12 will be for high need specialties. Preference will be given for residencies located in underserved areas of the Commonwealth that serve Medicaid beneficiaries.

Institutions should complete and submit an application for each desired residency slot. This requirement stands regardless of the specialty mix of requested slots. For example, if an institution requests one general pediatrician slot, one family practice slot, and a general surgery slot, it should complete three separate applications. Additional instructions and information are provided in the application.

The timeline for the application is as follows:

September 15, 2016	DMAS makes application form available to programs and sponsoring institutions.
October 17, 2016	Applications are due to DMAS 30 days after release of final application.

November 11, 2016	DMAS notifies programs and sponsoring institutions of award selection.
June 1, 2017	Approved institutions provide documentation to DMAS that they meet the criteria for supplemental payment and have filled all awarded residency slots.
July 1, 2017	DMAS awards new GME supplemental payments and residents begin.

The application form is available at http://www.dmas.virginia.gov/Content_pgs/pr-gme.aspx.

Contact Information: Beth Jones, Health Care Reimbursement Manager, Provider Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 298-3864, FAX (804) 371-8892, or email beth.jones@dmas.virginia.gov.

DEPARTMENT OF MINES, MINERAL AND ENERGY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

4VAC25-90, Rules and Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines

4VAC25-145, Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects

4VAC25-160, Virginia Gas and Oil Board Regulations

4VAC25-170, Geothermal Energy Regulations

The comment period begins October 17, 2016, and ends November 7, 2016.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall, and a report of

the small business impact review will be published in the Virginia Register of Regulations.

Contact Information: Michael Skiffington, Policy and Planning Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23223, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmme.virginia.gov.

STATE WATER CONTROL BOARD

Public Notice for Technical Advisory Committee Meeting for the James River Watershed in Lynchburg

Purpose of notice: To announce a technical advisory committee (TAC) meeting on a water quality study by the Department of Environmental Quality for the James River watershed in Lynchburg, Virginia. The general public is welcomed to attend.

TAC time and location: Tuesday, October 25, 2016, from 10 a.m. to 12 p.m. at the Region 2000 Local Government Council office, 828 Main Street, 12th Floor, Lynchburg, Virginia.

Description of study: Virginia agencies are working to identify sources of fecal bacteria contamination in stream segments from the James River watershed in Central Virginia. This contamination exceeds water quality standards and thus impairs or decreases the quality of the water.

The streams segments that will be included in the study are: 10.53 miles James River, 20.8 miles Ivy Creek, 5.89 miles Tomahawk Creek, 6.89 miles Burton Creek, 3.43 miles unnamed tributary to Burton Creek, 10.54 miles Judith Creek, 5.44 miles Fishing Creek, 10.3 miles Blackwater Creek, 8.5 miles Beaver Creek, 7.72 miles Harris Creek, 4.69 miles Dreaming Creek, 3.04 miles Opossum Creek, 6.37 miles Williams Run, 5.17 miles Graham Creek, and 9.46 miles Pedlar River.

Meeting purpose: During the meeting the TAC and public will be presented the draft total maximum daily load (TMDL) study document for review and discussion.

Questions: To learn more about the TMDL study or the pending TAC meeting, contact Paula Main at the Virginia Department of Environmental of Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, by telephone (434) 582- 6216, or by email paula.main@deq.virginia.gov.

Proposed Consent Order for Allied Aviation Fueling of National Airport, Inc.

An enforcement action has been proposed for Allied Aviation Fueling of National Airport, Inc. for violations of the State Water Control Law and regulations in Arlington, Virginia. The State Water Control Board proposes to issue a consent

General Notices/Errata

order to resolve violations associated with an unauthorized discharge of oil from the Ronald Reagan Washington National Airport fuel farm facility. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 18, 2016, through November 17, 2016.

Proposed Enforcement Action for Elizabeth River Crossings OPCO, LLC

An enforcement action has been proposed for Elizabeth River Crossings OPCO, LLC for the Midtown Elizabeth River Tunnel for alleged violations of the State Water Control Law in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from October 17, 2016, to November 16, 2016.

Proposed Consent Order for National Capital Area Council, Boy Scouts of America

An enforcement action has been proposed for National Capital Area Council, Boy Scouts of America (BSA) for violations at the Goshen Scout Reservation in Goshen, Virginia. The State Water Control Board proposes to issue a consent order to National Capital Area Council, BSA to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tamara Ambler will accept comments by email at tamara.ambler@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from October 17, 2016, to November 17, 2016.

Proposed Consent Order for Robert Woodall Chevrolet

An enforcement action has been proposed for Robert Woodall Chevrolet for violations of the State Water Control Law and regulation in the City of Danville, Virginia. The State Water Control Board proposes to issue a consent order to Robert Woodall Chevrolet to resolve violations regarding a petroleum spill that occurred in the automobile repair shop. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will

accept comments by email at marvin.booth@deq.virginia.gov, FAX at (434) 582-5125, or postal mail at Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502 from October 17, 2016, to November 17, 2016.

Public Comment Period and Public Meeting - FY 2017 Virginia Clean Water Revolving Loan Fund Intended Use Plan and Project Priority List

Introduction: Section 606(c) of the Water Quality Act of 1987 requires the state to develop an Intended Use Plan (IUP) that identifies the uses of its Clean Water Revolving Loan Fund and to prepare a list of projects targeted for financial assistance with those funds. Following public comment and final board action, the list of targeted projects for financial assistance becomes the State's yearly clean water revolving loan project priority list (PPL) in the IUP.

FY 2017 program development: On June 1, 2016, the staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential stormwater management, living shoreline projects, land conservation and Brownfield remediation clientele. July 15, 2016, was established as the deadline for receiving applications. Based on this solicitation, DEQ received 24 wastewater improvement applications requesting \$126,677,274, one application for a stormwater management project for \$4,307,361; and one living shorelines application for an additional \$250,000, bringing the total amount requested to \$131,234,635.

All 24 wastewater applications were evaluated in accordance with the program's funding distribution criteria. In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the project's readiness to proceed. The one stormwater application was reviewed in accordance with the board's priority ranking criteria for stormwater projects. Living shoreline projects are not ranked. All wastewater and stormwater applications are considered to be of good quality and should provide significant water quality and environmental improvement.

The list of applications in Attachment A of the document linked below is shown by project type in priority funding order based on the board's prioritization criteria. Note that each project type (wastewater and stormwater) has separate priority ranking point systems that are not intended to be numerically compared from one type to the other. All applications are considered to be of good quality and should provide significant water quality and environmental improvement. Based on these considerations, on September 22 the board approved the staff recommendation to target funding for \$131,234,635 for all 26 projects as shown on Attachment B of the document linked below and present the proposed PPL and IUP for public comment.

The list of applications and the target funding list are available at <http://www.deq.virginia.gov/Programs/Water/CleanWaterFinancingAssistance/FY2017AnnualSolicitation.aspx>.

Public Participation: The board is presenting its draft list of targeted FY 2017 loan recipients and Intended Use Plan for public review and comment. A public meeting will be held at 2 p.m., Monday, October 24 at the Department of Environmental Quality, 11th Floor Conference Room, 629 East Main Street, Richmond, Virginia 23219. The public review and comment period will end immediately following the public meeting. Comments or questions should be directed to the DEQ contact person listed below. Written comments should include the name, address, and telephone number of the commenter.

Contact Information: Walter Gills, Clean Water Financing and Assistance Program, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email walter.gills@deq.virginia.gov.

Public Comment Period - Proposed Revisions to the Stormwater Local Assistance Fund Guidelines

On behalf of the State Water Control Board, the Department of Environmental Quality (DEQ) is presenting draft revisions to the Stormwater Local Assistance Fund (SLAF) Guidelines for public review and comment. The public review and comment period ends November 1, 2016.

The fund, which provides matching grants to local governments for the implementation of stormwater best management practices, was created by the General Assembly in 2013, and the board approved the original SLAF Guidelines September 30, 2013. The General Assembly recently amended the Code of Virginia to expand SLAF eligibility to include the acquisition of non-point source nutrient credits, which necessitated revisions to the SLAF Guidelines. DEQ staff determined that additional changes would be beneficial to improve the SLAF program during this revision process.

The draft revisions to the guidelines and the memo to the board highlighting the changes are now available for public review and comment at <http://www.deq.virginia.gov/programs/water/cleanwaterFinancingAssistance.aspx>.

Public comments may be submitted through November 1, 2016.

All written comments or questions should include the name, address, and telephone number of the commenter and be directed to the contact person below.

Contact Information: Walter Gills, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email walter.gills@deq.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-190, Litter Receptacle Regulations**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated September 12, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed to protect human health and the environment. This regulation requires litter receptacles to be placed and maintained for the public to use. These receptacles are a critical component of the prevention of litter in the Commonwealth. Without these receptacles, the public would have no place to deposit their trash while in public. This would potentially lead to an increase in littering in the Commonwealth and associated negative impacts to human health and the environment.

Comments received during the public comment period for the periodic review of this regulation were only received from the James City Clean County Commission. The commission was concerned with three key issues, cigarette butt disposal containers, the need for additional litter receptacles due to receptacles being full, and additional requirements for litter containers and a portable toilet at construction sites. The regulations address the minimum requirements for litter receptacles, including placement and maintenance of these receptacles. Enforcement of this regulation is conducted by local law enforcement. The Code of Virginia directs the Virginia Waste Management Board to adopt regulations containing guidelines for the use of litter receptacles in public places. Virginia is a diverse state, and this regulation provides minimum standards for the placement of litter receptacles. Some localities may experience more challenges with preventing litter than others. Localities may choose to impose requirements that are more stringent than these requirements to address local issues with litter. Enforcement of this regulation is conducted by local law enforcement, and localities are able to implement additional measures to address specific litter issues in their communities.

This regulation is not complex. It requires placement of litter receptacles at certain places throughout the Commonwealth. In most cases the regulation requires a minimum of one litter receptacle to be placed at locations where litter needs to be deposited to prevent it from being improperly discarded. The regulation allows the entity that is required to provide and maintain litter receptacles the ability to decide the appropriate number of litter receptacles needed to collect the litter and the frequency for them to be emptied.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

General Notices/Errata

A periodic review was last conducted on this regulation in 2012. Since that time, changes to technology and economic conditions have not impacted this regulation.

The Director of the Department of Environmental Quality, on behalf of the Virginia Waste Management Board, recommends that this regulation be retained. As currently written, the regulation meets the requirements of state law while minimizing the impacts on small businesses.

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VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22VAC40-72. Standards for Licensed Assisted Living Facilities.

Publication: 33:2 VA.R. 259-260 September 19, 2016.

Correction to Final Regulation:

Page 259, Effective Date, change to read "November 15, 2016."

VA.R. Doc. No. R17-4734; Filed September 29, 2016, 10:13 a.m.