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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>).

December 2016 through February 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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, 2017
33:26	August 2, 2017	August 21, 2017
34:1	August 16, 2017	September 4, 2017
34:2	August 30, 2017	September 18, 2017
34:3	September 13, 2017	October 2, 2017
34:4	September 27, 2017	October 16, 2017
34:5	October 11, 2017	October 30, 2017
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017
34:8	November 21, 2017 (Tuesday)	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 (Tuesday)	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **Regulations Governing the Practice of Dentistry.**

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

Name of Petitioner: Rodney S. Mayberry, DDS.

Nature of Petitioner's Request: To amend 18VAC60-21-80. Publishing an advertisement that contains a false claim of professional superiority, contains a claim to be a specialist, or uses any terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, November 2013), or such guidelines or requirements as subsequently amended.

Agency Plan for Disposition of Request: The petition will be published on December 12, 2016, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment ending January 11, 2017. The request to amend regulations and any comments for or against the petition will be considered by the board at the first scheduled meeting after close of comment, which will be March 10, 2017. The petitioner will receive information on the board's decision after that date.

Public Comment Deadline: January 11, 2017.

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

VA.R. Doc. No. R17-07; Filed November 9, 2016, 4:58 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 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **3VAC5-30. Tied-House (amending 3VAC5-30-60).**

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 11, 2017.

Effective Date: February 3, 2017.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), and § 4.1-111 authorizes the board to amend or repeal regulations adopted by it in accordance with the Administrative Process Act.

Purpose: The amendment adds language that conforms with the current agency guidance document Circular Letter 06-01 allowing manufacturers, importers, brokers, bottlers, and wholesalers of alcoholic beverage to provide and install carbon dioxide filters in wine and beer draft lines of licensed retail establishments. The amendment has no adverse impact on the health, safety, or welfare of the citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: The amendment is expected to be noncontroversial as it merely conforms the regulation with current practice.

Substance: The amendment provides that representatives of manufactures, importers, bottlers, brokers, or wholesalers of wine and beer products may provide and install without charge carbon dioxide filters in draft beer lines of retail licensees.

Issues: The primary advantage for the agency, regulated community, and the public in amending 3VAC5-30-60 is to conform the regulation with a guidance document and current practice within the regulated community. Another advantage for the agency is the fulfillment of the commitment made to update the regulation when the guidance document was issued. Furthermore, the allowance of this practice enables

businesses to ensure that product quality and integrity are preserved without additional expense to many small businesses. There are no disadvantages to the Commonwealth or the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to specify that any manufacturer, importer, bottler, broker or wholesaler of alcoholic beverages may provide to retail licensees carbon dioxide filters without charge and install such filters in the retailers draft beer lines.

Result of Analysis. The benefits exceed the costs for the proposed change.

Estimated Economic Impact. A carbon dioxide filter is a device placed in the gas line of a beer dispensing system. Its purpose is to filter impurities from carbon dioxide gas so that the impurities do not end up in draft beer. These filters were not prevalent when this regulation was first drafted, and therefore were not included in the items that could be given to retailers. Since the carbon dioxide filters could only be sold to retailers and not given, beer manufacturers/wholesalers became concerned with the integrity of their product as some retailers did not have the same concerns and thus were not willing to purchase the filters.¹

On February 14, 2006, the Department of Alcoholic Beverage Control (Department) issued a guidance document² stating that the Board approved the provision of carbon dioxide filters free of charge. The Board's proposed amendment to this regulation conforms the regulation to this policy that has been in effect since 2006. Thus the proposal will not affect the carbon dioxide filter rule in practice, but will be beneficial in that it will improve clarity for readers of the regulation who have not also seen the guidance document.

Businesses and Entities Affected. The proposed amendment to the regulation merely clarifies, and does not change, an existing rule. The carbon dioxide filter rule potentially affects manufacturers, importers, bottlers, brokers and wholesalers of alcoholic beverages, as well as retail licensees. According to the Department there are over 9,000 such licensed entities in the Commonwealth, the majority of which qualify as small businesses.

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 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 to the regulation merely clarifies, and does not change, an existing rule. Therefore, it does not significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

¹ Source: Department of Alcoholic Beverage Control

² See Circular Letter 06-01: <http://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=3394>

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

Summary:

The amendment allows any manufacturer, importer, bottler, broker, or wholesaler of alcoholic beverages to provide carbon dioxide filters to retail licensees without charge and to install such filters in the retailer's draft beer lines.

3VAC5-30-60. Inducements to retailers; beer and wine tapping equipment; bottle or can openers; spirits back-bar pedestals; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.

A. Any manufacturer, importer, bottler, broker, or wholesaler, or its representative, may sell, rent, lend, buy for, or give to any retailer, without regard to the value thereof, the following:

1. Draft beer or wine knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall

not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer or wine; and

2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:

- a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;
- b. Gas pressure gauges (may be sold at cost);
- c. Draft arms or standards;
- d. Draft boxes; ~~and~~
- e. Refrigeration equipment or components thereof; and
- f. Carbon dioxide filters, which may be provided and installed without cost.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Any manufacturer, importer, bottler, broker, or wholesaler, or their representatives, may sell to any retailer and install in the retailer's establishment dispensing accessories (such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves) and carbon dioxide (and other gases used in dispensing equipment) at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed \$20. Openers in excess of \$20 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Any manufacturer of spirits may sell, lend, buy for or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising matter regarding spirits may appear.

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F. Manufacturers of alcoholic beverages and their authorized vendors or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees glasses or paper or plastic cups upon which advertising matter regarding alcoholic beverages may appear.

G. Manufacturers, importers, bottlers, brokers, or wholesalers of alcoholic beverages, or their representatives, may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with 3VAC5-30-80. Manufacturers, importers, bottlers, brokers, and wholesalers, or their representatives, may provide advertising materials to any retail licensee that have been customized for that retail licensee (including the name, logo, address, and website of the retail licensee) provided that such advertising materials must:

1. Comply with all other applicable regulations of the board;
2. Be for interior use only;
3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and
4. Be made available to all retail licensees.

H. Any manufacturer, importer, bottler, broker, or wholesaler of wine, beer, or spirits, or its representatives, may sell, lend, buy for, or give to any retail licensee clip-ons and table tents.

I. Any manufacturer, importer, bottler, broker, or wholesaler of alcoholic beverages, or their representatives, may clean and service, either free or for compensation, coils and other like equipment used in dispensing alcoholic beverages, and may sell solutions or compounds for cleaning alcoholic beverage glasses, provided the reasonable open market price is charged.

J. Any manufacturer, importer, bottler, or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.

K. Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4.1-216 A of the Code of Virginia, wholesaler, or retailer who violates, attempts to violate, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4.1-328 of the Code of Virginia.

V.A.R. Doc. No. R17-4768; Filed November 14, 2016, 6:08 p.m.

Fast-Track Regulation

Title of Regulation: 3VAC5-30. Tied-House (amending 3VAC5-30-90).

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 11, 2017.

Effective Date: February 3, 2017.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Section 4.1-101 of the Code of Virginia establishes the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board. Section 4.1-103 of the Code of Virginia enumerates the powers of the board, which includes the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia). Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt reasonable regulations that it deems reasonable to carry out the provisions of the Alcoholic Beverage Control Act, and to amend or repeal such regulations and provides that the board promulgate regulations that may displace competition in the marketplace.

Purpose: The amendment is intended to be responsive to the regulated business community; promulgated in response to the petition for rulemaking submitted by the Virginia Wine Wholesalers Association. The amendment to 3VAC5-30-90 will have no impact on the health, safety, or welfare of citizens.

Rationale for Using Fast-Track Rulemaking Process: This amendment is not expected to be controversial because the board sought public comment in response to the petition for rulemaking submitted by the Virginia Wine Wholesalers Association, and all responses received were favorable; no registered opposition to the regulatory amendment was received.

Substance: The amendment provides that wholesalers of wine products are permitted to establish differentiated pricing between on-premises retail licensees and off-premises retail licensees for the same product and package.

Issues: The primary advantage of this regulatory action is it allows businesses more flexibility in pricing structures of products sold, based upon the business model of the purchasing customer. According to the petitioners, this change will allow for a distribution structure that is modernized and consistent in the wine market segment in other jurisdictions. There are no disadvantages to the agency or the Commonwealth because tax revenue collections are not affected. A pertinent consideration for the regulated community is that long-standing nondiscriminatory pricing is altered, but the public comment period revealed no opposition to the amendment.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to permit wholesale wine licensees to differentiate in product pricing between retail establishment purchasers with on-premises and off-premises privileges.

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

Estimated Economic Impact. The current regulation limits the ability of wine and beer wholesalers from differentiating pricing between retail off-premises and retail on-premises privilege licensees. The Board was petitioned by the Virginia Wine Wholesalers Association to consider amending the regulation section 3VAC5-30-90; Price Discrimination, Inducements, to allow for differentiated pricing between off-premises and on-premises accounts. The Board proposes an amendment that would permit licensed wine wholesalers to establish differentiated pricing between on-premises and off-premises retail licensees. The amendment does not pertain to beer wholesalers.

The proposed amendment will enable wholesale wine licensees to have greater flexibility in how they choose to price their products. This may enable these firms to adjust prices in a manner that increases profits. Wholesalers will likely seek to determine if one of the two types of retail establishment purchasers (on-premises and off-premises) is more sensitive to price changes than the other; in other words, more likely to increase purchases with a lower price and reduce purchases with a higher price.¹ If wholesalers determine that one of the types of retail establishment purchasers is more price sensitive, they will charge a lower price to that type than to the less price sensitive type. The more price sensitive type may benefit from lower prices, while the less price sensitive type may face higher prices.

Businesses and Entities Affected. The proposed amendment affects the 14,000+ retail on-premises and retail off-premises Alcoholic Beverage Control licensees and the 350 wholesale wine licensees in the Commonwealth, most of which are small businesses.²

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

Projected Impact on Employment. The proposed amendment would not likely significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment may enable wholesale wine licensees to increase profits by enabling additional flexibility in product pricing.

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 allows wholesale wine licensees to charge one price to small retail off-premises privilege licensees and a different price to small on-premises privilege licensees. Wholesalers will likely increase prices for the type they determine to be less price sensitive, and lower prices for the type they determine to be more price sensitive. Thus the cost of wine purchases from wine wholesalers will likely increase for the less price sensitive type and decrease for the more price sensitive type.

Alternative Method that Minimizes Adverse Impact. Though the cost of wine purchases will likely increase for the less price sensitive type of Alcoholic Beverage Control retail licensee, there is no apparent alternative method that will reduce that adverse impact and still meet the intended policy goal with its associated benefits.

Adverse Impacts:

Businesses. The proposed amendment allows wholesale wine licensees to charge one price to retail off-premises privilege licensees and a different price to on-premises privilege licensees. Wholesalers will likely increase prices for the type they determine to be less price sensitive.

Localities. The proposed amendment does not adversely affect localities.

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

¹ In the terminology of economists, those who are more price sensitive are said to have relatively elastic demand, and those who are less price sensitive are said to have relatively inelastic demand.

² Data source: Department of Alcoholic Beverage Control

Agency's Response to Economic Impact Analysis: The Department of Alcoholic Beverage Control concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendment allows wine wholesalers to differentiate pricing between retail off-premises privilege licensees and retail on-premises privilege licensees.

3VAC5-30-90. Price discrimination; inducements.

A. No wholesale wine or beer licensee shall discriminate in price of alcoholic beverages between different retail purchasers except where the difference in price charged by such wholesale licensee is due to:

1. Acceptance or rejection by a retail purchaser of terms or conditions affecting a price offer, including a quantity discount, as long as such terms or conditions are offered on an equal basis to all retailers;
2. A bona fide difference in the cost of sale or delivery; or

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3. The wholesale licensee charging a lower price in good faith to meet an equally low price charged by a competing wholesale licensee on a brand and package of like grade and quality.

Where such difference in price charged to any such retail purchaser does occur, the board may ask for and the wholesale licensee shall furnish written substantiation for the price difference.

B. Notwithstanding subsection A of this section, wholesale wine licensees may differentiate in the pricing between retail purchasers with on-premises and off-premises privileges. However, there shall be no discrimination in pricing among retail licensee purchasers with on-premises privileges and no discrimination in pricing among retail licensee purchasers with off-premises privileges, unless the conditions in subsection A of this section are present.

C. No person holding a license authorizing the sale of alcoholic beverages at retail shall knowingly induce or receive a discrimination in price prohibited by this section.

VA.R. Doc. No. R16-24; Filed November 21, 2016, 4:35 p.m.

Fast-Track Regulation

Title of Regulation: **3VAC5-60. Manufacturers and Wholesalers Operations (amending 3VAC5-60-80).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 11, 2017.

Effective Date: February 3, 2017.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia); § 4.1-111 of the Code of Virginia authorizes the board to amend or repeal regulations adopted by it in accordance with the Administrative Process Act; and § 4.1-212 of the Code of Virginia grants the board the authority to adopt a regulation governing the solicitation of mixed beverage licensee by representatives of the spirits industry.

Purpose: The purpose of the amendment is to remove the incorrect fee amount because the regulation was not updated when § 4.1-230 of the Code of Virginia was amended and the fee was increased. The amendment has no adverse impact on the health, safety, or welfare of the citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial because it is already in practice and does nothing but align the regulation with the

existing language in the Code of Virginia. Individuals who are permitted under this amendment are already paying the statutory fee. Additionally, by eliminating the dollar amount, the regulation and Code of Virginia will not be in conflict if the statute increases the fee in the future.

Substance: The amendment is merely a housekeeping issue to remove an outdated fee from 3VAC5-60-80 B 1 b.

Issues: The primary advantage for the agency and regulated community is to amend the current language and conformity with § 4.1-230 E of the Code of Virginia. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to remove language from this regulation that conflicts with statute.

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

Estimated Economic Impact. The current regulation states that the annual permit fee for representatives of manufacturers of spirits to solicit mixed beverage licensees to sell their product is \$300. This conflicts with § 4.1-230 of the Code of Virginia¹ which lists the fee as \$390. When statutes and regulations are in conflict, the statutes apply. Thus the effective fee is \$390. The Board's proposal to remove the specification of the fee from the regulation would not affect the applicable fee. Nonetheless the proposal would be beneficial in that readers of the regulation would not be misled concerning the effective fee under law.

Businesses and Entities Affected. Since the proposed removal of the incorrect fee from the regulation does not affect the applicable fee, only readers of the regulation who are not aware of the fee in statute are directly affected by the proposal. The fee applies to representatives of manufacturers of spirits. There are 459 permits currently held by representatives of manufacturers of spirits.²

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 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 costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

¹ See <http://law.lis.virginia.gov/vacode/title4.1/chapter2/section4.1-230/>

² Data source: Department of Alcoholic Beverage Control

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

Summary:

The amendment removes an incorrect specific fee so that the regulation reflects that the correct fee for the permit issued to solicit the sale of mixed beverages by representatives of manufacturers of spirits is established pursuant to § 4.1-230 of the Code of Virginia.

3VAC5-60-80. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of spirits.

A. Generally. This section applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this section shall be prohibited.

B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit. To obtain a permit, a person shall:

- a. Register with the board by filing an application on such forms as prescribed by the board;
- b. Pay in advance a the fee of ~~\$300~~, which is subject to proration on a quarterly basis, pursuant to § 4.1-230 E of the Code of Virginia;
- c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and
- d. Be an individual at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice ~~thereof~~ is received and filed with the board; and, until the board receives such notice, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.

D. Permitted activities. Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

- 1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value (in quantities equal to the number of employees of the retail establishment present at the time the items are delivered); and provide film or video presentations of spirits which are essentially educational to licensees and their employees only; and are not for display or viewing by customers;
- 2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, sample container no larger than 375 milliliters of each brand being promoted by the permittee and not sold by the licensee; such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee; and any

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sample containers left with the licensee shall not be sold by the licensee;

3. Promote ~~their~~ his authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of their members and guests, and shall be limited as follows:

- a. To sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;
- b. To displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this section;
- c. To distribution of informational brochures, pamphlets and the like, relating to spirits;
- d. To distribution of novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value;
- e. To film or video presentations of spirits which are essentially educational;
- f. To display at the event the brands being promoted by the permittee;
- g. To rent display booth space if the rental fee is the same as paid by all exhibitors at the event;
- h. To provide its own hospitality, which is independent from activities sponsored by the association or organization holding the event;
- i. To purchase tickets to functions and pay registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and
- j. To make payments for advertisements in programs or brochures issued by the association or organization holding the event if the total payments made for all such advertisements do not exceed \$300 per year for any association or organization holding the event; or

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in 3VAC5-20-20 or 3VAC5-30-80.

E. Prohibited activities. A permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of spirits with a licensee;
2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under that section;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3 of this section;

8. Solicit or promote any brand or brands of spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or

9. Engage in solicitation of spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

1. The board may refuse, suspend, or revoke a permit if it shall have reasonable cause to believe that any cause exists ~~which that~~ would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending, or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.

V.A.R. Doc. No. R17-4769; Filed November 14, 2016, 6:26 p.m.

Fast-Track Regulation

Title of Regulation: 3VAC5-70. Other Provisions (amending 3VAC5-70-20).

Statutory Authority: § 4.1-103, 4.1-111, and 4.1-213 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 11, 2017.

Effective Date: February 3, 2017.

Agency Contact: Shawn Walker, Director of Law Enforcement, Department of Alcoholic Beverage Control,

2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4569, FAX (804) 213-4411, or email shawn.walker@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and § 4.1-111 of the Code of Virginia authorizes the board to amend or repeal regulations adopted by it in accordance with the Administrative Process Act.

Purpose: The purpose of the amendments are to conform to the language found in § 4.1-213 of the Code of Virginia, which was amended by Chapter 787 of the 2014 Acts of Assembly to eliminate the minimum size and one gallon maximum limitations on the size of cider containers. The amendments will have no adverse impact on the health, safety, or welfare of the citizens of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: This proposal is expected to be noncontroversial as the proposed amendment is merely bringing the regulation into conformity with the language of § 4.1-213 of the Code of Virginia related to the permitted sizes of containers of cider. The change in this statute was promulgated at the request of members of the regulated community.

Substance: The amendments remove the minimum container size of 375 milliliters and the maximum size limitation of one-gallon and add language consistent with § 4.1-213 D of the Code of Virginia related to the container sizes of cider.

Issues: The primary advantage for the agency and regulated community is to update the regulation to conform with § 4.1-213 D of the Code of Virginia. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to conform this regulation to statutory language in 2014 legislation concerning the sale of cider.

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

Estimated Economic Impact. Chapter 787 of the 2014 Acts of Assembly¹ added the following to § 4.1-213 of the Code of Virginia:

"Cider containing less than seven percent of alcohol by volume may be sold in any containers that comply with federal regulations for wine or beer, provided such containers are labeled in accordance with Board regulations. Cider containing seven percent or more of alcohol by volume may be sold in any containers that comply with federal regulations for wine, provided such containers are labeled in accordance with Board regulations."

The Board proposes to add this same language to the regulation. Adding the language to the regulation will have no impact on the law in effect, but may be beneficial in that

readers of the regulation may be better informed of the law in effect concerning the permitted sale of cider in the Commonwealth.

Businesses and Entities Affected. As the proposed language is already in statute, adding it to the regulation does not affect anyone beyond potentially enlightening readers of the regulation who are not aware of the statute.

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 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 costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?141+ful+CHAP0787>

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

Summary:

Pursuant to Chapter 787 of the 2014 Acts of Assembly, the amendments expand the sizes of containers in which cider is permitted to be sold in the Commonwealth.

3VAC5-70-20. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. The procedures established by regulations of the board for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of

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detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

B. Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth ~~below in this section~~.

C. Containers of cider ~~shall have a capacity of not less than 12 ounces (375 milliliters if in a metric sized container) nor more than one gallon (three liters if in a metric sized container); containing less than 7.0% alcohol by volume may be sold in any containers that comply with federal regulations for wine and beer provided such containers are labeled in accordance with board regulations. Cider containing 7.0% of more alcohol by volume may be sold in any containers that comply with federal regulations for wine, provided the containers are labeled in accordance with board regulations.~~

D. If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the board.

E. The markup or profit charged by the board shall be \$.08 per liter or fractional part thereof.

F. Persons must be 21 years of age or older to purchase or possess cider.

G. The provisions of subsection A and subdivision B 4 of 3VAC5-60-20 shall not be applicable to the sale of cider by wholesale wine licensees to retail licensees of the board.

V.A.R. Doc. No. R17-4756; Filed November 14, 2016, 6:06 p.m.

developments; (iii) increase the maximum per-development credit limit in the nonprofit pool; (iv) reduce the number of points awarded to applicants for providing a leasing preference to persons on public housing waiting lists; (v) for both elderly and family developments, implement a new sliding point scale for developments located in areas of economic opportunity, defined based upon census data, and delete language limiting points to census tracts with no other such development; (vi) define permissible uses of community rooms receiving points; (vii) revise amenity point requirements for certain windows and glass doors, internet service, and bath vent fans; (viii) increase points for developments with project-based vouchers and meeting listed criteria; (ix) extend points for providing preference to persons with developmental disabilities to an additional existing category of developments; (x) increase points for EarthCraft and LEED Gold developments; (xi) eliminate points for EarthCraft Platinum; (xii) provide points for certain developments with tenant utility monitoring and benchmarking; (xiii) increase points for developments applying for both 4.0% and 9.0% credits; (xiv) reduce developer experience points based on penalties for certain nonperformance; (xv) provide additional points for rental assistance demonstration deals competing in the local housing authority pool; (xvi) delete the 20% limit on credits in any pool for developments for the elderly; and (xvii) make other miscellaneous administrative or clarifying changes.

13VAC10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: 13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-50, 13VAC10-180-60).

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: January 1, 2017.

Agency Contact: Paul M. Brennan, General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5798, or email paul.brennan@vhda.com.

Summary:

The amendments (i) update the per unit cost limits; (ii) set a maximum permissible minimum income requirement for tenants receiving rental assistance that is applicable to all

development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least \$10,000 per unit for developments financed with tax-exempt bonds and \$15,000 per unit for all other developments.

Any application that exceeds the cost limits set forth below in subdivisions 1, 2, and 3 shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

1. Inner Northern Virginia. The Inner Northern Virginia region shall consist of Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and City of Falls Church. The total development cost of proposed developments in the Inner Northern Virginia region may not exceed (i) for new construction or adaptive reuse: ~~\$335,475~~ \$387,809 per unit plus up to an additional ~~\$37,275~~ \$43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition/rehabilitation: ~~\$292,875~~ \$338,564 per unit.

2. Prince William County, Loudoun County, ~~and~~ Fauquier County, ~~Manassas City, and Manassas Park City~~. The total development cost of proposed developments in Prince William County, Loudoun County, ~~and~~ Fauquier County, ~~Manassas City, and Manassas Park City~~ may not exceed (i) for new construction or adaptive reuse: ~~\$249,210~~ \$288,087 per unit plus up to an additional \$43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition/rehabilitation: ~~\$175,725~~ \$203,138 per unit.

3. Balance of state. The total development cost of proposed developments in the balance of the state may not exceed (i) for new construction or adaptive reuse: ~~\$186,375~~ \$215,450 per unit plus up to an additional \$43,090 per unit if the proposed development contains underground or structured

parking for each unit or (ii) for acquisition/rehabilitation: ~~\$143,775~~ \$166,204 per unit.

Costs, subject to a per unit limit set by the executive director, attributable to equipping units with electrical and plumbing hook-ups for dehumidification systems [~~and attributable to installing approved dehumidification systems~~] will not be included in the calculation of the above per unit cost limits.

The cost limits in subdivisions 1, 2, and 3 above are ~~2012~~ 2015 fourth quarter base amounts. The cost limits shall be adjusted annually beginning in the fourth quarter of ~~2013~~ 2016 by the authority in accordance with Marshall & Swift cost factors for such quarter, and the adjusted limits will be indicated on the application form, instructions, or other communication available to the public.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority

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to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

~~Effective January 1, 2016, each~~ Each application shall include written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies that apply (or that the applicant expects to apply) with respect to each building or

development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

Each applicant shall commit in the application not to require an annual minimum income requirement that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by tenants receiving rental assistance.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

After receipt of the applications, if necessary, the authority shall notify the chief executive officers (or the equivalent) of

the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments that the authority may own or may intend to acquire, construct and/or rehabilitate.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) that is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and
2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the

board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations that, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are

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later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$750,000 \$950,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

- a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points;

applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

- b. For applications submitted prior to January 1, 2016, written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

- a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

- b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

- c. Any proposed development that is to be located in a revitalization area meeting the requirements of § 36-55.30:2 A of the Code of Virginia. (10 points)

- d. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. ~~(10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)~~ (5 points)

e. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Virginia Housing Trust Fund, funding from VOICE for projects located in Prince William County and donations from unrelated private foundations that have filed an IRS Form 990 (or a variation of such form) or Rural Development for a below-market rate loan or grant; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; (iii) a commitment to donate land, buildings or tap fee waivers from the local government; or (iv) a commitment to donate land (including a below market rate land lease) from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option, with no ownership interest in the applicant, shall not make the donor a principal in the applicant). (The amount of such financing, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

f. Any development subject to (i) HUD's Section 8 or Section 236 ~~programs~~ program or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

g. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of five units or 10% of the units of the proposed development. (10 points)

h. Any proposed elderly development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) ~~with no other elderly tax credit units in such census tract.~~ (25 points). Effective January 1, 2018, any proposed elderly development located in a census tract that has less than a 12% poverty rate (based upon Census Bureau data) (20 points); any proposed elderly development located in a census tract that has less than a 3.0% poverty rate (based upon Census Bureau data) (30 points).

i. Any proposed family development located in a census tract that has less than a 10% poverty rate (based upon

Census Bureau data) ~~with no other family tax credit units in such census tract.~~ (25 points). Effective January 1, 2018, any proposed family development located in a census tract that has less than a 12% poverty rate (based upon Census Bureau data) (20 points); any proposed family development located in a census tract that has less than a 3.0% poverty rate (based upon Census Bureau data) (30 points).

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority [2 (15 points)] ~~1; effective January 1, 2018 (30 points)]~~.

k. Any proposed new construction development (including adaptive ~~re-use~~ reuse and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools [except the at-large pool, 0 points in the at-large pool]). ~~The; the~~ executive director may make exceptions in the following circumstances:

- (1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;
- (2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or
- (3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

l. Any proposed new construction development (including adaptive ~~re-use~~ reuse and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools [except the at-large pool, 0 points in the at-large pool]).

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community/meeting room with a minimum of 749 square feet is provided. (5 points) Community rooms receiving points under this subdivision 3 a (1) (a) may not be used for commercial purposes. [Provided Effective January 1, 2018, provided] that the cost of the community room is not included in eligible basis, the owner may conduct, or contract with a nonprofit provider to conduct, programs or classes for tenants and members

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of the community in the community room, so long as (i) tenants compose at least one-third of participants, with first preference given to tenants above the one-third minimum; (ii) no program or class may be offered more than five days per week; (iii) no individual program or class may last more than eight hours per day, and all programs and class sessions may not last more than 10 hours per day in the aggregate; (iv) cost of attendance of the program or class must be below market rate with no profit from the operation of the class or program being generated for the owner (owner may also collect an amount of reimbursement of supplies and clean-up costs); (v) the community room must be available for use by tenants when programs and classes are not offered, subject to reasonable "quiet hours" established by owner; and (vi) any owner offering programs or classes must provide an annual certification to the authority that it is in compliance with such requirements, with failure to comply with these requirements resulting in a 10-point penalty for three years from the date of such noncompliance for principals in the owner.

(b) If the exterior walls are constructed using the following materials:

(i) Brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) covering 30% or more of the exterior walls. (10 points) and

(ii) If subdivision 3 a (1) (b) (i) above is met, an additional one-fifth point for each percent of exterior wall brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) in excess of 30%. (maximum 10 points) and

(iii) If subdivision 3 a (1) (b) (i) above is met, an additional one-tenth point for each percent of exterior wall covered by fiber-cement board. (maximum 7 points)

(c) If all kitchen and laundry appliances (except range hoods) meet the EPA's Energy Star qualified program requirements. (5 points)

(d) If all the windows and glass doors ~~meet the EPA's Energy Star qualified program requirements~~ are Energy Star labeled for the North-Central Zone or are National Fenestration Rating Council (NFRC) labeled with a maximum U-Factor of 0.27 and maximum solar heat gain coefficient (SHGC) of 0.40. (5 points)

(e) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a ~~SEER~~ seasonal energy efficiency ratio (SEER) rating of 15.0 or more and a ~~HSPF~~ heating seasonal performance factor (HSPF) rating of 8.5 or more or (ii) air conditioning equipment with a SEER rating of 15.0 or more, combined with a gas furnace with an ~~AFUE~~ annual fuel

utilization efficiency (AFUE) rating of 90% or more. (10 points)

(f) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(g) If each bathroom contains only WaterSense labeled faucets and showerheads. (2 points)

(h) If each unit is provided with the necessary infrastructure for high-speed ~~eable, DSL or wireless~~ Internet service. (1 point)

(i) If all the water heaters have an energy factor greater than or equal to 67% for gas water heaters or greater than or equal to 93% for electric water heaters; or any centralized commercial system that has an efficiency performance rating equal to or greater than 95%, or any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points)

(j) If each bathroom is equipped with a WaterSense labeled toilet. (2 points)

(k) ~~For Effective until January 1, 2018, for~~ new construction only, if each full bathroom is equipped with EPA Energy Star qualified bath vent fans. (2 points) Effective January 1, 2018, if each full bathroom is provided either an EPA Energy Star qualified bath vent fan with duct size per manufacturer requirements or a continuous exhaust as part of a dedicated outdoor air system with humidity control. (2 points)

(l) If the development has or the application provides for installation of continuous R-3 or higher wall sheathing insulation. (5 points)

(m) If all cooking surfaces are equipped with fire prevention or suppression features that meet the authority's requirements (as indicated on the application form, instructions, or other communication available to the public). (2 points)

(2) The following points are available to applications electing to serve elderly tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

b. Any development in which (i) the greater of five units or 10% of the units will be assisted by HUD project-

based vouchers (as evidenced by the submission of a letter satisfactory to the authority from an authorized public housing authority (PHA) that the development meets all prerequisites for such assistance) or other form of documented and binding federal or state project-based rent subsidies in order to ensure occupancy by extremely low-income persons; and (ii) the greater of five units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in clause (ii) above must include roll-in showers and roll-under sinks and front control ranges, unless agreed to by the authority prior to the applicant's submission of its application). ~~(50 points)~~ (60 points)

In addition, for any development eligible for the preceding ~~50~~ 60 points, subject to appropriate federal approval, any applicant that commits to providing a first preference on its waiting list for persons with ~~an intellectual or a developmental disability (ID/DD) as confirmed by the Virginia Department of Medical Assistance Services (DMAS) or the Virginia Department of Behavioral Health and Developmental Services (DBHDS)~~ for the greater of five units or 10% of the units. (25 points)

c. Any development in which the greater of five units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard, (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and (iii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)

In addition, for any development eligible for the preceding 30 points, subject to appropriate federal approval, any applicant that commits to providing a first preference on its waiting list for persons with a developmental disability as confirmed by the Virginia Department of Behavioral Health and Developmental Services for the greater of [5 five] units or 10% of the units. (25 points)

d. Any development in which 5.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a

plan submitted as part of the application for credits. (15 points)

e. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for Northern Virginia or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

f. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) U.S. Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development or EarthCraft certified development; [~~30~~ 35] points for a LEED Gold development or EarthCraft Gold development; 45 points for a LEED Platinum development [and an additional 10 points for an EarthCraft certified development] or EarthCraft [~~Platinum development~~]; 45 points for EarthCraft [Gold development [and that performs] tenant utility monitoring and benchmarking.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving [~~30~~ 25] or 45 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis for [~~30~~ 25] points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis.

g. If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

h. [Any ~~Effective until January 1, 2018, any~~] development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus

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0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

i. Any applicant for a development that, pursuant to a common plan of development, is part of a larger development located on the same or contiguous sites, financed in part by tax-exempt bonds. ~~(20~~ (25 points for tax-exempt bond financing of at least 30% of aggregate units, ~~30~~ 35 points for tax-exempt bond financing of at least 40% of aggregate units, and ~~40~~ 45 points for tax-exempt bond financing of at least 50% of aggregate units; such points being noncumulative)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the controlling general partner or managing member of the controlling general partner or managing member for the proposed development have developed:

(1) As controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments. (50 points) or

(2) At least three deals as a principal and have at least \$500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the entity(s) and or person(s), including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including but not limited to: (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in

the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (50 points) or

(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

Applicants receiving points under subdivisions a (1) and a (2) of this subdivision 5 shall have the 50 points reduced [for each principal if the controlling general partner or managing member of the controlling general partner or managing member] in the applicant [that] acted as a principal in a development receiving an allocation of credits from the authority where [:

(a) such principal met the requirements to be eligible for points under 5(a)(1) or (2) and

(b) any of] the following occurred: (i) submission of a Form 8609 application that failed to match the required accountant's cost certification (minus 10 points for two years); (ii) failure to place a rehabilitation development in service by substantial completion (e.g., placed in service by expenditures after two years) (minus 5 points for two years); (iii) more than two requests for final inspection (minus 5 points for two years); [and or] (iv) requests for any deadline extension (minus 1 point for two years).

Applicants receiving points under ~~subdivision 5~~ subdivisions a (1) and a (2) above of this subdivision 5 are not eligible for points under subdivision a of subdivision 1 Readiness, above.

b. Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the ~~time frame~~ timeframe established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

c. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate

individual or individuals connected to the principal attend compliance training as recommended by the authority)

d. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

e. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

f. Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit by 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed).

~~[g. Any applicant that includes a principal that has submitted a subsequent application for a development prior to the issuance of Form 8609 for that development. (minus 10 points for a period of two calendar years after the year in which the subsequent application was submitted)]~~

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (200 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable

standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the proposed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 a may not receive points under subdivision 7 b below. (Up to 50 points, the product of (i) 100 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 b may not receive points under subdivision 7 a ~~above~~. (Up to 25 points, the product of (i) 50 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus one

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point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points. Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision 7 c may not receive bonus points under subdivision 7 d ~~below~~. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision 7 d may not receive bonus points under subdivision 7 c ~~above~~. (60 points; plus five points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

e. Any development participating in the Rental Assistance Demonstration (RAD) program competing in the local housing authority pool will receive an additional 10 points. Applicants must show proof of a commitment to enter into housing assistance payment (CHAP) or a RAD conversion commitment (RCC).

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of 425 points (325 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application that he determines is not submitted in good faith or that he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 40% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within

such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness, and if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

~~Not~~ [Effective until January 1, 2018, not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.]

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the

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remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated, or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may ~~either~~ (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds ~~or~~ (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate ~~or~~ (iii) supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation if in the reasonable discretion of the executive director, it serves the best interest of the plan, or (iv) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to

applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits

requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

If credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

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The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development that were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in

such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) will be assisted by HUD project-based vouchers or another form of documented and binding federal or state project-based rent subsidies in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for either (a) at least 25% of the units in the development or (b) if HUD Section 811 funds are providing the rent subsidies, at least 15% but not more than 25% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

VA.R. Doc. No. R17-4837; Filed November 10, 2016, 9:16 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

<p>REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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Title of Regulation: 14VAC5-45. Rules Governing Suitability in Annuity Transactions (amending 14VAC5-45-10 through 14VAC5-45-40; adding 14VAC5-45-45, 14VAC5-45-47).

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

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

Public Comment Deadline: January 23, 2017.

Agency Contact: Raquel C. Pino, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9873, or email raquel.pino@scc.virginia.gov.

Summary:

The proposed amendments incorporate provisions contained in the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation, including (i) a new definition for suitability information, (ii) additional requirements for providing information to consumers regarding the annuity, (iii) a requirement that agents complete a one-time four-credit continuing education course on annuity products, and (iv) a five-year recordkeeping retention requirement.

AT RICHMOND, NOVEMBER 18, 2016

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2016-00267

Ex Parte: In the matter of
Amending the Rules Governing
Suitability in Annuity Transactions

ORDER TO TAKE NOTICE

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

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

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 45 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Suitability in Annuity Transactions ("Rules"), which amend the Rules set out at 14VAC5-45-10 through 14VAC5-45-40, and add new Rules at 14VAC5-45-45 and 14VAC5-45-47.

The proposed amendments to Chapter 45 are necessary to incorporate provisions contained in the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation. These provisions include a new definition for suitability information, additional requirements for providing information to consumers regarding the annuity, a requirement that agents complete a one-time four-credit continuing education course on annuity products, and a five-year recordkeeping retention requirement.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules set out at 14VAC5-45-10 through 14VAC5-45-40, and add new Rules at 14VAC5-45-45 and 14VAC5-45-47, should

be considered for adoption with a proposed effective date of April 1, 2017.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the Rules Governing Suitability in Annuity Transactions, which amend the Rules set out at 14VAC5-45-10 through 14VAC5-45-40, and add new Rules at 14VAC5-45-45 and 14VAC5-45-47, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the proposed amendments to the Rules, shall file such comments or hearing request on or before January 23, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2016-00267.

(3) If no written request for a hearing on the proposal to amend the Rules as outlined in this Order is received on or before January 23, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(4) The Bureau forthwith shall provide notice to all companies, agencies, and agents licensed by the Commission to sell annuities or variable annuities in Virginia and to all interested persons.

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

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

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

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle.

14VAC5-45-10. Purpose and scope.

The purpose of this chapter is to set forth rules and procedures for recommendations to consumers that result in a

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transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. This chapter shall apply to any recommendation to purchase ~~or~~, exchange, or replace an annuity made to a consumer by an agent, or insurer where no agent is involved, that results in the purchase ~~or~~, exchange, or replacement recommended.

14VAC5-45-20. Definitions.

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

"Agent" or "insurance agent" means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in this Commonwealth.

"Annuity" means a fixed, variable, or modified guaranteed annuity that is individually solicited, whether the product is classified as an individual annuity or group annuity.

"Commission" means the State Corporation Commission.

"Continuing education credit" or "CE credit" means one continuing education credit as defined in § 38.2-1867 of the Code of Virginia.

"Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to § 38.2-1867 of the Code of Virginia.

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

"Insurer" means an insurance company required to be licensed under the laws of this Commonwealth to provide insurance products, including annuities.

"Recommendation" means advice provided by an agent, or an insurer where no agent is involved, to an individual consumer that results in a purchase ~~or~~, exchange, or replacement of an annuity in accordance with that advice.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer if there is no agent, that by reason of the transaction, an existing policy or contract, has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

"Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

1. Age;
2. Annual income;
3. Financial situation and needs, including the financial resources used for the funding of the annuity;
4. Financial experience;
5. Financial objectives;
6. Intended use of the annuity;
7. Financial time horizon;
8. Existing assets, including investment and life insurance holdings;
9. Liquidity needs;
10. Liquid net worth;
11. Risk tolerance; and
12. Tax status.

14VAC5-45-30. Exemptions.

Unless otherwise specifically included, this chapter shall not apply to ~~recommendations~~ transactions involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this chapter;
2. Contracts used to fund:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.);
 - b. A plan described by 26 USC §§ 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer;
 - c. A government or church plan defined in 26 USC § 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 USC § 457 of the Internal Revenue Code;
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - f. Preneed funeral contracts as defined in § 54.1-2800 of the Code of Virginia.

14VAC5-45-40. Duties of insurers and agents.

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, shall have reasonable grounds for believing that the recommendation is

suitable for the consumer on the basis of the facts disclosed by the consumer as to his investments and other insurance products and as to his financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;

2. The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:

a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. The consumer would benefit from product enhancements and improvements; and

c. The consumer has had another annuity exchange or replacement, and, in particular, an exchange or replacement within the preceding 36 months.

B. Prior to the execution of a purchase or exchange, or replacement of an annuity resulting from a recommendation, an agent, or insurer where no agent is involved, shall make reasonable efforts to obtain the consumer's suitability information concerning:

1. The consumer's financial status;

2. The consumer's tax status;

3. The consumer's investment objectives; and

4. Other information used or considered to be reasonable by the agent, or the insurer where no agent is involved, in making recommendations to the consumer.

C. Except as permitted under subsection D of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the

annuity is suitable based on the consumer's suitability information.

D. 1. Except as provided in subdivision 2 of this subsection, neither an agent, nor an insurer where no agent is involved, shall have any obligation to a consumer under subsection A or C of this section related to any recommendation annuity transaction if a consumer:

a. Refuses No recommendation is made;

b. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

c. A consumer refuses to provide relevant suitability information requested by the insurer or agent and the annuity transaction is not recommended;

d. A consumer decides to enter into an insurance annuity transaction that is not based on a recommendation of the insurer or agent; or

e. A consumer fails to provide complete or accurate information.

2. An insurer or agent's recommendation subject to subdivision 1 of this subsection shall be reasonable under all the circumstances actually known to the insurer or agent at the time of the recommendation.

E. An agent, or where no agent is involved the responsible insurer representative, shall at the time of sale:

1. Make a record of any recommendation subject to subsection A of this section;

2. Obtain a customer signed statement, documenting a customer's refusal to provide suitability information, if any; and

3. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's or insurer's recommendation.

F. 1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with subdivisions 3 and 4 of this subsection; or shall establish and maintain such a system, including, but not limited to the following:

a. Maintaining written procedures; and The insurer shall maintain reasonable procedures to inform its agents of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant agent training manuals;

b. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this chapter. The insurer shall establish standards for agent product training and shall maintain reasonable procedures to require its agents to comply with the requirements of 14VAC5-45-45;

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c. The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its agents;

d. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

e. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subdivision prevents an insurer from complying with this subdivision by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

f. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

2. An agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this chapter, or shall establish and maintain such a system, including, but not limited to:

- a. Maintaining written procedures; and
- b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

3. An insurer may contract with a third party, including an agent or independent agency, to establish and maintain a system of supervision as required by subdivision 1 of this subsection with respect to agents under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision 3 of this subsection is performing the functions required under subdivision 1 of this subsection and shall take action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

a. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

b. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision 3 of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to subdivision 3 of this subsection and that complies with the requirements to supervise in subdivision 4 of this subsection shall have fulfilled its responsibilities under subdivision 1 of this subsection.

6. An insurer, agent, or independent agency is not required by ~~subdivisions~~ subdivision 1 or 2 of this subsection to:

- a. Review, or provide for review of, all agent-solicited transactions; or
- b. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer, agent, or independent agency.

7. An agent or independent agency contracting with an insurer pursuant to subdivision 3 of this subsection, when requested by the insurer pursuant to subdivision 4 of this subsection, shall promptly give a certification as described in subdivision 4 or give a clear statement that it is unable to meet the certification criteria.

8. No person may provide a certification under subdivision 4 a of this subsection unless:

- a. The person is a senior manager with responsibility for the delegated functions; and
- b. The person has a reasonable basis for making the certification.

G. An agent shall not dissuade or attempt to dissuade a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;
2. Filing a complaint; or
3. Cooperating with the investigation of a complaint.

H. An agent shall comply with the following FINRA requirements:

1. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this chapter. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commission's

ability to enforce (including investigate) the provisions of this chapter.

2. For subdivision 1 of this subsection to apply, an insurer shall:

- a. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
- b. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

~~E. I. Compliance with the National Association of Securities Dealers Conduct Rules~~ (http://nasd.complinet.com/nasd/display/display.html?rbi_d=1489&element_id=1159000466) FINRA Rule 2111 (http://finra.complinet.com/en/display/display_main.html?rbi_d=2403&element_id=9859) pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commission's ability to enforce the provisions of this chapter.

14VAC5-45-45. Agent training.

A. An agent shall not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided product specific training standards and materials to comply with this subsection.

B. Training requirements are as follows:

1. An agent who engages in the sale of annuity products shall complete a one-time four-credit training course approved as continuing education by the Insurance Continuing Education Board in accordance with § 38.2-1867 of the Code of Virginia and provided by the Insurance Continuing Education Board approved education provider.
2. Agents who hold a life insurance line of authority and who desire to sell annuities shall complete the requirements of this subsection by January 1, 2018. Individuals who obtain a life insurance line of authority on or after January 1, 2018, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
3. The minimum length of the training required under this subsection shall be sufficient to qualify for at least four CE credits, but may be longer.
4. The training required under this subsection shall include information on the following topics:
 - a. The types of annuities and various classifications of annuities;
 - b. Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers;

d. The application of income taxation of qualified and nonqualified annuities;

e. The primary uses of annuities; and

f. Appropriate sales practices and replacement and disclosure requirements.

5. Providers of courses intended to comply with this subsection shall cover all topics listed in subdivision 4 of this subsection and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to those in subdivision 4 of this subsection.

6. A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this Commonwealth and comply with the rules and guidelines applicable to agent continuing education courses as set forth in § 38.2-1867 of the Code of Virginia.

7. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with § 38.2-1867 of the Code of Virginia.

8. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with § 38.2-1867 of the Code of Virginia.

9. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this Commonwealth.

10. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commission-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

14VAC5-45-47. Recordkeeping.

A. Insurers, agencies, and agents shall maintain or be able to make available to the commission records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an agent.

B. Records required to be maintained by this chapter may be maintained in paper, photographic, micro-process, magnetic,

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mechanical, or electronic media or by any process that accurately reproduces the actual document.

V.A.R. Doc. No. R17-4899; Filed November 19, 2016, 4:32 p.m.

Proposed Regulation

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

Title of Regulation: 14VAC5-400. Rules Governing Unfair Claim Settlement Practices (amending 14VAC5-400-10 through 14VAC5-400-80; adding 14VAC5-400-25, 14VAC5-400-90, 14VAC5-400-100, 14VAC5-400-110).

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-510 of the Code of Virginia.

Public Hearing Information:

For casualty insurers and interested persons - January 10, 2017 - 9 a.m. - State Corporation Commission, Tyler Building, 1300 East Main Street, 2nd Floor Courtroom, Richmond, VA 23219

For life and health insurers and interested persons - January 12, 2017 - 9 a.m. - State Corporation Commission, Tyler Building, 1300 East Main Street, 2nd Floor Courtroom, Richmond, VA 23219

Public Comment Deadline: January 31, 2017.

Agency Contact: Katie Johnson, Policy Advisor, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, 6th Floor, Richmond, VA 23219, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9688, FAX (804) 371-9873, or email katie.johnson@scc.virginia.gov.

Summary:

The proposed amendments follow closely the National Association of Insurance Commissioners' Unfair Claims Settlement Practices Act, Unfair Property/Casualty Claims Settlement Practices Model Regulation, and Unfair Life, Accident and Health Claims Settlement Practices Model Regulation. The proposed amendments (i) set forth claims settlement standards that are specific to automobile insurance, property policies, accident and sickness insurance, life insurance, and annuities; (ii) include clear compliance standards for all insurers and claim settlement standards that are applicable specifically to property policies, accident and sickness insurance, life insurance, and annuities; and (iii) clarify that 14VAC5-400 applies to all insurance policies issued in Virginia, except workers' compensation, title insurance, and fidelity and surety insurance.

AT RICHMOND, NOVEMBER 14, 2016
COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. INS-2016-00265

Ex Parte: In the matter of
Amending the Rules Governing
Unfair Claim Settlement Practices

ORDER TO TAKE NOTICE

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

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

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 400 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Unfair Claim Settlement Practices" ("Rules"), which amend the Rules at 14VAC5-400-10 through 14VAC5-400-80, and add new Rules at 14VAC5-400-25 and 14VAC5-400-90 through 14VAC5-400-110.

The amendments to Chapter 400 are necessary to conform the Rules to the National Association of Insurance Commissioners' Unfair Claims Settlement Practices Act (MDL-900), Unfair Property/Casualty Claims Settlement Practices Model Regulation (MDL-902), and Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (MDL-903). These amendments clarify that Chapter 400 applies to all insurance policies issued in the Commonwealth of Virginia – except policies of workers' compensation insurance, title insurance, and fidelity and surety insurance – including those policies that are issued by health maintenance organizations, dental maintenance organizations, dental provider organizations, health service plans, accident and sickness insurers, and dental and optometric service plans. In addition, the amendments set forth claims settlement standards that are specific to automobile insurance, property policies, and accident and sickness insurance, life insurance and annuities.

NOW THE COMMISSION is of the opinion that the Bureau's proposal to amend the Rules at 14VAC5-400-10 through 14VAC5-400-80, and add new Rules at 14VAC5-400-25 and 14VAC5-400-90 through 14VAC5-400-110, should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Unfair Claims Settlement Practices," which amend the Rules at 14VAC5-400-10 through 14VAC5-400-80, and add new Rules at 14VAC5-400-25 and 14VAC5-400-90 through 14VAC5-400-110, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the proposed amendments, shall file such comments or hearing request on or before January 31, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2016-00265.

(3) The Bureau shall hold two meetings during the comment period in order for insurers and interested persons to address questions about the proposed Rules to the Bureau. The meeting for property and casualty insurers and interested persons will be held on Tuesday, January 10, 2017, and the meeting for life and health insurers and interested persons will be held on Thursday, January 12, 2017. Each meeting shall be held from 9 a.m. to 12 p.m. in the Commission's second floor courtroom, located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

(4) If no written request for a hearing on the proposal to amend the Rules as outlined in this Order is received on or before January 31, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(5) The Bureau forthwith shall provide notice of the proposal to amend the Rules by sending, by e-mail or U.S. mail, a copy of this Order, together with the proposal, to all insurers licensed by the Commission to operate in the Commonwealth of Virginia, except for insurers licensed exclusively to write workers' compensation insurance, title insurance or fidelity and surety insurance, as well as all interested persons.

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

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

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

(9) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Kiva B. Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle and Deputy Commissioner Rebecca Nichols.

14VAC5-400-10. Scope Purpose and scope.

~~This~~ The purpose of this chapter defines certain is to set forth minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claim settlement practices for the acknowledgment, investigation, and disposition of claims arising under insurance policies issued pursuant to the laws of the Commonwealth of Virginia. This chapter applies to all persons ~~as hereinafter defined in 14VAC5-400-20~~ and to all insurance policies ~~and insurance contracts~~ except policies of workers' compensation insurance, title insurance, and fidelity and surety insurance ~~and contracts or plans for future hospitalization, medical, surgical, dental, optometric or legal services. This chapter is not exclusive, and other acts, not herein specified, may also be deemed to be a violation of the Unfair Trade Practices Act (§ 38.2-500 et seq. of the Code of Virginia).~~

14VAC5-400-20. Definitions.

~~The definition of "person" contained in § 38.2-501 of the Code of Virginia shall apply to this chapter and, in addition, where used in this chapter following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:~~

"Agent" means any ~~individual, corporation, association, partnership or other legal entity~~ person authorized to represent an insurer with respect to a claim;.

"Claim" means a demand for payment by a claimant and does not mean an inquiry concerning coverage;.

"Claimant" means ~~either a first party claimant, a third party claimant, or both, and includes such claimant's a designated legal representative and includes a member of the claimant's immediate family, or any other representative designated by the claimant;~~

"Commission" means the State Corporation Commission ~~of the Commonwealth of Virginia;~~

"Documentation" includes all pertinent communications, including electronic communications and transactions, data, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.

"Estimate" means a written statement of the cost of repairs to an automobile or to property, including any supplements.

"Explanation of benefits" means any form provided by any insurer that explains the amounts covered under a policy or

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plan and shows the amounts payable by a covered person to a health care provider.

"First party claimant" means an ~~individual, corporation, association, partnership or other legal entity asserting insured, a beneficiary, a policy owner, or an annuitant who asserts a right to payment under an insurance policy or insurance contract issued to such individual, corporation, association, partnership or other legal entity arising out of the occurrence of the contingency or loss covered by such policy or contract;~~

"Insured" means a person covered by an insurance policy.

"Insurer" means a person licensed to issue or ~~who that issues any insurance policy or insurance contract in this Commonwealth and or any third party acting on its behalf.~~ Insurer shall also include surplus lines brokers;

"Investigation" means all activities of an insurer ~~directly or indirectly related to the determination of liability and extent of loss under coverages afforded by an insurance policy or insurance contract; used to make a determination that the claim should be paid, denied, or closed.~~

"Notification of claim" means any notification, whether in writing or other means acceptable under the terms of the insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

"Person" has the same meaning as defined in § 38.2-501 of the Code of Virginia.

"Policy" means insurance policy, contract, certificate of insurance, evidence of coverage, or annuity.

"Proof of loss" means all necessary documentation reasonably required by the insurer to make a determination of benefit or coverage.

"Provider" means any person providing health care services.

"Third party claimant" means any ~~individual, corporation, association, partnership or other legal entity~~ person asserting a claim against any ~~individual, corporation, association, partnership or other legal entity~~ an insured or a provider filing a claim on behalf of an insured under an insurance policy ~~or insurance contract of an insurer;~~

~~"Workers' Compensation insurance" includes, but is not limited to, Longshoremen's and Harbor Workers' Compensation.~~

14VAC5-400-25. Compliance standards.

It shall be a violation of this chapter if any person:

1. Willfully violates any provision of this chapter; or
2. Commits a violation of any provision of this chapter with such frequency as to indicate a general business practice.

14VAC5-400-30. File and record documentation.

~~The~~ A. An insurer's claim files shall be subject to examination by the ~~Commission or by its duly appointed designees~~ commission. ~~Such files shall contain all notes and~~

~~work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.~~

B. An insurer shall maintain all claim data so that it is accessible and retrievable for examination. Claim data includes the claim number, line of coverage, date of loss and date received, as well as date of payment of the claim, date of denial, or date closed without payment.

C. Detailed documentation shall be maintained for each claim file in order to permit reconstruction of all transactions relating to each claim.

D. Each document within the claim file shall be noted as to date received, date processed, or date mailed.

E. All data and documentation shall be maintained for all open and closed files for the current year and, at a minimum, the three preceding calendar years.

14VAC5-400-40. Misrepresentation of policy provisions.

~~A. No person shall knowingly obscure or conceal from first party claimants, either directly or by omission, benefits, coverages or other provisions of any insurance policy or insurance contract when such insurer shall fail to fully disclose to a first party claimant all pertinent benefits, coverages, or other provisions are pertinent to a claim of an insurance policy under which a claim is presented and document the claim file accordingly.~~

B. No person shall misrepresent benefits, coverages, or other provisions of any insurance policy when such benefits, coverages, or other provisions are pertinent to a claim.

~~C. No insurer shall deny a claim for failure of a first party claimant to submit to physical examination or for failure of a the first party claimant to exhibit the property which is the subject of the claim without proof of demand by such insurer and unfounded refusal by a claimant to do so unless there is documentation of breach of the policy provisions in the claim file.~~

~~C. D. No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a deny a claim based on the failure of a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with required by the policy provisions unless the failure to comply with such time limit in fact the notice requirements prejudices the insurer's rights.~~

~~D. E. No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment include with any payment or in any accompanying correspondence that payment is "final" or "a release" of any claim unless the policy limit has been paid or a compromise settlement has been agreed to by the claimant.~~

~~E. F. No insurer shall issue checks or drafts a payment in partial settlement of a loss or claim under for a specific coverage which contain that contains language that purports~~

purporting to release the insurer or ~~its insured~~ the first party claimant from its total liability.

14VAC5-400-50. ~~Failure to acknowledge~~ Acknowledgment of pertinent communications.

A. ~~Every An~~ An insurer, upon receiving notification of a claim shall, within 10 ~~working~~ calendar days, acknowledge the receipt of such notice to the first party claimant unless payment is made within such period of time. Acknowledgment may be sent to a provider claimant. If an ~~acknowledgement~~ acknowledgment is made by means other than writing, an appropriate notation of such ~~acknowledgement~~ acknowledgment shall be made in the claim file of the insurer and dated. Notification given by a claimant to an agent of an insurer shall be notification to the insurer.

B. ~~Every insurer, upon~~ Upon receipt of any inquiry from the ~~Commission~~ commission respecting a claim, an insurer shall, ~~within 15 working days of receipt of such inquiry,~~ furnish an adequate a complete response to the inquiry within 14 calendar days of receipt.

C. An appropriate reply shall be made within 10 ~~working~~ calendar days on all other pertinent communications from a claimant ~~which that~~ that reasonably suggest that a response is expected.

D. ~~Every insurer, upon~~ Upon receiving notification of a ~~first party~~ claim, an insurer shall promptly provide necessary claim forms, instructions, and reasonable assistance ~~so that first party claimants can,~~ including language translations, in order for the claimant to comply with the policy conditions and the insurer's reasonable requirements; provided, however, every insurer, upon receiving notification of a third party claim, shall promptly provide the third party claimant with all necessary claim forms. Compliance with this ~~subdivision~~ subsection within 10 ~~working~~ calendar days of notification of a claim shall constitute compliance with subsection A of this section.

14VAC5-400-60. Standards for prompt investigation of claims.

A. ~~Unless otherwise specified in the policy, within 15 working~~ Within 10 calendar days after receipt by the insurer of ~~properly executed proofs~~ proof of loss, a first party claimant shall be advised of the acceptance or denial of the claim by the insurer. If the insurer needs more time to determine whether a ~~first party~~ claim should be accepted or denied, it shall notify the first party claimant within ~~45 working~~ 10 calendar days after receipt of the ~~proofs~~ proof of loss giving the reasons more time is needed.

B. ~~Unless otherwise specified in the policy, if~~ If an investigation of a first party claim has not been completed, ~~every an~~ an insurer shall, within 45 calendar days from the date of the notification of a first party claim and every 45 calendar days thereafter, send to the first party claimant a ~~letter~~ written

notice setting forth the reasons additional time is needed for investigation.

14VAC5-400-70. ~~Standards for prompt, fair and equitable settlement of claims~~ Claims settlement standards applicable to all insurers.

A. Any denial of a claim ~~must, including a partial denial,~~ shall be given to a claimant in writing and the claim file of the insurer shall contain a copy of the denial.

B. ~~No An~~ An insurer shall ~~deny a claim unless provide~~ a reasonable written explanation of the basis for such any claim denial ~~is included in the written denial.~~ Specific The written explanation shall provide a specific reference to a policy provision, condition, or exclusion ~~shall be made when a denial is based on such provision, condition or exclusion.~~

C. ~~Insurers An insurer~~ An insurer shall not ~~fail to settle first party claims~~ deny a claim on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

D. In any case where there is no dispute as to coverage or liability, ~~every an~~ an insurer ~~must shall~~ shall offer to a first party claimant, ~~or to a first party claimant's authorized representative,~~ an amount ~~which that~~ that is fair and reasonable as shown by the investigation of the claim, provided the amount so offered is within policy limits and in accordance with policy provisions.

E. An insurer shall not unreasonably refuse to pay any claim in accordance with the provisions of the policy.

F. An insurer shall not compel a first party claimant to institute a suit to recover amounts due under the policy by offering substantially less than the amounts ultimately recovered in a suit brought by the first party claimant.

14VAC5-400-80. ~~Standards for prompt, fair and equitable settlements~~ Claims settlement standards applicable to automobile insurance.

A. Where liability is reasonably clear, ~~insurers an insurer~~ an insurer shall not recommend that a third party ~~claimants~~ claimant make ~~claims a claim~~ a claim under ~~their its own policies~~ policy solely to avoid paying ~~claims a claim~~ a claim under ~~such insurer's insurance~~ the insured's policy or insurance contract.

B. ~~Insurers An insurer~~ An insurer shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop.

C. ~~Insurers An insurer~~ An insurer shall, ~~upon the claimant's request,~~ include the ~~first party claimant's~~ insured's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the ~~first party claimant~~ insured, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

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D. ~~If~~ When an insurer prepares an estimate of the cost of automobile repairs, such the estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located qualified repair shops.

E. When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

F. When an insurer elects to repair and the automobile is ~~in~~ fact repaired in a repair shop selected by the insurer or designated by the insurer as a repair shop that will repair the automobile for the amount offered by the insurer, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

G. An insurer shall provide reasonable notice to a claimant prior to termination of payment for automobile storage charges. The insurer shall provide reasonable time for the claimant to remove the automobile from storage prior to the termination of payment. Unless the insurer has provided a claimant with the name of a specific towing company prior to the claimant's use of another towing company, the insurer shall pay all reasonable towing charges irrespective of the towing company used by the claimant.

H. Prior to termination of payment for transportation or rental reimbursement expenses, the insurer shall provide reasonable time for the claimant to receive payment for automobile repairs or replacement. In the event of a total loss, the insurer shall provide reasonable time for a claimant to acquire a replacement automobile.

14VAC5-400-90. Claims settlement standards applicable to property policies.

When an insurer prepares an estimate of the cost of repairs to property, the estimate shall be an amount for which the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant.

14VAC5-400-100. Claims settlement standards applicable to accident and sickness insurance, life insurance, and annuities.

A. An insurer shall review any notice of claim or proof of loss submitted against one policy to determine if such notice of claim or proof of loss may fulfill the insured's obligation under any other policy issued by that insurer.

B. For accident and sickness claims, an insurer shall provide to a first party claimant an explanation of benefits describing the coverage for which the claim is paid or denied within 10 calendar days of receipt of proof of loss, unless otherwise specified in the policy. An insurer shall provide an

explanation of benefits for prescription drug claims that may be provided in the aggregate no less frequently than quarterly.

C. An insurer shall not arbitrarily or unreasonably deny or delay payment of a claim in which liability has become reasonably clear.

14VAC5-400-110. Severability.

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

VA.R. Doc. No. R17-4967; Filed November 16, 2016, 4:13 p.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Proposed Regulation

Title of Regulation: 16VAC25-200. Virginia Voluntary Protection Program (adding 16VAC25-200-10 through 16VAC25-200-110).

Statutory Authority: §§ 40.1-22 and 40.1-49.13 of the Code of Virginia.

Public Hearing Information:

February 16, 2017 - 10 a.m. - Department of Labor and Industry, Main Street Centre, 600 East Main Street, 12th Floor Conference Room South, Richmond, VA 23219

Public Comment Deadline: February 10, 2017.

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Basis: The Safety and Health Codes Board is authorized by subdivision 5 of § 40.1-22 of the Code of Virginia to "adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), and as may be necessary to carry out its functions established under this title." In making such rules and regulations to protect the occupational safety and health of employees, the board is required to adopt the standard that most adequately assures, to the extent feasible and on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. Section 40.1-22 further provides that the standards shall be at least as stringent as the standards promulgated by P.L. 91-596. In addition to the attainment of the highest degree of health and safety protection for the employee, the board must also consider "the latest available scientific data in the field, the feasibility of the standards, and

experiences gained under this and other health and safety laws."

Chapters 20 and 339 of the 2015 Acts of Assembly added § 40.1-49.13 of the Code of Virginia, which codifies the Virginia Voluntary Protection Program (VPP).

Purpose: The purpose of the proposed action is to adopt those definitions, rules, regulations, and standards required by § 40.1-49.13 of the Code of Virginia and necessary for the operation of the Virginia VPP in a manner that will promote and recognize employer implementation of exceptional safety and health management systems throughout the Commonwealth. Historically, employer adoption of VPP concepts has consistently resulted in injury and illness rates of 50% to 60%, or more, below that of the employer's industry as a whole.

Substance: The proposed regulation provides requirements for a traditional site-based VPP, which has two levels of participation, Star worksite and Merit worksite. Star worksite participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit worksite participants have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to fully meet the VPP Star requirements.

VPP also encompasses the following programs, which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems:

1. Challenge – where employers are guided by challenge administrators through a three-stage process intended to prepare a company to achieve VPP Star status;
2. Site-based construction – for long-term construction sites;
3. Mobile workforce – for employers that move from site to site; and
4. Corporate – designed for corporate applicants.

The standards for the VPP include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;
2. Systematic assessment of occupational hazards;
3. Comprehensive hazard prevention, mitigation, and control programs;
4. Employee safety and health training; and
5. Safety and health program evaluation.

The proposed regulation addresses the following issues:

1. Scope, purpose, and applicability
2. Definitions
3. Categories of participation (Star, Merit, Challenge, etc.);

4. Ways to participate (site-based in both general industry and construction, mobile workforce, VPP corporate);

5. Application requirements;

6. Comprehensive safety and health management system requirements;

7. Certification and recertification processes;

8. Onsite evaluations;

9. Annual submissions;

10. Other participation requirements;

11. Enforcement activity at VPP sites; and

12. Withdrawal or termination.

Issues: In Virginia, the Voluntary Protection Program was instituted in 1996 and is patterned after federal OSHA's VPP, which was originally created in 1982. The VOSH Program adopted VPP as a component of DOLI's larger mission to "...make Virginia a better place in which to work, live and conduct business by promoting safe, healthful workplaces, best employment practices...." An employer's membership in VPP is recognized as the nation's and Virginia's highest award that can be bestowed by a government agency to an employer for excellence in occupational safety and health management systems.

Virginia VPP currently recognizes 45 VPP sites employing over 11,000 employees who enjoy the protections and benefits of working in some of the safest and healthiest working conditions in the country. VPP sites also directly impact numerous qualified subcontractors and their employees that work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.

The traditional site-based VPP has two levels of participation, Star worksite and Merit worksite. Star participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit participants are those that have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to fully meet the VPP Star requirements.

VPP also encompasses the following programs, which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems:

1. Challenge – where employers are guided by challenge administrators through a three-stage process, which prepares a company to achieve VPP Star status;

2. Site-based construction – for long term construction sites;

3. Mobile workforce – for employers that move from site to site; and

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4. Corporate - designed for corporate applicants.

This regulation applies to Virginia employers and employees who volunteer to participate in Virginia VPP. As such, there is no negative impact on Virginia's employers that are not program participants.

Program participants do incur costs associated with developing and implementing safety and health management systems that often exceed current requirements in VOSH laws, standards, and regulations; however, the costs are incurred on a voluntary basis.

Employers that take proactive steps to improve safety and health protections for employees can realize significant savings and avoided costs associated with workplace injuries and illnesses. In 2015, the National Safety Council reported that the average cost of a medically consulted occupational injury in 2013 was \$42,000. In 2013, the Washington Post reported that the average net profit margin for all U.S. companies was 8.2%. With a net profit margin of 8.2%, a business would need to generate \$512,195 in new revenues to simply pay for the costs of that single injury.

The Department of Labor and Industry tracks injury and illness rates for each VPP site on an annual basis. Virginia VPP participating worksites average more than 60% lower injury and illness rates than their nonparticipating counterparts in their respective industries. Virginia VPP helps employers identify and correct occupational hazards in a proactive and cooperative approach that reduces or eliminates debilitating injuries, illnesses, and fatal accidents suffered by Virginia's employees. Nationally, recordable injury and illness rates for VPP sites have averaged 50% below that of other worksites in their industry.

VPP Star sites regularly report decreased bottom line expenditures, which are associated with both drastically reduced injury and illness rates and improved productivity and employee morale. Reducing private sector employer costs associated with injuries, illnesses, and fatal accidents enhances a company's economic viability and competitiveness and increases available capital for reinvestment, expansion, and new hiring.

Virginia VPP worksites have demonstrated over many years that VPP participation will:

1. Substantially reduce workplace injuries and illnesses;
2. Reduce workers' compensation costs;
3. Result in a more highly trained and experienced workforce;
4. Improve company productivity; and
5. Promote competitiveness in the marketplace.

VPP is available to private and public sector employers of all sizes. For example, it includes the Dominion Power North Anna nuclear facility, which has almost 1,000 employees, as well as Veritiv-Lynchburg with approximately 10 employees. A small sample of other participants in the Virginia VPP

include: Delta Airlines, Miller Coors, Raytheon, Eastman Chemical Company, and International Paper.

Virginia was the first VPP in the country to recognize state correctional institutions as VPP members – Augusta and Lunenburg Correctional Facilities of the Virginia Department of Corrections (VADOC). Both facilities have consistently incurred lower workers' compensation costs than other comparable VADOC sites and have significantly lower injury and illness rates than the national rates for correctional facilities.

VADOC, a participant in the VPP program since 2001, estimates that the Commonwealth saved approximately \$1.5 million at Lunenburg Correctional Center (LCC) between 2002 and 2006. VADOC further estimates that since 2001, based on a 2009 comparative analysis, the five other medium security dormitory-design Virginia correctional centers achieved similar results in VPP to that of LCC. The potential savings may have been approximately \$3 million in direct (insured) costs and \$10.4 million in indirect costs, for a total savings of \$13.4 million. With the program's continued expansion into other state facilities, the Commonwealth could expect increased savings. Other state agencies, as well as local governments, could also experience these benefits from participating in VPP.

Expanding Virginia's VPP will promote safer and healthier work places in Virginia by using a proactive, cooperative approach between employers, employees, and Virginia government, rather than a punitive one. The department benefits from this cooperative relationship by having exemplary sites to lead and guide other employers to improve their occupational safety and health performance.

Once a site has qualified and successfully submitted an application for consideration in the VPP Star program, final approval requires an intensive weeklong onsite evaluation by a VOSH VPP team. Final approval is determined by DOLI's Commissioner. VPP participants are exempt from regular VOSH programmed compliance inspections while they maintain their VPP status. Each VPP member site is required to be recertified by an onsite evaluation team of safety and health professionals every three to four years to remain in VPP.

Adopting a regulation for the operation of VPP and establishing a formal and permanent structure for VPP will also assist DOLI in its pursuit of several bold initiatives it hopes will greatly enhance safety and health protections for Virginia's workers.

First, DOLI is using VPP staffing resources to work cooperatively with the Virginia Associated General Contractors (AGC) to establish a pilot strategic partnership, known as Virginia BEST (Building Excellence in Safety and Health Training) to encourage and recognize construction contractors that voluntarily implement extensive safety and health management systems to benefit construction workers. Virginia BEST is a modified version of the Challenge

concept where employers are guided by Challenge administrators through a three-stage process to achieving exemplary safety and health management systems.

Second, DOLI is developing a pilot strategic partnership with the Virginia Department of Corrections (VADOC) to substantially increase VADOC participation in VPP. The VADOC partnership will use Challenge concepts as well.

Finally, DOLI is working to expand the scope of VPP by implementing a Virginia unique version of the OSHA Challenge Program, which would establish three levels of participation for employers wishing to enhance their safety and health management systems.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 339 of the 2015 Acts of Assembly, the Safety and Health Codes Board (Board) proposes to promulgate regulations for the Voluntary Protection Program (VPP).

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

Estimated Economic Impact. Chapter 339 of the 2015 Acts of Assembly codified VPP and required the Board to adopt regulations necessary for the program.¹ Pursuant to the statutory mandate, the Board proposes to promulgate regulations addressing the operation and administration of the program. VPP promotes effective worksite-based safety and health. In VPP, management, labor, and the Department of Labor and Industry (DOLI) establish cooperative relationships at workplaces that have implemented a comprehensive safety and health management system. Participants may terminate VPP status at any time for any reason.

VPP is not new in Virginia. According to DOLI, it was instituted in 1996 and is patterned after the federal VPP model, which was originally created in 1982. An employer's membership in VPP is recognized as the nation's and Virginia's highest award that can be bestowed by a government agency to an employer for excellence in occupational safety and health management systems. Virginia VPP currently recognizes 46 VPP sites employing over 11,000 employees. VPP sites also directly impact numerous qualified subcontractors and their employees who work at VPP sites as those companies are required to provide safety and health protections to their employees that are the equivalent to the protections provided to VPP site employees.

The traditional site-based VPP has two levels of participation, Star worksite and Merit worksite. Star participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit participants are those that have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to

fully meet the VPP Star requirements. VPP also encompasses the following programs which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems: Challenge – where employers are guided by challenge administrators through a three stage process, which can prepare a company to achieve VPP Star status; Site-based Construction – for long term construction sites; Mobile Workforce – for employers that move from site to site; and Corporate - designed for corporate applicants.

While VPP participants do incur costs associated with developing and implementing safety and health management systems that often exceed mandatory requirements in laws, standards and regulations, these costs are incurred on a voluntary basis in anticipation of the expected benefits. In general, employers that take proactive steps to improve safety and health protections for employees can realize significant savings and avoided costs associated with workplace injuries and illnesses. According to DOLI, recordable injury and illness rates for VPP sites have averaged 50% below that of other worksites in their industry nationally. Virginia VPP participating worksites average more than 60% lower injury and illness rates than their non-participating counterparts in their respective industries. DOLI further notes that VPP Star sites regularly report decreased bottom line expenditures, which are associated with both drastically reduced injury and illness rates, and improved productivity and employee morale which enhances a company's economic viability and competitiveness, and increases available capital for reinvestment, expansion and new hiring. These claims are supported by results from specific VPP sites including state correctional facilities. Additionally, there is consensus among the stakeholders as to the success of the program at the national level.² In short, the success of VPP appears uncontroverted. Attributing the entire benefits of VPP to the proposed regulation would be inaccurate, however.

The proposed regulation adopts rules for the operation and administration of the program which has been in existence since 1996. The proposed action promulgates the rules and procedures which have been followed in practice for quite some time. Thus, the main economic effect of this regulation is to supplement the recent codification of the program in the statute signaling Virginia's long term commitment to VPP. Without the code and regulation it would have remained largely as a discretionary program, subject to be terminated at any time. With the statutory and regulatory language, employers are assured that if they choose to participate in the program and incur significant costs, the program will not be terminated absent a legislative action. In that sense, the main economic effect of the proposed regulation is to enhance already existing incentives for employers to participate in VPP.

Businesses and Entities Affected. According to DOLI, based on data from 2014, approximately 234,644 establishments employing 3.6 million employees are subject to the Board's

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jurisdiction. Of these, all qualified public and private sector places of employment may participate in the program. Virginia VPP currently recognizes 46 VPP sites employing over 11,000 employees.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. To the extent the proposed regulation increases participation in VPP, compliance with voluntarily agreed upon more stringent health and safety standards and the likely improvements in productivity should have a positive impact on employment.

Effects on the Use and Value of Private Property. To the extent the proposed regulation increases participation in VPP, compliance with voluntarily agreed upon more stringent health and safety standards and the likely reductions in work place injuries or illnesses should have positive impact on asset values of participating companies.

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

Small Businesses:

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

Costs and Other Effects. Less than twenty percent of the employers who may choose to participate in VPP are considered small businesses. The costs and other effects on them are the same as those discussed above.

Alternative Method that Minimizes Adverse Impact. Participation in VPP program is voluntary and is not likely to impose net adverse effects on participating employers.

Adverse Impacts:

Businesses. More than eighty percent of the employers who may choose to participate in VPP are considered non-small businesses. Participation in VPP program is voluntary and is not likely to impose net adverse effects on participating employers.

Localities. Some of the employers who may choose to participate in VPP may be localities. Participation in VPP program is voluntary and is not likely to impose net adverse effects on participating employers.

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

¹ <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0339>

² Promoting Safe Workplaces through Voluntary Protection Programs, Hearing Before the Subcommittee on Workforce Protections Committee on Education and the Workforce, U.S. House of Representatives, June 28, 2012.

Agency's Response to Economic Impact Analysis: The Department of Labor and Industry has no additional comment in response to the economic impact analysis.

Summary:

The proposed regulation establishes the Virginia Voluntary Protection Program (VPP) in accordance with Chapters 20 and 339 of the 2015 Acts of Assembly. The proposed new chapter applies to Virginia employers and employees who volunteer to participate in the program and includes the following requirements for participation: upper management leadership and active and meaningful employee involvement; systematic assessment of occupational hazards; comprehensive hazard prevention, mitigation, and control programs; employee safety and health training; and safety and health program evaluation.

The proposed new chapter addresses (i) categories of participation, such as Star, Merit, and Challenge; (ii) ways to participate, such as site-based in both general industry and construction, mobile workforce, VPP corporate; (iii) application requirements; (iv) comprehensive safety and health management system requirements; (v) certification and recertification processes; (vi) onsite evaluations; (vii) annual submissions; (viii) other participation requirements; (ix) enforcement activity at VPP sites; and (x) withdrawal or termination from VPP.

CHAPTER 200

VIRGINIA VOLUNTARY PROTECTION PROGRAM

16VAC25-200-10. Voluntary participation program.

A. Participation in VPP is strictly voluntary. The applicant that wishes to participate freely submits information to VOSH on its safety and health management system and opens itself to department review.

B. VPP emphasizes trust and cooperation between VOSH, the employer, employees, and employee representatives and is complementary to the department's enforcement activity, but does not take its place. This partnership enables the department to remove participating sites from programmed inspection lists, allowing it to focus inspection resources on establishments in greater need of department oversight and intervention. However, VOSH will continue to investigate valid employee safety and health complaints, referrals, fatalities, accidents, and other significant events at VPP participant sites in accordance with VOSH enforcement procedures.

C. VPP participants develop and implement a systems approach to effectively identify, evaluate, prevent, and control occupational hazards so that injuries and illnesses to employees are prevented.

D. VPP participants are selected based on their written safety and health management system, the effective implementation of this system over time, and their performance in meeting VPP requirements. Not all worksites are appropriate candidates for VPP. At qualifying sites, all personnel are involved in the effort to maintain rigorous, detailed attention to safety and health. VPP participants often mentor other worksites interested in improving safety and

health, participate in safety and health outreach and training initiatives, share best practices, and promote excellence in safety and health in their industries and communities.

E. VPP participants must demonstrate continuous improvement in the operation and impact of their safety and health management systems. Annual VPP self-evaluations help participant's measure success, identify areas needing improvement, and determine needed changes. VOSH onsite evaluation teams verify this improvement.

F. Participation in VPP does not diminish employee and employer rights and responsibilities under VOSH laws, standards, and regulations.

G. The provisions of this chapter are intended to provide solely for the safety, health, and welfare of employees and the benefits thereof shall not run to any applicant, participant, or any other person nor shall a third party have any right of action for breach of any provision of this chapter except as otherwise specifically provided herein.

H. Nothing in this chapter shall be construed to in any way limit the commissioner's discretion to use department personnel and resources in accordance with the powers and duties as set forth in Title 40.1 of the Code of Virginia.

16VAC25-200-20. Definitions.

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

"90-day item" means compliance related issues that must be corrected within a maximum of 90 days, with effective protection provided to employees in the interim.

"Annual evaluation" means a participant's yearly self-assessment to gauge the effectiveness of all required VPP elements and any other elements of the safety and health management system.

"Annual submission" means a document written by a participant and submitted to the department on or before February 15 each year, consisting of the following information: updated names and addresses, the participant's and applicable contractors' injury and illness case numbers and rates, average annual employment and hours worked for the previous calendar year, a copy of the most recent annual evaluation of the safety and health management system, descriptions of significant changes or events, progress made on the previous year's recommendations, Merit or one-year conditional goals (if applicable), and any success stories.

"Applicable contractor" means a contractor whose employees worked at least 1,000 hours for the participant in any calendar quarter within the last 12 months and are not directly supervised by the applicant or participant.

"Challenge" means a voluntary protection program that provides participating employers and workers a three-stage process to work with their designated Challenge administrators to develop and improve their safety and health management program. VOSH-approved volunteer third party

Challenge administrators collaborate with participating employers to improve safety and health management programs through mentoring, training, and progress tracking.

"Challenge administrator" means selected individuals in organizations such as corporations, state agencies, or nonprofit associations that have met VOSH VPP criteria, including dedicated resources to administer the Challenge program for their worksites or members or other organizations' worksites or members. Administrators are involved in the application and review processes. In certain situations as specified by the commissioner, VOSH can serve as a Challenge administrator.

"Commissioner" means the Commissioner of Labor and Industry or his designees.

"Contract employees" means workers who are employed by a company that provides services under contract to the VPP applicant or participant, usually at the VPP applicant's or participant's worksite.

"Days away, restricted, or transfer case incidence rate" or "DART rate" means the rate of all injuries and illnesses resulting in days away from work, restricted work activity, or job transfer. This rate is calculated for a worksite for a specified period of time, usually one to three years.

"Department" means the Department of Labor and Industry.

"Mentoring" means the assistance that a VPP participant provides to another company to improve that site's safety and health management system or prepare it for VPP application or participation.

"Merit goal" means a target for improving one or more deficient safety and health management system elements for a participant approved to the Merit program. A Merit goal must be met in order for a site to achieve Star status.

"Merit program" means a program designed for worksites that have demonstrated the potential and commitment to achieve Star quality but need to further improve their safety and health management system. A worksite may be designated as "Merit" when, during an initial Star certification review, the VOSH review team determines that not all Star requirements are being fully met. In the case of a Merit designation, the participant must complete specified Merit goals in order to achieve Star status and continue in VPP. "Merit" is not a participation level that can be applied for.

"Misclassification" means when an employer improperly classifies a worker as an independent contractor who should in fact be an employee.

"Model system" means an exemplary, voluntarily implemented worker safety and health management system that (i) implements comprehensive safety and health programs that exceed basic compliance with occupational safety and health laws and regulations and (ii) meets the VPP requirements of this chapter.

"One-year conditional goal" means a target for correcting deficiencies in safety and health management system

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elements or sub-elements identified by VOSH during the onsite evaluation of a Star participant.

"Onsite assistance visit" means a visit to an applicant or participant site by agency personnel or other nonenforcement personnel to offer assistance, including help with its application, conduct of a records review, or make general observations about the site's safety and health management system.

"Onsite evaluation" means a visit to an applicant or participant site by a VOSH onsite evaluation team to determine whether the site qualifies to participate, continue participation, or advance within VPP.

"Onsite evaluation report" means a document written by the VOSH onsite evaluation team and consisting of the site report. This document contains the team's assessment of the safety and health management system and the team's recommendation regarding approval of the applicant or reapproval of the participant in VPP.

"Onsite evaluation team" means an interdisciplinary group of VOSH professionals and private industry volunteers who conduct onsite evaluations. The team normally consists of a team leader, a backup team leader, safety and health specialists, and other specialists as appropriate.

"Private industry volunteer" or "PIV" means a volunteer from a VPP site or corporation knowledgeable in safety and health management system assessment, formally trained in the policies and procedures of VPP, and determined by VOSH to be qualified to perform as a team member on a VPP onsite evaluation.

"Recommendations" means suggested improvements noted by the onsite evaluation team that are not requirements for VPP participation but would enhance the effectiveness of the site's safety and health management system. Compliance with VOSH standards is a requirement, not a recommendation.

"Safety and health management system" means a method of preventing worker fatalities, injuries, and illnesses through the ongoing planning, implementation, integration, and control of four interdependent elements: management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training.

"Star program" means the program within VPP designed for participants whose safety and health management systems operate in a highly effective, self-sufficient manner and meet all VPP requirements. Star is the highest level of VPP participation.

"Temporary employee" means an employee hired on a nonpermanent basis by the applicant or participant site.

"Total case incidence rate" or "TCIR" means a number that represents the total recordable injuries and illnesses per 100 full-time employees, calculated for a worksite for a specified period of time (usually one to three years).

"Voluntary Protection Program" or "VPP" means a voluntary program under which the commissioner recognizes

and partners with workplaces in which a model system has been implemented.

"Voluntary Protection Program Participants' Association" or "VPPPA" means a nonprofit § 501(c)(3) organization whose members are involved in VPP. The mission of the VPPPA is to promote safety, health, and environmental excellence through cooperative efforts among employees, management, and government.

"VOSH" means the Virginia Occupational Safety and Health program of the Department of Labor and Industry.

16VAC25-200-30. Categories of participation.

A. Categories of participation may include:

1. Site-based fixed worksites and long-term construction sites, including traditional Star and Merit designations.
2. Challenge participants where employers are guided by challenge administrators through a three-stage process, which can prepare a company to achieve VPP Star status.
3. Mobile workforce participants where employers often work as subcontractors and move from site to site.
4. Corporate participants that have adopted VPP on a large scale.

B. Levels of recognition:

1. Star worksite status recognizes the safety and health excellence of worksites where workers are successfully protected from fatality, injury, and illness by the implementation of comprehensive and effective workplace safety and health management systems. These worksites are self-sufficient in identifying and controlling workplace hazards.
2. Merit worksite status recognizes worksites that have good safety and health management systems and that show the willingness, commitment, and ability to achieve site-specific goals that will qualify them for Star participation.
 - a. If the onsite evaluation team recommends participation in the Merit program, the site must then complete a set of goals in order to maintain Merit status and qualify for the Star program.
 - b. Merit goals must address Star requirements not presently in place or aspects of the safety and health management system that are not up to Star quality.
 - c. Methods for improving the safety and health management system that will address identified problem areas must be included in Merit goals.
 - d. Correction of a specific hazardous condition must be a 90-day item, not a Merit goal. However, when a safety and health management system deficiency underlies a specific hazardous condition, then corrections to the system must be included as Merit goals.
 - e. Reducing a three-year TCIR or DART rate to below the national average is not by itself an appropriate Merit goal. Corrections to safety and health management

system deficiencies underlying the high rate must be included in the Merit goals.

f. Merit worksites are given a three-year conditional goal of achieving Star status. A participant must meet Star rate requirements within the first two years of its Merit participation. This is to afford an additional year's experience, for a total of no more than three years to gain Star approval.

g. A Merit participant qualifies for Star when it has met its Merit goals, Star rate requirements, and when all other safety and health elements and sub-elements are operating at Star quality.

h. A Merit participant may qualify for the Star program before the end of its Merit term if the participant meets all conditions in subdivision 2 g of this subsection.

3. Challenge recognizes three-stages of accomplishment as specified in 16VAC25-200-40 B.

C. Nothing in this chapter shall be construed to prohibit the commissioner from establishing programs that are site-specific, company-wide, statewide, or any combination thereof.

16VAC25-200-40. Ways to participate.

A. Site-based fixed participation is directed at the owners and site officials who control site operations and have ultimate responsibility for assuring safe and healthful working conditions of:

1. Private-sector fixed worksites in general industry;
2. Construction worksites or projects that will have been in operation for at least 12 months at the projected time of approval and that expect to continue in operation for at least an additional 12 months;
3. State and local government sector fixed worksites;
4. Resident contractors at participating VPP sites for the contractors' operations at those VPP sites;
5. Resident contractors at nonparticipating sites for the contractors' operations at those sites, so long as the resident contractors are part of a larger organization approved to participate under the corporate option.

B. Challenge provides participating employers and workers an avenue to work with designated Challenge administrators to develop or improve their safety and health management system. Challenge participants do not generally receive exemptions from VOSH programmed inspections, although it is within the commissioner's discretion to design programs that permit exemption from programmed inspections for successful Stage 3 applicants.

Challenge administrators collaborate with participating employers to improve their safety and health management programs in three stages through mentoring, training, and progress tracking:

1. Stage 1 - assess, learn, and develop. Challenge participants learn the elements necessary to develop and

implement an effective safety and health management program; assess performance of existing safety and health programs and policies; provide training to management and workers; and develop strategies, programs, and policies.

2. Stage 2 - implement, track, and control. Challenge participants complete and implement policies and programs developed in Stage 1; continue to enhance and develop their safety and health management program; implement and improve their safety and health management program; and begin to incorporate policies for contractor or special trade contractor safety and health management program requirements.

3. Stage 3 - reassess, monitor, and improve. Challenge participants monitor, reassess, and continuously improve their safety and health management program. Challenge participants who complete Stage 3 have a safety and health management system sufficiently advanced for the participant to begin the application process for VPP Star certification.

C. Mobile workforce companies typically function as contractors or subcontractors that may or may not have the authority for safety and health for an entire worksite and for those companies that have employees that move site to site, such as a specialty trade contractor or repair and maintenance company, regardless of size or length and duration of the project or service.

D. VPP corporate is designed for corporate applicants who demonstrate a strong commitment to employee safety and health and VPP. These applicants, typically large corporations or state or local government agencies, have adopted VPP on a large scale for protecting the safety and health of their employees. VPP corporate applicants must have established standardized corporate-level safety and health management systems that are effectively implemented organization-wide, as well as internal audit or screening processes that evaluate their facilities for safety and health performance.

16VAC25-200-50. Application requirements.

A. Term of participation.

1. There is no time limit to the term of participation in Star, as long as a site continues to meet all Star requirements and to maintain Star quality.
2. Fixed-site construction participation ceases with the completion of the construction project.
3. There is no time limit to the term of participation for mobile worksite, corporate, or Challenge site as long as the participant continues to meet all applicable requirements and maintain quality systems.

B. Injury and illness history requirements.

1. Injury and illness history is evaluated using a three-year total case incident rate (TCIR) and a three-year day away, restricted, or transfer case incident rate (DART rate). The three-year TCIR and DART rates must be compared to the

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published Bureau of Labor Statistics (BLS) national average for the five-digit or six-digit North American Industrial Classification System (NAICS) code for the industry in which the applicant is classified. The BLS publishes NAICS industry averages two years after data is collected. For example, in calendar year 2016, calendar year 2014 national averages will be available and used for comparison.

2. Both the three-year TCIR and the three-year DART rate must be below one of the three most recently published BLS national averages for the specific NAICS code.

3. Some smaller worksites may be eligible to use the alternate rate calculation as provided for in VOSH written procedures.

C. VOSH inspection history.

1. The applicant must not have been issued final VOSH citations related to a fatality in the preceding three-year period prior to application submission. In the event that the company elects to contest a citation related to a VOSH fatality, the company may not submit a VPP application until such time as all fatality-related citations have become a final order of the commissioner.

2. If VOSH has inspected an applicant site in the 36 months preceding the application, the inspection, abatement, and any other history of interaction with VOSH must indicate good faith attempts by the employer to improve safety and health at the site. This includes verification of correction of all serious violations. In addition, the existence of any of the following at the site precludes the site's participation in VPP:

- a. Open enforcement investigations;
- b. Pending or open contested citations or notices under appeal at the time of application;
- c. Affirmed willful or antidiscrimination whistleblower violations under § 40.1-51.2:1 of the Code of Virginia during the 36 months prior to application;
- d. Documented instances of misclassification of employees during the 36 months prior to application;
- e. Unresolved, outstanding enforcement actions, such as long-term abatement agreements or contests.

D. Contract worker coverage.

1. Workers for applicable contractors must be provided with safety and health protection equal in quality to that provided to participant employees.

2. All contractors, whether regularly involved in routine site operations or engaged in temporary projects such as construction or repair, must follow the safety and health rules of the host site.

3. VPP participants must have in place a documented oversight and management system covering applicable contractors to:

a. Ensure that safety and health considerations are addressed during the process of selecting contractors and when contractors are on site;

b. Ensure that contractors follow site safety rules;

c. Include provisions for timely identification, correction, and tracking of uncontrolled hazards in contractor work areas;

d. Include a provision for removing a contractor or contractor's employees from the site for safety or health violations.

4. Nested contractors, such as contracted maintenance workers, and temporary employees who are supervised by host site management and governed by the site's safety and health management system are entitled to the same workplace protections as host employees and are therefore included in the host site's injury and illness rates.

5. Site management must maintain copies of the TCIR and DART rate data for all applicable contractors based on hours worked at the site. Sites must report all applicable contractor TCIR and DART rate data to VOSH annually.

6. Managers, supervisors, and nonsupervisory employees of contract employers must be made aware of:

- a. The hazards they may encounter while on the site.
- b. How to recognize hazardous conditions and the signs and symptoms of workplace-related illnesses and injuries.
- c. The implemented hazard controls, including safe work procedures.
- d. Emergency procedures.

E. Assurances.

1. Applicants must understand and agree, through assurances, to fulfill program requirements for participation in VPP.

2. Applicants must assure that:

a. The applicant will comply with VOSH laws, standards, and regulations and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, VOSH onsite review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

b. Site deficiencies related to compliance with VOSH requirements and identified during the VOSH onsite review will be corrected within 90 days, with interim protection provided to employees.

c. Site employees support the VPP application.

d. VPP elements are in place, and the requirements of the elements will be met and maintained.

e. Employees, including newly hired employees and contract employees when they reach the site, will have the VPP explained to them, including employee rights

under the program and VOSH laws, standards, and regulations.

f. Employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties. See § 40.1-51.2:1 of the Code of Virginia.

g. Employees will have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. At unionized sites, this requirement may be met through the employee representative's access to these results.

h. The information listed in this subdivision 2 h will be maintained and available for VOSH review to determine initial and continued approval to the VPP:

(1) Written safety and health management system;

(2) Agreements between management and the collective bargaining agents concerning safety and health;

(3) Data necessary to evaluate the achievement of individual Merit goals or one-year conditional goals.

i. On or before February 15 each year, each participating site must submit its annual evaluation to the department.

j. Whenever significant organizational, ownership, union, or operational changes occur, such as a change in management, corporate takeover, merger, or consolidation, a new statement of commitment signed by both management and any authorized collective bargaining agents, as appropriate, will be provided to VOSH within 60 days of the effective date of the significant changes.

3. The applicant must demonstrate a willingness to follow through on all assurances.

4. Employees must be aware of the recourse available to them if management fails to fulfill any of these assurances. This may include rescinding their support of VPP participation or exercising the right to file a VOSH complaint.

F. Preapplication assistance.

1. Department personnel may conduct onsite assistance visits of a prospective applicant's site to offer assistance in the application process or before scheduling the onsite evaluation to obtain additional information or clarification of information provided in the application.

2. Preapplication assistance may also include referrals to the VPP mentoring program, Virginia VPP best practices training sessions, VPPPA conferences, and VPPPA application workshops.

G. Application receipt and review.

1. The commissioner shall establish written procedures to address requirements concerning receipt and review of application contents, including the comprehensive safety

and health management system requirements outlined in 16VAC25-200-60.

2. If, upon review, the application is considered incomplete, the department shall notify the applicant by letter, noting the missing elements and requesting that the missing information be submitted within 90 days. If the additional information is not provided within that timeframe, the application must be returned to the applicant. Applications can be resubmitted at any time.

3. If it is clear that the applicant cannot qualify for VPP, the department must ask the applicant to withdraw the application within 30 days. If the application is not withdrawn, the application will be returned with a letter indicating the reasons the application was denied.

4. An applicant may withdraw the application by notifying the department. The withdrawal is effective on the date the notification is received. The original application must be returned to the applicant. If the application had already been accepted, the department must retain a working copy for one year, for use in responding to questions that may arise.

16VAC25-200-60. Comprehensive safety and health management system requirements.

A. The elements for VPP shall include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;
2. Systematic assessment of occupational hazards;
3. Comprehensive hazard prevention, mitigation, and control programs;
4. Employee safety and health training; and
5. Safety and health program evaluation.

B. The commissioner shall establish written procedures to address applicant and participant requirements concerning the elements and sub-elements appropriate to the program:

1. Management commitment;
2. VPP commitment;
3. Employee involvement;
4. Contract worker coverage;
5. Safety and health management system evaluation;
6. Worksite analysis;
7. Baseline and comprehensive safety and industrial hygiene hazard analysis;
8. Hazard analysis of routine jobs, tasks, and processes;
9. Hazard analysis of significant changes;
10. Pre-use analysis;
11. Documentation and use of hazard analysis;
12. Routine self-inspections;
13. Hazard reporting system for employees;

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14. Industrial hygiene (IH) program;

- a. IH surveys;
- b. Sampling strategy;
- c. Sampling results;
- d. Documentation;
- e. Communication;
- f. Use of results;
- g. IH expertise;
- h. Procedures; and
- i. Use of contractors for IH surveys;

15. Analysis of injury, illness, and near-hit incidents;

16. Trend analysis;

17. Hazard prevention and control;

18. Certified professional resources;

19. Hazard elimination and control methods;

- a. Engineering;
- b. Administrative;
- c. Work practices; and
- d. PPE;

20. Hazard control programs;

21. Compliance with applicable Virginia unique occupational safety and health regulations;

22. Occupational health care program;

23. Preventative maintenance of equipment;

24. Tracking of hazard correction;

25. Disciplinary system;

26. Emergency preparedness and response; and

27. Safety and health training.

16VAC25-200-70. Certification process.

A. Evaluation periods. The commissioner shall establish written procedures to set time periods and scheduling requirements for onsite evaluations in response to initial applications accepted by the department and for recertification of participants.

B. Scheduling exceptions. Onsite evaluations shall be conducted earlier than normal scheduled requirements when:

- 1. Significant changes have occurred in management, processes, or products that may require evaluation to ensure the site is maintaining a VPP quality safety and health management system.
- 2. VOSH has learned of significant problems at the site, such as increasing injury and illness rates, serious deficiencies described in the site's annual evaluation of its safety and health management system, or deficiencies discovered through VOSH enforcement activity resulting from an employee complaint, fatality, accident, or other event.

C. Decision to conduct the onsite evaluation. Once an application is accepted, the department must:

- 1. Notify the site by letter or email in a timely manner that an onsite evaluation will be conducted. However, no onsite evaluation may be conducted until all prior enforcement actions have been closed.
- 2. Notify the appropriate VOSH enforcement personnel so that the site can be removed from any programmed inspection lists, effective no more than 75 days prior to the scheduled onsite review.

D. Methods of evaluation. The three primary methods of evaluation during the certification or recertification process are document review, walkthrough, and employee interviews. Additional activities that must occur are the opening conference, daily briefings, report preparation, and closing conference. The onsite evaluation team must evaluate each element and sub-element of the safety and health management system and VPP requirements.

E. Recommendations. At the conclusion of the onsite evaluation, the onsite evaluation team must reach a consensus to recommend to the commissioner as to whether the site is suitable for participation or continued participation in VPP, and at what level of participation.

16VAC25-200-80. Onsite evaluations.

A. Onsite evaluation team. An onsite evaluation consists of a thorough evaluation of a VPP applicant's or participant's safety and health management system in order to recommend approval or re-approval. Onsite evaluations are carried out by a team consisting of VOSH staff acting in a nonenforcement capacity, private industry volunteers, and other qualified team members.

B. Onsite evaluation procedures. The commissioner shall establish written procedures for onsite evaluations of applicants and participants undergoing recertification. The procedures shall address issues including:

- 1. Prioritizing and scheduling onsite evaluations;
- 2. Inclusion of union representatives, if any, in the opening and closing conferences and the opportunity to accompany the onsite evaluation team on the site walkthrough;
- 3. Onsite evaluation team composition, qualifications, preparation, and assessment of personal protective equipment needed;
- 4. Opening conference subjects, review of injury and illness records, incentive programs, document review, walkthrough, review of safety and health management system elements and sub-elements, formal and informal interviews of employees, including applicable contractor employees, and closing conference subjects and recommendations;
- 5. Employee rights under the program and under VOSH laws, standards, and regulations; and

6. Assuring that employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties, pursuant to § 40.1-51.2:1 of the Code of Virginia.

C. Correction of hazards.

1. As hazards are found and discussed during the walkthrough, the onsite evaluation team must add them to a written list of the uncontrolled hazards identified. This list will be used when the team briefs site management at the end of each day on site.

2. VOSH expects that every effort will be made by the site to correct identified hazards before the closing conference. If hazard correction cannot be accomplished before the conclusion of the onsite evaluation, the onsite evaluation team and site management must discuss and agree upon correction methods and timeframes.

3. The site may be given up to a maximum of 90 days to correct uncontrolled hazards, as long as interim protection is provided. These 90-day items must be corrected before the final onsite evaluation report can be processed. Management must provide the team leader with a signed letter indicating how and when the correction will be made. The team leader may decide to return to the site to verify correction.

4. If, after repeated attempts to reach agreement, site management refuses to correct a situation that exposes employees to serious safety or health hazards, that situation shall be referred for enforcement action.

5. Should any identified hazard be determined to present a risk of imminent danger to life or health of an employee, department personnel shall assure that its procedures for immediately removing employees from exposure to the hazard until corrected are complied with by the applicant or participant.

D. Deficiencies in the safety and health management system. Where the team detects deficiencies in the safety and health management system, even when physical hazards are not present, the onsite evaluation team must document these deficiencies as goals for correction, recommendations for improvement, or both.

1. If the system deficiency is a requirement for VPP at the Star level, it must become the subject of a goal, either a Merit goal or a one-year conditional goal. Implementation of goals is mandatory for VPP participation. Timeframes, interim protection, and methods of achieving goals must be discussed and agreed to with site management.

2. If improvement of the system deficiency is not necessarily a requirement for VPP, but will improve worker safety and health at the site, the improvement must be a recommendation. Implementation of recommendations is encouraged but is not mandatory for VPP participation.

E. Final analysis of findings.

1. When the documentation review, the walkthrough, and employee interviews have been completed, the onsite evaluation team must meet privately to review and summarize its findings before conducting the closing conference.

2. A draft of the certification or recertification report shall be completed by the team before leaving the site. The draft report must reflect the consensus of the onsite evaluation team.

F. Closing conference. The findings of the onsite evaluation team, including its recommendation to the commissioner, must be presented to site management and appropriate employee representatives before the team leaves the site.

16VAC25-200-90. Annual submissions.

A. Annual self-assessment.

1. Participation in VPP requires each site or participant to annually evaluate the effectiveness of its safety and health management system, including the effectiveness of all VPP elements and sub-elements.

2. The commissioner shall establish written procedures establishing the content and reporting requirements of participant annual submissions.

3. Annual submissions are due on or before February 15 each year.

B. Applicable contractors. Participants shall report on the injury and illness data for all applicable contractors.

16VAC25-200-100. Enforcement activity at Voluntary Protection Program sites.

A. Types of enforcement activity. Two types of enforcement activity trigger additional VPP assessment:

1. Unprogrammed VOSH inspections, which occur in response to all referrals, formal complaints, fatalities, and certain accidents.

2. Other incidents or events, whether or not injuries or illnesses have occurred and whether or not normal enforcement procedures apply to the situation.

B. Site reassessment. VOSH may reassess the site's safety and health management system if there is reason to believe that a serious deficiency exists that would have an impact on the site's continued qualification for VPP.

C. Enforcement personnel. The commissioner shall establish written procedures describing the use of enforcement personnel during onsite evaluations and any limitations placed on their conducting an enforcement inspection at a VPP site.

D. Impact of enforcement activity.

1. If the event that triggers enforcement activity occurs during the time between application and onsite evaluation, the onsite evaluation must be postponed until the enforcement case is closed.

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2. If the event that triggers enforcement activity occurs during the onsite evaluation, the onsite evaluation must cease until the enforcement case is closed.

16VAC25-200-110. Withdrawal, suspension, or termination.

A. Withdrawal.

1. Participants may withdraw of their own accord or be asked by VOSH to withdraw from the programs.

2. Any participant may choose to withdraw voluntarily at any time.

3. VOSH shall request that a participant withdraw from VPP if it is determined that it is no longer meeting the requirements for VPP participation.

4. The commissioner shall establish written withdrawal procedures that (i) provide for the participant's formal notification to the department, (ii) the commissioner's acknowledgment of receipt and notification to the participant of the status change, (iii) notification to department personnel of the status change, (iv) return of the participant to the VOSH programmed inspection list, and (v) disposition of the VPP participant file.

5. The commissioner shall establish written procedures to address a VPP participant's change of location that establishes criteria for determining whether the participant can retain its VPP status or must withdraw.

6. The commissioner will consider the company's reapplication to VPP if and when eligibility requirements are met.

B. Suspension.

1. Participants that experience a work-related fatality, whether an employee or contract employee, may be immediately suspended from program participation until such time as a VOSH fatality investigation can be completed.

2. The commissioner shall establish written procedures to address a VPP participant's temporary suspension from VPP, that provides for the department's formal notification to the participant and removal of the VPP flag or other recognition device from display until the suspension is lifted.

3. A participant's suspension will not result in the participant being returned to the VOSH programmed inspection list.

C. Termination.

1. The commissioner may terminate a participant from the VPP for failure to maintain the requirements of the program.

2. In the event a fatality investigation shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the participant from

participation in the VPP, the commissioner, in his discretion, may terminate the participation in VPP.

3. If a whistleblower investigation pursuant to §§ 40.1-51.2:1 and 40.1-51.2:2 of the Code of Virginia shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the site from participation in the VPP, the commissioner, in his discretion, may terminate the participation in VPP.

4. Under most other situations, termination should occur only when all reasonable efforts for assistance have been exhausted.

5. The commissioner shall establish written termination procedures that provide for the commissioner's formal notification to the participant and union representatives, an appeal process, and notification of the commissioner's final decision.

6. If the commissioner finds the participant's appeal valid, the participant may continue in VPP.

7. In the event of a final decision to terminate, the written procedures shall provide for notification to department personnel of the status change, return of the participant to the VOSH programmed inspection list, and disposition of the VPP participant file. If a terminated participant wishes to pursue reinstatement, it must wait three years to reapply.

VA.R. Doc. No. R16-4468; Filed November 18, 2016, 1:41 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Final Regulation

Title of Regulation: **18VAC41-70. Esthetics Regulations (amending 18VAC41-70-10 through 18VAC41-70-40, 18VAC41-70-60 through 18VAC41-70-110, 18VAC41-70-160, 18VAC41-70-180, 18VAC41-70-230, 18VAC41-70-240, 18VAC41-70-260, 18VAC41-70-270, 18VAC41-70-280; adding 18VAC41-70-35; repealing 18VAC41-70-170, 18VAC41-70-220).**

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

Effective Date: February 1, 2017.

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

Summary:

The amendments are the result of a periodic review and include clarifying text to ensure consistency with other board regulations and state and federal laws and compliance with current industry standards. Changes include (i) adding new definitions; (ii) requiring disclosure of felonies, certain misdemeanors, and disciplinary actions; (iii) allowing individuals to obtain required training in esthetics apprenticeship programs and to take licensure exams after successful completion of such a program; (iv) requiring individuals to apply for licensure within five years of taking their exams; (v) clarifying that no fee is charged for a temporary license; (vi) requiring voided licenses to be returned to the board within 30 days and clarifying what circumstances may lead to a voided license; (vii) allowing for board inspection of shops, salons, and schools during reasonable hours; (viii) requiring schools to provide specific information to the board, including curriculum changes, and within required time periods; (ix) providing grounds for discipline for several prohibited actions; and (x) updating sanitation requirements for salons, shops, and schools, including requiring salons and shops to provide a client bathroom.

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

Part I General

18VAC41-70-10. Definitions.

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

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

"Credit hour" means a combination of the number of hours in class each week and the number of hours per week in a laboratory by which a school may measure its course work. One unit of credit equals one hour of classroom study, two hours of laboratory experience or three hours of internship or practicum or a combination of the three times the number of weeks in the term. Emerging delivery methodologies may necessitate a unit of undergraduate credit to be measured in nontime base methods. These courses shall use the demonstration of competency, proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Direct supervision" means that a Virginia licensed esthetician or master esthetician shall be present in the

esthetics spa or esthetics school at all times when services are being performed by a temporary license holder or student.

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

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

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

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

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

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

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Virginia state institution" for the purposes of this chapter means any institution approved by the Virginia Department of Education.

Part II Entry

18VAC41-70-20. General requirements for an esthetician license or master esthetician license.

~~A. In order to receive a license as an esthetician or master esthetician, an applicant must~~ Any individual wishing to engage in esthetics or master esthetics shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and meet the following qualifications:

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

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

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

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

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose ~~a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for this purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia~~ the following information regarding criminal convictions in Virginia and all other jurisdictions:

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

b. All felony convictions [~~during the applicant's lifetime~~ within 20 years of the date of application].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima

facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

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

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved esthetics training program or a master esthetics training program in a Virginia licensed esthetics school shall be eligible for the applicable examination.

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

18VAC41-70-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as an esthetician or master esthetician in any other state or jurisdiction of the United States and who has completed both a training program and a written examination and a practical examination requirement that is ~~are~~ substantially equivalent to ~~that~~ those required by this chapter may be issued an esthetician or master esthetician license without an examination. The applicant must also meet the requirements set forth in 18VAC41-70-20 A.

18VAC41-70-35. Apprenticeship training.

A. Licensed estheticians and master estheticians who train apprentices shall comply with the standards for apprenticeship training established by the Division of Registered Apprenticeship of the Virginia Department of Labor and Industry and the Virginia Board for Barbers and Cosmetology. Owners of esthetics spas who train apprentices shall comply with the standards for apprenticeship training established by the Division of Registered Apprenticeship of the Virginia Department of Labor and Industry.

B. Any person completing the Virginia apprenticeship program in esthetics or master esthetics shall be eligible for examination.

18VAC41-70-40. Examination requirements and fees.

A. Applicants for initial licensure shall ~~meet the~~ pass both a written examination and a practical examination requirement

approved by the board. The examinations may be administered by the board or by a designated testing service. ~~The board maintains discretion in determining the license requirements.~~

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

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

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

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

18VAC41-70-60. Examination administration.

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

B. Every esthetics or master esthetics examiner shall hold a current Virginia license in his respective profession, have three or more years of active experience as a licensed professional, and be currently practicing in that profession. Examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

C. No certified esthetics or master esthetics instructor who (i) is currently teaching, (ii) is a school owner, or (iii) is an apprentice sponsor shall be an examiner.

D. Each esthetics or master esthetics chief examiner shall (i) hold a current Virginia license in his respective profession, (ii) have five or more years of active experience in that profession, (iii) have three years of active experience as an examiner, and (iv) be currently practicing in his respective profession. Chief examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

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

18VAC41-70-70. Esthetician temporary license.

A. A temporary license to work under the direct supervision of a currently licensed esthetician or master esthetician may be issued only to applicants for initial licensure that the board finds eligible for the applicable examination. There shall be no fee for a temporary license.

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

C. Any person continuing to practice esthetics services after a temporary license has expired may be prosecuted and fined by the Commonwealth under § §§ 54.1-111 A 1 and 54.1-202 of the Code of Virginia.

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

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-70-20.

18VAC41-70-80. Spa General requirements for a spa license.

A. Any ~~individual~~ firm wishing to operate an esthetics spa shall obtain a spa license in compliance with § 54.1-704.1 of the Code of Virginia, and shall meet the following qualifications in order to receive a license:

1. The applicant, and all members of the responsible management, shall be in good standing as a licensed spa in Virginia and all other jurisdictions where licensed. The applicant [and all members of the responsible management] shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics spa or practice of the profession. This includes [~~but is not limited to~~] monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant [or any member of responsible management] has been previously licensed in Virginia as an esthetics spa.

Upon review of the applicant's [and all members of the responsible management's] prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics spa. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case

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decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

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

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

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

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

b. All felony convictions [~~during the applicant's lifetime~~ within 20 years of the date of application].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall disclose the firm's responsible management.

B. ~~An esthetics spa license Shop or salon licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address of the business. Any changes in the name, or address, or ownership of the spa shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board.~~

C. ~~In the event of a closing of an esthetics spa, the owner must notify the board in writing within 30 days of the closing, and return the license to the board. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license, within 30 days of the change in the business entity. Such changes include [but are not limited to]:~~

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, or association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed shop or salon for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

18VAC41-70-90. ~~School~~ General requirements for a school license.

A. Any ~~individual firm~~ wishing to operate an esthetics school shall submit an application to the board at least 60 days prior to the date for which approval is sought, obtain a school license in compliance with § 54.1-704.2 of the Code of Virginia. ~~All instruction and training of estheticians shall be conducted under the direct supervision of a certified esthetics instructor. All instruction and training of master estheticians shall be conducted under the direct supervision of a certified master esthetics instructor, and meet the following qualifications in order to receive a license:~~

1. The applicant and all members of the responsible management shall be in good standing as a licensed school in Virginia and all other jurisdictions where licensed. The applicant [and all members of the responsible management] shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's operation of any esthetics school or practice of the profession. This includes [~~but is not limited to~~] monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant [or any member of the responsible management] has been previously licensed in Virginia as an esthetics school.

Upon review of the applicant's [and all members of the responsible management's] prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein it deems the applicant is unfit or unsuited to engage in the operation of an esthetics school. The board will decide each case by taking into account the

totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

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

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

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm and all members of the responsible management regarding criminal convictions in Virginia and all other jurisdictions:

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

b. All felony convictions [~~during the applicant's lifetime~~ within 20 years of the date of application].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall disclose the firm's responsible management.

B. An esthetics Esthetics school license licenses are issued to firms as defined in this chapter and shall not be transferable and shall bear the same name and address as the school. Any changes in the name or the address of record or principal place of business of the school shall be reported to the board in writing within 30 days of such change. The board shall not be responsible for the licensee's, certificate holder's, or permit holder's failure to receive notices, communications, and correspondence caused by the licensee's, certificate holder's, or permit holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in

writing to the board within 30 days of the changes and obtain a new license.

D. In the event of a school closing, the owner must notify the board in writing within 30 days of the closing, and return the license to the board.

C. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the original license becomes void and shall be returned to the board within 30 days of the change. Additionally, the firm shall apply for a new license within 30 days of the change in business entity. Such changes include [~~but are not limited to~~]:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Conversion, formation, or dissolution of a corporation, a limited liability company, an association, or any other business entity recognized under the laws of the Commonwealth of Virginia.

D. Any change in the officers of a corporation, managers of a limited liability company, or officers or directors of an association shall be reported to the board in writing within 30 days of the change.

E. Barber schools, cosmetology schools, nail schools, or waxing schools under the Virginia Department of Education shall be exempted from licensure requirements.

F. The board or any of its agents shall be allowed to inspect during reasonable hours any licensed school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter. For purposes of a board inspection, "reasonable hours" means the hours between 9 a.m. and 5 p.m.; however, if the licensee generally is not open to the public substantially during the same hours, "reasonable hours" shall mean the business hours when the licensee is open to the public.

18VAC41-70-100. General requirements for an esthetics instructor certificate.

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for an esthetics instructor certificate if the person Any individual wishing to engage in esthetics instruction shall meet the following qualifications:

1. Holds a current Virginian esthetician license; and The applicant shall be in good standing as a licensed esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as an esthetician. This includes [~~but is not limited to~~] monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license.

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The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.

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

2. The applicant shall hold a current Virginia esthetics license;

~~Completes~~ 3. The applicant shall complete one of the following qualifications:

a. ~~Passes~~ Pass a course in teaching techniques at the postsecondary educational level; or

b. ~~Completes~~ Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and ~~passes~~ pass an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board-; and

~~3. Persons who (i) make application for licensure between September 20, 2007, and September 19, 2008, and (ii) have completed one year of documented work experience as an esthetics instructor are not required to complete subdivision 2 of this subsection.~~

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

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

b. All felony convictions [during the applicant's lifetime within 20 years of the date of application].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

B. ~~Esthetics instructors~~ Instructors shall be required to maintain a Virginia esthetician license.

18VAC41-70-110. General requirements for a master esthetics instructor certificate.

~~A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a master esthetics instructor certificate if the person~~ Any individual wishing to engage in master esthetics instruction shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed master esthetician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as [an a] master esthetician. This includes [but is not limited to] monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as an esthetician or master esthetician.

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

~~1. Holds~~ 2. The applicant shall hold a current Virginia master esthetician license; and

~~2. Completes~~ 3. The applicant shall complete one of the following qualifications:

a. ~~Passes~~ Pass a course in teaching techniques at the postsecondary educational level; or

b. ~~Completes~~ Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and ~~passes~~ pass an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board.-3. ~~Persons who (i) make application for licensure between September 20, 2007, and September 19, 2008, and (ii) have completed one year of documented work experience as a master esthetics instructor are not required to complete subdivision 2 of this subsection-; and~~

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

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

b. All felony convictions [during the applicant's lifetime within 20 years of the date of application].

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

B. Master esthetics instructors ~~Instructors~~ shall be required to maintain a Virginia master esthetician license.

18VAC41-70-160. Failure to renew.

A. When a ~~licensed individual or entity~~ licensee fails to renew its license within 30 days following its expiration date, the licensee shall apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and reinstatement fee.

B. When ~~an esthetician or master esthetician~~ a licensee fails to renew ~~his~~ its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application entry requirements and shall pass the board's current examination for each respective license. Individuals applying for licensure under this section shall be eligible to apply for a temporary license from the board under 18VAC41-70-70.

~~C. When an esthetics spa fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.~~

~~D. C.~~ The application for reinstatement for ~~an esthetics a~~ school shall provide (i) the reasons for failing to renew prior to the expiration date and (ii) a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school ~~by the Department of Professional and Occupational Regulation~~ and if the school's records are maintained in accordance with 18VAC41-70-230 and 18VAC41-70-240. Upon receipt of the reinstatement fee, application package, and inspection results, the board may

reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

~~When an esthetics school fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.~~

~~E. D.~~ The date a renewal fee is received by the Department of Professional and Occupational Regulation or its agent will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

~~F. E.~~ When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

~~G. F.~~ A licensee ~~who~~ that reinstates ~~his~~ its license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

~~H. G.~~ A licensee ~~who~~ that fails to reinstate ~~his~~ its license shall be regarded as unlicensed from the expiration date of the license forward. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of time for which the individual or business entity was licensed.

Part V
Esthetics Schools

18VAC41-70-170. Applicants for school license. (Repealed.)

~~Any person, firm, or corporation desiring to operate an esthetics school shall submit an application to the board at least 60 days prior to the date for which approval is sought.~~

[18VAC41-70-180. General requirements.

An esthetics school shall:

1. Hold a school license for each and every location.
2. Hold a spa license if the school receives compensation for services provided in its clinic.
3. For esthetics courses, employ a staff of licensed and certified esthetics instructors or licensed and certified master esthetics instructors.

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4. For master esthetics courses, employ a staff of licensed and certified master esthetics instructors.
5. Develop individuals for entry-level competency in esthetics.
6. Submit its curricula for board approval. Esthetician curricula shall be based on a minimum of 600 clock or equivalent credit hours and shall include performances in accordance with 18VAC41-70-190. Master esthetician curricula shall be based on a minimum of 600 clock or equivalent credit hours and shall include performances in accordance with 18VAC41-70-190 C. All changes to curricula must be resubmitted and approved by the board.
7. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the spa in plain view of the public.
8. Conduct classroom instruction in an area separate from the clinic area where practical instruction is conducted and services are provided.
9. Complete practical instruction in the school's clinic area.]

18VAC41-70-220. School identification. (Repealed.)

~~Each esthetics school approved by the board shall identify itself to the public as a teaching institution.~~

18VAC41-70-230. Records.

~~A. Schools are required to keep all records of hours in accordance with 18VAC41-70-190, including transcripts, course descriptions and competency examinations used to award such credit for a period of five years after the student terminates or completes the curriculum of the school. shall maintain on the premises of each school and available for inspection by the board or any of its agents the following records for the period of a student's enrollment through five years after the student's completion of the curriculum, termination, or withdrawal:~~

1. Enrollment application containing the student's signature and a [~~2x2~~ two-inch by two-inch] color head and shoulders photograph of the student,
2. Daily record of attendance containing the student's signature,
3. Student clock hours containing the student's signature and method of calculation,
4. Practical performance completion sheets containing the student's signature,
5. Final transcript,
6. Competency examinations used to award credit,
7. Course descriptions, and
8. All other relevant documents that account for a student's accrued clock hours and practical applications [.]

~~B. Schools are required to keep upon graduation, termination or withdrawal written records of hours and~~

~~performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school.~~

~~C. For a period of five years after a student completes the curriculum, terminates or withdraws from the school, schools are required to provide documentation of hours and performances completed by a student upon receipt of a written request from the student.~~

~~B. Schools shall produce to the board or any of its agents, within 10 days of the request, any document, book, or record concerning any student, or for which the licensee is required to maintain records, for inspection and copying by the board or its agents. The board may extend such [~~time frame~~ timeframe] upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.~~

~~C. Schools shall, within 21 days upon receipt of a written request from a student, provide documentation of hours and performances completed by the student as required to be maintained by subsection A of this section.~~

~~D. Prior to a school changing ownership or a school closing, the schools are school is required to provide to current students documentation of hours and performances completed.~~

~~E. For a period of one year after a school changes ownership, schools are required to the school shall provide, within 21 days upon receipt of a written request from a student, documentation of hours and performances completed by a current student upon receipt of a written request from the student.~~

18VAC41-70-240. Hours reported Reporting.

~~A. Schools shall provide, in a manner, format, and frequency prescribed by the board, a roster of all current students and a roster of students who attended in the preceding six months prior to the reporting deadline.~~

~~B. Within 30 days of the closing of a licensed esthetics school for any reason ceasing to operate, whether through dissolution or alteration of the business entity, the school shall provide a written report to the board on performances and hours of each of its students who ~~have~~ has not completed the program.~~

18VAC41-70-260. Display of license.

~~A. Each licensed spa or school shall ensure that all current licenses and temporary licenses issued by the board shall be displayed in plain view of the public either in the reception area or at individual work stations of the spa or school ~~in plain view of the public~~. Duplicate licenses or temporary licenses shall be posted in a like manner in every spa or school location where the ~~regulant~~ licensee or temporary license holder provides services.~~

B. All licensees and temporary license holders shall operate under the name in which the license or temporary license is issued.

C. All apprenticeship cards issued by the Department of Labor and Industry (DOLI) shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop or salon. The apprentice sponsor shall require each apprentice to wear a badge clearly indicating his status as a DOLI registered apprentice.

18VAC41-70-270. Sanitation and safety standards for spas and schools.

A. Sanitation and safety standards.

1. Any spa or school where esthetics services are delivered to the public must be clean and sanitary at all times.
2. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.
3. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be a hospital grade and tuberculocidal disinfectant solution registered with the U.S. Environmental Protection Agency (EPA). Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic, which the manufacturer designed for use on more than one client, is to be carried out in the following manner prior to servicing a client:

- a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;
- b. Wash thoroughly with hot water and soap;
- c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;
- d. Fully immerse implements into solution for a minimum of 10 minutes; and
- e. After immersion, rinse articles, thoroughly dry with a clean paper towel, and store in a clean pre-disinfected and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection

storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including [~~but not limited to~~] powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable tools or implements may be stored in an area other than in a closed cabinet or container. This area shall be clean.

5. All materials including cosmetic and nail brushes, sponges, chamois, spatulas, and galvanic electrodes must be cleaned with warm water and soap or detergent to remove all foreign matter. Implements should then be rinsed, thoroughly dried with a clean paper towel, and completely immersed in an EPA-registered hospital grade and tuberculocidal disinfectant solution. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly, and stored in a pre-disinfected and dry drawer, cabinet or nonairtight covered container, or left in an EPA-registered disinfection storage solution used according to manufacturer's directions.

6. All wax pots shall be cleaned and disinfected with an EPA-registered hospital grade and tuberculocidal disinfectant solution with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

7. Each esthetician must have a wet disinfection unit at his station.

8. Nail brushes; nippers; finger bowls; disinfected or washable buffers; disinfected or washable files, which must also be scrubbed with a brush to remove all foreign matter [;] and other instruments must be washed in soap and water, rinsed, thoroughly dried with a clean paper towel, and then completely immersed in an EPA-registered hospital grade and tuberculocidal disinfectant solution for 10 minutes after each use. After disinfection they must be rinsed, dried thoroughly with a clean paper towel, and placed in a dry, pre-disinfected, nonairtight covered receptacle, cabinet, or drawer, or left in an EPA-registered disinfectant storage system used according to manufacturer's directions.

9. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipe-less units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

- a. Drain all water and remove all debris;

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b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residues and then rinse with water;

c. Disinfect by spraying or wiping the surface with an [~~appropriate~~ EPA-registered hospital grade and tuberculocidal disinfectant solution]; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. ~~All furniture, walls, floors, and windows~~ Service chairs, workstations and workstands, and back bars shall be clean ~~and in good repair;~~

2. The floor surface in ~~the immediate~~ all work area areas must be of a washable surface other than carpet. The floor must be kept clean, and free of debris, nail clippings, dropped articles, spills, and clutter, trash, electrical cords, other waste materials, and other items that may pose a hazard;

3. ~~Walls~~ All furniture, fixtures, walls, floors, windows, and ceilings in the immediate work area must shall be in good repair; and free of water seepage and dirt. All mats shall be secured or shall [~~lay lie~~] flat;

4. A fully functional bathroom with a working toilet and sink [~~must be available for clients~~ shall be maintained exclusively for client use]. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. There must be antibacterial soap and clean individual single-use towels or hand air-drying device for the client's use. [For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use];

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee; ~~7. Electrical and electrical outlets shall be covered by plates;~~

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The spa area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals; and to allow the free flow of air; and

9. Adequate lighting shall be provided.

C. Equipment sanitation.

~~1. Service chairs, wash basins, sinks, showers, tubs, tables, and workstations shall be clean. Floors shall be kept free of waste materials. Instruments shall be cleaned and disinfected after every use and stored free from contamination;~~

~~2. The top of workstands shall be kept clean;~~

~~3. The work area shall be free of clutter, trash, and any other items that may cause a hazard;~~

~~4. Equipment shall be placed so as to prevent any accidental injury to the client or licensee; and~~

~~5. Electrical appliances and equipment shall be in safe working order at all times.~~

D. Articles, tools, and products.

1. Any multiuse article, tool, or product that cannot be cleansed or disinfected is prohibited from use;

2. Soiled implements must be removed from the tops of work stations immediately after use;

3. Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;

4. Lotions, ointments, creams, and powders shall be [labeled and] kept in closed containers. A clean spatula shall be used to remove creams or other products from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be recovered covered after each use;

5. All appliances shall be safely stored;

6. Presanitized tools and implements, linens, and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;

7. ~~Soiled~~ Clean towels, robes, or other linens ~~and implements shall be deposited in a container made of cleanable materials and separate from those that are clean used for each patron.~~ Clean towels, robes, or other linens shall be stored in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;

8. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

9. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the spa or school in accordance with the guidelines of the Virginia Department of Health and OSHA (Occupational Safety and Health Administration).

E. Chemical storage and emergency information.

1. Spas and schools shall have in the immediate working area a binder with all [~~Material~~] Safety Data Sheets [~~(MSDS)~~ (SDS)] provided by manufacturers for any chemical products used;

2. Spas and schools shall have a blood spill clean-up kit in the work area that contains at a minimum latex gloves, two [~~12x12~~ 12-inch by 12-inch] towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with

face shield or any OSHA-approved blood spill clean-up kit;

3. Flammable chemicals shall be [labeled and] stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner [~~(oxidizers () e.g., [oxidizers~~], catalysts, and solvents) shall be [labeled and] separated in storage.

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client;

2. All employees providing client services shall wear gloves while providing services when exposure to bloodborne pathogens is possible;

3. No spa or school providing esthetics services shall have on the premises esthetics products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in esthetics products;

4. No product shall be used in a manner that is disapproved by the ~~U.S. Food and Drug Administration (FDA)~~ FDA; and

5. Esthetics spas must be in compliance with current building and zoning codes.

G. In addition to ~~any~~ the requirements set forth in this section, all licensees and temporary license holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry.

H. All spas and schools shall immediately report the results of any inspection of the spa or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All spas and schools shall conduct a self-inspection on an annual basis and maintain a self-inspection form on file for five years so that it may be requested and reviewed by the board at its discretion.

18VAC41-70-280. Grounds for license revocation, probation, or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.

~~A.~~ The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or temporary license holder, and suspend, place on probation, or revoke or refuse to renew or reinstate any license, certificate, or temporary license, or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and ~~the regulations of the board~~ this chapter if the board finds that the licensee, certificate holder, permit holder, or applicant:

1. ~~The licensee, certificate holder, temporary license holder or applicant is~~ Is incompetent, ~~or negligent in practice, or~~

incapable mentally or physically, as those terms are generally understood in the profession, to practice as an esthetician;

~~2. The licensee, certificate holder, or temporary license holder fails to teach in accordance with the board-approved curriculum or fails to comply with 18VAC41-70-190 D when making an assessment of credit hours awarded.~~

~~3. The licensee, certificate holder, temporary license holder, or applicant is~~ 2. Is convicted of fraud or deceit in the practice or teaching of esthetics, fails to teach in accordance with the board-approved curriculum, or fails to comply with 18VAC41-70-190 D when making an assessment of credit hours awarded;

~~4. The licensee, certificate holder, temporary license holder, or applicant attempted~~ 3. Attempts to obtain, obtained, renewed, or reinstated a license certificate or temporary license by false or fraudulent representation;

~~5. The licensee, certificate holder, temporary license holder, or applicant violates~~ 4. Violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any esthetician may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing esthetics or master esthetics;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed shop, salon, or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or this chapter;

~~6. The licensee, certificate holder, temporary license holder, or applicant fails~~ 8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, temporary license holder's, applicant's, or owner's possession or maintained in accordance with this chapter;

~~7. A licensee, certificate holder, or temporary license holder fails~~ 9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or temporary license. ~~The board shall not be responsible for the licensee's, certificate holder's, or temporary license holder's failure to receive notices, communications and correspondence caused by the licensee's, certificate holder's, or temporary license~~

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holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

~~8. The licensee, certificate holder, temporary license holder, or applicant publishes~~ 10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

~~9. The licensee, certificate holder, temporary license holder, or applicant fails~~ 11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or temporary license in connection with a disciplinary action in any [~~other~~] jurisdiction or of any license or temporary license that has been the subject of disciplinary action in any [~~other~~] jurisdiction; ~~or~~

~~10. The licensee, certificate holder, temporary license holder, or applicant has been convicted or found guilty in any jurisdiction of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for the purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;~~

~~11. The licensee, certificate holder, temporary license holder, or applicant fails to notify the board in writing within 30 days that the licensee, certificate holder, temporary license holder, or applicant has pleaded guilty or nolo contendere or was convicted and found guilty of any misdemeanor or felony.~~

12. Has been convicted or found guilty, regardless of the manner of adjudication, in Virginia or any other jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13 [.] Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of convictions as stated in subdivision 12 of this section;

14. Allows, as [~~an owner or operator responsible management~~] of a spa or school, a person who has not obtained a license or a temporary permit to practice unless the person is duly enrolled as a registered apprentice;

15. Allows, as [~~an owner or operator responsible management~~] of a school, a person who has not obtained

an instructor certificate to practice as an esthetics or a master esthetics instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the practices of esthetics or master esthetics, or the operation of esthetics spas; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at [~~the any board~~] examination.

~~B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. An instructor of the approved school fails to teach the curriculum as provided for in this chapter;~~

~~2. The owner or director of the approved school permits or allows a person to teach in the school without an applicable current esthetics instructor certificate or master esthetics instructor certificate; or~~

~~3. The instructor, owner or director is guilty of fraud or deceit in the teaching of esthetics.~~

~~C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any esthetics spa or impose a fine as permitted by law, or both, if the board finds that:~~

~~1. The owner or operator of the spa fails to comply with the sanitary requirements of an esthetics spa provided for in this chapter or in any local ordinances; or~~

~~2. The owner or operator allows a person who has not obtained a license or a temporary license to practice as an esthetician or master esthetician.~~

~~D. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of esthetics.~~

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

FORMS (18VAC41-70)

~~Esthetician – Esthetics Instructor Examination & License Application, A425-1261_62EXLIC (eff. 9/2011)~~

~~Master Esthetician – Master Esthetics Instructor Examination & License Application, A425-1264_65EXLIC (eff. 9/2011)~~

~~Temporary Permit Application, A425-1213TP (eff. 9/2011)~~

~~License by Endorsement Application, A450-1213END-v9 (rev. 9/2016)~~

~~Training & Experience Verification Form, A425-1213TREXP (eff. 9/2011)~~

~~Individuals Reinstatement Application, A450-1213REI-v8 (rev. 9/2016)~~

~~Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS-v8 (rev. 9/2016)~~

~~Salon, Shop & Spa Self Inspection Form, A425-1213_SSS_INSP (eff. 9/2011)~~

~~Instructor Certification Application, A450-1213INST-v7 (rev. 9/2016)~~

~~School License Application, A450-1213SCHL-v9 (rev. 9/2016)~~

~~School Reinstatement Application, A450-1213SCHL-REIN-v2 (rev. 9/2016)~~

~~School Self Inspection Form, A425-1213SCH_INSP (eff. 9/2011)~~

~~Licensure Fee Notice, A450-1213FEE-v6 (rev. 9/2016)~~

[[Esthetician – Esthetics Instructor Examination & License Application, A450-1261_62EXLIC-v13 \(eff. 1/2017\)](#)

[[Master Esthetician – Master Esthetics Instructor Examination & License Application, A450-1264_65EXLIC-v14 \(eff. 1/2017\)](#)

[[Temporary Permit Application, A450-1213TEMP-v2 \(eff. 1/2017\)](#)

[[License by Endorsement Application, A450-1213END-v10 \(eff. 1/2017\)](#)

[[Training & Experience Verification Form, A450-1213TREXP-v5 \(eff. 1/2017\)](#)

[[Individual - Reinstatement Application, A450-1213REI-v9 \(eff. 1/2017\)](#)

[[Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS-v9 \(eff. 1/2017\)](#)

[[Salon, Shop & Spa Self Inspection Form, A450-1213_SSS_INSP-v3 \(eff. 5/2016\)](#)

[[Instructor Certification Application, A450-1213INST-v8 \(eff. 1/2017\)](#)

[[School License Application, A450-1213SCHL-v10 \(eff. 1/2017\)](#)

[[School Reinstatement Application, A450-1213SCHL-REI-v3 \(eff. 1/2017\)](#)

[[School Self Inspection Form, A450-1213SCH_INSP-v3 \(eff. 5/2016\)](#)]

[[Licensure Fee Notice, A450-1213FEE-v6 \(rev. 9/2016\)](#)]
[[Change of Responsible Management, A450-1213CRM \(eff. 1/2017\)](#)]

VA.R. Doc. No. R14-3985; Filed November 14, 2016, 4:26 p.m.

COMMON INTEREST COMMUNITY BOARD

Proposed Regulation

Title of Regulation: 18VAC48-50. Common Interest Community Manager Regulations (amending 18VAC48-50-253, 18VAC48-50-255).

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Hearing Information:

January 31, 2017 - 10 a.m. - Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 200, Hearing Room 3, Richmond, VA 23233

Public Comment Deadline: February 10, 2017.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board. The imperative form of the verb "shall" is used, making the board's authority to regulate mandatory rather than discretionary.

Section 54.1-2349 of the Code of Virginia states in part that the board shall establish an education-based certification program for persons who are involved in the business or activity of providing management services to common interest communities and authorizes the board to approve training courses and instructors.

Purpose: The General Assembly determined that an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities was essential to protect the health, safety, and welfare of the citizens of Virginia. The Common Interest Community Board's current regulations require both applicants for initial licensure and renewal to complete a minimum of two contact hours in common interest community law and regulation in addition to fair housing training. The two contact hour programs are only applicable for renewal of certificates for principal or supervisory employees and are not a prerequisite to initial certification. The proposed amendment to the language provides much-needed clarification.

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Substance: The proposed amendments to 18VAC48-50-253 and 18VAC48-50-255 remove "applicants" from the requirement of completing a two-hour common interest community law and regulation training program and a two-hour fair housing training program as a prerequisite for initial certification. In addition, the proposed amendment clarifies the topic areas and course of study regarding the two contact hours pertaining to common interest community law and regulation.

Issues: The primary advantage to the public and the certificate holders of the board is that the revisions will clarify the training program course content required to renew a certification and ensure that certificate-holders are aware of regulatory and legislative changes related to common interest communities and fair housing. There are no identified disadvantages to the public with the proposed language change as it does not change any of the current requirements or practices. The advantage to the Commonwealth is that the change ensures clarity and consistency when reviewing training programs for approval. There are no identified disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Common Interest Community Board (Board) proposes amendments to the "Virginia common interest community law and regulation training program" and "fair housing training program" requirements. The Board proposes to remove erroneous language and amend other language to improve clarity.

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

Estimated Economic Impact. The current "18VAC48-50-253 Virginia Common Interest Community Law and Regulation Training Program Requirements" states that: "In order to qualify as a Virginia common interest community law and regulation training program **for applicants for and renewal of certificates**¹ issued by the board, the common interest community law and regulation program must include a minimum of two contact hours and the syllabus shall encompass Virginia laws and regulations related to common interest community management and creation, governance, administration, and operations of associations."

Analogous to 18VAC48-50-253, the current "18VAC48-50-255 Fair Housing Training Program Requirements" states that "In order to qualify as a fair housing training program for applicants for and renewal of certificates² issued by the board, the fair housing training program must include a minimum of two contact hours and ..." According to the Department of Professional and Occupational Regulation, the two contact hour programs are only applicable for renewal of certificates for principal or supervisory employees, and not a prerequisite to initial certification. Thus the Board proposes to remove "applicants for and" from both 18VAC48-50-253 and

18VAC48-50-255. Removing this language will not have any impact in practice beyond clarifying the actual requirements in practice. This will be beneficial in that it will reduce the likelihood that readers of the regulation are misled.

The Board also proposes to clarify the language on the training content. The current regulation specifies which aspects (i.e., management, creation, governance, administration, and operations) of common interest communities to which the training must be related. The proposed action would remove those specific aspects to clarify that the training on law and regulations is not limited only to those aspects of common interest communities.

Businesses and Entities Affected. The proposed amendments pertain to the 6 Virginia common interest community law and regulation training programs and the 7 fair housing training programs.

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

Projected Impact on Employment. The proposed amendments do not affect employment.

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

Real Estate Development Costs. The proposed amendments do 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 amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

¹ The text in the regulation is not bolded.

² Ibid

Agency's Response to Economic Impact Analysis: The Common Interest Community Board concurs with the approval of the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments clarify (i) that the requirement to complete a minimum of two contact hours in common interest community law and regulation in addition to fair housing training applies only to the renewal of certificates for principal or supervisory employees and is not a prerequisite to initial certification and (ii) the topic areas and course of study regarding the two contact hours pertaining to common interest community law and regulation.

18VAC48-50-253. Virginia common interest community law and regulation training program requirements.

In order to qualify as a Virginia common interest community law and regulation training program for ~~applicants for and~~ renewal of certificates issued by the board, the common interest community law and regulation program must include a minimum of two contact hours and the syllabus shall encompass updates to Virginia laws and regulations directly related to common interest community management and creation, governance, administration, and operations of associations.

18VAC48-50-255. Fair housing training program requirements.

In order to qualify as a fair housing training program for ~~applicants for and~~ renewal of certificates issued by the board, the fair housing training program must include a minimum of two contact hours and the syllabus shall encompass Virginia fair housing laws and any updates, all as related to the management of common interest communities.

VA.R. Doc. No. R16-4618; Filed November 10, 2016, 12:09 p.m.

BOARD OF PHARMACY

Proposed Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-25).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information:

December 12, 2016 - 9 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA 23233.

Public Comment Deadline: February 10, 2017.

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.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system.

The specific authority of the board to regulate the practice of pharmacy is found in § 54.1-3307 of the Code of Virginia

Purpose: In 2012, the U.S. Department of Justice resolved allegations against Walgreens Pharmacy with a \$7.9 million payment because the chain offered beneficiaries of government health care programs (Medicare, Medicaid, TRICARE, etc.) inducements that are prohibited by law to transfer prescriptions to Walgreen pharmacies. Quotes from federal law enforcement illustrate the need to enact such a prohibition in Virginia. The U.S. Attorney for the Eastern District of Michigan said, "Continuity with a pharmacist is important to detect problems with dosages and drugs interactions. Patients should make decisions based on legitimate health care needs, not on inducements like gift cards." The Inspector General for the U.S. Department of Health and Human Services said, "Violating Federal health care laws, as Walgreens allegedly did by offering incentives for new business, cannot be tolerated."

As the Virginia Pharmacists Association stated in its letter of support for a regulatory change, "Transfer coupons and other transfer incentives fragment the medication records of patients which leads to inaccuracies in the medication records and is detrimental to patient care." The Board of Pharmacy has determined that there is a need to propose a regulation to protect the health, safety, and welfare of the citizens who count on Virginia pharmacies for accuracy and integrity in filling prescriptions.

Substance: The proposed amendment makes it unprofessional conduct to offer inducements or incentives, such as coupons or gift cards, for a patient to transfer a prescription, absent any professional rationale for such transfer. Customer rewards or affinity cards that encourage loyalty to a pharmacy would not be considered unprofessional.

Issues: The primary advantage to the public is improvement in the continuity of care in delivery of pharmaceutical services. There is a disadvantage for customers who use prescription transfer just as a means of obtaining gift cards and incentives. There are no advantages or disadvantages to the agency.

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

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to add to the list of unprofessional conduct for pharmacists and pharmacies the following acts: "Advertising or soliciting in a manner that may jeopardize the health, safety and welfare of a patient, including incentivizing or inducing the transfer of a prescription absent professional rationale by use of coupons, rebates, or similar offerings."

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Regulations

Estimated Economic Impact

Background. Pursuant to Virginia Code § 54.1-3316, the Board may revoke or suspend pharmacy permits or impose a monetary penalty when permit holders have engaged in unprofessional conduct. Thus the proposal to add inducements to transfer prescriptions by use of coupons, rebates, or similar offerings to the list of unprofessional conduct effectively bans the use of such incentives. According to the Department of Health Professions, only large chain drug stores have issued these inducements.

Benefits. According to the Virginia Pharmacists Association, "Transfer coupons and other transfer incentives fragment the medication records of patients which leads to inaccuracies in the medication records and is detrimental to patient care." Pharmacists are trained to understand and detect dangerous drug interactions. When individuals fill their prescriptions at multiple pharmacies,¹ the pharmacists at these pharmacies may not be aware of all the drugs being taken by the individual. This inhibits pharmacists' ability to catch and prevent dangerous drug interactions. Some drug interactions can potentially cause severe health problems. Other interactions reduce the effectiveness of one or both drugs.

Even with the proposed ban on inducements to transfer prescriptions, people remain free to fill prescriptions at multiple pharmacies and to transfer prescriptions. The proposed ban on inducements to transfer prescriptions would though very likely significantly reduce the frequency of prescription transfers. This would in turn reduce the number of occurrences where pharmacists are unaware of all the prescriptions being taken by a patient. Thus, the ban would likely reduce the frequency that patients suffer from adverse drug interactions in Virginia. Information is unavailable to forecast the magnitude of the reduction in adverse drug interactions.

Costs. Coupons, rebates and other incentives help consumers save money. Banning inducements to transfer prescriptions by use of coupons, rebates, or similar offerings increases the cost of prescriptions for people who would otherwise take advantage of such offerings.

It is indeterminate as to whether the large chain drug stores that offer the inducements are worse off or better off with the ban. Since they currently offer the inducements they presumably believe doing so maximizes their profits. Thus losing this marketing option may reduce net profits. On the other hand, the inducements reduce the ultimate price paid by the consumers utilizing the inducements. Banning the inducements can be seen as stopping competition between the drug stores and essentially enabling them all to charge a higher price.

Comparison. People who are meticulous about their records and wish to save money through use of coupons and rebates are worse off with the proposed ban. Such individuals do not put themselves at increased risk of adverse drug interactions since they keep their multiple pharmacists fully informed of

all of their prescriptions. So the ban produces no benefit for them. The ban does increase their costs of obtaining prescriptions since they would no longer be able save money through use the coupons, rebates, and other incentives.

People who do not keep their multiple pharmacists informed of all their prescriptions are likely better off with the ban. Such individuals put themselves at increased risk of negative health outcomes due to their inhibiting their multiple pharmacists' ability to catch and prevent dangerous drug interactions. Given the potential severity of the increased health risks, the benefits of the proposed ban for people who do not keep their multiple pharmacists informed of all their prescriptions likely exceed the cost of paying somewhat more for prescriptions.

Businesses and Entities Affected. The proposed amendment potentially affects all pharmacies in the Commonwealth. According to the Department of Health Professions, only large chain drug stores have issued coupons, rebates, and other inducements to transfer prescriptions. Consumers who use inducements to transfer prescriptions are also affected.

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 affect how the large chain drug stores that have issued inducements to transfer prescriptions use their property. They will no longer be able to issue such inducements for their pharmacies. As discussed above, it is indeterminate as to whether this will be positive or negative toward their value.

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 directly affect small businesses.

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

Adverse Impacts:

Businesses. As discussed above, it is indeterminate as to whether the proposed amendment will be positive or negative for large drug stores.

Localities. The proposed amendment will not likely adversely affect localities.

Other Entities. As discussed above, the proposed amendment adversely affects people who are meticulous about their

records and wish to save money through use of coupons and rebates.

¹ Filling prescriptions at different locations of one drug store chain would presumably not leave the pharmacists unaware of all the prescriptions filled as they would have the same computerized information system.

Agency's Response to Economic Impact Analysis: The Board of Pharmacy does not concur with the economic impact analysis (EIA) of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20, Regulations Governing the Practice of Pharmacy, relating to the prohibition on offering inducements to transfer prescriptions.

The EIA fails to note the high cost of adverse drug interactions, one of the problems associated with patients moving prescriptions from pharmacy to pharmacy, following inducements such as coupons and rebates. A learning module developed by the Food and Drug Administration on the Prevalence and Incidence of Adverse Drug Reactions (ADRs) uses research and statistics from the Institute of Medicine and other sources, such as the Journal of the American Medical Association. It reports that ADRs are one of the leading causes of morbidity and mortality in health care. The Institute of Medicine reported in January of 2000 that from 44,000 to 98,000 deaths occur annually from medical errors. Of this total, an estimated 7,000 deaths occur due to ADRs.

The exact number of ADRs is not certain, but whatever the true number is, ADRs represent a significant public health problem that is, for the most part, preventable.

When a patient requests transfer of a prescription, it is commonplace for prescriptions to be transferred verbally from one pharmacist to another, a process that can lead to transcription errors if the prescription information is communicated incorrectly or misunderstood by the receiving pharmacist. Inducing patients to transfer prescriptions would appear to unnecessarily increase risk associated with the transfer process which could lead to patient harm.

On page 2 of the EIA, the analyst makes the statement that "Banning the inducements can be seen as stopping competition between the drug stores and essentially enabling them all to charge a higher price." Apparently, the intent of the regulatory action has been misread, because it does not "ban inducements" that pharmacies can offer to their customers. Pharmacies may continue to advertise lower prices and offer affinity rewards for filling prescriptions; the ban would be on inducements to switch prescriptions from drug store to drug store. There are a variety of ways in which a pharmacy can lower the cost of prescription drugs (i.e., \$4 antibiotics), so competition is not impeded by enactment of this regulation.

The EIA also fails to note that the issue of inducements to transfer has already been addressed by the U.S. Department of Justice. In 2012, the Department of Justice resolved allegations against Walgreens Pharmacy with a \$7.9 million

payment because the chain offered beneficiaries of government health care programs (Medicare, Medicaid, TRICARE, etc.) inducements that are prohibited by law to transfer prescriptions to Walgreen pharmacies. Quotes from federal law enforcement illustrate the need to enact such a prohibition in Virginia. The U.S. Attorney for the Eastern District of Michigan said, "Continuity with a pharmacist is important to detect problems with dosages and drugs interactions. Patients should make decisions based on legitimate health care needs, not on inducements like gift cards." The Inspector General for the U.S. Department of Health and Human Services, said, "Violating Federal health care laws, as Walgreens allegedly did by offering incentives for new business, cannot be tolerated."

The proposal of the Virginia Board of Pharmacy follows the action of the Department of Justice for the reasons noted.

Summary:

The proposed amendments prohibit advertising or soliciting that may jeopardize the health, safety, and welfare of a patient, including incentivizing or inducing a patient to transfer a prescription absent professional rationale by use of coupons, rebates, etc.

18VAC110-20-25. Unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-3316 of the Code of Virginia:

1. Failing to comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records or related to provision of patient records to another practitioner or to the patient or his personal representative;
2. Willfully or negligently breaching the confidentiality of a patient unless otherwise required or permitted by applicable law;
3. Failing to maintain confidentiality of information received from the Prescription Monitoring Program, obtaining such information for reasons other than to assist in determining the validity of a prescription to be filled, or misusing information received from the program;
4. Engaging in disruptive or abusive behavior in a pharmacy or other health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;
5. Engaging or attempting to engage in a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family, including but not limited to sexual misconduct with a patient or a member of his family or other conduct that results or could result in personal gain at the expense of the patient;
6. Failing to maintain adequate safeguards against diversion of controlled substances;

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7. Failing to appropriately respond to a known dispensing error in a manner that protects the health and safety of the patient;
8. Delegating a task within the practice of pharmacy to a person who is not adequately trained to perform such a task;
9. Failing by the PIC to ensure that pharmacy interns and pharmacy technicians working in the pharmacy are registered and that such registration is current; ~~or~~
10. Failing to exercise professional judgment in determining whether a prescription meets requirements of law before dispensing; or
11. Advertising or soliciting in a manner that may jeopardize the health, safety, and welfare of a patient, including incentivizing or inducing the transfer of a prescription absent professional rationale by use of coupons, rebates, or similar offerings.

V.A.R. Doc. No. R16-4549; Filed November 14, 2016, 8:44 a.m.

REAL ESTATE BOARD Fast-Track Regulation

Title of Regulation: 18VAC135-11. Public Participation Guidelines (amending 18VAC135-11-50).

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 11, 2017.

Effective Date: January 30, 2017.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email reboard@dpor.virginia.gov.

Basis: The Real Estate Board is authorized under § 54.1-201 of the Code of Virginia to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the board. The authority granted under § 54.1-404 of the Code of Virginia includes the promulgation of regulations governing the proper discharge of the board's duties. The amendments conform to Chapter 795 of the 2012 Acts of Assembly, which provides that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative.

Purpose: The purpose of this action 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 to the statute. Therefore, there is no controversy in its promulgation.

Substance: The amendment provides 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 and 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 Assembly,¹ the Real Estate Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

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

Estimated Economic Impact. The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Chapter 795 of the 2012 Acts of Assembly added to § 2.2-4007.02. "Public participation guidelines" of the Code of Virginia that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation will not change the law in effect, but will be beneficial in that it will inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

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 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 costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

Agency's Response to Economic Impact Analysis: The Real Estate Board concurs with the economic impact analysis prepared by 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

18VAC135-11-50. 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 repropoed 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.

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.

VA.R. Doc. No. R17-4933; Filed November 14, 2016, 10:10 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Department of Social Services. 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.

Regulations

Title of Regulation: 22VAC40-191. Background Checks for Child Welfare Agencies.

Contact Information: Deborah Eves, Division of Licensing, Children's Programs, Department of Social Services, 801 East Main Street, 9th Floor, Wytestone Building, Richmond, VA 23219, telephone (804) 726-7506, or email deborah.eves@dss.virginia.gov.

FORMS (22VAC40-191)

Criminal History/Sex Offender and Crimes Against Minors Registry Search Form, SP-230 (rev. 12/2012)

~~Virginia Department of Social Services/Child Protective Services Central Registry Release of Information Form, 032-02-151-09 (rev. 11/2009)~~

~~Sworn Statement or Affirmation for Child Day Programs, 032-05-0160-08 eng (eff. 6/2013)~~

~~Sworn Statement or Affirmation for Child Placing Agencies, 032-05-0974-03 eng (eff. 6/2013)~~

~~Sworn Statement or Affirmation for Foster and Adoptive Parents, Adult Household Members, 032-05-0973-03 eng (eff. 6/2013)~~

[Sworn Statement or Affirmation for Child Placing Agencies, 032-05-0974-04-eng \(eff. 7/2014\)](#)

[Central Registry Release of Information Form, 032-02-0151-12-eng \(eff. 8/2015\)](#)

[Sworn Statement or Affirmation for Child Day Programs, 032-05-0160-09-eng \(eff. 7/2014\)](#)

[Sworn Statement or Affirmation for Foster and Adoptive Parents, Adult Household Members, 032-05-0973-04-eng \(eff. 7/2014\)](#)

V.A.R. Doc. No. R17-4980; Filed November 18, 2016, 2:58 p.m.

Final Regulation

Title of Regulation: 22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10 through 22VAC40-201-150, 22VAC40-201-170, 22VAC40-201-200; adding 22VAC40-201-35, 22VAC40-201-161; repealing 22VAC40-201-160).

Statutory Authority: §§ 63.2-217, 63.2-319, and 63.2-900 of the Code of Virginia.

Effective Date: January 11, 2017.

Agency Contact: Em Parente, Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7538, FAX (804) 726-7895, or email em.parente@dss.virginia.gov.

Summary:

The amendments include (i) as required by state and federal law, allowing independent living services to be extended to youths older than 18 years of age who are being released from Department of Juvenile Justice custody, so long as those youths were in foster care before they were incarcerated and remove the permanency goal of

independent living except for juvenile refugees, youths leaving foster care who are at least 18 years old, and youths at least 18 years of age who are leaving Juvenile Correctional Center custody; (ii) limiting when a foster child can be removed from kinship foster care without the consent of the relative foster parent; (iii) allowing the restoration of parental rights for the parents, whose rights had been terminated, of older foster care children; (iv) mandating that the state Department of Social Services negotiate adoption assistance subsidies; (v) setting the process by which named parties will decide which school district a foster child will attend; and (vi) reducing the timeframe for submitting a foster care plan to the courts and the timeframe for the courts to approve that plan.

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

22VAC40-201-10. Definitions.

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis; ~~and that is open to the participation of the birth parents or prior custodians and other individuals significant to the child and family,~~ pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family [] as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment ~~or services~~ provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the ~~child placing agency~~ local board and the adoptive parents of a child with special needs [] ~~to provide for the unmet financial and service needs of or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the [payments payment] and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.~~

"Adoption Manual" means ~~Volume VII, Section III, Chapter C—Adoption/Agency Placement of the Service Program Manual of the Virginia Department of Social Services dated October 2009/March 2010.~~

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

~~"Adoption search" means interviews and written or telephone inquiries made by a local department to locate and advise the biological parents or siblings of an adult adoptee's request, by Application for Disclosure or petition to the court, for identifying information from a closed adoption record.~~

"Adoptive home" means any family home selected and approved by a parent, local board [] or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption. ~~The adoptive home study is included in the dual approval process.~~

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 [~~and or~~] 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body ~~to receive funds~~ pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

~~"Concurrent permanency planning" means a sequential, structured approach to case management which requires working towards a permanency goal (usually reunification) while at the same time establishing and working towards an alternative permanency plan utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually [a] reunification with the family, simultaneously with an established alternative permanent plan for the child.~~

~~"Custody investigation" means a method to gather information related to the parents and a child whose custody, visitation, or support is in controversy or requires determination [-]~~

"Department" means the ~~State~~ state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

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~~"Dual approval process" "Dually approved" means a process that includes a home study, mutual selection, interviews, training, and background checks to be completed on all applicants being considered for approval have met the required standards to be approved as a resource, foster or adoptive family home provider.~~

~~"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of [the] child.~~

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

~~"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement. Foster care also includes children under the placement and care of the local board who have not been removed from their home.~~

~~"Foster care maintenance payments" means payments to cover federally allowable those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision [,] school supplies, a child's incidentals, reasonable travel for the child to visit relatives to the child's home for visitation, and reasonable travel to remain in his previous in the school in which the child is enrolled at the time of the placement, and other allowable expenses in accordance with guidance developed by the department. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.~~

~~"Foster Care Manual" means Chapter E Foster Care of the Child and Family Services Manual of the Virginia Department of Social Services dated July 2011.~~

~~"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the CPMT where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.~~

~~"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.~~

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of ~~prevention, placement casework~~, treatment, and community services, including [~~but not limited to~~] independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands which establishes orderly procedures for the

interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the ~~local department~~ child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

["Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.]

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs ~~including, but not limited to, attorney or other fees directly related to the finalization of the adoption, transportation, court costs, and reasonable and necessary fees of licensed child-placing agencies as set out in § 63.2-1301 D of the Code of Virginia.~~

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

~~"Permanency planning indicator" or "PPI" means a tool used in concurrent permanency planning to assess the likelihood of reunification. This tool assists the worker in determining if a child should be placed with a resource family and if a concurrent goal should be established.~~

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

~~"Resource parent" means a provider who has completed the dual approval process and has been approved as both a foster and adoptive family home provider.~~

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

~~"Service plan" means a written document that describes the programs, care, services, and other support which will be offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia,~~

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"SSI" means Supplemental Security Income.

"State pool ~~fund~~ funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse [~~, of a birth or adoptive parent~~] or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the ~~visitation~~ visits conducted pursuant to § 63.2-1212 of the Code of Virginia ~~subsequent to the entry of an interlocutory order of adoption~~ and the written report ~~compiling~~ of the findings made in the course of the

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visitation ~~which~~. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement.

22VAC40-201-20. Foster care prevention services.

A. The local department shall first make reasonable efforts to keep the child in his home.

B. The local department shall make diligent efforts to locate and assess relatives or other alternative caregivers to support the child remaining in his home or as placement options if the child cannot safely remain in his home.

C. ~~Foster care services~~; The local department shall provide services pursuant to § 63.2-905 of the Code of Virginia, shall be available to the child and birth parents or custodians to prevent the need for foster care placement when the child is abused and neglected as defined in § 63.2-100 of the Code of Virginia or has been found to be a child in need of services as defined in § 16.1-228 of the Code of Virginia [by the court] or as determined by the family assessment and planning team.

D. Any services available to a child in foster care shall also be available to a child and his birth parents or custodians to prevent foster care placement and shall be based on an assessment of the child's and birth parents' or custodians' needs.

E. ~~Any service~~ Appropriate services shall be provided to prevent foster care placement or to stabilize the family situation provided the need for the service is documented in the local department's ~~service~~ written plan or in the IFSP used in conjunction with accessing CSA funds.

F. Children at imminent risk of entry into foster care shall be evaluated by the local department as reasonable candidates for foster care based on federal ~~and state guidelines~~ regulations, 45 CFR 1356.60(c).

G. The local department shall ~~consider a~~ develop a written plan for the implementation of wrap around plan of care services prior to removing a child from his home ~~and~~. As long as the risk of removal from the home continues, services shall be provided to address identified needs. In the event that the child can no longer be safely maintained in the home, the local department shall document why the support and services considered and the reasons such support and services provided were not sufficient to maintain the child in his home.

H. ~~Within 30 days after~~ Prior to removing the child from the custody of his parents, the local department shall make diligent efforts, in accordance with the Foster Care Manual to notify in writing all adult relatives that the child is being removed or has been removed or is likely to be removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home.

22VAC40-201-30. Entering foster care.

A. A child enters foster care through a court commitment, entrustment agreement, or noncustodial foster care agreement. ~~Foster care children who have been committed to the Department of Juvenile Justice (DJJ) shall re-enter foster care at the completion of the DJJ commitment if under the age of 18.~~

B. The entrustment agreement shall specify the rights and obligations of the child, the birth parent or custodian, and the ~~child placing agency~~ local department. Entrustments shall not be used for educational purposes, to make the child eligible for Medicaid, or to obtain mental health treatment.

1. ~~Temporary entrustment~~ Entrustment agreements that are not for the termination of parental rights may be revoked by the birth parent or custodian or ~~child placing agency~~ local board prior to the court's approval of the agreement.

2. ~~Permanent entrustment~~ Entrustment agreements that terminate parental rights shall only be entered into when the birth parent and the ~~child placing agency~~ local board, after counseling about alternatives to permanent relinquishment, agree that voluntary relinquishment of parental rights and placement of the child for adoption are in the child's best interests. When a ~~child placing agency~~ local board enters into a permanent entrustment agreement, the child-placing agency shall make diligent efforts to ensure the timely finalization of the adoption.

3. ~~Local departments shall submit~~ Submission of a petition for approval of the entrustment agreement to the juvenile and domestic relations court ~~pursuant to § 63.2-903~~ shall be in accordance with § 16.1-277.01 of the Code of Virginia.

C. A child may be placed in foster care by a birth parent or custodian entering into a noncustodial foster care agreement with the local department where the birth parent or custodian retains legal custody and the local department assumes placement and care of the child.

1. A noncustodial foster care agreement shall be signed by the local department and the birth parent or custodian and shall address (i) the conditions for care and control of the child; and (ii) the rights and obligations of the child, birth parent or custodian, and the local department. Local departments shall enter into a noncustodial foster care agreement at the request of the birth parent or custodian when such an agreement is in the best interest of the child.

When a noncustodial foster care agreement is executed, the permanency goal shall be reunification and continuation of the agreement is subject to the cooperation of the birth parent or custodian and child.

2. The plan for foster care placement through a noncustodial foster care agreement shall be submitted to the court for approval within ~~60~~ 45 days of the child's entry into foster care. Submission of a petition for approval of a noncustodial agreement to the juvenile and domestic relations court shall be made in accordance with § 16.1-281 of the Code of Virginia.

3. When a child is placed in foster care through a noncustodial foster care agreement, all foster care requirements shall be met.

22VAC40-201-35. Reentry into foster care from commitment.

A. In the event the youth was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice (DJJ) and has not attained the age of 18 years, the local board shall resume custody upon the youth's release from commitment, unless an alternative arrangement for the custody of the youth has been made and communicated in writing to DJJ. At least 90 days prior to the youth's release from commitment on parole supervision the local department shall consult with the court service unit on the youth's return to the locality and collaborate to develop a foster care plan that prepares the youth for successful transition back to the custody of the local department or to an alternative custody arrangement, if applicable. The plan shall identify services necessary for the transition and how the services are to be provided.

B. The foster care plan shall be submitted to the court for approval within 45 days of the youth's reentry into foster care. Submission of a petition for approval of the foster care plan to the juvenile and domestic relations district court shall be made in accordance with § 16.1-281 of the Code of Virginia.

22VAC40-201-40. Foster care placements.

A. Within 30 days of the child being placed in the custody of the local board, the local department shall exercise due diligence to [identify and] notify in writing all adult relatives that the child has been removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home.

B. The local department shall ensure a child in foster care is placed in a ~~licensed or~~ an approved home or licensed facility that complies with all applicable federal and state requirements for safety. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in a ~~licensed or~~ an approved home or licensed facility:

1. The local department shall ~~make diligent efforts~~ exercise due diligence to locate and assess relatives as a foster home placement for the child, including in emergency situations.

2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.

3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation, provide continuity of connections, and provide educational stability for the child.

4. The local department shall ~~make diligent efforts~~ take reasonable steps to place the child with siblings unless such a joint placement would be contrary to the safety or well-being of the child or siblings.

5. The local department shall, when appropriate, consider placement ~~with a resource parent in a dually approved home~~ so that if reunification fails, the placement is the best available placement to provide permanency through adoption for the child.

6. The local department shall not delay or deny placement of a child into a foster family placement on the basis of race, color, or national origin of the foster or resource parent or child.

7. When a child being placed in foster care is of native American, Alaskan Eskimo, or Aleut heritage and is a member of a nationally recognized tribe, the local department shall follow all federal laws, regulations, and policies regarding the referral of ~~a the child of native American heritage.~~ The local department may contact the Virginia Council on Indians Department of Historic Resources for information on contacting Virginia tribes and shall consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

8. If a child is placed in a kinship foster placement pursuant to § 63.2-900.1 of the Code of Virginia, the child shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517 of the Code of Virginia.

~~B. C.~~ A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

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~~C. D.~~ Foster, or adoptive, or resource family homes shall meet standards established by the board and shall be approved by child-placing agencies. ~~Group homes and residential facilities shall be licensed by the appropriate licensing agency. Local departments shall verify the licensure status of the facility prior to placement of the child.~~ Prior to the placement of a child in a licensed child-placing agency (LCPA) foster home, the local department shall verify that the LCPA approved the foster home. Prior to the placement of a child in a children's residential facility, the local department shall verify that the facility is licensed to operate by the appropriate state regulatory authority.

~~D. E.~~ Local departments shall receive notice of the approval [~~by the receiving state~~] from the department's office of the ICPC prior to placing a child out of state.

~~E. F.~~ When a child is to be placed in a home in the local department is considering placement of a child in a foster or adoptive home approved by another local department's jurisdiction department within Virginia, the local department intending to place the child shall ~~notify the local department that approved the home that the home is being considered for the child's placement. The local department consult with the approving local department about the placement of the child and shall also verify that the home is still approved and shall consult with the approving local department about placement of the child.~~

~~F. G.~~ When a child is moving with a foster, or adoptive, or resource family is moving from one jurisdiction to another, the local department holding custody shall notify the local department in the jurisdiction to which the foster, or adoptive, or resource family is moving.

~~G. H.~~ When a child moves with a foster, or adoptive, or resource family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

~~H. I.~~ A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

~~I. J.~~ In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child. ~~The birth parent or prior custodian shall be involved in the decision-making process regarding the placement change prior to a final decision being made.~~ 1. The service worker shall consider the child's best interest and safety needs when involving the birth parent or prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

~~2. K.~~ In the case ~~of an~~ where an emergency situation requires an immediate placement change, the birth parent with residual parental rights or prior custodian and all other

relevant parties shall be notified immediately of the placement change. ~~The child-placing agency local department shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.~~

22VAC40-201-50. Initial foster care placement activities.

A. Information on every child in foster care shall be entered into the department's automated child welfare system ~~in accordance with guidance in the initial placement activities section of the Foster Care Manual.~~

B. The local department shall assess the child for Title IV-E eligibility. The local department shall also refer the child for all financial benefits to which the child may be eligible, including [but not limited to] Child Support, Title IV-E, SSI, other governmental benefits, and private resources.

C. The service worker shall ensure that the child receives a medical examination no later than 30 days after initial placement. The child shall be provided a medical evaluation within 72 hours of initial placement if conditions indicate such an evaluation is necessary. ~~[Dental appointments shall be scheduled every six months as age appropriate, and physicals shall be scheduled at regular intervals. If the child has not had a dental appointment in the past six months and it is developmentally appropriate, a dental appointment shall be scheduled as soon as possible.]~~

~~D. The~~ In accordance with § 22.1-3.4 of the Code of Virginia, the local department shall collaborate with the appropriate local educational agencies school division to ensure that the child remains in his previous school placement when it is a joint determination that it is in the best interests of the child. If remaining in the same school is not in the best interests of the child, the service worker shall enroll the child in an appropriate new school as soon as possible but no more than 72 hours after placement.

1. The child's desire to remain in his previous school setting shall be considered in making the decision about which school the child shall attend.

2. The service worker, in cooperation with the birth parents or prior custodians, foster care providers, and other involved adults, shall coordinate the school placement.

3. If remaining in the same school is jointly determined to be in the best interests of the child, the local department shall arrange for transportation for the child to remain in that school unless the child requires specialized transportation documented in the Individualized Education Program (IEP) for the child, which is funded by the responsible school division.

4. The local department shall document in writing the joint determination with the local school division of the child's best interest for school placement.

5. If the joint determination process cannot be completed prior to the placement in the new residence, the child will

remain in the same school until the best interest determination is completed.

E. Within 72 hours of placing a school age child in a foster care placement, the local department making the placement shall give written notification to the principal of the school in which the child is to be enrolled and the superintendent of the relevant school division of the placement and notify the principal of the status of parental rights.

22VAC40-201-60. Assessment.

A. Assessments shall be conducted in a manner that respectfully involves children and birth parents or prior custodians to give them a say in what happens to them an opportunity for shared decision making. Decision making shall include input from children, youth, birth parents or prior custodians, and other interested individuals. Assessments shall be used both in the establishment of foster care goals and also to inform service plans.

~~B. The initial foster care assessment shall result in the selection of a specific permanency goal. In accordance with guidance in the assessment section of the Foster Care Manual, the local department shall complete the PPI during the initial foster care assessment to assist in determining if a concurrent goal should be selected.~~

~~C. B.~~ The initial foster care assessment shall be completed within ~~[time frames~~ timeframes] developed by the department but shall not exceed 30 calendar days after acceptance of the child in a foster care placement.

~~4. C.~~ When a child has been removed from his home as a result of abuse or neglect, the initial foster care assessment shall include a summary of the Child Protective Services' safety and risk assessments.

~~2. D.~~ The history and circumstances of the child, the birth parents or prior custodians, or other interested individuals shall be assessed at the time of the initial foster care assessment to determine their service needs. The initial foster care assessment shall:

- ~~a. 1.~~ Include a comprehensive social history;
- ~~b. 2.~~ Utilize assessment tools designated by the department;
- ~~c. 3.~~ Be entered into the department's automated child welfare system; and
- ~~d. 4.~~ Include a description of how the child, youth, birth parents or prior custodians, and other interested individuals were involved in the decision making process.

~~D. The service worker shall refer the child; birth parents or prior custodians; and foster, adoptive or resource parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.~~

~~E. Assessments of Assessment shall be ongoing and evaluate~~ the effectiveness of services to the child; birth parents or prior custodians; and foster; or adoptive; or resource parents and the need for additional services shall

~~occur at least every three months as long as the goal is to return home. For all other goals, assessments of the effectiveness and need for additional services shall occur at least every six months after placement for as long as the child remains in foster care. The assessments shall be completed in accordance with guidance in the assessment section of the Foster Care Manual.~~

F. The service worker shall refer the child, birth parents or prior custodians, and foster or adoptive parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.

22VAC40-201-70. Foster care goals.

A. Foster care goals are established to assure permanency ~~planning is achieved~~ for the child. ~~Priority shall be given to the goals listed in subdivisions 1, 2, and 3 of this subsection, which are recognized in federal legislation as providing children with permanency. The selection of goals other than those in subdivisions 1, 2, and 3 of this subsection must include documentation as to why each of these first three goals were not selected.~~ Foster Permissible foster care goals are:

- 1. Return Transfer custody [of the child] to [~~a parent or a prior custodian;~~ his prior family];
- 2. Transfer [~~of~~] custody of the child to a relative other than his prior family;;
- 3. ~~Adoption.~~ Finalize adoption [of the child];
- 4. ~~Permanent~~ Place the child in permanent foster care;;
- 5. ~~Independent~~ Transition to independent living; if the child is admitted to the United States as a refugee or asylee; or
- 6. ~~Another~~ Place the child in another planned permanent living arrangement in accordance with § 16.1-282.1 A2 of the Code of Virginia.

B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:

- 1. Approve the foster care service plan seeking to change the permanency goal to adoption; and
- 2. Terminate parental rights.

Upon termination of parental rights, the local department shall provide an array of adoption services to support obtaining a finalized adoption.

~~C. The goal of permanent foster care shall only be considered for children age 14 and older in accordance with guidance in the section on choosing a goal in the Foster Care Manual. The local department shall engage in concurrent permanency planning in order to achieve timely permanency for the child. Permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated.~~

~~D. When the goal for the youth is to transition to independent living, the local department shall provide~~

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services pursuant to ~~guidance in the section on choosing a goal in the Foster Care Manual.~~

~~E. D.~~ The goal of another planned permanent living arrangement may be chosen when the court has found that ~~none of the alternative permanency goals are appropriate and the court has found the child to:~~

- ~~1. Have~~ The child has a severe and chronic emotional, physical, or neurological disabling condition; ~~and~~
- ~~2. Require~~ The child requires long-term residential care for the condition; ~~and~~
- ~~3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child.~~

~~F. These permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated. Although one goal may appear to be the primary goal, other goals shall be continuously explored and planned for as appropriate.~~

~~E. If either the goal of permanent foster care or another planned permanent living arrangement is selected, the local department shall continue to search for relatives and significant individuals as permanent families throughout the child's involvement with the child welfare system. The local department shall continue to evaluate the best interest of the child [and in light of] the changing circumstances of the child and extended family.~~

~~F. The goal of independent living services shall only be selected for those children admitted to the United States as a refugee or asylee or those youth age 18 years leaving foster care and meeting the requirements to receive independent living services. For those youth with this goal, the service worker shall continue diligent efforts to search for a relative or other interested adult who will provide a permanent long-term family relationship for the youth.~~

22VAC40-201-80. Service Foster care plans.

A. Every child in foster care ~~longer than 45 days~~ shall have a ~~current service~~ written foster care plan approved by the court within 60 days of entry into foster care. The ~~service~~ foster care plan shall specify the ~~assessed~~ permanency goal and ~~when appropriate~~ the concurrent permanency goal; and shall meet all requirements set forth in federal or state law. ~~The~~ In the development of the service foster care plan, the local department shall occur through shared decision making between the local department; consider input from the child; ~~the birth parents or prior custodians; the foster; or adoptive; or resource parents; and any other interested individuals, who may include service providers.~~ All of these ~~partners~~ persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

~~B. A service~~ The foster care plan shall be written after the completion of a thorough the assessment. ~~Service~~ Foster care plans shall directly reference how the strengths identified in the foster care assessment will support the plan and the needs to be met to achieve the permanency goal, including the identified concurrent permanency goal, in a timely manner.

~~C. A plan for visitation with the birth parents or prior custodians, and siblings, grandparents, or other interested individuals for all children in foster care shall be developed and presented to the court as part of the service foster care plan in accordance with § 63.2-900.2 of the Code of Virginia. A plan shall not be required if such visitation is not in the best interest of the child.~~

22VAC40-201-90. Service delivery.

~~A. Permanency planning services~~ Services shall be provided to support the safety and well-being of the child. Services to children and birth parents or prior custodians shall be delivered as part of a total system with cooperation, coordination, and collaboration occurring among children and youth, birth parents or prior custodians, service providers, the legal community and other interested individuals continue until evidence indicates the services are either not effective to reach the child's goal or no longer necessary because the goal has been achieved, or the birth parent or prior custodian has refused services.

~~B. Permanency planning for children and birth parents or prior custodians shall be an inclusive process providing timely notifications and full disclosure to the birth parents or prior custodians of the establishment of a concurrent permanency goal when indicated and the implications of concurrent permanency planning for the child and birth parents or prior custodians. Child placing agencies~~ Local departments shall also make timely notifications notify the birth parents or prior custodians concerning placement changes, hearings and meetings regarding the child, and assessments of needs and case progress; and responsiveness shall be responsive to the requests of the child and birth parents or prior custodians.

~~C. Services to children and birth parents or prior custodians shall continue until an assessment indicates the services are no longer necessary. Services to achieve concurrent permanency goals shall be provided to support achievement of both permanency goals.~~

~~D. C.~~ In order to meet the child's permanency goals ensure that permanency is achieved for the child, services may be provided to extended family relatives or other interested individuals who are assessed to be potential permanency options for the child and may continue until an assessment indicates the services are no longer necessary.

D. Developmental and medical examinations shall be provided for the child in foster care in accordance with the Virginia Department of Medical Assistance Services' Early Periodic Screening Diagnosis and Treatment (EPSDT) schedule in the Virginia EPSDT Periodicity Chart. Dental

examinations shall be provided for the child in accordance with the American Academy of Pediatric Dentistry's Periodicity and Anticipatory Guidance Recommendations (Dental Health Guidelines-Ages 0-18 Years, Recommendations for Preventive Pediatric Dental Care (AAPD Reference Manual 2002-2003)) as determined by the Virginia Department of Medical Assistance Services. As indicated through assessment, appropriate health care services shall include trauma, developmental, mental health, psychosocial, and substance abuse services and treatments. Local departments shall follow the protocols for appropriate and effective use of psychotropic medications for children in foster care disseminated by the department.

E. All children in foster care shall have a face-to-face contact with an approved ~~case~~ service worker at least once per calendar month regardless of the child's permanency goal or placement ~~and in accordance with guidance in the service delivery section of the Foster Care Manual and the Adoption Manual. The majority~~ More than 50% of each child's visits shall be in his place of residency.

1. The purpose of the visits shall be to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child.

2. The visits shall be made by individuals who meet the department's requirements consistent with 42 USC § 622(b).

F. ~~Supportive services to foster, adoptive, and resourcee parents shall be provided.~~ 1. The local department shall enter into a placement agreement developed by the department with the foster, ~~or adoptive, or resourcee~~ parents. ~~The~~ As required by § 63.2-900 of the Code of Virginia, the placement agreement shall include, at a minimum, a code of ethics and mutual responsibilities for all parties to the agreement as ~~required by § 63.2-900 of the Code of Virginia.~~

1. Services to prevent placement disruptions shall be provided to the foster and adoptive parents.

2. Foster, ~~and adoptive, and resourcee~~ parents who have children placed with them shall be contacted by a service worker as often as needed in accordance with ~~22VAC211-100~~ 22VAC40-211-100 to assess service needs and progress.

3. Foster, ~~and adoptive, and resourcee~~ parents shall be given full factual information about the child, including but not limited to, circumstances that led to the child's removal, and complete educational, medical, and behavioral information. All information shall be kept confidential by the foster and adoptive parents.

4. Foster, ~~and adoptive, and resourcee~~ parents shall be given ~~appropriate sections of the foster care [service] plan. [Information in the service plan that is prohibited from being released shall not be provided to the foster parent, in~~

~~accordance with § 16.1-281 B and C of the Code of Virginia.]~~

~~5. If needed, services to stabilize the placement shall be provided.~~

~~6. 5. Respite care for foster, and adoptive, and resourcee parents may be provided on an emergency or planned basis in accordance with criteria developed by the department.~~

~~7. 6. The department shall make a contingency fund funds available to provide reimbursement to local departments' foster and resourcee parents for damages pursuant to § 63.2-911 of the Code of Virginia and according to department guidance to property caused by children placed in the home. Provision of reimbursement is contingent upon the availability of funds.~~

22VAC40-201-100. Providing independent living services.

A. Independent living services shall be identified by the youth; foster, ~~or~~ or adoptive ~~or resourcee~~ family; local department; service providers; legal community; and other interested individuals and shall be included in the service plan. Input from the youth in assembling these individuals and developing the services is required.

B. Independent living services ~~may shall~~ shall be provided to all youth ages 14 to 18 years and ~~may shall~~ shall be ~~provided until the youth reaches age 21~~ offered to any person between 18 and 21 years of age who is in the process of transitioning from foster care to self-sufficiency.

C. ~~[The] child placing agency [local department may offer a program of independent living services that meets the youth's needs such as~~ Independent living services include] education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. ~~Child placing agencies~~ Local departments shall assess the youth's independent living skills and needs ~~in accordance with guidance in the service delivery section of the Foster Care Manual~~ and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 years may continue to receive independent living services from the ~~child placing agency~~ local department between the ages of 18 and 21 years if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and

2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the service agreement. The service agreement shall require, at a minimum, that the youth's living arrangement shall be approved by the local department and that the youth shall cooperate with all services; or

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3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 years and older is eligible to live in an independent living arrangement provided the ~~child placing agency~~ local department utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a ~~child-placing agency~~ local department and chooses to discontinue receiving independent living services after age 18 ~~but prior to his 21st birthday~~ years may request a resumption of independent living services ~~in accordance with § 63.2-905.1 of the Code of Virginia provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board regarding the terms and conditions of his receipt of independent living services. Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his 21st birthday written notice of his right to request restoration of independent living services in accordance with § 63.2-905.1 of the Code of Virginia by including such written notice in the person's transition plan.~~

H. ~~Child placing agencies~~ Local departments shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Local departments shall provide independent living services to any person between 18 and 21 years of age who:

1. Was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice;
2. Is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency; and
3. Provides written notice of his intent to receive independent living services and enters into a written agreement which sets forth the terms and conditions for the provision of independent living services with the local board within 60 days of his release from commitment.

~~±~~ J. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 shall be conducted to assure the effectiveness of service provision.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. File petitions in accordance with the requirements for the type of hearing.

2. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the ~~child placing agency~~ service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

3. Inform the court of reasonable efforts made to achieve concurrent permanency goals ~~in those cases where a concurrent goal has been identified.~~

B. An administrative panel review shall be held six months after a permanency planning hearing when the ~~goals goal~~ goal of adoption, permanent foster care, ~~or independent living~~ has been approved by the court unless the court requires more frequent hearings. ~~A foster care review hearing will be held annually.~~ The child will continue to have ~~Administrative Panel Reviews~~ administrative panel reviews or review hearings every six months until ~~a final order of adoption is issued~~ or the child reaches age 18 years.

C. The local department shall invite the child; the birth parents or prior custodians when appropriate; and the child's foster; ~~or adoptive, or resource~~ placement providers; guardian ad litem; court appointed special advocate (CASA); relatives; ~~and other interested individuals~~ service providers to participate in the administrative panel reviews.

D. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. ~~All interested individuals~~ Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

E. A supervisory review is required every six months for youth ages 18 to 21.

F. ~~When~~ In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

G. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

H. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously

terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

22VAC40-201-120. Funding.

A. The local department is responsible for establishing a foster child's eligibility for federal, state, or other funding sources and making required payments from such sources. ~~State pool funds shall be used~~ Local departments shall seek state pool funds for a child's maintenance and service needs when other funding sources are not available.

B. The assessment and provision of services to the child and birth parents or prior custodians shall be made without regard to the funding source.

~~C. Local departments shall reimburse foster or resource parents for expenses paid by them on behalf of the foster child when the expenses are preauthorized or for expenses paid without preauthorization when the local department deems the expenses are appropriate.~~

~~D. C.~~ The child's eligibility for Title IV-E funding shall be redetermined upon a change in situation and in accordance with federal Title IV-E eligibility requirements, ~~the Title IV-E Eligibility Manual, October 2005, and the Adoption Manual.~~

E. The service worker is responsible for providing the eligibility worker information required for the annual redetermination of Medicaid eligibility and information related to changes in the child's situation.

22VAC40-201-130. Closing the foster care case.

A. Foster care cases are closed or transferred to another service category under the following circumstances:

1. When the foster care child turns 18 years of age;
2. When the court releases the child from the local department's custody prior to the age of 18 years;
3. When a ~~voluntary placement agreement~~ temporary entrustment or noncustodial agreement has expired, been revoked, or been terminated by the court;
4. When the foster care child is committed to ~~DJJ~~ the Department of Juvenile Justice; or
5. When the final order of adoption is issued.

B. When the foster care case is closed for services, the case record shall be maintained according to the record retention schedules ~~of~~ established by the Library of Virginia.

C. Any foster care youth who has reached age 18 years has the right to request information from his records in accordance with state law.

22VAC40-201-140. Other foster care requirements.

A. The director of a local department or his designee may grant approval for a child to travel out-of-state and out-of-country. The approval must be in writing and maintained in the child's file.

B. Pursuant to § 63.2-908 of the Code of Virginia, a foster ~~or resource~~ parent may consent to a marriage or entry into the military if the child has been placed with him through a

permanent foster care agreement ~~which~~ that has been approved by the court.

C. An employee of a local department, including a relative, cannot serve as a foster, adoptive, or ~~resource~~ licensed child-placing agency parent for a child in the custody of that local department. ~~The employee can be a foster, adoptive, or resource parent for another local department or licensed child placing agency or~~ In the event it is in the child's best interest that a local employee be the foster parent, the child's custody may be transferred to another local department.

D. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for service foster care plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the service foster care plan for the foster child (parent).

2. The child is eligible for maintenance payments, ~~services,~~ in accordance with 42 USC § 675(4)(B) and Medicaid, ~~and child support services based on federal law and in accordance with guidance in the Foster Care Manual and the Adoption Manual in accordance with 42 USC § 672(h).~~

E. When a child in foster care is committed to the Department of Juvenile Justice (~~DJJ~~), the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18 years, the local department shall maintain a connection with the child ~~in accordance with guidance developed by the department.~~

F. At least 90 days prior to a youth's release from commitment to the Department of Juvenile Justice, the local department shall:

1. Consult with the court services unit concerning the youth's return to the locality; and
2. Work collaboratively with the court services unit to develop a plan for the youth's successful transition back to the community, which will identify the services necessary to facilitate the transition and will describe how the services will be provided.

22VAC40-201-150. Adoption Resource Exchange of Virginia.

A. The Adoption Resource Exchange of Virginia (AREVA) is a service offered by the department that connects families with children who are available for adoption within the Commonwealth of Virginia. AREVA is one tool used to help local departments reach the federal goal of permanency within 24 months specified in § 471 of the Title IV-E of the Social Security Act (42 USC § 671) and the requirement of § 16.1-283 F of the Code of Virginia to file reports to the court on progress towards adoption. The purpose of AREVA is to increase opportunities for children waiting to be adopted by providing services to child-placing agencies having

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custody of these children. The services provided by AREVA include [~~but are not limited to~~]:

1. Maintaining a registry of children awaiting adoption and a registry of approved parents waiting to adopt;
2. Preparing and posting an electronic photo-listing of children ~~with special needs~~ awaiting adoption and a photo-listing of parents awaiting placement of a child ~~with special needs~~;
3. Providing information and referral services for children who have special needs to link child-placing agencies with other adoption resources;
4. Providing ongoing targeted and child-specific recruitment efforts for waiting children;
5. Providing consultation and technical assistance on child-specific recruitment to child-placing agencies for waiting children; and
6. Monitoring local departments' compliance with legal requirements, guidance, and policy on registering children and parents.

B. For a child in foster care [~~that who~~] has the foster care plan goal of adoption as specified in § 63.2-906 of the Code of Virginia and whose parental rights have been terminated, the child-placing agency shall register the child with AREVA within 60 days of termination of parental rights.

C. Child-placing agencies shall comply with all of the AREVA requirements ~~according to guidance in the Adoption Manual.~~

22VAC40-201-160. Adoption assistance. (Repealed.)

~~A. An adoption assistance agreement shall be executed by the child placing agency for a child who has been determined eligible for adoption assistance. Local departments shall use the adoption assistance agreement form developed by the department.~~

~~B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs as defined in 22VAC40-201-10 and meet the following criteria:~~

- ~~1. Be under 18 years of age and meet the requirements set forth in § 473 of Title IV E of the Social Security Act (42 USC § 673); or~~
- ~~2. Be under 18 years of age and in the placement and care of a child placing agency at the time the petition for adoption is filed and be placed by the child placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the child has resided for 18 months with the foster or resource parents who file a petition for adoption under § 63.2-1229 of the Code of Virginia.~~

~~C. The types of adoption assistance for which a child may be eligible are:~~

- ~~1. Title IV E adoption assistance if the child meets federal eligibility requirements.~~

~~2. State adoption assistance when the child's foster care expenses were paid from state pool funds or when the child has a conditional agreement and payments are not needed at the time of placement into an adoptive home but may be needed later and the child's foster care expenses were paid from state pool funds. A conditional adoption assistance agreement allows the adoptive parents to apply for state adoption assistance after the final order of adoption. A conditional adoption assistance agreement shall not require annual certification.~~

~~D. Adoption assistance payments shall be negotiated with the adoptive parents taking into consideration the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources shall be explored to help defray the costs of adoption assistance~~

~~E. Three types of payments may be made on behalf of a child who is eligible for adoption assistance:~~

~~1. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.~~

~~a. The total amount of reimbursement is based on actual costs and shall not exceed \$2,000 per child per placement.~~

~~b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.~~

~~c. Nonrecurring expenses include:~~

~~(1) Attorney fees directly related to the finalization of the adoption;~~

~~(2) Transportation and other expenses incurred by adoptive parents related to the placement of the child. Expenses may be paid for more than one visit;~~

~~(3) Court costs related to filing an adoption petition;~~

~~(4) Reasonable and necessary fees related to adoption charged by licensed child placing agencies; and~~

~~(5) Other expenses directly related to the finalization of the adoption.~~

~~2. A maintenance payment shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed. In these cases a conditional adoption assistance agreement may be entered into. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.~~

~~a. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.~~

~~b. The maintenance payments shall not be reduced below the amount specified in the adoption assistance~~

~~agreement without the concurrence of the adoptive parents or a reduction mandated by the appropriation act.~~

~~e. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care maintenance rate and:~~

~~(1) The child reaches a higher age grouping, as specified in guidance for foster care maintenance rates; or~~

~~(2) Statewide increases are approved for foster care maintenance rates.~~

~~3. A special service payment is used to help meet the child's physical, mental, emotional, or nonroutine dental needs. The special service payment shall be directly related to the child's special needs. Special service payments shall be time limited based on the needs of the child.~~

~~a. Types of expenses that are appropriate to be paid are included in the Adoption Manual.~~

~~b. A special service payment may be used for a child eligible for Medicaid to supplement expenses not covered by Medicaid.~~

~~e. Payments for special services are negotiated with the adoptive parents taking into consideration:~~

~~(1) The special needs of the child;~~

~~(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and~~

~~(3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.~~

~~d. The rate of payment shall not exceed the prevailing community rate.~~

~~e. The special services adoption assistance agreement shall be separate and distinct from the adoption assistance agreement for maintenance payments and nonrecurring expenses.~~

~~F. When a child is determined eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement:~~

~~1. Shall be executed within 90 days of receipt of the application for adoption assistance;~~

~~2. Shall be signed before entry of the final order of adoption;~~

~~3. Shall specify the amount of payment and the services to be provided, including Medicaid; and~~

~~4. Shall remain in effect regardless of the state to which the adoptive parents may relocate.~~

~~G. Procedures for the child whose eligibility for adoption assistance is established after finalization shall be the same as for the child whose eligibility is established before finalization except the application shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs and the child otherwise meets the eligibility requirements of subsection B of this~~

~~section for adoption assistance payments. Application for adoption assistance after finalization shall be for state adoption assistance.~~

~~H. The adoptive parents shall annually submit an adoption assistance affidavit to the local department in accordance with guidance in the Adoption Manual.~~

~~I. The local department is responsible for:~~

~~1. Payments and services identified in the adoption assistance agreement, regardless of where the family resides; and~~

~~2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due.~~

~~J. Adoption assistance shall be terminated when the child reaches the age of 18 unless the child has a physical or mental disability or an educational delay resulting from the child's disability which warrants continuation of the adoption assistance. If a child has one of these conditions the adoption assistance may continue until the child reaches the age of 21.~~

~~K. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:~~

~~1. The child is no longer receiving financial support from the adoptive parents; or~~

~~2. The adoptive parents are no longer legally responsible for the child.~~

~~L. Child placing agencies are responsible for informing adoptive parents in writing that they have the right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. Applicants for adoption assistance shall have the right to appeal adoption assistance decisions related to:~~

~~1. Failure of the child placing agency to provide full factual information known by the child placing agency regarding the child prior to adoption finalization;~~

~~2. Failure of the child placing agency to inform the adoptive parents of the child's eligibility for adoption assistance; and~~

~~3. Decisions made by the child placing agency related to the child's eligibility for adoption assistance, adoption assistance payments, services, and changing or terminating adoption assistance.~~

22VAC40-201-161. Adoption assistance.

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs in accordance with §§ 63.2-1300 and 63.2-1301 of the Code of Virginia and meet the following criteria:

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1. Be younger than 18 years of age and meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or

2. Be younger than 18 years of age and in the placement and care of a child-placing agency at the time the petition for adoption is filed and be placed by the child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the foster parents have filed a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. Adoption assistance may include the following payments or services where appropriate:

1. Title IV-E maintenance payments if the child meets federal eligibility requirements.

2. State-funded maintenance payments when the local department determines that (i) the child does not meet the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673) [; and] (ii) the child is a child with special needs [; (iii) the child's foster care expenses were paid from state pool funds or Title IV E; and (iv) an adoption assistance payment is necessary to facilitate an adoption pursuant to § 63.2-1301 B of the Code of Virginia].

3. [~~A state funded~~ State-funded] special service [payment is payments] used to help meet the child's physical, mental, emotional, or dental needs [~~Special service payments~~ (i)] when the child is in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, [(ii)] when the child meets the criteria of a child with special needs set out in § 63.2-1300 of the Code of Virginia, and [(iii)] when the adoptive parents are capable of providing permanent family relationships needed by the child in all respects except financial.

4. Nonrecurring expense payments when an adoption assistance agreement is entered into prior to [or at the time of] the finalization of the adoption. [Claims for nonrecurring expense payments must be filed within two years of the date of the final decree of adoption.]

D. For the child who meets the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673) or who is receiving state-funded maintenance payments and has a special medical need as specified in § 32.1-325 of the Code of Virginia and in the Virginia DSS Medicaid Eligibility manual, M0310.102 2b, the adoption assistance agreement shall include a statement indicating the child's Medicaid eligibility status.

E. Additional criteria for the payments and services specified in subsection C of this section are as follows:

1. A maintenance payment [, whether under Title IV-E or state funded,] shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates, or it is determined through negotiation, that the

payment is not needed. [~~The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.~~]

a. The amount of [~~the payment~~ all payments] shall be negotiated by a representative of the department with the adoptive parents, taking into consideration the needs of the child and circumstances of the adoptive parents.

b. [~~The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.~~

c.] The maintenance payments shall not be reduced below the amount specified in the adoption assistance agreement without the concurrence of the adoptive parents or a [statewide] reduction [~~mandated by the appropriation act~~].

[~~e. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care maintenance rate~~ d. The maintenance payment specified in the adoption assistance agreement may only be increased if the child is already receiving the maximum amount allowed] and (i) the child reaches [~~a higher age grouping, as specified in guidance for foster care maintenance rates~~ an age at which the foster care maintenance rate would increase] or (ii) statewide increases are approved for foster care maintenance rates.

[e. The adoptive parents shall be required under the adoption assistance agreement to keep the local department informed of the circumstances that would make them ineligible for a maintenance payment or eligible for a different amount of maintenance payment than that specified in the adoption assistance agreement.

f. Maintenance payments shall cease being made to the adoptive parents for the child who has not yet reached the age of 18 years if (i) the adoptive parents are no longer legally responsible for the support of the child or (ii) the child is no longer receiving any support from the adoptive parents.]

2. The special service payment shall be directly related to the child's special needs listed on the adoption assistance agreement. Special service payments shall be time limited based on the needs of the child and can be modified beyond the original provision of the agreement when the local department and the adoptive parents agree to the modification in a signed and dated addendum. Subsection K of this section addresses addendums to an existing agreement.

[~~a. Types of payments that are appropriate are included in the Chapter F, Section 2 of the VDSS Child and Family Services Manual.~~

b. a.] A special service payment may be used for a child eligible for Medicaid to supplement payments not covered by Medicaid.

[~~e. b.] Payments for special services are negotiated by a representative of the department with the adoptive parents, taking into consideration:~~

- (1) The special needs of the child;
- (2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and
- (3) The circumstances of the adoptive family [~~—In considering the family's circumstances, income shall not be the sole factor, including the family's income]~~.

[~~d. c.] The rate of payment shall not exceed the prevailing [community] rate [for the provision of such special services within the child's community]~~.

[~~e. d.] The special services adoption assistance payments shall be separate and distinct from the maintenance payments and nonrecurring expenses on the adoption assistance form.~~

3. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.

- a. The total amount of reimbursement [~~is shall be~~] based on actual costs and shall not exceed \$2,000 per child per placement [or an amount established by federal law].
- b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.
- c. Nonrecurring expenses include those items set out in § 63.2-1301 D of the Code of Virginia.

4. When the adoptive parents decline a specific payment or agree to a reduced payment amount and their family circumstances or the child's needs change, the adoptive parents may request a change to the agreement and an addendum to the adoption assistance agreement can be negotiated. The requirements for addendums to an existing adoption assistance agreement are in subsection K of this section.

F. All adoption assistance payments, services, and agreements shall be negotiated with the adoptive parents by a representative of the department, taking into consideration the needs of the child, the circumstances of the family, and the limitations specified in subsections B, C, and E of this section. Documentation supporting the requests for payments and services shall be provided by the adoptive parents and for consideration in the negotiation of the adoption assistance agreement. Income shall not be the sole factor in considering the family's circumstances during the negotiations. Available family and community resources shall be explored as an alternative or supplement to the adoption assistance payment.

G. An adoption assistance agreement shall be [~~executed entered into~~] by the local board [and the adoptive parents]

or a child who has been determined eligible for adoption assistance [and when an adoption assistance agreement is necessary to facilitate the adoption]. Local departments shall use the adoption assistance agreement form developed by the department. [~~The agreement shall be entered into by the local board and the adoptive parents, or in In~~] cases in which the child is in the custody of a licensed child-placing agency, the agreement shall be entered into by the local board, the licensed child-placing agency, and the adoptive parents. [All adoption assistance agreements shall be negotiated by a representative of the department.]

H. When a child is determined [to be] eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement shall:

- [~~1. Be executed within 90 days of receipt of the application for adoption assistance;~~
- ~~2.] Be signed [before prior to or at the time of] entry of the final order of adoption;~~
- [~~3. 2.] Specify the payment types, monthly amounts, special services to be provided; and~~
- [~~4. 3.] Remain in effect [and governed by the laws of the Commonwealth of Virginia] regardless of the state to which the adoptive parents may relocate.~~

I. Application for adoption assistance after finalization of the adoption shall be for [~~state adoption assistance state-funded maintenance payments~~] as set out in § 63.2-1301 B of the Code of Virginia. The application for adoption assistance shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs.

J. The adoptive parents shall annually submit a signed adoption assistance affidavit to the local department by the end of the month in which the adoption assistance agreement was effective [pursuant to § 63.2-1302 C of the Code of Virginia].

K. Adoption assistance agreements may be modified beyond the original provisions of the agreement to the extent provided by law when the local department and the adoptive parents agree in writing to [~~the extension,~~] new [or renewed] special services or provisions in an addendum signed and dated by the local department and the adoptive parents. The local departments shall use the addendum form provided by the department and the changes to the agreement shall be negotiated by a representative of the department. [~~The provisions of the special services and payments specified on the addendum shall still meet the requirements specified in subsections C and D of this section.~~]

- L. The local department is responsible for:
- 1. Maintaining payments and services identified in the adoption assistance agreement and any addendum in effect, regardless of where the family resides;
 - 2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due;

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3. Discussing with the adoptive parents the child's unique needs and their ability to manage the needs of the child;

4. Assisting the adoptive parents in coordinating services to meet the child's special needs related to adoption assistance upon request;

5. Providing services to prevent disruption [~~of the placement~~] and strengthen family well-being, when requested by the adoptive parents; and

6. Providing training, when requested, to the adoptive parents as part of an already established local department curriculum. If the local department does not provide the necessary training when requested, the local department shall identify potential training sources and assist the adoptive parent in accessing the training.

M. Adoption assistance shall be terminated when the child reaches the age of 18 years unless the child has a physical or mental disability or an educational delay resulting from the child's disability that warrants continuation of the adoption assistance. If a child has a physical or mental disability that warrants continuation of the adoption assistance, the adoption assistance payments may continue until the child reaches the age of 21 years if the local department and adoptive parents sign an addendum to the agreement to extend the agreement to the specified age. If the sole reason for continuing the agreement beyond the age of 18 years is educational delay, then state-funded adoption assistance may continue until the youth graduates from high school or until the youth's 21st birthday, whichever is earlier, if the local department and the adoptive parents sign an addendum to the agreement to extend the agreement to the end of the month of high school graduation or until the youth's 21st birthday, whichever is earlier.

N. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is no longer receiving [~~financial~~] support from the adoptive parents; or

2. The adoptive parents are no longer legally responsible for the support of the child.

O. Local boards of social services are responsible for informing adoptive parents in writing of their right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. In accordance with § 63.2-1304 of the Code of Virginia applicants for, and recipients of, adoption assistance shall have the right to appeal adoption assistance decisions by a local board or licensed child-placing agency in granting, denying, changing, or discontinuing adoption assistance.

22VAC40-201-170. [~~Child-placing~~ Child-placing] agency's responsibilities for ~~consent~~ in non-agency nonagency adoptive placements.

A. At the request of the juvenile court, the child-placing agency shall:

1. Conduct a home study of the prospective adoptive home that shall include the elements in §§ 63.2-1231 and 63.2-1205.1 of the Code of Virginia and department guidance in Volume VII, Section III, Chapter D—Adoption/Non-Agency Placement and Other Court Services of the Service Program Manual of the Virginia Department of Social Services, October 2009 taking into consideration that the manner in which a family receives a child for adoption shall have no bearing on how the family is to be assessed for purposes of adoptive placement; and

2. Provide the court with a written report of the home study.

B. The child-placing agency shall make a recommendation to the court regarding the suitability of the individual to adopt.

C. If As provided in §§ 63.2-1218 and 63.2-1219 of the Code of Virginia, if the child-placing agency suspects an exchange of property, money, services, or any other thing of value has occurred in violation of law in the placement or adoption of the child, it shall report such findings to the commissioner for investigation. The following exceptions apply:

1. Reasonable and customary services provided by a licensed or duly authorized child placing agency, and fees paid for such services;

2. Payment or reimbursement for medical expenses directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings and for expenses incurred for medical care for the child;

3. Payment or reimbursement to birth parents for transportation necessary to execute consent to the adoption;

4. Usual and customary fees for legal services in adoption proceedings; and

5. Payment or reimbursement of reasonable expenses incurred by the adoptive parents for transportation in inter-country placements and as necessary for compliance with state and federal law in such placements.

22VAC40-201-200. Training.

A. Local department ~~foster care and adoption service~~ workers and supervisory staff shall attend and complete initial in-service training in accordance with ~~guidance~~ in the Foster Care Manual and the Adoption Manual §§ 63.2-913 and 63.2-1200.1 of the Code of Virginia.

~~B. Local department foster care and adoption workers and supervisory staff shall complete an individual training needs assessment using a method developed by the department.~~

~~C. B. Local department foster care and adoption service workers and supervisory staff shall attend and complete annual in-service training in accordance with guidance developed 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 (22VAC40-201)

[Virginia Application for Adoption Assistance, 032-04-0093-00-eng \(eff. 3/2012\)](#)

[Virginia Adoption Assistance Agreement, 032-04-0090-00-eng \(eff. 7/2014\)](#)

[Addendum to Adoption Assistance Agreement, 032-04-0086-00-eng \(eff. 3/2012\)](#)

[Adoptee Application for Disclosure \(and Guidelines Regarding the Application\), 032-02-0018-03-eng \(eff. 8/2013\)](#)

DOCUMENTS INCORPORATED BY REFERENCE

~~Child & Family Services Manual, Chapter E Foster Care, July 2011, Virginia Department of Social Services~~

~~Service Program Manual, Volume VII, Section III, Chapter C Adoption/Agency Placement, October 2009/March 2010, Virginia Department of Social Services~~

~~Service Program Manual, Volume VII, Section III, Chapter D Adoption/Agency Placement, October 2009, Virginia Department of Social Services~~

~~Title IV E Eligibility Manual (E. Foster Care), January 2012, Virginia Department of Social Services~~

[Medicaid Eligibility Manual, M0310, Non-IV-E Adoption Assistance, Virginia Department of Social Services](#)

[Virginia EPSDT Periodicity Chart, Virginia Department of Medical Assistance Services](#)

[Periodicity and Anticipatory Guidance Recommendations, AAPD/ADA/AAP Guidelines, Dental Health Guidelines - Ages 0 - 18 Years, Recommendations for Preventive Pediatric Dental Care \(AAPD Reference Manual 2002-2003\)](#)

~~[Child and Family Services Manual, Chapter E Foster Care, Section 17.1.3 Rates, July 2014, Virginia Department of Social Services]~~

~~Child and Family Services Manual, Chapter F Adoption, July 2014, Virginia Department of Social Services]~~

VA.R. Doc. No. R13-3751; Filed November 14, 2016, 9:18 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-300. Estate Tax (repealing 23VAC10-300-20 through 23VAC10-300-90).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 10, 2017.

Effective Date: February 27, 2017.

Agency Contact: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation.

Purpose: As a result of a periodic review of the Virginia Estate Tax regulation (23VAC10-300) initiated by the Department of Taxation on May 30, 2016, and completed June 20, 2016, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies, and it is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor Terence R. McAuliffe's Executive Order 17 signed June 30, 2014.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the Virginia estate tax.

Rationale for Using Fast-Track Rulemaking Process: The department is using the fast-track rulemaking process because the repeal of the Virginia Estate Tax regulation (23VAC10-300) is expected to be noncontroversial because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies. No comments were received during the periodic review of the regulation.

Substance: The action repeals the Virginia Estate Tax regulation (23VAC10-300). Since 1980 Virginia imposed a "pick-up" estate tax that was equal to the maximum amount of the federal credit for state death taxes as it existed on January 1, 1978. Congress eliminated the federal credit for state death taxes in 2005, but the freeze to 1978 preserved the revenue from the Virginia estate tax. In 2006 the General Assembly struck the language tying the tax to the 1978

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amount of the federal credit, which effectively repealed the Virginia estate tax; see Chapters 4 and 5 of the 2006 Acts of Assembly, Special Session I. Because the Virginia Estate Tax (§ 58.1-900 et seq., of the Code of Virginia) no longer imposes a tax on the estates of decedents there is no longer a need for the Virginia Estate Tax regulation. Repeal of the regulation will have no impact on the administration of the Virginia estate tax.

Issues: As the law no longer imposes a Virginia estate tax, the regulation pursuant to that law is unnecessary. Accordingly, its repeal poses no disadvantages to the public or the Commonwealth.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (Department) proposes to repeal the Estate Tax regulation.

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

Estimated Economic Impact. Chapters 4 and 5 of the 2006 Special Session Acts of Assembly¹ effectively eliminated the Commonwealth's estate tax for estates of persons who died on or after July 1, 2007. Thus the Estate Tax regulation is obsolete. The proposed repeal of the regulation would have no impact on applicable rules and requirements, but nonetheless would be beneficial in that it would eliminate the possibility that readers of the regulation would be misled concerning the law in effect.

Businesses and Entities Affected. Since Virginia's estate tax was effectively repealed via legislation in 2006,² repealing this regulation does not affect any businesses or entities beyond potential readers of the regulation who may have been misled concerning the law in effect.

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

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

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

Real Estate Development Costs. The proposed repeal of the regulation 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 repeal of the regulation does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation does not adversely affect businesses.

Localities. The proposed repeal of the regulation does not adversely affect localities.

Other Entities. The proposed repeal of the regulation does not adversely affect other entities.

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?062+ful+CHAP0004> and <http://leg1.state.va.us/cgi-bin/legp504.exe?062+ful+CHAP0005>

² Ibid

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

Pursuant to Chapters 4 and 5 of the 2006 Acts of Assembly, Special Session I, and a periodic review of the regulation, completed June 20, 2016, the action repeals the Virginia Estate Tax regulation (23VAC10-300). Repeal of the regulation does not reflect any change in current tax policy and has no impact on the administration of the Virginia estate tax.

VA.R. Doc. No. R17-4871; Filed November 21, 2016, 1:22 p.m.

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 22, 2016

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. PUC-2016-00055

Ex Parte: In re: revising the
Virginia Universal Service Plan
to conform to changes in federal
regulations regarding Lifeline

ORDER

Following passage of the Telecommunications Act of 1996, 47 USC § 251 et seq., the State Corporation Commission ("Commission") adopted changes to the Virginia Universal Service Plan ("VUSP") to conform to the federal requirements adopted by the Federal Communications Commission ("FCC") for determining customer eligibility to participate in the Lifeline program.¹ The Commission found that "it is in the public interest for eligible local exchange carriers operating in Virginia to participate in [Lifeline] and take advantage of available federal funds to make local telephone service even more affordable for qualifying low-income customers."² As in 1997, currently all incumbent local exchange providers in Virginia participate in the VUSP.³ Additionally, there is presently one competitive local exchange carrier, Cox Virginia Telcom, L.L.C., that has been designated by the Commission, pursuant to 47 USC § 214 (e), to be an eligible telecommunications carrier to receive federal universal service support for Lifeline service provided in Virginia.⁴

The FCC has adopted changes to its Lifeline eligibility requirements as part of its efforts to modernize Lifeline for the twenty-first century.⁵ These changes include revisions to the manner through which individuals may be determined to be eligible to participate in Lifeline.⁶ The FCC stated that its changes will "streamline the criteria for Lifeline program qualification in recognition of the way the vast majority of Lifeline subscribers gain entry to the program" and add a new method through which veterans may qualify.⁷ Accordingly, the FCC concluded that it will allow entry to Lifeline based on participation in the Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, Federal Public Housing Assistance, the Veterans Pension benefits and Survivor Pension benefits programs, and all current Tribal qualifying programs, and to low-income consumers who demonstrate income of less than 135% of the federal poverty guidelines.⁸ These changes to the FCC's regulations are to become effective December 2, 2016.⁹

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the VUSP again should be amended to conform to the revised requirements for eligibility adopted by the FCC for participation in Lifeline.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUC-2016-00055.
- (2) The VUSP hereby is amended to conform to the eligibility requirements adopted by the FCC. In accordance with the FCC's 2016 Lifeline Modernization Order, such revised eligibility requirements shall be effective December 2, 2016.
- (3) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North Ninth Street, Richmond, Virginia 23219; and each local exchange carrier certificated in Virginia as listed on Appendix A. A copy also shall be delivered to the Commission's Office of General Counsel and Division of Public Utility Regulation.

¹ Commonwealth of Virginia, ex rel, State Corporation Commission, Ex parte: In re: Consideration of changes in universal service support for low-income customers as required by federal regulations, Case No. PUC-1997-00166, 1997 S.C.C. Ann. Rept. 323 (Dec. 17, 1997).

² Id.

³ Id.

⁴ Commonwealth of Virginia, ex rel., State Corporation Commission, Ex parte: In re: Implementation of Requirements of § 214 (e) of the Telecommunications Act of 1996, Case No. PUC-1997-00135; Application of Cox Virginia Telcom, LLC., For designation as an eligible telecommunications carrier under 47 U.S.C. § 214 (e), Case No. PUC-2012-00059, 2012 S.C.C. Ann. Rept. 205, Order (Dec. 14, 2012).

⁵ In the matter of: Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197, Connect America Fund, WC Docket No. 10-90, Third Report and Order, Further Report and Order, Order on Reconsideration, 31 FCC Red 3962, para. 1-7 (2016) ("2016 Lifeline Modernization Order").

⁶ Id.

⁷ Id. at para. 7.

⁸ Id. at paras. 7, 167-212.

⁹ See id. at para. 167.

Bureau of Insurance

November 15, 2016

Administrative Letter 2016-09

To: All Insurers Providing Health Insurance Coverage in Virginia, Health Maintenance Organizations, Health Services Plans, Dental and Optometric Services Plans, and Dental Plan Organizations

Re: Provider Discount Arrangements

The purpose of this administrative letter is to provide guidance to carriers offering managed care health insurance plans that include options for plan members to obtain services

General Notices/Errata

from non-network providers at discounted rates through a provider discount arrangement.

For purposes of this letter, a provider discount arrangement is a contractual arrangement between a carrier and a third party vendor under which the carrier's members have access to the third party vendor's contracted providers for non-network benefits at discounted rates. The contract between the third party vendor and the providers may also have a "hold harmless" clause that prohibits the providers from balance billing. When a carrier has this type of arrangement, plan members have two choices when utilizing non-network providers for covered services:

- Plan members may receive services from non-network providers participating in the provider discount arrangement at discounted rates; or
- Plan members may receive services from any other non-network providers.

Carriers using provider discount arrangements may not refer to the providers participating in this type of arrangement in any of its forms or advertising materials as being part of a network as this would be incorrect and misleading, and may result in confusion among consumers or plan members.

Policy forms must clearly define network providers, non-network providers, and non-network providers that participate in a provider discount arrangement and must accurately describe the member's benefits and responsibilities when utilizing each type of provider.

A carrier must clearly distinguish between network providers, non-network providers and non-network providers that participate in a provider discount arrangement in any printed or electronic directory that lists the provider types.

When a carrier has both a contract with a provider and a contract with a third party vendor that is providing the carrier access to the same provider for non-network services at negotiated discounted rates, claims must be adjudicated based on the terms of the carrier's contract with the provider and in accordance with the terms of the policy for network benefits.

Please refer any questions regarding this matter to: Julie Fairbanks, Bureau of Insurance, Life and Health Division, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9385, FAX (804) 371-9944, or email julie.fairbanks@scc.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Grasshopper Solar LLC Notice of Intent - Small Renewable Energy (Solar) Project Permit by Rule - Mecklenburg County

Geenex Solar, on behalf of Grasshopper Solar, LLC, has provided a notice of intent to submit to the Department of Environmental Quality the necessary documentation for a

permit by rule for a small renewable energy solar project in Mecklenburg County. The project is an 80-megawatt, alternating current, ground-mounted solar photovoltaic facility to be located between Highway 47 and Highway 49 on approximately 913 acres just to the north of Chase City, Virginia. The facility is currently designed with a single-axis tracking system utilizing approximately 285,286 polycrystalline 340-watt solar panels.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Proposed State Mitigation Plan for the Volkswagen Partial Consent Decree - Notice of Informal Public Comment Period

On October 25, 2016, a Partial Consent Decree was finalized between the U.S. Justice Department, the Volkswagen Corporation, and its subsidiaries regarding the installation and use of emissions testing defeat devices in approximately 500,000 2.0-liter vehicles sold and operated in the United States beginning in 2009. Use of these defeat devices has increased air emissions of nitrogen oxide (NO_x), resulting in adverse impacts to air quality and violating the federal Clean Air Act. NO_x emissions contribute to the formation of ground level ozone, which impairs lung function and cardiovascular health.

An Environmental Mitigation Trust has been established as part the settlement that provides funds to the states to mitigate the air quality impacts of the higher 2.0-liter vehicle emissions from the offending action. The initial share to Virginia from the trust is up to \$87.6 million. The trust establishes a process to administer the funds, a process for states to receive funds, and identifies categories of eligible mitigation actions and expenditures.

In response to the settlement, the Department of Environmental Quality (DEQ) has developed a proposed state mitigation plan intended to provide the public with insight into the Commonwealth's vision for the eligible uses of the trust mitigation funds. This proposed plan is focused on the eligible types of mitigation actions that can produce the greatest air quality benefit in terms of NO_x emission reductions, reduce public exposure, and promote clean vehicle technologies. The proposed state mitigation plan can be found at <http://www.deq.virginia.gov/Programs/Air/vwmitigation.aspx>.

DEQ is announcing an informal public comment period on the proposed state mitigation plan. Because the mitigation plan is expected to have a significant positive impact on the Commonwealth, DEQ is requesting input from the public to help inform the development of the final mitigation plan prior to taking any formal action. In addition to seeking general comments on the overall plan approach, DEQ is seeking

specific comments on the proposed distribution of funding for the categories of eligible mitigation actions, and specific recommendations and information on possible mitigation projects to be considered by the Commonwealth. However, this is not a formal solicitation for projects.

How to comment to DEQ: Email written comments to vwmitigation@deq.virginia.gov, send a FAX to (804) 698-4510, or send postal mail to the Air Division, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from November 17, 2016, to December 16, 2016. Please provide full name, address, and telephone number.

Public meeting: DEQ is holding an informal public meeting from 5 p.m. to 8 p.m. on December 7, 2016, at the Administration Board Room, Henrico County Government Center, 4301 East Parham Road, Henrico, VA 23228. The only topic under consideration will be the proposed state mitigation plan and eligible mitigation actions under the plan.

Federal information: The full Partial Settlement, including Appendix D that specifically deals with the Environmental Mitigation Trust, as well as additional information are available from the U.S. Environmental Protection Agency at <https://www.epa.gov/enforcement/volkswagen-clean-air-act-partial-settlement>.

Virginia information: DEQ has established a web page with information about Virginia's actions for meeting the requirements of the settlement and the Environmental Mitigation Trust: <http://www.deq.virginia.gov/Programs/Air/vwmitigation.aspx>. This page will be updated periodically as new information and opportunities for public comment become available.

Contact Information: VWMitigation, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, or email vwmitigation@deq.virginia.gov.

STATE BOARD OF HEALTH

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 State Board of Health 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.

12VAC5-440, Regulations for Summer Camps

12VAC5-462, Swimming Pool Regulations Governing the Posting of Water Quality Test Results

The comment period begins November 15, 2016, and ends December 6, 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: Julie Henderson, Director of Food and General Environmental Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, or email julie.henderson@vdh.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

