



VIRGINIA

REGISTER OF REGULATIONS

VOL. 33 ISS. 11

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JANUARY 23, 2017

TABLE OF CONTENTS

Register Information Page	1181
Publication Schedule and Deadlines	1182
Petitions for Rulemaking	1183
Notices of Intended Regulatory Action	1184
Regulations	1186
8VAC20-22. Licensure Regulations for School Personnel (Final)	1186
9VAC25-720. Water Quality Management Planning Regulation (Final)	1190
12VAC5-481. Virginia Radiation Protection Regulations (Final)	1199
12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (Final)	1217
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Final)	1217
12VAC30-135. Demonstration Waiver Services (Final)	1217
16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (Extension of Public Comment Period)	1225
16VAC25-200. Virginia Voluntary Protection Program (Extension of Public Comment Period)	1226
18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (Fast-Track)	1226
18VAC48-10. Public Participation Guidelines (Fast-Track)	1228
18VAC60-21. Regulations Governing the Practice of Dentistry (Fast-Track)	1230
18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (Fast-Track)	1231
18VAC76-10. Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions (Final)	1233
18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (Fast-Track)	1234
18VAC85-40. Regulations Governing the Practice of Respiratory Therapists (Fast-Track)	1236
18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (Fast-Track)	1238
18VAC85-101. Regulations Governing the Practice of Radiologic Technology (Fast-Track)	1240
18VAC85-101. Regulations Governing the Practice of Radiologic Technology (Fast-Track)	1242
18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (Fast-Track)	1244
18VAC90-60. Regulations Governing the Registration of Medication Aides (Fast-Track)	1246
18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (Fast-Track)	1248
18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (Fast-Track)	1248
18VAC105-20. Regulations Governing the Practice of Optometry (Fast-Track)	1251
18VAC110-20. Regulations Governing the Practice of Pharmacy (Final)	1254
18VAC115-20. Regulations Governing the Practice of Professional Counseling (Fast-Track)	1255
18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (Fast-Track)	1255
18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (Fast-Track) ..	1255
18VAC125-20. Regulations Governing the Practice of Psychology (Fast-Track)	1258
18VAC140-20. Regulations Governing the Practice of Social Work (Fast-Track)	1260
18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (Final)	1262
18VAC160-30. Waterworks and Wastewater Works Operators Licensing Regulations (Final)	1262
18VAC160-40. Onsite Sewage System Professionals Licensing Regulations (Final)	1262

Virginia Code Commission

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

Table of Contents

Governor	1294
General Notices/Errata.....	1296

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>).

January 2017 through February 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 NURSING

Agency Decision

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

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

Name of Petitioner: Rachel Warrick.

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

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on November 16, 2016, the board decided to issue a Notice of Intended Regulatory Action (NOIRA) to initiate rulemaking. The board recognized the strong support for the requested change but decided it needed to consider various options and to gather additional information. Those options may include, but are not limited to, maintaining the current language, amending to require first name and last initial, amending to require identification of the title under which one is practicing (RN, LPN, etc.), or eliminating the name tag provision completely. The board will be submitting a NOIRA for the Governor's approval. Once approved for publication, there will be a 30-day comment period, and the board will consider what, if any, amendment to propose.

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

VA.R. Doc. No. R17-05; Filed January 5, 2017, 3:17 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending **18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic**. The purpose of the proposed action is to propose regulations for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements established in regulation. The goal of the planned action is establishment of an expedited process for licensure of qualified physicians who want to practice in Virginia, either in person or by telemedicine.

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

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

Public Comment Deadline: February 22, 2017.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R17-4970; Filed December 30, 2016, 8:12 p.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending **18VAC90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to respond to a petition for rulemaking that requested an amendment to allow use of first name and last initial on a name tag for nurses in all settings. The board's intent is to gather additional information about requirements in other states and from other boards in Virginia and to solicit comment from employers.

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

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

Public Comment Deadline: February 22, 2017.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R17-05; Filed December 30, 2016, 8:14 p.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Long-Term Care Administrators intends to consider amending **18VAC95-20, Regulations Governing the Practice of Nursing Home Administrators**. The purpose of the proposed action is to protect public health, safety, and welfare and to ensure that the regulation is clearly written and easily understandable. To that end, many of the considered amendments are editorial or intended to clarify existing language. In addition, however, the board intends to (i) include the Health Services Executive (HSE) credential as a qualification for licensure; the HSE is a new credential approved by the National Association of Long-Term Care Administrator Boards; (ii) expand the grounds for disciplinary actions or denial of licensure to include causes that would be considered unprofessional conduct but are not explicitly listed in the current regulation; and (iii) adopt causes or grounds for action currently listed in regulations of other boards, such as the Board of Nursing, with the goal of a greater ability to fulfill the mission of public protection by citing more specific grounds for action in disciplinary cases.

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

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

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

Public Comment Deadline: February 22, 2017.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. R17-4984; Filed December 30, 2016, 8:13 p.m.

BOARD OF PHYSICAL THERAPY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Physical Therapy intends to consider amending **18VAC112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed action is to decide whether to replace the Federation of State Boards of Physical Therapy Practice Review Tool, which as of November 30, 2016, is no longer offered, with a self-assessment tool called oPTion that allows physical therapists to compare their knowledge, skills, and abilities to entry-level general physical therapy practice. The oPTion assessment report categorizes the therapist's performance into levels one through four. If this replacement is made, the board will determine if a specific level of

performance will be required for the purpose of licensing therapists who have not been engaged in active practice or for granting credit to licensees for continuing education.

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

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

Public Comment Deadline: February 22, 2017.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

VA.R. Doc. No. R17-4983; Filed December 30, 2016, 8:14 p.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider amending **18VAC115-30, Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants**. The purpose of the proposed action is to (i) clarify certain provisions, (ii) add more specific requirements for supervised practice to better ensure accountability and quality in the experience, (iii) add time limits for completion of experience to avoid perpetual supervisees who may continue to practice without passage of an examination and completion of certification, (iv) add requirements for continuing education as a requisite for renewal to ensure on-going competency to practice, and (v) place additional standards of practice in regulation to address issues the board has seen in complaints and disciplinary proceedings and for consistency with other professions in behavioral health.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Comment Deadline: February 22, 2017.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R17-4945; Filed December 30, 2016, 8:11 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 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

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

Title of Regulation: **8VAC20-22. Licensure Regulations for School Personnel (amending 8VAC20-22-10, 8VAC20-22-50).**

Statutory Authority: § 22.1-298.1 of the Code of Virginia.

Effective Date: February 22, 2017.

Agency Contact: Patty Pitts, Assistant Superintendent for Teacher Education and Licensing, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Summary:

Pursuant to Chapters 642 and 651 of the 2016 Acts of Assembly, the amendments provide for the issuance of a three-year license to qualified individuals to teach high school career and technical education courses in specific subject areas for no more than 50% of the instructional day or year, on average.

Part I Definitions

8VAC20-22-10. Definitions.

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

"Accredited institution" means an institution of higher education accredited by a regional accrediting agency recognized by the ~~United States~~ U.S. Department of Education.

"Alternate route to licensure" means a nontraditional route to licensure available to individuals who meet the criteria specified in 8VAC20-22-90.

"Approved program" means a professional education program recognized as meeting state standards for the content and operation of such programs so that graduates of the

program will be eligible for state licensure. The Board of Education has the authority to approve programs in Virginia.

"Cancellation" means the withdrawal of a teaching license following the voluntary return of the license by the license holder.

"Career and Technical Education License" means a nonrenewable license issued for a three-year validity period to a qualified individual to teach high school career and technical education courses in a specific subject area for no more than 50% of the instructional day or year, on average. Individuals to whom this license is issued shall meet the requirements specified in 8VAC20-22-50.

"Certified provider" means a provider certified by the Department of Education to provide preparation and training for applicants seeking the Provisional License specified in 8VAC20-22-90.

"Collegiate Professional License" means a five-year, renewable license available to an individual who has satisfied all requirements for licensure, including the professional teacher's assessments prescribed by the Board of Education.

"Content area coursework" means courses at the undergraduate level (i.e., two-year or four-year institution) or at the graduate level that will not duplicate previous courses taken in the humanities, history and social sciences, the sciences, mathematics, health and physical education, and the fine arts. These courses are usually available through the college or department of arts or sciences.

"Denial" means the refusal to grant a teaching license to a new applicant or to an applicant who is reapplying after the expiration of a license.

"Division Superintendent License" means a five-year, renewable license available to an individual who has completed an earned master's degree from an accredited institution of higher education and meets the requirements specified in 8VAC20-22-600. The individual's name must be listed on the Board of Education's list of eligible division superintendents.

"Experiential learning" means a process of applying for an initial license through the alternate route as prescribed by the Board of Education and meeting the criteria specified in 8VAC20-22-90 E to be eligible to request experiential learning credits in lieu of the coursework for the endorsement (teaching) content area.

"Industry certification credential" means an active career and technical education credential that is earned by successfully completing a Board of Education-approved industry certification examination, being issued a professional

license in the Commonwealth, or successfully completing an occupational competency examination.

"International Educator License" means a three-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional, teaching license issued for no more than three years to an exchange educator with citizenship in a nation other than the United States of America and employed as an educator in a Virginia public or accredited nonpublic school; to teach for up to three consecutive years.

"Licensure by reciprocity" means a process used to issue a license to an individual coming into the Commonwealth from another state when that individual meets certain conditions specified in the Board of Education regulations.

"Mentor" means a classroom teacher hired by the local school division who has achieved continuing contract status or other instructional personnel including retired teachers who meet local mentor selection criteria. The mentor should work in the same building as the beginning teacher or be instructional personnel who is assigned solely as a mentor. A mentor should be assigned a limited number of teachers at any time. Instructional personnel who are not assigned solely as mentors should not be assigned to more than four teachers at any time. Mentors guide teachers in the program through demonstrations, observations, and consultations.

"Postgraduate Professional License" means a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from a regionally accredited institution.

"Professional teacher's assessment" means those tests or other requirements mandated for licensure as prescribed by the Board of Education.

"Provisional License" means a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in ~~these regulations~~ this chapter. The individual must have a minimum of an undergraduate degree from a regionally accredited college or university (with the exception of those individuals seeking the Technical Professional License). The Provisional License, with the exception of those individuals seeking licensure through a career switcher program who will be issued a one-year Provisional License, will be issued for three years. Individuals must complete all requirements for a renewable license within the validity period of the license.

"Pupil Personnel Services License" means a five-year, renewable license available to an individual who has earned an appropriate graduate degree from a regionally accredited institution with an endorsement for guidance counselor, school psychologist, school social worker, or vocational evaluator. This license does not require teaching experience.

"Renewable license" means a license issued by the Board of Education for five years to an individual who meets the requirements specified in the Board of Education regulations.

"Revocation" means the withdrawal of a teaching license.

"Suspension" means the temporary withdrawal of a teaching license.

"Teach For America License" means a two-year provisional license available to an individual who is a participant in Teach For America and meets the requirements specified in 8VAC20-22-50.

"Technical Professional License" means a five-year, renewable license available to an individual who has graduated from an accredited high school (or possesses a General Education Development Certificate); has exhibited academic proficiency, technical competency, and occupational experience; and meets the requirements specified in 8VAC20-22-50.

8VAC20-22-50. Types of licenses; dating licenses.

A. The following types of licenses are available:

1. Provisional License. The Provisional License is a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in ~~these regulations~~ this chapter. The individual must have a minimum of an undergraduate degree from a regionally accredited college or university (with the exception of those individuals seeking the Technical Professional License). The Provisional License, with the exception of those individuals seeking licensure through a career switcher program, will be issued for three years. Individuals must complete the requirements for the regular, five-year license within the validity period of the Provisional License.
2. Collegiate Professional License. The Collegiate Professional License is a five-year, renewable license available to an individual who has satisfied all requirements for licensure, including an earned undergraduate degree from a regionally accredited college or university and the professional teacher's assessments prescribed by the Board of Education.
3. Postgraduate Professional License. The Postgraduate Professional License is a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from a regionally accredited college or university.
4. Technical Professional License. The Technical Professional License is a five-year, renewable license available to a person who has graduated from an accredited high school (or possesses a General Education Development Certificate); has exhibited academic proficiency, skills in literacy and communication, technical competency, and occupational experience; and has

Regulations

completed nine semester hours of specialized professional studies credit from a regionally accredited college or university. The nine semester hours of professional studies coursework must include human growth and development (three semester hours), curriculum and instructional procedures (three semester hours), and applications of instructional technology or classroom and behavior management (three semester hours). The Technical Professional License is issued at the recommendation of an employing educational agency in the areas of career and technical education, educational technology, and military science. Individuals seeking military science must have the appropriate credentials issued by the United States military. In addition to demonstrating competency in the endorsement area sought, the individual must:

- a. Hold a license issued by the appropriate Virginia board for those program areas requiring a license and a minimum of two years of satisfactory experience at the journeyman level or an equivalent;
- b. Have completed a registered apprenticeship program and two years of satisfactory experience at the journeyman level or an equivalent level in the trade; or
- c. Have four years of work experience at the management or supervisory level or equivalent or have a combination of four years of training and work experience at the management or supervisory level or equivalent.

Individuals holding the Technical Professional License who seek the Collegiate Professional or Postgraduate Professional License must meet the professional teacher's assessments requirement.

5. School Manager License. The school manager license is a five-year, renewable license intended to provide for the differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. For example, a school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian. The license is available to a candidate who holds a baccalaureate degree from a regionally accredited college or university; has three years of successful managerial experience; and is recommended for the license by a Virginia school division superintendent.

6. Pupil Personnel Services License. The Pupil Personnel Services License is a five-year, renewable license available to an individual who has earned an appropriate graduate degree from a regionally accredited college or university with an endorsement for guidance counselor, school psychologist, school social worker, or vocational evaluator. This license does not require teaching experience.

7. Division Superintendent License. The Division Superintendent License is a five-year, renewable license available to an individual who has completed an earned

master's degree from a regionally accredited college or university and meets the requirements specified in 8VAC20-22-600. The individual's name must be listed on the Board of Education's list of eligible division superintendents.

8. International Educator License. The International Educator License provides a three-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional, teaching license issued for no more than three years to an exchange educator with citizenship in a nation other than the United States of America, and employed as an educator in a Virginia public or accredited nonpublic school, to teach for up to three consecutive years. This license does not require professional teacher's assessments; however, the individual will be subject to assessment requirements if the individual seeks a five-year renewable license. To be issued the International Educator License an individual must:

- a. Be employed by a Virginia public or accredited nonpublic school;
- b. Hold non-U.S. citizenship and be a nonpermanent resident;
- c. Serve as an exchange teacher for a time period not to exceed three consecutive years; and
- d. Meet the following requirements as verified by a state-approved, federally-designated Exchange Visitor Program (22 CFR Part 62):
 - (1) Be proficient in written and spoken English;
 - (2) Demonstrate competence in the appropriate academic subject ~~area(s)~~ areas;
 - (3) Hold the U.S. equivalent of a baccalaureate degree or higher as determined by an approved credential agency; and
 - (4) Hold U.S. or foreign educator credentials and completed at least one year of successful teaching experience that:
 - (a) Enables the educator to fulfill a similar assignment in his home country; or
 - (b) Is comparable to those requirements for Virginia teachers.

9. Teach For America License. The Teach For America License is a two-year provisional license.

- a. This provisional license is available to any participant in Teach For America, a nationwide nonprofit organization focused on closing the achievement gaps between students in high-income and low-income areas, who submits an application and meets the following requirements:

- (1) Holds, at minimum, a baccalaureate degree from a regionally accredited institution of higher education;

(2) Has met the requirements prescribed by the Virginia Board of Education for all endorsements sought or has met the qualifying scores on the content area assessment prescribed by the board for the endorsements sought;

(3) Possesses good moral character according to criteria developed by the Virginia Board of Education;

(4) Has been offered and has accepted placement in Teach For America;

(5) Has successfully completed pre-service training and is participating in the professional development requirements of Teach For America, including teaching frameworks, curricula, lesson planning, instructional delivery, classroom management, assessment and evaluation of student progress, classroom diversity, and literacy development;

(6) Has an offer of employment from a local school board to teach in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia; and

(7) Receives a recommendation from the employing school division for a Teach For America License in the endorsement area in which the individual seeks to be licensed.

b. In addition to the criteria set forth in subdivision 9 a of this ~~subdivision 9~~ subsection, any individual who seeks an endorsement in early childhood, early/primary, or elementary education shall either (i) agree to complete such coursework in the teaching of reading as may be prescribed by the Virginia Board of Education pursuant to 8VAC20-22-130 during the first year of employment or (ii) achieve a passing score on a reading instructional assessment prescribed by the Virginia Board of Education.

c. Teachers issued a Teach For America provisional license shall not be eligible for continuing contract status while employed under the authority of a Teach For America license and shall be subject to the probationary terms of employment specified in § 22.1-303 of the Code of Virginia.

d. The Virginia Board of Education may extend any Teach For America License for one additional year upon request of the employing school division, provided that no Teach For America License shall exceed a total of three years in length.

e. Notwithstanding any provision of law to the contrary, upon completion of at least two years of full-time teaching experience in a public elementary or secondary school in the Commonwealth or a preschool program that receives state funds pursuant to subsection C of § 22.1-199.1 of the Code of Virginia, an individual holding a Teach For America License shall be eligible to receive a renewable license if he has (i) achieved satisfactory

scores on all professional teacher assessments required by the Virginia Board of Education and (ii) received satisfactory evaluations at the conclusion of each year of employment.

f. Notwithstanding any provision of law to the contrary, the Virginia Board of Education shall issue a Teach For America License to any individual who (i) has completed two years of successful teaching in the Teach For America program in another state, (ii) is not eligible to receive a renewable license, and (iii) meets the criteria in subdivision 9 a of this ~~subdivision 9~~ subsection.

10. Career and Technical Education License. The Career and Technical Education License is a nonrenewable license issued for a three-year validity period.

a. The Career and Technical Education License is available to a qualified individual who has been employed to teach high school career and technical education courses in specific subject areas for no more than 50% of the instructional day or year, on average, and who meets the following requirements:

(1) Submits an application in the form prescribed by the board that includes a recommendation for such a license from the local school board;

(2) Meets certain basic conditions for licensure as outlined in 8VAC20-22-40;

(3) Meets one of the following requirements:

(a) Holds, at a minimum, a baccalaureate degree from a regionally accredited institution of higher education and has completed coursework in the career and technical education subject area in which the individual seeks to teach;

(b) Holds the required professional license in the specific career and technical education subject area in which the individual seeks to teach, where applicable; or

(c) Holds an industry certification credential, as that term is defined in § 22.1-298.1 of the Code of Virginia, in the specific career and technical education subject area in which the individual seeks to teach;

(4) Has at least four years of full-time work experience or its equivalent in the specific career and technical education subject area in which the individual seeks to teach; and

(5) Has obtained qualifying scores on the communication and literacy professional teacher's assessment prescribed by the board.

b. The employing school board shall assign a mentor to supervise an individual issued a Career and Technical Education License pursuant to this subsection during the first year of teaching.

c. Except as otherwise provided in subdivision 10 d of this subsection, any individual issued a Career and Technical Education License pursuant to this subsection

Regulations

may be granted subsequent three-year extensions of such license by the board upon recommendation of the local school board.

d. Any individual issued a Career and Technical Education License pursuant to this subsection who completes:

(1) Nine semester hours of specialized professional studies credit from a regionally accredited institution of higher education; or

(2) An alternative course of professional studies proposed by the local school board and approved by the Department of Education shall be granted a three-year extension of such license by the board and may be granted subsequent three-year extensions of such license by the board upon recommendation of the local school board. Any such specialized professional studies credit or alternative course of professional studies may be completed through distance learning programs and shall include human growth and development; curriculum, instructional, and technology procedures; and classroom and behavior management.

e. No Career and Technical Education License issued by the board pursuant to this subsection shall be deemed a

provisional license or a renewable license, as those terms are defined in § 22.1-298.1 of the Code of Virginia.

f. Individuals issued a Career and Technical Education License pursuant to this subsection shall not be eligible for continuing contract status while teaching under such license and shall be subject to the probationary terms of employment specified in § 22.1-303 of the Code of Virginia.

g. The provisions of § 22.1-299.6 of the Code of Virginia and of board regulations governing the denial, suspension, cancellation, revocation, and reinstatement of licensure shall apply to a Career and Technical Education License issued pursuant to this subsection.

B. All licenses will be effective from July 1 in the school year in which the application is made. A Virginia employing education division or agency is required to notify employees in writing at the time of employment of the need to meet appropriate assessment requirements for licensure.

VA.R. Doc. No. R17-4986; Filed December 21, 2016, 11:46 a.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting.

Title of Regulation: 9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-90).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Effective Date: February 22, 2017.

Agency Contact: Craig Lott, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4240, or email craig.lott@deq.virginia.gov.

Summary:

The amendments revise two existing total maximum daily load wasteload allocations in the Tennessee-Big Sandy River.

9VAC25-720-90. Tennessee-Big Sandy River Basin.

A. Total maximum daily loads (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	317.92	LB/YR

Regulations

2.	Cedar Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	1,789.93	LB/YR
3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	57,533.49	LB/YR
4.	Hutton Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	91.32	LB/YR
5.	Clinch River	Total Maximum Daily Load Development for the Upper Clinch River Watershed	Tazewell	P01R	Sediment	206,636	LB/YR
6.	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	21,732	LB/YR
7.	Black Creek	General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia	Wise	P17R	Manganese	2,127	KG/YR
8.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total dissolved solids	1,631,575	KG/YR
9.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total suspended solids	322,234	KG/YR
10.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington, <u>Bristol</u>	O07R	Sediment	784,036 <u>310.91</u>	LB/YR <u>T/YR</u>
11.	Stock Creek	General Standard (Benthic) Total Maximum Daily Load Development for Stock Creek	Scott	P13R	Sediment	0	T/YR
12.	Lick Creek	Lick Creek TMDLs for Benthic Impairments- Dickenson, Russell and Wise Counties	Dickenson, Russell, Wise	P10R	Sediment	63	T/YR

Regulations

13.	Cigarette Hollow	Lick Creek TMDLs for Benthic Impairments- Dickenson, Russell and Wise Counties	Dickenson, Russell, Wise	P10R	Sediment	0.4	T/YR
14.	Laurel Branch	Lick Creek TMDLs for Benthic Impairments- Dickenson, Russell and Wise Counties	Dickenson, Russell, Wise	P10R	Sediment	3.9	T/YR
15.	Right Fork	Lick Creek TMDLs for Benthic Impairments- Dickenson, Russell and Wise Counties	Dickenson, Russell, Wise	P10R	Sediment	1.3	T/YR
16.	Middle Fork Holston River	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Washington, Smyth	O05R	Sediment	100.4	T/YR
17.	Wolf Creek	Bacteria and Benthic Total Maximum Daily Load Development for Wolf Creek	Washington	O06R	Sediment	301.6	T/YR
18.	North Fork Holston River	Mercury Total Maximum Daily Load Development for the North Fork Holston River, Virginia	Scott, Washington, Smyth, Bland, Tazewell, Russell	O10R	Total mercury	11.9	G/YR
19.	Laurel Creek	Bacteria and Sediment TMDL Development Lower Clinch River Watershed, VA	Russell, Tazewell	P05R	Sediment	0.26	T/YR
20.	Thompson Creek	Bacteria and Sediment TMDL Development Lower Clinch River Watershed, VA	Russell	P07R	Sediment	0.22	T/YR
21.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington, Bristol	O07	E. coli	1.23E+12 <u>4.38E+12</u>	cfu/year
22.	Black Creek and tributaries	General Standard TMDL Development for Black Creek	Wise	P17	Alkalinity	0	kg/year
23.	Callahan Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Callahan Creek	Wise	P17	E. coli	1.74E+09	cfu/year
24.	Hutton Creek and tributaries	Fecal Coliform TMDL Development for Cedar, Hall, Byers, and Hutton Creeks	Washington	O05	Fecal coliform	0	cfu/year

Regulations

25.	Cedar Creek	Fecal Coliform TMDL Development for Cedar, Hall, Byers, and Hutton Creeks	Washington	O05	Fecal coliform	1.55E+10	cfu/year
26.	Hall/Byers Creek	Fecal Coliform TMDL Development for Cedar, Hall, Byers, and Hutton Creeks	Washington	O05	Fecal coliform	7.85E+10	cfu/year
27.	Stock Creek	Bacteria TMDL Development Clinch River and Cove Creek Watershed	Scott	P13	E. coli	2.15E+12	cfu/year
28.	Blackwater Creek	Bacteria TMDL Development Clinch River and Cove Creek Watershed	Lee	P16	E. coli	1.13E+13	cfu/year
29.	North Fork Clinch River	Bacteria TMDL Development Clinch River and Cove Creek Watershed	Scott	P13, P15	E. coli	1.90E+13	cfu/year
30.	Moll Creek	Bacteria TMDL Development Clinch River and Cove Creek Watershed	Russell, Scott	P14	E. coli	2.29E+13	cfu/year
31.	Clinch River	Bacteria TMDL Development Clinch River and Cove Creek Watershed	Russell, Scott	P13, P14	E. coli	2.92E+14	cfu/year
32.	Clinch River and Plum Creek (near Tazewell)	E. coli Total Maximum Daily Loads in the Upper Clinch River Watershed	Tazewell	P01, P02	E. coli	2.09E+13	cfu/year
33.	Clinch River, Coal Creek, and Middle Creek (near Richlands)	E. coli Total Maximum Daily Loads in the Upper Clinch River Watershed	Tazewell	P01, P02, P03	E. coli	6.29E+13	cfu/year
34.	Garden Creek	Total Maximum Daily Load Development for Garden Creek	Buchanan	Q04	E. coli	3.86E+11	cfu/year
35.	Crab Orchard Creek	Bacteria TMDLs for Sepulcher Creek, Toms Creek and Crab Orchard Branch	Wise	P11	E. coli	0	cfu/year
36.	Little Toms Creek	Bacteria TMDLs for Sepulcher Creek, Toms Creek and Crab Orchard Branch	Wise	P11	E. coli	1.04E+10	cfu/year

Regulations

37.	Sepulcher Creek	Bacteria TMDLs for Sepulcher Creek, Toms Creek and Crab Orchard Branch	Wise	P11	E. coli	1.39E+10	cfu/year
38.	Toms Creek	Bacteria TMDLs for Sepulcher Creek, Toms Creek and Crab Orchard Branch	Wise	P11	E. coli	2.61E+10	cfu/year
39.	Indian Creek	Bacteria Total Maximum Daily Load Development for Indian Creek	Tazewell	P02	E. coli	1.75E+10	cfu/year
40.	Knox Creek and Guess Fork	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Knox Creek and Pawpaw Creek	Buchanan	Q03	E. coli	4.53E+10	cfu/year
41.	Slate Creek	E. coli, Phased Benthic, and Phased Total PCB TMDL Development for Levisa Fork, Slate Creek, and Garden Creek	Buchanan	Q07	E. coli	5.29E+11	cfu/year
42.	Levisa Fork	E. coli, Phased Benthic, and Phased Total PCB TMDL Development for Levisa Fork, Slate Creek, and Garden Creek	Buchanan	Q04, Q05, Q06, Q07, Q08	E. coli	7.69E+12	cfu/year
43.	Lick Creek, Laurel Branch, Cigarette Hollow	Bacteria Total Maximum Daily Load Development for Lick Creek	Russell, Dickenson	P10	E. coli	2.42E+11	cfu/year
44.	Little Creek	Fecal Coliform TMDL for Little Creek Watershed	Washington, Bristol	O07	Fecal coliform	8.29E+09	cfu/year
45.	Bear Creek	Bacteria and Sediment TMDL Development Lower Clinch River Watershed	Wise	P11	E. coli	2.31E+12	cfu/year
46.	Clinch River, Little Stoney Creek, Staunton Creek, Fall Creek	Bacteria and Sediment TMDL Development Lower Clinch River Watershed	Russell, Scott	P13, P14	E. coli	3.14E+12	cfu/year
47.	Russell Creek	Bacteria and Sediment TMDL Development Lower Clinch River Watershed	Russell, Wise	P09, P10	E. coli	8.38E+12	cfu/year

Regulations

48.	Guest River	Bacteria and Sediment TMDL Development Lower Clinch River Watershed	Norton, Wise	P11	E. coli	9.49E+12	cfu/year
49.	Stony Creek	Bacteria and Sediment TMDL Development Lower Clinch River Watershed	Scott	P12	E. coli	1.00E+13	cfu/year
50.	Elk Garden Creek, Loop Creek	Bacteria TMDL Development for the Middle Clinch River and Tributaries	Russell	P06	E. coli	6.36E+12	cfu/year
51.	Swords/Hess Creek	Bacteria TMDL Development for the Middle Clinch River and Tributaries	Russell	P04	E. coli	7.04E+12	cfu/year
52.	Dumps Creek	Bacteria TMDL Development for the Middle Clinch River and Tributaries	Russell	P08	E. coli	9.90E+12	cfu/year
53.	Big Cedar Creek, Burgess Creek	Bacteria TMDL Development for the Middle Clinch River and Tributaries	Russell	P06	E. coli	1.34E+13	cfu/year
54.	Lewis Creek	Bacteria TMDL Development for the Middle Clinch River and Tributaries	Russell	P04	E. coli	1.53E+13	cfu/year
55.	Clinch River	Bacteria TMDL Development for the Middle Clinch River and Tributaries	Tazewell, Russell	P01, P02, P03, P04, P05, P06, P07	E. coli	1.64E+13	cfu/year
56.	Middle Fork Holston River (VAS-O03R-02)	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Smyth	O03	E. coli	2.61E+10	cfu/year
57.	Middle Fork Holston River (VAS-O03R-01)	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Smyth	O03	E. coli	5.29E+10	cfu/year
58.	Middle Fork Holston River	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Smyth, Washington	O03, O04, O05	E. coli	7.62E+12	cfu/year

Regulations

59.	Middle Fork Holston River	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Smyth	O03, O04	E. coli	1.04E+13	cfu/year
60.	Middle Fork Holston River	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Smyth	O03, O04, O05	E. coli	3.56E+13	cfu/year
61.	Abrams Creek	TMDL Development North Fork Holston River Watershed	Washington	O12	E. coli	6.83E+10	cfu/year
62.	Possum Creek	TMDL Development North Fork Holston River Watershed	Scott	O13	E. coli	2.74E+11	cfu/year
63.	Big Moccasin Creek	TMDL Development North Fork Holston River Watershed	Scott, Russell	O14	E. coli	4.43E+11	cfu/year
64.	North Fork Holston River, Upper	TMDL Development North Fork Holston River Watershed	Bland, Washington, Smyth, Tazewell	O09, O10, O11, O12	E. coli	1.06E+13	cfu/year
65.	North Fork Holston, lower Lower	TMDL Development North Fork Holston River Watershed	Bland, Washington, Smyth, Tazewell, Scott, Russell	O09, O10, O11, O12, O13, O14 O14	E. coli	1.33E+13	cfu/year
66.	Laurel Creek	TMDL Development North Fork Holston River Watershed	Tazewell	O10	Temperature	2.85	J/m ² /s
67.	South Fork Powell River	E. coli and Phased Benthic Total Maximum Daily Load Development for Powell River and Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)	Wise	P18	E. coli	1.08E+11	cfu/year
68.	Butcher Fork	E. coli and Phased Benthic Total Maximum Daily Load Development for Powell River and Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)	Wise	P18	E. coli	3.08E+11	cfu/year
69.	Wallen Creek	E. coli and Phased Benthic Total Maximum Daily Load Development for Powell River and	Lee	P22	E. coli	1.16E+12	cfu/year

		Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)					
70.	North Fork Powell River	E. coli and Phased Benthic Total Maximum Daily Load Development for Powell River and Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)	Lee	P20	E. coli	2.17E+12	cfu/year
71.	Upper Powell River	E. coli and Phased Benthic Total Maximum Daily Load Development for Powell River and Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)	Wise	P17	E. coli	4.39E+12	cfu/year
72.	Middle Powell River	E. coli and Phased Benthic Total Maximum Daily Load Development for Powell River and Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)	Wise, Lee	P17, P18, P19	E. coli	9.65E+12	cfu/year
73.	Lower Powell River	E. coli and Phased Benthic Total Maximum Daily Load Development for Powell River and Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)	Wise, Lee	P17, P18, P19, P20, P21	E. coli	1.51E+13	cfu/year
74.	Straight Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Straight Creek	Lee	P20	E. coli	0	cfu/year
75.	Mainstem North Fork Holston River	General Standard (Benthic) Total Maximum Daily Load Development for Upper North Fork Holston River	Bland, Smyth, Tazewell	O09, O10, O11	Chloride	862466	kg/year
76.	Wolf Creek	Bacteria and Benthic Total Maximum Daily Load Development for Wolf Creek	Washington	O06	E. coli	7.31E+13	cfu/year

Regulations

77.	South Fork Holston River	E. coli TMDL Development for South Fork Holston River	Smyth, Washington	O01, O02	E. coli	7.52E+12	cfu/year
-----	--------------------------	---	-------------------	----------	---------	----------	----------

Notes:

¹The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

B. Non-TMDL wasteload allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-Q13R	VA0061913	Pound WWTP	Pound River	33.26	001	CBOD ₅ , JUN-NOV	28	KG/D
						CBOD ₅ , DEC-MAY	47	KG/D
						TKN, JUN-NOV	28	KG/D
VAS-Q14R	VA0026565	Clintwood WWTP	Cranes Nest River	9.77	001	BOD ₅	30	KG/D
VAS-O06R	VA0026531	Wolf Creek Water Reclamation Facility	Wolf Creek	7.26	001	CBOD ₅	249.8	KG/D
VAS-P01R	VA0026298	Tazewell WWTP	Clinch River	346.26	001	CBOD ₅ , JUN-NOV	76	KG/D
VAS-P03R	VA0021199	Richlands Regional WWTF	Clinch River	317.45	001	BOD ₅ , JUN-NOV	273	KG/D
VAS-P06R	VA0020745	Lebanon WWTP	Big Cedar Creek	5.22	001	BOD ₅	91	KG/D
VAS-P11R	VA0077828	Coeburn Norton Wise Regional WWTP	Guest River	7.56	001	CBOD ₅ , JUN-NOV	303	KG/D
						CBOD ₅ , DEC-MAY	379	KG/D
VAS-P15R	VA0029564	Duffield Industrial Park WWTP	North Fork Clinch River	21.02	001	BOD ₅	36	KG/D
VAS-P17R	VA0020940	Big Stone Gap Regional WWTP	Powell River	177.38	001	CBOD ₅ , JUN-NOV	110	KG/D

VA.R. Doc. No. R17-5012; Filed December 22, 2016, 8:51 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

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

Title of Regulation: 12VAC5-481. Virginia Radiation Protection Regulations (amending 12VAC5-481-390, 12VAC5-481-400, 12VAC5-481-421, 12VAC5-481-480, 12VAC5-481-1210, 12VAC5-481-3120).

Statutory Authority: § 32.1-229 of the Code of Virginia.

Effective Date: February 22, 2017.

Agency Contact: Steve Harrison, Director - Office of Radiological Health, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email steve.harrison@vdh.virginia.gov.

Summary:

As an agreement state with the federal Nuclear Regulatory Commission (NRC), Virginia is required to ensure that its regulations are compatible with Title 10, Energy, of the Code of Federal Regulations (CFR). This regulatory action amends 12VAC5-481 to implement revisions of Title 10 of CFR from 2011 until 2013.

The amendments (i) clarify and update the requirements for advance notification of shipment of irradiated reactor fuel and nuclear waste; (ii) add or correct citations; and (iii) make other technical corrections.

Article 2

Exemptions from the Regulatory Requirements

12VAC5-481-390. Source material.

A. Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from this part and the requirements for a license set forth in this chapter to the extent that they transport or store radioactive material in the regular course of the carriage for another or storage incident thereto.

B. Any person is exempt from Part III (12VAC5-481-380 et seq.) of this chapter to the extent that such person receives, possesses, uses, owns, transfers, or delivers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than 0.05% of the mixture, compound, solution or alloy. The exemption

contained in this chapter does not apply to Australian-obligated radioactive material, nor does it include byproduct materials as defined in 12VAC5-481-10.

C. Any person is exempt from Part III (12VAC5-481-380 et seq.) of this chapter to the extent that such person receives, possesses, uses, or transfers unrefined and unprocessed ore containing source material; provided that, except as authorized in a specific license, such person shall not refine or process such ore.

D. Any person is exempt from Parts III (12VAC5-481-380 et seq.), IV (12VAC5-481-600 et seq.), and X (12VAC5-481-2250 et seq.) of this chapter to the extent such person receives, possesses, uses, or transfers:

1. Any quantities of thorium contained in (i) incandescent gas mantles, (ii) vacuum tubes; (iii) welding rods; (iv) electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium; (v) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than 2 grams of thorium; (vi) rare earth metals and compounds, mixtures, and products containing not more than 0.25% by weight thorium, uranium, or any combination of these; or (vii) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium.

2. Source material contained in the following products:

- a. Glaze ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20% by weight source material;

- b. Piezoelectric ceramic containing not more than 2.0% by weight source material;

- c. Glassware containing not more than 2.0% by weight source material or for glassware manufactured before August 27, 2013, 10% by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction; or

- d. Glass enamel or glass enamel frit containing not more than 10% by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983. (On July 25, 1983, the exemption of glass enamel or glass enamel frit was suspended. The exemption was eliminated on September 11, 1984.)

3. Photographic film, negatives, and prints containing uranium or thorium.

4. Any finished product or part fabricated of, or containing tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4.0% by weight and that the exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such product or part.

Regulations

5. Uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of such counterweights provided that:

a. Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

b. Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer, and the statement: "Unauthorized Alterations Prohibited" (The requirements of this subdivision need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend required by 10 CFR 40.13(c)(5)(ii) in effect on June 30, 1969); and

c. ~~The counterweights are not manufactured for a military purpose using Australian obligated source material.~~ The exemption contained in this subsection shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering.

6. Natural or depleted uranium metal used as shielding constituting part of any shipping container, provided that:

a. The shipping container is conspicuously and legibly impressed with the legend: "CAUTION—RADIOACTIVE SHIELDING—URANIUM", and

b. The uranium metal is encased in mild steel or equally fire-resistant metal of minimum wall thickness of 1/8 inch (3.2 mm).

7. Thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10% by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30% by weight of thorium; and that the exemption contained in this paragraph does not authorize either:

a. The shaping, grinding, or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

b. The receipt, possession, use, or transfer of uranium or thorium contained in contact lens, spectacles, or eyepieces in binoculars or other optical instruments.

8. Thorium contained in any finished aircraft engine part contained nickel-thoria alloy, provided that:

a. The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

b. The thorium content in the nickel-thoria alloy does not exceed 4.0% by weight.

9. The exemptions in this subsection do not authorize the manufacture of any products described.

10. No person may initially transfer for sale or distribution a product containing source material to persons exempt under this ~~section~~ subsection or equivalent regulations of the NRC or another agreement state, unless authorized by the NRC with a license issued under 10 CFR 40.52 to initially transfer such products for sale or distribution.

a. Persons initially distributing source material in products covered by the exemptions in this section before August 27, 2013, without specific authorization may continue such distribution for one year beyond ~~adoption of this subdivision~~ this date. Initial distribution may also be continued until the NRC takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than one year beyond ~~adoption of this chapter~~ this date.

b. Persons authorized to manufacture, process, or produce these materials or products containing source material, and persons who import finished products or parts, for sale or distribution shall be authorized by an NRC license issued under 10 CFR 40.52 for distribution only and are exempt from the requirements of 12VAC5-481-450 and Parts IV (12VAC5-481-600 et seq.) and X (~~12VAC5-481-1170~~ 12VAC5-481-2250 et seq.) of this chapter.

12VAC5-481-400. Radioactive material other than source material.

A. Exempt concentrations.

1. Except as provided in subdivisions 3 and 4 of this subsection, any person is exempt from the requirements for a license set forth in this part to the extent that such person receives, possesses, uses, transfers, owns, or acquires products or materials containing radioactive material in concentrations not in excess of those listed in 12VAC5-481-3720.

2. This subsection shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

3. A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in this part to the extent that this person transfers radioactive material (i) contained in a product or material in concentrations not in excess of those specified in 12VAC5-481-3720 and (ii) introduced into the product or material by a licensee holding a specific license issued by the NRC expressly authorizing such introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by or application to a human being.

4. No person may introduce radioactive material into a product or material knowing or having reason to believe

that it will be transferred to persons exempt under this subsection or equivalent regulations by the NRC or another agreement state except in accordance with a license issued under 12VAC5-481-480.

B. Exempt quantities.

1. Except as provided in subdivisions 3, 4, and 5 of this subsection, any person is exempt from the requirements of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities, each of which does not exceed the applicable quantity set forth in 12VAC5-481-3730.

2. Any person who possesses radioactive material received or acquired before September 25, 1971, under the general license provided in 12VAC5-481-430 is exempt from the requirements for a license set forth in this part and from the regulations contained therein to the extent that this person possesses, uses, transfers, or owns radioactive material.

3. This subsection does not authorize for purposes of commercial distribution the production, packaging, repackaging, or transfer of radioactive material or the incorporation of radioactive material into products intended for commercial distribution.

4. No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in 12VAC5-481-3730, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this part or equivalent regulations of the NRC or another agreement state, except in accordance with a license issued under 12VAC5-481-480, which license states that the radioactive material may be transferred by the licensee to persons exempt under this part or the equivalent regulations of the NRC or another agreement state.

5. No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in 12VAC5-481-3730, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by this part.

C. Exempt items.

1. Except for persons who apply radioactive material to or persons who incorporate radioactive material into the following products, or persons who initially transfer for sale or distribution the following products containing radioactive material, any person is exempt from this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires the following products:

a. Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified quantities:

(1) 25 mCi (925 MBq) of tritium per timepiece;

(2) 5 mCi (185 MBq) of tritium per hand;

(3) 15 mCi (555 MBq) of tritium per dial (bezels when used shall be considered as part of the dial);

(4) 100 μ Ci (3.7 MBq) of promethium 147 per watch or 200 μ Ci (7.4 MBq) of promethium 147 per any other timepiece;

(5) 20 μ Ci (0.74 MBq) of promethium 147 per watch hand or 40 μ Ci (1.48 MBq) of promethium 147 per other timepiece hand;

(6) 60 μ Ci (2.22 MBq) of promethium 147 per watch dial or 120 μ Ci (4.44 MBq) of promethium 147 per other timepiece dial (bezels when used shall be considered as part of the dial);

(7) The levels of radiation from hands and dials containing promethium 147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(a) For wrist watches, 0.1 millirad per hour (1 microgray per hour) at 10 centimeters from any surface,

(b) For pocket watches, 0.1 millirad per hour (1 microgray per hour) at 1 centimeter from any surface, or

(c) For any other timepiece, 0.2 millirad per hour (1 microgray per hour) at 10 centimeters from any surface; or

(8) 1 μ Ci (37 kBq) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007.

b. Other products including:

(1) Static elimination devices that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 μ Ci (18.5 MBq) of polonium-210 per device;

(2) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 μ Ci (18.5 MBq) of polonium-210 per device or of a total of not more than 50 mCi (1.85 GBq) of hydrogen-3 (tritium) per device; and

(3) Such devices authorized before October 23, 2012, for use under the general license then provided in 12VAC5-481-430 and equivalent regulations of the NRC or another agreement state and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the agency, the NRC, or another agreement state.

c. Balances of precision containing not more than 1 mCi (37 MBq) of tritium per balance or not more than 0.5 mCi (18.5 MBq) of tritium per balance part manufactured before December 17, 2007.

d. (Reserved.)

e. Marine compasses containing not more than 750 mCi (27.8 GBq) of tritium gas and other marine navigational

Regulations

instruments containing not more than 250 mCi (9.25 GBq) of tritium gas manufactured before December 17, 2007.

f. (Reserved.)

g. Ionization chamber smoke detectors containing not more than 1 μ Ci (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

h. Electron tubes (includes: spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pickup tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents), provided that each tube does not contain more than one of the following specified quantities:

(1) 150 mCi (5.55 GBq) of tritium per microwave receiver protector tube or 10 mCi (370 MBq) of tritium per any other electron tube;

(2) 1 μ Ci (37 kBq) of cobalt-60;

(3) 5 μ Ci (185 kBq) of nickel-63;

(4) 30 μ Ci (1.11 MBq) of krypton-85;

(5) 5 μ Ci (185 kBq) of cesium-137; or

(6) 30 μ Ci (1.11 MBq) of promethium-147; and

(7) Provided further that the levels of radiation dose from each electron tube containing radioactive material do not exceed 1 millirad per hour (10 microgray per hour) at 1 centimeter (0.39 inches) from any surface when measured through 7 milligrams per square centimeter of absorber.

i. Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(1) Each source contains no more than one exempt quantity set forth in 12VAC5-481-3730, and

(2) Each instrument contains no more than 10 exempt quantities. For purposes of this subdivision, an instrument's source or sources may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in 12VAC5-481-3730, provided that the sum of such fractions shall not exceed unity.

(3) For purposes of this subdivision, 0.05 μ Ci (1.85 kBq) of americium-241 is considered an exempt quantity under 12VAC5-481-3730.

j. (Reserved.)

2. Any person who desires to apply radioactive material to, or to incorporate radioactive material into, the products exempted in subdivision 1 of this subsection, or who desires to initially transfer for sale or distribution such

products containing radioactive material, should apply for a specific license pursuant to 12VAC5-481-480 C, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to subdivision 1 of this subsection.

D. Self-luminous products containing radioactive material.

1. Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, or except as provided in subdivision 3 of this subsection, any person is exempt from the requirements for a license set forth in this part to the extent that such person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to 12VAC5-481-480 D, which license authorizes the initial transfer of the product to persons who are exempt from regulatory requirements.

2. Any person is exempt from this chapter to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 acquired prior to September 1, 1980.

3. Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under subdivision 1 of this subsection should apply for a license and for a certificate of registration in accordance with 12VAC5-481-480 D.

4. The exemption in subdivision 1 of this subsection does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

E. Gas and aerosol detectors containing radioactive material.

1. Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect health, safety, or property from fires and airborne hazards provided that the detectors containing radioactive material shall have been manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 12VAC5-481-480 E, which license authorizes use under this subsection. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by the NRC or another agreement state under provisions comparable to 12VAC5-481-480 C authorizing distribution to persons exempt from regulatory requirements.

2. Any person who desires to manufacture, process, or produce gas and aerosol detectors containing radioactive material, or to initially transfer such products for use under subdivision 1 of this subsection E, should apply to the agency for a license in accordance with 12VAC5-481-480 C and for a certificate of registration with the NRC in accordance with 10 CFR 32.210.

3. Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an agreement state shall be considered exempt under subdivision 1 of this subsection, provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of 12VAC5-481-480 C.

4. Gas and aerosol detectors containing NARM previously manufactured and distributed in accordance with a specific license issued by the NRC or another agreement state shall be considered exempt under subdivision 1 of this subsection, provided that the device is labeled in accordance with the specific license authorizing distribution, and provided further that they meet the requirements of 12VAC5-481-480 C.

F. Radioactive drug: Capsules containing carbon-14 urea for "in-vivo" diagnostic use for humans.

1. Except as provided in subdivision 2 of this subsection, any person is exempt from the requirements for a license set forth in this part, provided that such person receives, possess, uses, transfers, owns, or acquires capsules containing 1 μ Ci (37 kBq) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each for "in vivo" diagnostic use for humans.

2. Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Part VII (12VAC5-481-1660 et seq.) of this chapter.

3. Any person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution such capsules shall apply for a license under and a certification of registration in accordance with 12VAC5-481-480 I.

4. Nothing in this subsection relieves persons from complying with applicable U.S. Food and Drug Administration (FDA), other federal, and state requirements governing receipt, administration, and use of drugs.

G. Carriers. Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from this part to the extent that they transport special nuclear material in the regular course of carriage for another or storage incident thereto. This exemption does not apply to the storage in transit or transport of material by persons

covered by a general license issued under 12VAC5-481-430 E.

H. Certain industrial devices.

1. Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in § 32.1-229 of the Code of Virginia and in Parts III (12VAC5-481-380 et seq.), IV (12VAC5-481-600 et seq.), V (12VAC5-481-1170 et seq.), VII (12VAC5-481-1660 et seq.), X (12VAC5-481-2250 et seq.), XII (12VAC5-481-2660 et seq.), and XIV (12VAC5-481-3140 et seq.) of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the NRC under 10 CFR 32.30, which license authorizes the initial transfer of the device for use under this subsection. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

2. Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material for use under subdivision 1 of this subsection, should apply to the NRC for a license under 10 CFR 32.30 and for a certificate of registration in accordance with 10 CFR 32.210.

12VAC5-481-421. Requirements for license to initially transfer source material for use under the small quantities of source material general license.

A. An application for a specific license to initially transfer source material for use under 12VAC5-481-420 A or equivalent regulations of the NRC or another agreement state will be approved if:

1. The applicant satisfies the general requirements specified in 12VAC5-481-450; and
2. The applicant submits adequate information on, and the agency approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

B. Conditions of licenses to initially transfer source material for use under the small quantities of source material general license: quality control, labeling, safety instructions, and records and reports.

Regulations

1. Each person licensed under subsection A of this section shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

2. Each person licensed under subsection A of this section shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

3. Each person licensed under subsection A of this section shall provide the information specified in this ~~paragraph~~ subdivision to each person to whom source material is transferred for use under 12VAC5-481-420 A or equivalent provisions of the NRC or another agreement state. This information shall be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

a. A copy of 12VAC5-481-420 A and 12VAC5-481-570, or relevant equivalent regulations of the NRC or another agreement state.

b. Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

4. Each person licensed under subsection A of this section shall report transfers as follows:

a. File a report with the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The report shall include the following information:

(1) The name, address, and license number of the person who transferred the source material;

(2) For each general licensee under 10 CFR 40.22 or equivalent agreement state provisions to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name, position, or both and phone number, of the general licensee to whom the material was sent and the type, physical form, and quantity of source material transferred; and

(3) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

b. File a report with the agency and other agreement state agencies that identifies all persons operating under provisions equivalent to 12VAC5-481-420 A to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the agreement state to which the report is being made:

(1) The name, address, and license number of the person who transferred the source material;

(2) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name, position, or both and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(3) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the agreement state.

c. Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under 12VAC5-481-420 A or equivalent NRC and other agreement state provisions during the current period, a report shall be submitted to the agency indicating so. If no transfers have been made to general licensees of the NRC or in a particular agreement state during the reporting period, this information shall be reported to the NRC or responsible agreement state agency upon request of the agency.

5. Each person licensed under subsection A of this section shall maintain all information that supports the reports required by this section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the agency, the NRC, or another agreement state.

12VAC5-481-480. Special requirements for a specific license to manufacture, assemble, repair, or distribute commodities, products, or devices that contain radioactive material.

A. Reserved.

B. Licensing the distribution of radioactive material in exempt quantities. (Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing radioactive material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, ~~D.C.~~ DC 20555-0001.)

C. Licensing the manufacture or initial transfer of devices to persons generally licensed under 12VAC5-481-430 B.

1. An application for a specific license to manufacture or initially transfer devices containing radioactive material, excluding special nuclear material, to persons generally licensed under 12VAC5-481-430 B or equivalent regulations of the NRC, or another agreement state will be approved if:

a. The applicant satisfies the general requirements of 12VAC5-481-450;

b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

- (1) The device can be safely operated by persons not having training in radiological protection;
- (2) Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one calendar quarter a dose in excess of 10% of the limits specified in 12VAC5-481-640; and
- (3) Under accident conditions such as fire and explosion associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the dose to the appropriate organ as specified in 12VAC5-481-3580, Column IV;

c. Each device bears a durable, legible, clearly visible label or labels approved by the agency, which contain in a clearly identified and separate statement:

- (1) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information;
- (2) The requirement, or lack of requirement, for leak testing, or for testing any "on-off" mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and
- (3) The information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(a) The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION—RADIOACTIVE MATERIAL

_____Name of manufacturer or initial transferor

(b) The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent, and the regulations of a licensing state. This label shall be

maintained on the device in a legible condition. Removal of this label is prohibited. (The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.)

CAUTION—RADIOACTIVE MATERIAL

_____Name of manufacturer or initial transferor;

d. Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, and the words, "Caution Radioactive Material," the radiation symbol described in 12VAC5-481-850, and the name of the manufacturer or initial distributor;

e. Each device meeting the criteria of 12VAC5-481-430 B 4 m bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing if separate, or the device if the source housing is not separable, that includes the words, "Caution Radioactive Material," and, if practicable, the radiation symbol described in 12VAC5-481-850; and

f. The device has been registered in the Sealed Source and Device Registry.

2. In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the agency will consider information that includes, but is not limited to:

- a. Primary containment or source capsule;
- b. Protection of primary containment;
- c. Method of sealing containment;
- d. Containment construction materials;
- e. Form of contained radioactive material;
- f. Maximum temperature withstood during prototype tests;
- g. Maximum pressure withstood during prototype tests;
- h. Maximum quantity of contained radioactive material;
- i. Radiotoxicity of contained radioactive material; and
- j. Operating experience with identical devices or similarly designed and constructed devices.

Regulations

3. In the event the applicant desires that the general licensee under 12VAC5-481-430 B, or under equivalent regulations of the NRC, or another agreement state, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and basis for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a calendar quarter dose in excess of 10% of the limits specified in 12VAC5-481-640.

4. Each person licensed under this subsection to distribute devices to generally licensed persons shall:

a. Furnish a copy of the general license contained in 12VAC5-481-430 B to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in 12VAC5-481-430 B;

b. Furnish a copy of the general license contained in the NRC's, or another agreement state's, regulation equivalent to 12VAC5-481-430 B, or alternatively, furnish a copy of the general license contained in 12VAC5-481-430 B to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license of the NRC, or another agreement state. If a copy of the general license in 12VAC5-481-430 B is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the NRC, or another agreement state, under requirements substantially the same as those in 12VAC5-481-430 B;

c. Report to the agency all transfers of such devices to persons for use under the general license in 12VAC5-481-430 B. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no transfers have been made to persons generally licensed under 12VAC5-481-430 B during the reporting period, the report shall so indicate. The report shall cover

each calendar quarter and shall be filed within 30 days thereafter;

d. Furnish reports to other agencies.

(1) Report to the NRC all transfers of such devices to persons for use under the NRC's general license in 10 CFR 31.5.

(2) Report to the responsible state agency all transfers of devices manufactured and distributed pursuant to this subsection for use under a general license in that state's regulations equivalent to 12VAC5-481-430 B.

(3) Such reports shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include identification of each intermediate person by name, address, contact, and relationship to the intended user. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to the generally licensed person.

(4) If no transfers have been made to NRC general licensees during the reporting period, this information shall be reported to the NRC.

(5) If no transfers have been made to general licensees within a particular state during the reporting period, this information shall be reported to the responsible state agency upon request of that agency; and

e. Keep records showing the name, address, and the point of contact for each general licensee to whom he directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in 12VAC5-481-430 B, or equivalent regulations of the NRC or another agreement state. The records shall show the date of each transfer, the radionuclide and the quantity of radioactivity in each device transferred, the identity of any intermediate person, and compliance with the report requirements of subdivision 4 of this subsection.

f. If a notification of bankruptcy has been made under 12VAC5-481-500 E or the license is to be terminated, each person licensed under this section shall provide, upon request, to the agency, the NRC and to any appropriate agreement state, records of final disposition required under subdivision 4 e of this subsection.

g. The licensee shall maintain all information concerning transfers and receipts of devices that supports the reports required by this section. Records required by this section shall be maintained for a period of three years following the date of the recorded event.

D. Special requirements for the manufacture, ~~initially~~ initial transfer, assembly, or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under 12VAC5-481-430 D will be approved if:

1. The applicant satisfies the general requirements specified in 12VAC5-481-450.
2. The applicant submits sufficient information regarding each device pertinent to evaluation of the potential radiation exposure, including:
 - a. Chemical and physical form and maximum quantity of tritium or promethium-147 in each device;
 - b. Details of construction and design;
 - c. Details of the method of binding or containing the tritium or promethium-147;
 - d. Procedures for and results of prototype testing to demonstrate that the tritium or promethium-147 will not be released to the environment under the most severe conditions likely to be encountered in normal use;
 - e. Quality assurance procedures to be followed that are sufficient to ensure compliance with subdivision 8 of this subsection; and
 - f. Any additional information, including experimental studies and tests, required by the NRC to facilitate a determination of the safety of the device.
3. Each device will contain no more than 10 curies of tritium or 300 millicuries of promethium-147. The levels of radiation from each device containing promethium-147 will not exceed 0.5 millirad per hour at 10 centimeters from any surface when measured through 50 milligrams per square centimeter of absorber.
4. The agency determines that:
 - a. The method of incorporation and binding of the tritium or promethium-147 in the device is such that the tritium or promethium-147 will not be released under the most severe conditions likely to be encountered in normal use and handling of the device;
 - b. The tritium or promethium-147 is incorporated or enclosed so as to preclude direct physical contact with it by any person;
 - c. The device is so designed that it cannot easily be disassembled; and
 - d. Prototypes of the device have been subjected to and have satisfactorily passed the tests required by subdivision ~~4 d~~ 5 of this subsection.
5. The applicant shall subject at least five prototypes of the device to tests as follows:
 - a. The devices are subjected to tests that adequately take into account the individual, aggregate, and cumulative

effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as temperature, moisture, absolute pressure, water immersion, vibration, shock, and weathering.

b. The devices are inspected for evidence of physical damage and for loss of tritium or promethium-147 after each stage of testing using methods of inspection adequate for determining compliance with the criteria in subdivision 5 c of this subsection.

c. Device designs are rejected for which the following has been detected for any unit:

- (1) A leak resulting in a loss of 0.1% or more of the original amount of tritium or promethium-147 from the device;
- (2) Surface contamination of tritium or promethium-147 on the device of more than 2,200 disintegrations per minute per 100 square centimeters of surface area; or
- (3) Any other evidence of physical damage.

6. The device has been registered in the Sealed Source and Device Registry.

7. Labeling.

a. A person licensed to manufacture, assemble, or initially transfer devices containing tritium or promethium-147 for distribution to persons generally licensed under 12VAC5-481-430 D, except as provided in subdivision 7 b of this subsection, shall affix to each device a label containing the radiation symbol prescribed by 12VAC5-481-850, such other information as may be required by the agency including disposal instructions when appropriate, and the following or a substantially similar statement that contains the information in the following statement:

The receipt, possession, use, and transfer of this device, Model* _____, Serial No.*_____, containing _____ (Identity and quantity of radioactive material) are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or of a state with which the NRC has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION--RADIOACTIVE MATERIAL

(Name of manufacturer, assembler, or initial transferor.)*

*The model, serial number, and name of manufacturer, assembler, or initial transferor may be omitted from this label provided they are elsewhere specified in labeling affixed to the device.

b. If the agency determines that it is not feasible to affix a label to the device containing all the information called for in subdivision 7 a of this subsection, it may waive those requirements and require ~~in~~ the following:

Regulations

- (1) A label is affixed to the device identifying:
 - (i) The manufacturer, assembler, or initial transferor; and
 - (ii) The type of radioactive material; and
- (2) A leaflet bearing the following information be enclosed in or accompany the container in which the device is shipped:
 - (i) The name of the manufacturer, assembler, or initial transferor;
 - (ii) The type and quantity of radioactive material;
 - (iii) The model number;
 - (iv) A statement that the receipt, possession, use, and transfer of the device are subject to a general license or the equivalent and the regulations of the ~~U.S.~~ NRC or of an agreement state; and
 - (v) Such other information as may be required by the agency, including disposal instructions when appropriate.

8. Quality assurance; prohibition of transfer.

- a. Each person licensed under this subsection shall visually inspect each device and shall reject any that has an observable physical defect that could adversely affect containment of the tritium or promethium-147.
- b. Each person licensed under this subsection shall:
 - (1) Maintain quality assurance systems in the manufacture of the luminous safety device in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed devices are capable of performing their intended functions; and
 - (2) Subject inspection lots to acceptance sampling procedures, by procedures specified in subdivision 8 c of this subsection and in the license issued under this subsection, to provide at least 95% confidence that the lot tolerance percent defective of 5.0% will not be exceeded.
- c. The licensee shall subject each inspection lot to the following:
 - (1) Tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as absolute pressure and water immersion.
 - (2) Inspection for evidence of physical damage, containment failure, or for loss of tritium or promethium-147 after each stage of testing using methods of inspection adequate for applying the following criteria for defective:
 - (i) A leak resulting in a loss of 0.1% or more of the original amount of tritium or promethium-147 from the device;
 - (ii) Levels of radiation in excess of 0.5 millirad (5 microgray) per hour at 10 centimeters from any surface when measured through 50 milligrams per square

centimeter of absorber if the device contains promethium-147; and

(iii) Any other criteria specified in the license issued under this subsection.

d. No person licensed under this subsection shall transfer to persons generally licensed under 12VAC5-481-430 D or under an equivalent general license of the NRC or other agreement state:

(1) Any luminous safety device tested and found defective under any condition of a license issued under subdivisions 1 through 6 or this subdivision 8 of this subsection, unless the defective luminous safety device has been repaired or reworked, retested, and determined by an independent inspector to meet the applicable acceptance criteria; or

(2) Any luminous safety device contained within any lot that has been sampled and rejected as a result of the procedures in subdivision 8 b (2) of this subsection, unless:

(i) A procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under this subsection; and

(ii) Each individual sub-lot is sampled, tested, and accepted in accordance with subdivisions 8 b (2) and d (2) (i) of this subsection and any other criteria that may be required as a condition of the license issued under this subsection.

9. Transfer reports.

a. Each person licensed under this subsection shall file an annual report with the agency, which shall state the total quantity of tritium or promethium-147 transferred to persons generally licensed under 12VAC5-481-430 D. The report shall identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. Each report shall cover the year ending June 30 and shall be filed within 30 days thereafter. If no transfers have been made to persons generally licensed under 12VAC5-481-430 D during the reporting period, the report shall indicate so.

b. Each person licensed under this subsection shall report annually all transfers of devices to persons for use under a general license in the NRC or another agreement state's regulations that are equivalent to 12VAC5-481-430 D to (i) the NRC at Director, Office of ~~Federal and State Materials and Environmental Management Programs~~ Nuclear Material Safety and Safeguards, ATTN: Document Control Desk/GLTS, by an appropriate method listed in 10 CFR 30.6(a) and (ii) the responsible agreement state agency. The report shall state the total quantity of tritium or promethium-147 transferred, identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify

the quantity of tritium or promethium-147 in each kind of device. If no transfers have been made to the NRC or particular agreement state during the reporting period, this information shall be reported to the NRC and responsible agreement state agency.

E. Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under 12VAC5-481-430 F. An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under 12VAC5-481-430 F will be approved if:

1. The applicant satisfies the general requirement of 12VAC5-481-450.
2. The applicant submits sufficient information regarding each type of calibration or reference source pertinent to evaluation of the potential radiation exposure, including:
 - a. Chemical and physical form and maximum quantity of americium 241 or radium-226 in the source;
 - b. Details of construction and design;
 - c. Details of the method of incorporation and binding of the americium-241 or radium-226 in the source;
 - d. Procedures for and results of prototype testing of sources, which are designed to contain more than 0.005 microcurie (0.185 kilobecquerel) of americium-241 or radium-226, to demonstrate that the americium-241 or radium-226 contained in each source will not be released or be removed from the source under normal conditions of use;
 - e. Details of quality control procedures to be followed in manufacture of the source;
 - f. Description of labeling to be affixed to the source or the storage container for the source; and
 - g. Any additional information, including experimental studies and tests, required by the NRC to facilitate a determination of the safety of the source.
3. Each source will contain no more than 5 microcuries of americium-241 or radium-226.
4. The agency determines, with respect to any type of source containing more than 0.005 microcurie (0.185 kilobecquerel) of americium-241 or radium-226, that:
 - a. The method of incorporation and binding of the americium-241 or radium-226 in the source is such that the americium-241 will not be released or be removed from the source under normal conditions of use and handling of the source; and
 - b. The source has been subjected to and has satisfactorily passed appropriate tests required by subdivision 5 of this subsection.
5. The applicant shall subject at least five prototypes of each source that is designed to contain more than 0.005

microcurie (0.185 kilobecquerel) of americium-241 or radium-226 to tests as follows:

- a. The initial quantity of radioactive material deposited on each source is measured by direct counting of the source.
 - b. The sources are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment or binding of americium-241 or radium-226, such as physical handling, moisture, and water immersion.
 - c. The sources are inspected for evidence of physical damage and for loss of americium-241 or radium-226 after each stage of testing using methods of inspection adequate for determining compliance with the criteria in subdivision 5 d of this subsection.
 - d. Source designs are rejected for which the following has been detected for any unit (i) removal of more than 0.005 microcurie (0.185 kilobecquerel) of americium-241 or radium-226 from the source or (ii) any other evidence of physical damage.
6. Labeling of devices. Each person licensed under this subsection shall affix to each source or storage container for the source a label that shall contain sufficient information relative to safe use and storage of the source and shall include the following statement or a substantially similar statement which contains the information in the following statement:
- "The receipt, possession, use, and transfer of this source, Model, Serial No., are subject to a general license and the regulations of the U.S. Nuclear Regulatory Commission (NRC) or of a state with which the NRC has entered into an agreement for the exercise of regulatory authority. Do not remove this label.
- CAUTION - RADIOACTIVE MATERIAL - THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.**
- _____
 (Name of manufacturer or initial transferor)"
7. Leak testing of each source. Each person licensed under this subsection shall perform a dry wipe test upon each source containing more than 0.1 microcurie (3.7 kilobecquerel) of americium-241 or radium-226 before transferring the source to a general licensee under 12VAC5-481-430 F or under equivalent regulations of the NRC or another agreement state. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the filter paper shall be measured using methods capable of detecting 0.005 microcurie (0.185 kilobecquerel) of americium-241 or radium-226. If a source has been shown to be leaking or

Regulations

losing more than 0.005 microcurie (0.185 kilobecquerel) of americium-241 or radium-226 by the methods described in this section, the source shall be rejected and shall not be transferred to a general licensee under 12VAC5-481-430 F, or equivalent regulations of the NRC or another agreement state.

F. Reserved.

G. Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of 12VAC5-481-430 G will be approved if:

1. The applicant satisfies the general requirements specified in 12VAC5-481-450.
2. The radioactive material is to be prepared for distribution in prepackaged units of:
 - a. Carbon-14 in units not exceeding 370 kBq (10 μ Ci) each.
 - b. Cobalt-57 in units not exceeding 370 kBq (10 μ Ci) each.
 - c. Hydrogen-3 (tritium) in units not exceeding 1.85 MBq (50 μ Ci) each.
 - d. Iodine-125 in units not exceeding 370 kBq (10 μ Ci) each.
 - e. Mock iodine-125 in units not exceeding 1.85 kBq (0.05 μ Ci) of iodine-129 and 185 Bq (0.005 μ Ci) of americium-241 each.
 - f. Iodine-131 in units not exceeding 370 kBq (10 μ Ci) each.
 - g. Iron-59 in units not exceeding 740 kBq (20 μ Ci) each.
 - h. Selenium-75 in units not exceeding 370 kBq (10 μ Ci) each.
3. Each prepackaged unit bears a durable, clearly visible label:
 - a. Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kBq (10 μ Ci) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 MBq (50 μ Ci) of hydrogen-3 (tritium); 740 kBq (20 μ Ci) of iron-59; or mock iodine-125 in units not exceeding 1.85 kBq (0.05 μ Ci) of iodine-129 and 185 Bq (0.005 μ Ci) of americium-241 each; and
 - b. Displaying the radiation caution symbol described in 12VAC5-481-850 and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals."
4. One of the following statements, as appropriate, or a substantially similar statement that contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or

appears in a leaflet or brochure that accompanies the package:

- a. This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

_____ Name of manufacturer

- b. This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of a licensing state.

_____ Name of manufacturer

5. The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in 12VAC5-481-910.

H. Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under 12VAC5-481-430 H will be approved if:

1. The applicant satisfies the general requirements of 12VAC5-481-450;
2. The applicant submits sufficient information regarding each type of device pertinent to evaluation of the potential radiation exposure, including:
 - a. Chemical and physical form and maximum quantity of strontium-90 in the device;
 - b. Details of construction and design of the source of radiation and its shielding;
 - c. Radiation profile of a prototype device;
 - d. Procedures for and results of prototype testing of devices to demonstrate that the strontium-90 contained in each device will not be released or be removed from the device under the most severe conditions likely to be encountered in normal handling and use;

- e. Details of quality control procedures to be followed in manufacture of the device;
 - f. Description of labeling to be affixed to the device;
 - g. Instructions for handling and installation of the device;
 - h. Any additional information, including experimental studies and tests, required by the ~~Agency~~ agency to facilitate a determination of the safety of the device;
3. Each device will contain no more than 50 microcuries of strontium-90 in an insoluble form;
4. Each device will bear durable, legible labeling that includes the radiation caution symbol prescribed by 12VAC5-481-850, a statement that the device contains strontium-90 and the quantity thereof, instructions for disposal and statements that the device may be possessed pursuant to a general license, that the manufacturer or civil authorities should be notified if the device is found, that removal of the labeling is prohibited, and that disassembly and repair of the device may be performed only by a person holding a specific license to manufacture or service such devices;
5. The agency determines that:
- a. The method of incorporation and binding of the strontium-90 in the device is such that the strontium-90 will not be released from the device under the most severe conditions ~~which that~~ are likely to be encountered in normal use and handling of the device;
 - b. The strontium-90 is incorporated or enclosed so as to preclude direct physical contact by any individual with it and is shielded so that no individual will receive a radiation exposure to a major portion of his body in excess of 0.5 rem in a year under ordinary circumstances of use;
 - c. The device is so designed that it cannot be easily disassembled;
 - d. Prototypes of the device have been subjected to and have satisfactorily passed the tests required by subdivision 6 of this subsection.
 - e. Quality control procedures have been established to satisfy the requirements of subdivision 8 of this subsection;
6. The applicant shall subject at least five prototypes of the device to tests as follows:
- a. The devices are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of strontium-90, such as temperature, moisture, absolute pressure, water immersion, vibration, shock, and weathering.
 - b. The devices are inspected for evidence of physical damage and for loss of strontium-90 after each stage of testing, using methods of inspection adequate for

- determining compliance with the criteria in subdivision 6 c of this subsection.
 - c. Device designs are rejected for which the following has been detected for any unit:
 - (1) A leak resulting in a loss of 0.1% or more of the original amount of strontium-90 from the device; or
 - (2) Surface contamination of strontium-90 on the device of more than 2,200 disintegrations per minute per 100 square centimeters of surface area; or
 - (3) Any other evidence of physical damage;
7. The device has been registered in the Sealed Source and Device Registry; and
8. Quality assurance; prohibition of transfer.
- a. Each person licensed under this subsection shall visually inspect each device and shall reject any ~~which~~ that has an observable physical defect that could affect containment of the strontium-90.
 - b. Each person licensed under this subsection shall test each device for possible loss of strontium-90 or for contamination by wiping with filter paper an area of at least 100 square centimeters on the outside surface of the device, or by wiping the entire surface area if it is less than 100 square centimeters. The detection on the filter paper of more than 2,200 disintegrations per minute of radioactive material per 100 square centimeters of surface wiped shall be cause for rejection of the tested device.
 - c. Each person licensed under this subsection shall:
 - (1) Maintain quality assurance systems in the manufacture of the ice detection device containing strontium-90 in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed devices are capable of performing their intended functions; and
 - (2) Subject inspection lots to acceptance sampling procedures by procedures specified in subdivision 8 d of this subsection and in the license issued under this subsection, to provide at least 95% confidence that the lot tolerance percent defective of 5.0% will not be exceeded.
 - d. Each person licensed under this subsection shall subject each inspection lot to:
 - (1) Tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could possibly affect the effective containment of strontium-90, such as absolute pressure and water immersion.
 - (2) Inspection for evidence of physical damage, containment failure, or for loss of strontium-90 after each stage of testing using methods of inspection adequate to determine compliance with the following criteria for defective (i) a leak resulting in a loss of 0.1% or more of the original amount of strontium-90 from the device and

Regulations

(ii) any other criteria specified in the license issued under this subsection.

e. No person licensed under this subsection shall transfer to persons generally licensed under 12VAC5-481-430 H, or under an equivalent general license of the NRC or another agreement state:

(1) Any ice detection device containing strontium-90 tested and found defective under the criteria specified in a license issued under this subsection unless the defective ice detection device has been repaired or reworked, retested, and determined by an independent inspector to meet the applicable acceptance criteria; or

(2) Any ice detection device containing strontium-90 contained within any lot that has been sampled and rejected as a result of the procedures in subdivision 8 c (2) of this subsection, unless:

(i) A procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under this subsection; and

(ii) Each individual sub-lot is sampled, tested, and accepted in accordance with ~~subdivision~~ subdivisions 8 c (2) and 8 e (2) (i) of this subsection and any other criteria as may be required as a condition of the license issued under this subsection.

I. Manufacture, preparation, or transfer for commercial distribution of drugs containing radioactive material for medical use under Part VII (12VAC5-481-1660 et seq.) of this chapter.

1. An application for a specific license to manufacture, prepare, or transfer for commercial distribution drugs containing radioactive material for use by persons authorized pursuant to Part VII (12VAC5-481-1660 et seq.) of this chapter will be approved if:

a. The applicant satisfies the general requirements specified in 12VAC5-481-450;

b. The applicant submits evidence that the applicant is at least one of the following:

(1) Registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(2) Registered or licensed with a state agency as a drug manufacturer;

(3) Licensed as a pharmacy by the Virginia Board of Pharmacy;

(4) Operating as a nuclear pharmacy within a federal medical institution; or

(5) A PET drug production facility registered with a state agency.

c. The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity

per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

d. The applicant satisfies the following labeling requirements:

(1) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol as described in 12VAC5-481-850 and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted.

(2) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol as described in 12VAC5-481-850 and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

2. A licensee authorized to manufacture, prepare or transfer for commercial distribution radioactive drugs shall ensure that any individual preparing the drugs is one of the following:

a. An authorized nuclear pharmacist (ANP) as defined in 12VAC5-481-10;

b. An individual ~~that~~ who meets the requirements specified in 12VAC5-481-1770 and 12VAC5-481-1790, and the licensee has received an approved license amendment identifying this individual as an ANP;

c. A pharmacist, as defined in 12VAC5-481-10, designated as an ANP if:

(1) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material; and

(2) The individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC; or

d. An individual under the supervision of an ANP as specified in 12VAC5-481-1710.

3. Shall provide to the agency no later than 30 days after the date that the licensee allows, under subdivision 2 a or c of this subsection, the individual to work as an ANP:

- a. The individual's certification by a specialty board whose certification process has been recognized by the NRC with the written attestation signed by a preceptor as required by 12VAC5-481-1770;
 - b. An NRC or another agreement state license;
 - c. NRC master materials licensee permit;
 - d. The permit issued by a licensee or NRC master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or
 - e. Documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and
 - f. The Virginia Board of Pharmacy's license.
4. A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:
- a. Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and
 - b. Check each instrument for constancy and proper operation at the beginning of each day of use.
5. Nothing in this subsection relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.
6. Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination in accordance with 12VAC5-481-1930. The licensee shall record the results of each test and retain each record for three years after the record is made.
- J. Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to Part VII (12VAC5-481-1660 et seq.) of this chapter for the medical use of radioactive material or use as a calibration, transmission or reference source will be approved if:
1. The applicant satisfies the general requirements in 12VAC5-481-450;
 2. The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:
 - a. The radioactive material contained, its chemical and physical form, and amount;
 - b. Details of design and construction of the source or device;
 - c. Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;
 - d. For devices containing radioactive material, the radiation profile of a prototype device;
 - e. Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;
 - f. Procedures and standards for calibrating sources and devices;
 - g. Legend and methods for labeling sources and devices as to their radioactive content; and
 - h. Instructions for handling and storing the source or device from the radiation safety standpoint; these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device provided, that instructions that are too lengthy for such label may be summarized on the label and printed in detail on a brochure that is referenced on the label;
 3. The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the source or device is licensed by the agency for distribution to persons licensed pursuant to Part VII (12VAC5-481-1660 et seq.) of this chapter for the medical use of radioactive material or under equivalent licenses of the NRC, or another agreement state, provided that such labeling for sources that do not require ~~long-term~~ long-term storage may be on a leaflet or brochure that accompanies the source;
 4. In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include sufficient information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source;

Regulations

5. In determining the acceptable interval for test of leakage of radioactive material, the agency will consider information that includes, but is not limited to:

- a. Primary containment or source capsule;
- b. Protection of primary containment;
- c. Method of sealing containment;
- d. Containment construction materials;
- e. Form of contained radioactive material;
- f. Maximum temperature withstood during prototype tests;
- g. Maximum pressure withstood during prototype tests;
- h. Maximum quantity of contained radioactive material;
- i. Radiotoxicity of contained radioactive material; and
- j. Operating experience with identical sources or devices or similarly designed and constructed sources or devices; and

6. The device has been registered in the Sealed Source and Device Registry.

K. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

1. An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to 12VAC5-481-420 C or equivalent regulations of the NRC or another agreement state will be approved if:

- a. The applicant satisfies the general requirements specified in 12VAC5-481-450;
- b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of 10% of the limits specified in 12VAC5-481-640; and
- c. The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

2. In the case of an industrial product or device whose unique benefits are questionable, the agency will approve an application for a specific license under this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

3. The agency may deny any application for a specific license under this subsection if the end ~~use(s)~~ use or uses of the industrial product or device cannot be reasonably foreseen.

4. Each person licensed pursuant to subdivision 1 of this subsection shall:

a. Maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

b. Label or mark each unit to:

(1) Identify the manufacturer or initial transferor of the product or device and the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(2) State that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the NRC or another agreement state;

c. Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

d. Do the following:

(1) Furnish a copy of the general license contained in 12VAC5-481-420 C and a copy of agency form "Certificate - Use of Depleted Uranium under a General License" to each person to whom depleted uranium in a product or device for use pursuant to the general license contained in 12VAC5-481-420 C is transferred; or

(2) Furnish a copy of the general license contained in the NRC's or another agreement state's regulation equivalent to 12VAC5-481-420 B and a copy of the NRC's or another agreement state's certificate, or alternatively, furnish a copy of the general license contained in 12VAC5-481-420 C and a copy of agency form "Certificate - Use of Depleted Uranium under a General License" to each person to whom depleted uranium in a product or device for use pursuant to the general license of the NRC or another agreement state is transferred, with a note explaining that use of the product or device is regulated by the NRC or another agreement state under requirements substantially the same as those in 12VAC5-481-420 C;

e. Report to the agency all transfers of industrial products or devices to persons for use under the general license in 12VAC5-481-420 C. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of device transferred, and the

quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under 12VAC5-481-420 C during the reporting period, the report shall so indicate;

f. Do the following:

- (1) Report to the NRC all transfers of industrial products or devices to persons for use under the NRC general license in 10 CFR 40.25;
- (2) For devices transferred to another agreement state, report to the responsible state agency all transfers of devices manufactured and distributed pursuant to this subsection for use under a general license in that state's regulations equivalent to 12VAC5-481-420 C;
- (3) Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person;
- (4) If no transfers have been made to NRC licensees during the reporting period, this information shall be reported to the NRC; and
- (5) If no transfers have been made to general licensees within another agreement state during the reporting period, this information shall be reported to the responsible state agency upon the request of that agency; and keep records showing the name, address, and point of contact for each general licensee to whom he transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in 12VAC5-481-420 C or equivalent regulations of the NRC or another agreement state. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

L. Serialization of nationally tracked sources. Each licensee who manufactures a nationally tracked source shall assign a unique serial number to each nationally tracked source. Serial numbers shall be composed only of alpha-numeric characters.

12VAC5-481-1210. Performance requirements for industrial radiographic equipment.

A. Equipment used in industrial radiographic operations must meet the following minimum criteria:

Each radiographic exposure device, source assembly or sealed source, and all associated equipment must meet the requirements specified in American National Standard

Institute, N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS Handbook 136, issued January 1981); This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, NY 10036; telephone: (212) 642-4900.

B. In addition to the requirements specified in this section the following requirements apply to radiographic exposure devices, source changers, source assemblies and sealed sources;

1. The licensee shall ensure that each radiographic exposure device has attached to it a durable, legible, clearly visible label bearing the:
 - a. Chemical symbol and mass number of the radionuclide in the device;
 - b. Activity and the date on which this activity was last measured;
 - c. Model or product code and serial number of the sealed source;
 - d. Name of the manufacturer of the sealed source; and
 - e. Licensee's name, address, and telephone number.

2. Radiographic exposure devices intended for use as Type B packages must meet the applicable transportation requirements of Part XIII (12VAC5-481-2950 et seq.) of this chapter.

3. Modification of radiographic exposure devices, source changers, and source assemblies and associated equipment is prohibited, unless approved by the agency or other approval body.

C. In addition to the requirements specified in subsections A and B of this section, the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the source to be moved out of the device for radiographic operations or to source changers;

1. The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.
2. The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.
3. The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers that must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

Regulations

4. Each sealed source or source assembly must have attached to it or engraved on it, a durable, legible, visible label with the words:

"DANGER—RADIOACTIVE."

The label may not interfere with the safe operation of the exposure device or associated equipment.

5. The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use.

6. Guide tubes must be used when moving the source out of the device.

7. An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during industrial radiography operations.

8. The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432-1980.

9. Source changers must provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

D. All radiographic exposure devices and associated equipment in use after January 10, 1996, must comply with the requirements of this section; ~~and,~~

E. As an exception to subsection A of this section, equipment used in industrial radiographic operations need not comply with 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can reasonably exert on the lever or crankshaft of the drive mechanism.

12VAC5-481-3120. Advance notification of transport of nuclear waste.

A. Prior to the transport of any nuclear waste outside of the confines of the licensee's facility or other place of use or storage, or prior to the delivery of any nuclear waste to a carrier for transport, each licensee shall provide advance notification of such transport.

B. Advance notification for transport of licensed material is required when:

1. The licensed material is required to be in Type B packaging for transportation;

2. The licensed material is being transported ~~through Virginia~~ to or across state boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

3. The quantity of licensed material in a single package exceeds:

a. 3000 times the A_1 value of the radionuclides as specified in 12VAC5-481-3770;

b. 3000 times the A_2 value of the radionuclides as specified in 12VAC5-481-3770; or

c. 1000 terabecquerel (27,000 curies).

C. Each advance notification required by subsections A and B of this section shall contain the following information:

1. The name, address, and telephone number of the shipper, carrier, and receiver of the shipment;

2. A description of the nuclear waste contained in the shipment as required by 49 CFR 172.202 and 172.203(d);

3. The point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;

4. The seven-day period during which arrival of the shipment at state boundaries or tribal reservation boundaries is estimated to occur;

5. The destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

6. A point of contact with a telephone number for current shipment information.

D. The notification required by subsections A and B of this section shall be made in writing to ~~the each~~ office of the governor or governor's designee, the office of each appropriate tribal official or tribal official's designee, and to the agency. A notification delivered by mail shall be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A notification delivered by ~~messenger~~ any other means than mail shall reach ~~the each~~ office of the governor or governor's designee, the office of each appropriate tribal official or tribal official's designee, and the agency, at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A copy of the notification shall be retained by the licensee for three years.

1. A list of names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

2. Contact information for each state, including telephone and mailing addresses of governors and governors' designees, and participating tribes, including telephone and mailing addresses of tribal officials and tribal officials' designees, is available on the NRC website at: <https://scp.nrc.gov/special/designee.pdf>.

3. A list of the names and mailing addresses of the governors' designees and tribal officials' designees of participating tribes is available on request from the Director, Division of Material Safety, State, Tribal and Rulemaking Program, Office of Nuclear Material Safety

and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

E. The licensee shall notify the governor or governor's designee, the office of each appropriate tribal official or tribal official's designee, and the agency of any changes to schedule information provided pursuant to subsections A and B of this section. Such notification shall be by telephone to a responsible individual in the office of the governor or governor's designee, the office of each appropriate tribal official or tribal official's designee, and the agency. The licensee shall maintain for three years a record of the name of the individual contacted.

F. Each licensee who cancels a nuclear waste shipment, for which advance notification has been sent, shall send a cancellation notice, identifying the advance notification that is being canceled, to the governor or governor's designee, the office of each appropriate tribal official or tribal official's designee, and to the agency. A copy of the notice shall be retained by the licensee for three years.

VA.R. Doc. No. R17-4897; Filed December 29, 2016, 8:17 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Titles of Regulations: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-20).**

12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).

12VAC30-135. Demonstration Waiver Services (repealing 12VAC30-135-10 through 12VAC30-135-90).

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

Effective Date: February 22, 2017.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, or email victoria.simmons@dmas.virginia.gov.

Summary:

Pursuant to Item 301 UU of Chapter 665 of the 2015 Acts of Assembly, the amendments move the family planning program from demonstration waiver regulations to state plan regulations. The amendments (i) increase the income level for eligibility for the program; (ii) authorize use of the Department of Medical Assistance Services Central Processing Unit or other contractor for determining eligibility, provided that DMAS determines that this is the most practicable approach; (iii) clarify that individuals eligible for full-benefit coverage under Medicaid or FAMIS are not eligible under this program; and (iv)

authorize coverage for additional testing, beyond the initial testing, for sexually transmitted infections and newer methods of cervical cancer screening.

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

12VAC30-30-20. Optional groups other than the medically needy.

The Title IV A agency determines eligibility for Title XIX services.

1. Caretakers and pregnant women who meet the income and resource requirements of AFDC but who do not receive cash assistance.

2. Individuals who would be eligible for AFDC, SSI or an optional state supplement as specified in 42 CFR 435.230, if they were not in a medical institution.

3. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the state's § 1915(c) waiver under which this group(s) group is covered. In the event an existing § 1915(c) waiver is amended to cover this group(s) group, this option is effective on the effective date of the amendment.

4. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in § 1905(o) of the Act.

5. The state does not cover all individuals who are not described in § 1902(a)(10)(A)(i) of the Act, who meet the income and resource requirements of the AFDC state plan and who are under the age of 21. The state does cover reasonable classifications of these individuals as follows:

a. Individuals for whom public agencies are assuming full or partial financial responsibility and who are:

(1) In foster homes (and are under the age of 21).

(2) In private institutions (and are under the age of 21).

(3) In addition to the group under subdivisions 5 a (1) and (2) of this section, individuals placed in foster homes or private institutions by private nonprofit agencies (and are under the age of 21).

b. Individuals in adoptions subsidized in full or part by a public agency (who are under the age of 21).

c. Individuals in NFs (who are under the age of 21). NF services are provided under this plan.

d. In addition to the group under subdivision 5 c of this section, individuals in ICFs/MR (who are under the age of 21).

Regulations

6. A child for whom there is in effect a state adoption assistance agreement (other than under Title IV-E of the Act), who, as determined by the state adoption agency, cannot be placed for adoption without medical assistance because the child has special care needs for medical or rehabilitative care, and who before execution of the agreement:

- a. Was eligible for Medicaid under the state's approved Medicaid plan; or
- b. Would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies.

The state covers individuals under the age of 21.

7. Section 1902(f) states and SSI criteria states without agreements under §§ 1616 and 1634 of the Act.

The following groups of individuals who receive a state supplementary payment under an approved optional state supplementary payment program that meets the following conditions. The supplement is:

- a. Based on need and paid in cash on a regular basis.
- b. Equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement.
- c. Available to all individuals in each classification and available on a statewide basis.
- d. Paid to one or more of the following classifications of individuals:
 - (1) Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.
 - (2) Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.
 - (3) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.
 - (4) Individuals receiving a state administered optional state supplement that meets the conditions specified in 42 CFR 435.230.

The supplement varies in income standard by political subdivisions according to cost-of-living differences.

The standards for optional state supplementary payments are listed in 12VAC30-40-250.

8. Individuals who are in institutions for at least 30 consecutive days and who are eligible under a special income level. Eligibility begins on the first day of the 30-day period. These individuals meet the income standards specified in 12VAC30-40-220.

The state covers all individuals as described above.

9. Individuals who are 65 years of age or older or who are disabled as determined under § 1614(a)(3) of the Act, whose income does not exceed the income level specified in 12VAC30-40-220 for a family of the same size, and

whose resources do not exceed the maximum amount allowed under SSI.

10. Individuals required to enroll in cost-effective employer-based group health plans remain eligible for a minimum enrollment period of one month.

11. Women who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with § 1504 of the Act and need treatment for breast or cervical cancer, including a pre-cancerous condition of the breast or cervix. These women are not otherwise covered under creditable coverage, as defined in § 2701(c) of the Public Health Services Act, are not eligible for Medicaid under any mandatory categorically needy eligibility group, and have not attained age 65.

12. Individuals who may qualify for the Medicaid Buy-In program under § 1902(a)(10)(A)(ii)(XV) of the Social Security Act (Ticket to Work Act) if they meet the requirements for the 80% eligibility group described in 12VAC30-40-220, as well as the requirements described in 12VAC30-40-105 and 12VAC30-110-1500.

13. Individuals under the State Eligibility Option of P.L. 111-148 § 2303 who are not pregnant and whose income does not exceed the state established income standard for pregnant women in the Virginia Medicaid and CHIP State Plan and related waivers, which is 200% of the federal poverty level, shall be eligible for the family planning program. Services are limited to family planning services as described in 12VAC30-50-130 D.

12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are

covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services. These services in order to be covered (i) shall meet medical necessity criteria based upon diagnoses made by LMHPs who are practicing within the scope of their licenses and (ii) are reflected in provider records and on providers' claims for services by recognized diagnosis codes that support and are consistent with the requested professional services.

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

"Activities of daily living" means personal care activities and includes bathing, dressing, transferring, toileting, feeding, and eating.

"Adolescent or child" means the individual receiving the services described in this section. For the purpose of the use of these terms, adolescent means an individual 12-20 years of age; a child means an individual from birth up to 12 years of age.

"Behavioral health services administrator" or "BHSA" means an entity that manages or directs a behavioral health benefits program under contract with DMAS.

"Care coordination" means collaboration and sharing of information among health care providers, who are involved with an individual's health care, to improve the care.

"Certified prescreener" means an employee of the local community services board or behavioral health authority, or its designee, who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

"Clinical experience" means providing direct behavioral health services on a full-time basis or equivalent hours of

part-time work to children and adolescents who have diagnoses of mental illness and includes supervised internships, supervised practicums, and supervised field experience for the purpose of Medicaid reimbursement of (i) intensive in-home services, (ii) day treatment for children and adolescents, (iii) community-based residential services for children and adolescents who are younger than 21 years of age (Level A), or (iv) therapeutic behavioral services (Level B). Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience. The equivalency of part-time hours to full-time hours for the purpose of this requirement shall be as established by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DMAS" means the Department of Medical Assistance Services and its contractor or contractors.

"Human services field" means the same as the term is defined by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

"Individual service plan" or "ISP" means the same as the term is defined in 12VAC30-50-226.

"Licensed mental health professional" or "LMHP" means a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

"LMHP-resident" or "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling. For purposes of Medicaid reimbursement to their supervisors for services provided by such residents, they shall use the title "Resident" in connection with the applicable profession after their signatures to indicate such status.

"LMHP-resident in psychology" or "LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory

Regulations

requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident in Psychology" after their signatures to indicate such status.

"LMHP-supervisee in social work," "LMHP-supervisee," or "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work. For purposes of Medicaid reimbursement to their supervisors for services provided by supervisees, these persons shall use the title "Supervisee in Social Work" after their signatures to indicate such status.

"Progress notes" means individual-specific documentation that contains the unique differences particular to the individual's circumstances, treatment, and progress that is also signed and contemporaneously dated by the provider's professional staff who have prepared the notes. Individualized and member-specific progress notes are part of the minimum documentation requirements and shall convey the individual's status, staff interventions, and, as appropriate, the individual's progress, or lack of progress, toward goals and objectives in the ISP. The progress notes shall also include, at a minimum, the name of the service rendered, the date of the service rendered, the signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units/hours required to deliver the service. The content of each progress note shall corroborate the time/units billed. Progress notes shall be documented for each service that is billed.

"Psychoeducation" means (i) a specific form of education aimed at helping individuals who have mental illness and their family members or caregivers to access clear and concise information about mental illness and (ii) a way of accessing and learning strategies to deal with mental illness and its effects in order to design effective treatment plans and strategies.

"Psychoeducational activities" means systematic interventions based on supportive and cognitive behavior therapy that emphasizes an individual's and his family's needs and focuses on increasing the individual's and family's knowledge about mental disorders, adjusting to

mental illness, communicating and facilitating problem solving and increasing coping skills.

"Qualified mental health professional-child" or "QMHP-C" means the same as the term is defined in 12VAC35-105-20.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-590.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-1370.

"Service-specific provider intake" means the face-to-face interaction in which the provider obtains information from the child or adolescent, and parent or other family member or members, as appropriate, about the child's or adolescent's mental health status. It includes documented history of the severity, intensity, and duration of mental health care problems and issues and shall contain all of the following elements: (i) the presenting issue/reason for referral, (ii) mental health history/hospitalizations, (iii) previous interventions by providers and timeframes and response to treatment, (iv) medical profile, (v) developmental history including history of abuse, if appropriate, (vi) educational/vocational status, (vii) current living situation and family history and relationships, (viii) legal status, (ix) drug and alcohol profile, (x) resources and strengths, (xi) mental status exam and profile, (xii) diagnosis, (xiii) professional summary and clinical formulation, (xiv) recommended care and treatment goals, and (xv) the dated signature of the LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

b. Intensive in-home services (IIH) to children and adolescents under age 21 shall be time-limited interventions provided in the individual's residence and when clinically necessary in community settings. All interventions and the settings of the intervention shall be defined in the Individual Service Plan. All IIH services shall be designed to specifically improve family dynamics, provide modeling, and the clinically necessary interventions that increase functional and therapeutic interpersonal relations between family members in the home. IIH services are designed to promote psychoeducational benefits in the home setting of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from an out-of-home placement due to a documented medical need of the individual. These services provide crisis treatment; individual and family counseling; communication skills (e.g., counseling to assist the individual and his parents or guardians, as appropriate, to understand and practice appropriate problem solving,

anger management, and interpersonal interaction, etc.); care coordination with other required services; and 24-hour emergency response.

(1) These services shall be limited annually to 26 weeks. Service authorization shall be required for Medicaid reimbursement prior to the onset of services. Services rendered before the date of authorization shall not be reimbursed.

(2) Service authorization shall be required for services to continue beyond the initial 26 weeks.

(3) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

(4) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

c. Therapeutic day treatment (TDT) shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family counseling.

(1) Service authorization shall be required for Medicaid reimbursement.

(2) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

(3) These services may be rendered only by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

d. Community-based services for children and adolescents under 21 years of age (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition

due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual[®] Criteria or an equivalent standard authorized in advance by DMAS, shall be required for this service.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

(3) Individuals shall be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization shall be required for Medicaid reimbursement. Services that were rendered before the date of service authorization shall not be reimbursed.

(5) Room and board costs shall not be reimbursed. DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(6) These residential providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Behavioral Health and Developmental Services under the Standards for Licensed Children's Residential Facilities (22VAC40-151), [~~Standards for Interim Regulation of Children's Residential Facilities (6VAC35-51)~~ Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41)], or Regulations for Children's Residential Facilities (12VAC35-46).

(7) Daily progress notes shall document a minimum of seven psychoeducational activities per week. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, stress management, and any care coordination activities.

(8) The facility/group home must coordinate services with other providers. Such care coordination shall be documented in the individual's medical record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

(9) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement.

Regulations

Requirements for intakes and ISPs are set out in 12VAC30-60-61.

(10) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH.

e. Therapeutic behavioral services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual[®] Criteria, or an equivalent standard authorized in advance by DMAS shall be required for this service.

(2) Authorization is required for Medicaid reimbursement. Services that are rendered before the date of service authorization shall not be reimbursed.

(3) Room and board costs shall not be reimbursed. Facilities that only provide independent living services are not reimbursed. DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(4) These residential providers must be licensed by the Department of Behavioral Health and Developmental Services (DBHDS) under the Regulations for Children's Residential Facilities (12VAC35-46).

(5) Daily progress notes shall document that a minimum of seven psychoeducational activities per week occurs. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The individual must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals shall be discharged from this service when other less intensive services may achieve stabilization.

(8) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during

the entire duration of services. Services that are based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for intakes and ISPs are set out in 12VAC30-60-61.

(9) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH.

(10) The facility/group home shall coordinate necessary services with other providers. Documentation of this care coordination shall be maintained by the facility/group home in the individual's record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of Amount, Duration and Scope of Selected Services.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early

and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's individualized education program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services.

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance

to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. The licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with intellectual disability prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with

Regulations

toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility ~~nor~~ or services to promote fertility. Family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage, or make direct referrals for abortions.

3. Family planning services as established by § 1905(a)(4)(C) of the Social Security Act include annual family planning exams; cervical cancer screening for women; sexually transmitted infection (STI) testing; lab

services for family planning and STI testing; family planning education, counseling, and preconception health; sterilization procedures; nonemergency transportation to a family planning service; and U.S. Food and Drug Administration approved prescription and over-the-counter contraceptives, subject to limits in 12VAC30-50-210.

Part I

Family Planning Waiver (Repealed)

12VAC30-135-10. Definitions. (Repealed.)

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

~~"Creditable health coverage" means "creditable coverage" as defined under § 2701(e) of the Public Health Service Act (42 USC § 300gg(e)) and includes coverage that meets the requirements of § 2103 provided to a targeted low income child under Title XXI of the Social Security Act or under a waiver approved under § 2105(e)(2)(B) (relating to a direct service waiver).~~

~~"Family planning" means those services necessary to prevent or delay a pregnancy. It shall not include services to promote pregnancy such as infertility treatments. Family planning does not include counseling about, recommendations for or performance of abortions, or hysterectomies or procedures performed for medical reasons such as removal of intrauterine devices due to infections.~~

~~"FAMIS" means the Family Access to Medical Insurance Security Plan described in 12VAC30-141.~~

~~"Over the counter" means drugs and contraceptives that are available for purchase without requiring a physician's prescription.~~

~~"Third party" means any individual entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under the State Plan for Medical Assistance.~~

12VAC30-135-20. Administration and eligibility determination. (Repealed.)

~~A. The Department of Medical Assistance Services shall administer the family planning demonstration waiver services program under the authority of § 1115(a) of the Social Security Act and 42 USC § 1315.~~

~~B. Local departments of social services or a department contractor shall be responsible for determining eligibility of and for enrolling eligible individuals in the family planning waiver. Local departments of social services or a department contractor shall conduct periodic reviews and redeterminations of eligibility at least every 12 months while recipients are enrolled in the family planning waiver.~~

12VAC30-135-30. Eligibility. (Repealed.)

~~A. To be eligible under the family planning waiver, an individual must meet the eligibility conditions and requirements found in 12VAC30-40-10, have family income~~

less than or equal to 133% of the federal poverty level, not have creditable health coverage, and not be eligible for enrollment in a Medicaid full benefit coverage group or FAMIS.

B. Individuals who have received a sterilization procedure or hysterectomy are ineligible under the waiver.

C. Individuals enrolled in the family planning waiver will not be retroactively eligible.

D. A recipient's enrollment in the family planning waiver shall be terminated if the individual receives a sterilization procedure or hysterectomy or is found to be ineligible as the result of a reported change or annual redetermination. The recipient's enrollment in the family planning waiver also shall be terminated if a reported change or annual redetermination results in eligibility for Virginia Medicaid in a full benefit coverage group or eligibility for FAMIS. A 10-day advance notice must be provided prior to cancellation of coverage under the family planning waiver unless the individual becomes eligible for a full benefit Medicaid covered group or FAMIS.

12VAC30-135-40. Covered services. (Repealed.)

A. Services provided under the family planning waiver are limited to:

1. Family planning office visits including annual gynecological or physical exams (one per 12 months); sexually transmitted diseases (STD) testing; cervical cancer screening tests (limited to one every six months);
2. Laboratory services for family planning and STD testing;
3. Family planning education and counseling;
4. Contraceptives approved by the Food and Drug Administration, including diaphragms, contraceptive injectables, and contraceptive implants;
5. Over the counter contraceptives; and
6. Sterilizations, not to include hysterectomies.

B. Services not covered under the family planning waiver include, but are not limited to:

1. Performance of, counseling for, or recommendations of abortions;
2. Infertility treatments;
3. Procedures performed for medical reasons;
4. Performance of a hysterectomy; and
5. Transportation to a family planning service.

12VAC30-135-50. Provider qualifications. (Repealed.)

Services provided under this waiver must be ordered or prescribed and directed or performed within the scope of the licensed practitioner. Any appropriately licensed Medicaid enrolled physician, nurse practitioner, or medical clinic may provide services under this waiver.

12VAC30-135-60. Quality assurance. (Repealed.)

The Department of Medical Assistance Services shall provide for continuing review and evaluation of the care and services paid by Medicaid under this waiver. To ensure a thorough review, trained professionals shall review cases either through desk audit or through on site reviews of medical records. Providers shall be required to refund payments made by Medicaid if they are found to have billed Medicaid for services not covered under this waiver, if records or documentation supporting claims are not maintained, or if bills are submitted for medically unnecessary services.

12VAC30-135-70. Reimbursement. (Repealed.)

A. Providers will be reimbursed on a fee for service basis.

B. All reasonable measures including those measures specified under 42 USC § 1396 (a) (25) will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients.

C. A completed sterilization consent form, in accordance with the requirements of 42 CFR Part 441, Subpart F, must be submitted with all claims for payment for sterilization procedures.

12VAC30-135-80. Recipients' rights and right to appeal. (Repealed.)

Individuals found eligible for and enrolled in the family planning waiver shall have freedom of choice of providers. Individuals will be free from coercion or mental pressure and shall be free to choose their preferred methods of family planning. The client appeals process at 12VAC30-110 shall be applicable to applicants for and recipients of family planning services under this waiver.

12VAC30-135-90. Sunset provision. (Repealed.)

Consistent with federal requirements applicable to this § 1115 demonstration waiver, these regulations shall expire effective with the termination of the federally approved waiver.

VA.R. Doc. No. R15-2866; Filed December 30, 2016, 2:23 p.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Extension of Public Comment Period

Title of Regulation: 16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-30, 16VAC25-60-90, 16VAC25-60-110 through 16VAC25-60-150, 16VAC25-60-245, 16VAC25-60-260).

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Regulations

The Department of Labor and Industry noticed a public comment period on amendments to the Administrative Regulation for the Virginia Occupational Safety and Health Program (16VAC25-60) in the November 28, 2016, issue of the Virginia Register of Regulations (33:7 VA.R. 731-740 November 28, 2016).

The public comment period has been extended to February 17, 2017, using the Virginia Regulatory Town Hall website, <http://www.townhall.virginia.gov>. Please include the full name of the person commenting and any organization represented. To be considered, written comments must be submitted using the Town Hall online comment forum at <http://www.townhall.virginia.gov/L/comments.cfm?stageid=7520> by 11:59 p.m. on February 17, 2017.

A public hearing will be held on February 16, 2017, at 10 a.m., Department of Labor and Industry, Main Street Centre, 600 East Main Street, 12th Floor Conference Room South, Richmond, VA 23219. Oral and written comments are accepted at the public hearing.

Agency Contact: Holly Raney, Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-2324, or email holly.raney@doli.virginia.gov.

VA.R. Doc. No. R16-4561; Filed December 21, 2016, 3:42 p.m.

Extension of Public Comment Period

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.

The Department of Labor and Industry noticed a public comment period on amendments to the Virginia Voluntary Protection Program (16VAC25-200) in the December 12, 2016, issue of the Virginia Register of Regulations (33:8 VA.R. 812-824 December 12, 2016).

The public comment period has been extended to February 17, 2017, using the Virginia Regulatory Town Hall website, <http://www.townhall.virginia.gov>. Please include the full name of the person commenting and any organization represented. To be considered, written comments must be submitted using the Town Hall online comment forum at <http://www.townhall.virginia.gov/L/comments.cfm?stageid=7521> by 11:59 p.m. on February 17, 2017.

A public hearing will be held on February 16, 2017, at 10 a.m., Main Street Centre, 600 East Main Street, 12th Floor Conference Room South, Richmond, VA 23219. Oral and written comments are accepted at the public hearing.

Agency Contact: Holly Raney, Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-2324, or email holly.raney@doli.virginia.gov.

VA.R. Doc. No. R16-4468; Filed December 21, 2016, 1:42 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Fast-Track Regulation

Title of Regulation: 18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-100).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4630, FAX (804) 527-4471, or email auidb@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Audiology and Speech-Language Pathology to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to one hour of continuing education with three hours of volunteer service, he is still required to have nine hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.



Substance: The board has adopted amended regulations to allow audiologists and speech-language pathologists to count up to one of the 10 hours required for annual renewal to be satisfied through delivery of health care services, without compensation, to low-income individuals receiving health care services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for audiologists and speech-language pathologists to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Audiology and Speech-Language Pathology (Board) proposes to allow three hours of volunteer work to be substituted for one hour of continuing education annually for audiologists and speech-language pathologists.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from audiologists and speech-language pathologists. The limit on the continuing education hours that can be satisfied by volunteer work is one hour per year. Currently, audiologists and speech-language pathologists are required to take 10 hours of continuing education per year for annual renewal of their licenses.

The proposed change will allow affected professionals to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the one-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 10 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing practitioners who are

indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 513 audiologists and 4,365 speech-language pathologists licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 898 establishments in the industry category of the affected entities, which include other independent health practitioners not directly affected by the proposed regulation (e.g., occupational and physical therapists, etc.). All of the 898 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the one-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 10 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. All of the affected audiologists and speech-language pathologist establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Regulations

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow audiologists and speech-language pathologists to substitute six hours of volunteer work for two hours of continuing education annually.

18VAC30-21-100. Continuing education requirements for renewal of an active license.

A. In order to renew an active license, a licensee shall complete at least 10 contact hours of continuing education prior to December 31 of each year. Up to 10 contact hours of continuing education in excess of the number required for renewal may be transferred or credited to the next renewal year. One hour of the 10 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Continuing education shall be activities, programs, or courses related to audiology or speech-language pathology, depending on the license held, and offered or approved by one of the following accredited sponsors or organizations sanctioned by the profession:

1. The Speech-Language-Hearing Association of Virginia or a similar state speech-language-hearing association of another state;
2. The American Academy of Audiology;
3. The American Speech-Language-Hearing Association;
4. The Accreditation Council on Continuing Medical Education of the American Medical Association offering Category I continuing medical education;
5. Local, state, or federal government agencies;
6. Colleges and universities;
7. International Association of Continuing Education and Training; or
8. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations.

C. If the licensee is dually licensed by this board as an audiologist and speech-language pathologist, a total of no more than 15 hours of continuing education are required for renewal of both licenses with a minimum of 7.5 contact hours in each profession.

D. A licensee shall be exempt from the continuing education requirements for the first renewal following the date of initial licensure in Virginia under 18VAC30-21-60.

E. The licensee shall retain all continuing education documentation for a period of three years following the renewal of an active license. Documentation from the sponsor or organization shall include the title of the course, the name of the sponsoring organization, the date of the course, and the number of hours credited.

F. The board may grant an extension of the deadline for continuing education requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date of December 31.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board shall periodically conduct an audit for compliance with continuing education requirements. Licensees selected for an audit conducted by the board shall complete the Continuing Education Activity and Assessment Form and provide all supporting documentation within 30 days of receiving notification of the audit.

I. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

VA.R. Doc. No. R17-4865; Filed January 3, 2017, 9:34 a.m.

COMMON INTEREST COMMUNITY BOARD

Fast-Track Regulation

Title of Regulation: 18VAC48-10. Public Participation Guidelines (amending 18VAC48-10-50).

Statutory Authority: §§ 2.2-4007.02, 54.1-201, and 54.1-2349 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 13, 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 2.2-4007.02 of the Code of Virginia mandates each agency develop, adopt, and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Common Interest Community 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.

Purpose: The change conforms the agency's public participation guidelines to the change in the Administrative Process Act pursuant to Chapter 795 of the 2012 Acts of Assembly. 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: As the change merely conforms the regulation to the underlying statute, the rulemaking is not expected to be controversial and, therefore, appropriate for the fast-track rulemaking process.

Substance: The change to 18VAC48-10-50 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: As the change merely conforms the regulation to § 2.2-4007.02 of the Code of Virginia, the primary advantage is to ensure consistency between the law and regulation, which should reduce the chance of confusion. There are no anticipated disadvantages to the public 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 Common Interest Community 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 agency 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**

18VAC48-10-50. 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

Regulations

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. R17-4889; Filed December 27, 2016, 12:02 p.m.

BOARD OF DENTISTRY

Fast-Track Regulation

Title of Regulation: 18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-30).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the amendment is to reduce the possibility of fraud in the acquisition of prescription drugs by illegal use of a dentist's Drug Enforcement Agency (DEA) number. The board's amendment maintains access to the DEA registration for purposes of inspection or investigation but eliminates the posting requirement that made the DEA information readily accessible for any potential illegal prescriptions. The goal of protection of the health and safety of the public is enhanced by the security of a dentist's DEA registration.

Rationale for Using Fast-Track Rulemaking Process: This proposal is in response to a petition for rulemaking, which was supported by comments from 56 dentists. It will not be controversial because it is fully supported by the dental community and the board.

Substance: The posting requirements amendments allow a dentist who administers, prescribes, or dispenses Schedules II through V controlled substances to maintain a copy of his current registration with the federal Drug Enforcement Administration in a readily retrievable manner at each practice location rather than displaying it to the public along with his current license.

Issues: The advantage to the public is less risk of the illegal use of a dentist's DEA number to obtain controlled substances. There are no disadvantages. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In response to a 2016 petition for rulemaking, the Board of Dentistry (board) is proposing a fast-track action to eliminate a posting requirement for dentists.¹

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

Estimated Economic Impact. Currently, dentists who administer, prescribe, or dispense Schedules II through V controlled substances are required to post copies of their registrations that are issued by the United States Drug Enforcement Administration (DEA). The regulation requires licensees to display their current registrations with their current active licenses where they are "conspicuous and readable by patients in each dental practice setting."

The petitioner raised a concern that this information might be used for illegal purposes and thus requested that the board consider eliminating the posting requirement for DEA registrations. Accordingly, the board is proposing to amend the regulation to remove the "display" requirement and replace it with one that imposes a duty to maintain a copy of the current registration "in a readily retrievable manner at each practice location." The proposed amendment does not significantly affect costs. To the extent that not requiring the display of the DEA registration reduces the likelihood of fraud in the acquisition of prescription drugs by illegal use of a dentist's DEA number, the proposal is beneficial. Thus the proposed amendment likely produces a net benefit.

Businesses and Entities Affected. The proposed amendment would affect the 7,147 licensed dentists² and 3,201 dental offices³ in the Commonwealth. All of the dental offices qualify as small businesses.

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

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

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

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendment does not significantly affect costs.

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 More information about the petition for rulemaking is available on the Virginia Regulatory Town Hall at <http://townhall.virginia.gov/L/viewpetition.cfm?petitionid=246>.

² Data source: Department of Health Professions

³ Data source: Virginia Employment Commission

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

Summary:

The amendments allow a dentist who administers, prescribes, or dispenses Schedules II through V controlled substances to maintain a copy of his current registration with the federal Drug Enforcement Administration in a readily retrievable manner at each practice location rather than displaying it to the public along with his current license.

18VAC60-21-30. Posting requirements.

A. A dentist who is practicing under a firm name or who is practicing as an employee of another dentist is required by § 54.1-2720 of the Code to conspicuously display his name at the entrance of the office. The employing dentist, firm, or company must enable compliance by designating a space at the entrance of the office for the name to be displayed.

B. In accordance with § 54.1-2721 of the Code a dentist shall display his dental license where it is conspicuous and readable by patients in each dental practice setting. If a licensee practices in more than one office, a duplicate license obtained from the board may be displayed.

C. A dentist who administers, prescribes, or dispenses Schedules II through V controlled substances shall display maintain a copy of his current registration with the federal Drug Enforcement Administration ~~with his current active license~~ in a readily retrievable manner at each practice location.

D. A dentist who administers conscious/moderate sedation, deep sedation, or general anesthesia in a dental office shall display his sedation or anesthesia permit issued by the board or certificate issued by AAOMS.

V.A.R. Doc. No. R16-28; Filed January 3, 2017, 9:37 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Fast-Track Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-151).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Regulations

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Funeral Directors and Embalmers to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to one hour of continuing education with one hour of volunteer service, he is still required to have four hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health professional services, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow funeral service licensees, funeral directors, and embalmers to count one hour of the five hours required for annual renewal to be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for funeral service licensees, funeral directors, and embalmers to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Funeral Directors and Embalmers (Board) proposes to allow one hour of volunteer work to be substituted for one hour of continuing education annually for funeral service licensees, funeral directors, and embalmers.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept one hour of volunteer work in satisfaction of one hour of continuing education from funeral service licensees, funeral directors, and embalmers. The limit on the continuing education hours that can be satisfied by volunteer work is one hour per year. Currently, funeral service licensees, funeral directors, and embalmers are required to take five hours of continuing education per year for annual renewal of their licenses.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. In addition, the area of expertise of the affected practitioners may not be directly related to the services needed at local health departments or free clinics.

Also, it is not clear whether the ratio of required one hour of volunteer work per continuing education hour is sufficient by itself to provide additional incentives to offer volunteer service. Spending one hour acquiring continuing education would take the same amount of time providing one hour of free services. The proposed regulation will however help those licensees, directors, and embalmers if they have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A service licensee, a director, or an embalmer choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 1,533 funeral service providers, 43 funeral directors, and 2 embalmers licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 349 funeral home and service establishments in Virginia. All of the establishments satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the one-hour limit on the continuing education hours that can be gained through this method should not produce a significant negative impact. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all affected practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. All of the affected establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow funeral service licensees, funeral directors, and embalmers to substitute one hour of volunteer work for one hour of continuing education annually.

18VAC65-20-151. Continued competency requirements for renewal of an active license.

A. Funeral service licensees, funeral directors or funeral embalmers shall be required to have completed a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements. One hour of the five

hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic. For the purposes of continuing education credit for volunteer service, an approved sponsor shall be a local health department or free clinic.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell or offer goods, products or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

VA.R. Doc. No. R17-4953; Filed January 3, 2017, 9:37 a.m.

DEPARTMENT OF HEALTH PROFESSIONS
Final Regulation

REGISTRAR'S NOTICE: The Department of Health Professions is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 18 of the Code of Virginia, which exempts regulations for the implementation of the Health Practitioners' Monitoring Program, Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 of the Code of Virginia.

Title of Regulation: **18VAC76-10. Regulations Governing the Health Practitioners' Monitoring Program for the Department of Health Professions (amending 18VAC76-10-20, 18VAC76-10-65).**

Statutory Authority: § 54.1-2516 of the Code of Virginia.

Effective Date: February 22, 2017.

Agency Contact: Peggy Woods, Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4418, FAX (804) 527-4475, or email peggy.woods@dhp.virginia.gov.

Summary:

The amendments clarify the director's authority to appoint and remove members of the Health Practitioners' Monitoring Committee, change the number of members that constitutes a quorum from four to five, and make a

Regulations

technical correction changing the title "program coordinator" to "program manager."

18VAC76-10-20. Organization of committee.

A. Members shall be appointed by the director for a term of four years and shall be eligible for reappointment for one additional four-year term. A member who is appointed to fill a vacancy for the remainder of an unexpired term shall be eligible for two full four-year terms. Terms of appointment shall begin on July 1 of each calendar year. The director shall have authority to remove a member for cause.

B. Members of the committee shall not be current members of a health regulatory board within the department.

C. The committee shall schedule meetings as necessary to conduct its business. ~~Four~~ Five members shall constitute a quorum. The committee may adopt bylaws to govern its operations as it deems necessary to conduct its business and as consistent with law and regulations.

D. Each health regulatory board within the department shall designate, in accordance with subdivision 8 of § 54.1-2400 of the Code of Virginia, a liaison to the committee.

18VAC76-10-65. Authority of the chairperson of the committee.

A. The chairperson of the committee, following consultation with and briefing by the program ~~coordinator~~ manager, shall advise the relevant board that a participant is noncompliant and is no longer eligible for a stay.

B. The chairperson may act on behalf of the committee when a scheduled meeting is canceled due to failure to convene a quorum.

VA.R. Doc. No. R17-4979; Filed January 3, 2017, 9:39 a.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-235).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care

services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for doctors of medicine, osteopathic medicine, podiatry, and chiropractic to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to 15 hours of continuing education with hours of volunteer service, he is still required to have 30 hours of Type I approved continuing education necessary to acquire new knowledge and skills and an additional 15 hours of Type 2 continuing competency activities. All of the 60 hours required for biennial renewal may be Type 1 hours. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow doctors of medicine, osteopathic medicine, podiatry, and chiropractic to count up to 15 of the 30 Type 2 hours required for biennial renewal to be satisfied through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for doctors of medicine, osteopathic medicine, podiatry, and chiropractic to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Medicine (Board) proposes to allow one hour of volunteer work to be substituted for one hour of continuing education up to 15 hours biennially for doctors of medicine, osteopathic medicine, podiatry, and chiropractic.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept one hour of volunteer work in satisfaction of one hour of continuing education from doctors of medicine, osteopathic medicine, podiatry, and chiropractic. The limit on the continuing education hours that can be satisfied by volunteer work is 15 hours every two years. Currently, doctors of medicine, osteopathic medicine, podiatry, and chiropractic are required to take 60 hours of continuing education every two years for biennial renewal of their licenses.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience.

Also, it is not clear whether the ratio of required one hour of volunteer work per continuing education hour is sufficient by itself to provide additional incentives to offer volunteer service. Spending one hour acquiring continuing education would take the same amount of time providing one hour of free services. The proposed regulation will however help affected practitioners if they have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 36,818 doctors of medicine, 3,053 doctors of osteopathic medicine, 773 doctors of chiropractic, and 521 doctors of podiatry licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 4,471 establishments in the industry category of the doctors of medicine and osteopathic medicine, which include establishments of other health practitioners (e.g., offices of acupuncturists, allergists, anesthesiologists, etc.) not directly affected by the proposed regulation. All but four of the 4,471 establishments in that category satisfy the small business criteria. There are also 698 chiropractors' offices and 150 podiatry offices all of which satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all affected practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. Most of the affected establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow doctors of medicine, osteopathic medicine, podiatry, and chiropractic to substitute one hour of volunteer work for one hour of continuing education for up to 15 hours of the 30 Type 2 hours required for biennial renewal.

18VAC85-20-235. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall attest to completion of at least 60 hours of continuing learning activities within the two years immediately preceding renewal as follows:

1. A minimum of 30 of the 60 hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession.

Regulations

a. Type 1 hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the Council on Chiropractic Education or any other organization approved by the board.

b. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.

2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of care, patient safety, new medical technology, and patient communication. Up to 15 of the Type 2 continuing education hours may be satisfied through delivery of services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for one hour of providing such volunteer services. For the purpose of continuing education credit for voluntary service, documentation by the health department or free clinic shall be acceptable.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board may grant an exemption for all or part of the requirements for a licensee who:

1. Is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board; or
2. Is practicing solely as a medical examiner, provided the licensee obtains six hours of medical examiner training per year provided by the Office of the Chief Medical Examiner.

V.A.R. Doc. No. R17-4947; Filed January 3, 2017, 9:40 a.m.

Fast-Track Regulation

Title of Regulation: 18VAC85-40. **Regulations Governing the Practice of Respiratory Therapists (amending 18VAC85-40-66).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for respiratory therapists to volunteer professional services to free clinics or public health centers. While a licensee can satisfy two hours of continuing education with six hours of volunteer service, he is still required to have 18 hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Inclusion of continuing education credit for post-licensure academic courses may encourage respiratory therapists to further their education to become more competent in and knowledgeable about new techniques and therapies to benefit the health of the patients they treat.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

The inclusion of credit for post-licensure academic courses is also permissive and will expand the opportunities for completion of continuing competency requirements.

Substance: The board has adopted amended regulations to allow respiratory therapists to count up to two of the 20 hours required for biennial renewal to be satisfied through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

The board, upon the recommendation of the advisory board, also amended the regulation to allow continuing education credit for completion of post-licensure academic courses at an accredited college or university.

Issues: The advantage to the public is the incentive given for respiratory therapists to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Medicine (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education biennially for respiratory therapists.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from respiratory therapists. The limit on the continuing education hours that can be satisfied by volunteer work is two hours every two years. Currently, respiratory therapists are required to take 20 hours of continuing education every two years for biennial renewal of their licenses.

The proposed change will allow affected professionals to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 20 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for respiratory therapists to spend one hour acquiring

continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing respiratory therapists who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 3,930 respiratory therapists licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 376 establishments in the industry category of the affected entities, which include establishments of other health practitioners (e.g., offices of acupuncturists, dental hygienists, massage therapists, etc.) not directly affected by the proposed regulation. All of the 376 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 20 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. All of the respiratory therapy establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Regulations

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow respiratory therapists to (i) substitute six hours of volunteer work for two hours of continuing education biennially and (ii) obtain continuing education credit by completion of a post-licensure academic course at an accredited college or university.

18VAC85-40-66. Continuing education requirements.

A. In order to renew an active license as a respiratory therapist, a licensee shall attest to having completed 20 hours of continuing education within the last biennium as follows:

1. Courses approved and documented by a sponsor recognized by the AARC or in courses;
2. Courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium; or
3. A credit course of post-licensure academic education relevant to respiratory care offered by a college or university accredited by an agency recognized by the U.S. Department of Education.

Up to two continuing education hours may be satisfied through delivery of respiratory therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R17-4948; Filed January 3, 2017, 9:40 a.m.

Fast-Track Regulation

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

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for occupational therapists and occupational therapy assistants to volunteer professional services to free clinics or public health centers. While a licensee can satisfy two hours of continuing education with six hours of volunteer service, he is still required to have at least 10 hours of Type 1 approved continuing education necessary to acquire new knowledge and skills and an additional eight hours of Type 2 continuing competency activities. All of the 20 hours required

for biennial renewal may be Type 1 hours. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow occupational therapists and occupational therapy assistants to count two hours of the 10 Type 2 hours required for biennial renewal to be satisfied through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for occupational therapists and occupational therapy assistants to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Medicine (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education biennially for occupational therapists and occupational therapy assistants.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from occupational therapists and occupational therapy assistants. The limit on the continuing education hours that can be satisfied by volunteer work is two hours every two years. Currently, occupational therapists and occupational therapy assistants are required to take 20 hours of continuing education every two years for biennial renewal of their licenses.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 20 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 3,801 occupational therapists and 1,384 occupational therapy assistants licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 898 establishments in the industry category of the affected entities, which include establishments of other health practitioners (e.g., offices of audiologists, pathologists, physical therapists, etc.) not directly affected by the proposed regulation. All of the 898 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 20 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Regulations

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. All of the occupational therapy establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow occupational therapists and occupational therapy assistants to substitute six hours of volunteer work for two hours of the 10 Type 2 hours of continuing education required for biennial renewal.

18VAC85-80-71. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall complete the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities offered by a sponsor or organization recognized by the profession and may include in-service training, self-study courses, continuing education courses, specialty certification, or professional workshops.

2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation, or other such experiences that promote continued learning. Up to two of the Type 2 continuing education hours may be satisfied through delivery of

occupational therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services as documented by the health department or free clinic.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit of at least one to two percent of its active licensees to determine compliance. The practitioners selected for the audit shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R17-4958; Filed January 3, 2017, 9:41 a.m.

Fast-Track Regulation

Title of Regulation: **18VAC85-101. Regulations Governing the Practice of Radiologic Technology (repealing 18VAC85-101-50, 18VAC85-101-61).**

Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system, and § 54.1-2956.8:1 of the Code of Virginia, which provides that it is unlawful to practice radiologic technology without a license.

Purpose: The existence of regulatory language for traineeships for unlicensed graduates has created confusion for some applicants who believe they can practice radiologic technology before passage of the licensing examination. The law specifies that licensure is required for practice, with the exception of radiologic technologists employed by a hospital. To ensure that a person is fully qualified to engage in practice defined as "the application of ionizing radiation to human beings for diagnostic or therapeutic purposes," the sections allowing for traineeships are being repealed to protect the health and safety of patients in the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: Since the promulgation of 18VAC85-101-50 in 1996 and 18VAC85-101-61 in 2003, staff can only recall one time a traineeship has been granted, and that was years ago when examinations were only offered three times a year. Graduates are now allowed to sit for the licensing examination any day of the work week, so the need for a traineeship no longer exists but does cause confusion for a few persons. Accordingly, repeal of 18VAC85-101-50 and 18VAC85-101-61 will not be controversial.

Substance: The board is repealing 18VAC85-101-50 and 18VAC85-101-61 on traineeships for unlicensed graduates.

Issues: There are no advantages or disadvantages to the public because there are no traineeships currently being granted. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to repeal 50 (Traineeship for unlicensed graduate) and 60 (Traineeship for an applicant for licensure as a radiologic technologist-limited) of 18VAC85-101.

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

Estimated Economic Impact. Code of Virginia (Code) § 54.1-2956.8:1 states that "it shall be unlawful for a person to practice...as a radiologist technologist or radiologist technologist, limited...unless he holds a license as such issued by the Board." The Code section provides for one exception for individuals employed by a hospital who are practicing as radiologic technologists.

The existence of regulatory language for traineeships for unlicensed graduates (in sections 50 and 60) has created confusion for some applicants who believe they can practice radiologic technology before passage of the licensing examination. As described above, the law specifies that licensure is required for practice, with the exception of radiologic technologists employed by a hospital. According to the Department of Health Professions, since the enactment of the sections staff can only recall one time a traineeship has been granted, and that was when examinations were only

offered three times a year. Graduates are now allowed to sit for the licensing examination any day of the work week; so the need for a traineeship no longer exists. Thus the proposed repeal of the sections would have no impact in practice other than reduce potential confusion among readers of the regulation.

Businesses and Entities Affected. The proposed repeal of the sections would reduce the likelihood of confusion among readers of the regulation. Individuals considering licensure as a radiologist technologist or radiologist technologist-limited are the most likely to be interested in the sections. Each year approximately 430 new licenses are issued for radiologist technologists and 45 new licenses are issued for radiologist technologists-limited.¹

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 Data source: Department of Health Professions.

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

Summary:

The amendments repeal provisions on traineeships for unlicensed graduates for consistency with § 54.1-2956.8:1 of the Code of Virginia.

Regulations

18VAC85-101-50. Traineeship for unlicensed graduate. (Repealed.)

~~A. An applicant who is an unlicensed graduate of an ARRT acceptable program may be employed as a trainee under the direct supervision of a licensed radiologic technologist, or doctor of medicine, osteopathy, chiropractic, or podiatry.~~

~~B. The graduate shall submit an application for a traineeship to the board for review and approval by the Chairman of the Advisory Board on Radiological Technology or his designee.~~

~~C. The traineeship shall terminate 14 working days after receipt by the candidate of the licensure examination results. The unlicensed graduate may reapply for a new traineeship while awaiting to take the next examination.~~

~~D. An unlicensed graduate may serve in a traineeship for a period not to exceed two years or through three unsuccessful attempts of the licensure examination, whichever comes first. After such time, the graduate shall apply to the Advisory Board on Radiological Technology for approval to continue in practice as a trainee.~~

18VAC85-101-61. Traineeship for an applicant for licensure as a radiologic technologist limited. (Repealed.)

~~A. An applicant who is seeking licensure as a radiologic technologist limited may be employed as a trainee under the direct supervision of a licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic or podiatry.~~

~~B. The person shall submit an application for a traineeship to the board for review and approval by the Chairman of the Advisory Board on Radiological Technology or his designee.~~

~~C. The traineeship shall terminate 14 working days after receipt by the candidate of the licensure examination results or, if training for limited licensure in bone densitometry or abdomen and pelvis, 14 working days after completion of the required number of procedures. The trainee may reapply for a new traineeship while waiting to take the next examination or for satisfactory completion of the required number of procedures.~~

V.A.R. Doc. No. R17-4946; Filed January 3, 2017, 9:42 a.m.

Fast-Track Regulation

Title of Regulation: 18VAC85-101. Regulations Governing the Practice of Radiologic Technology (amending 18VAC85-101-150).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for a radiologic technologist, a radiologic technologist-limited, and a radiologist assistant to volunteer professional services to free clinics or public health centers. While a licensee can satisfy two hours of continuing education with six hours of volunteer service, he is still required to have hours of approved continuing education necessary to acquire new knowledge and skills, as follows: 24 hours for a radiologic technologist, 12 hours for a radiologic technologist-limited, and 50 hours for a radiologist assistant. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow a radiologic technologist, a radiologic technologist-limited, and a radiologist assistant to count two hours of the hours required for biennial renewal to be satisfied through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for a radiologic technologist, a radiologic technologist-limited, or a radiologist assistant to volunteer his services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the

Board of Medicine (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education biennially for radiologist assistants, radiological technologists, and radiologic technologists-limited.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from radiologist assistants, radiological technologists, or radiologic technologist-limited. The limit on the continuing education hours that can be satisfied by volunteer work is two hours every two years. Currently, radiologist assistants, radiological technologists, and radiologic technologists-limited are required respectively to take 24, 12, or 50 hours of continuing education every two years for biennial renewal of their licenses.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for affected practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing affected practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 12 licensed radiologist assistants, 4,292 radiologic technologists, and 644 radiologic technologists-limited in Virginia. According to data provided by the Virginia Employment Commission, there are 4,471 establishments in the industry category of the affected entities, which include establishments of other health practitioners (e.g., offices of acupuncturists,

allergists, anesthesiologists, etc.) not directly affected by the proposed regulation. All but four of the 4,471 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. Most if not all of the radiologic technology establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow a radiologic technologist, a radiologic

Regulations

technologist-limited, and a radiologist assistant to substitute six hours of volunteer work for two hours of continuing education biennially.

Part VIII
Renewal of Licensure

18VAC85-101-150. Biennial renewal of license.

A. A radiologist assistant, radiologic technologist, or radiologic technologist-limited who intends to continue practice shall renew his license biennially during his birth month in each odd-numbered year and pay to the board the prescribed renewal fee.

B. A license that has not been renewed by the first day of the month following the month in which renewal is required shall be expired.

C. An additional fee as prescribed in 18VAC85-101-25 shall be imposed by the board.

D. In order to renew an active license as a radiologic technologist, a licensee shall attest to having completed 24 hours of continuing education as acceptable to the ARRT within the last biennium.

E. In order to renew an active license as a radiologic technologist-limited, a licensee shall attest to having completed 12 hours of continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours shall be acceptable to the ARRT, or by the ACRRT for limited licensees whose scope of practice is chiropractic, or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.

F. In order to renew an active license as a radiologist assistant, a licensee shall attest to having completed 50 hours of continuing education as acceptable to the ARRT within the last biennium. A minimum of 25 hours of continuing education shall be recognized by the ARRT as intended for radiologist assistants or radiologists and shall be specific to the radiologist assistant's area of practice. Continuing education hours earned for renewal of a radiologist assistant license shall satisfy the requirements for renewal of a radiologic technologist license.

G. Up to two continuing education hours may be satisfied through delivery of radiological services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, documentation by the health department or free clinic shall be acceptable.

H. Other provisions for continuing education shall be as follows:

1. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

2. The practitioner shall retain in his records the Continued Competency Activity and Assessment Form available on the board's website with all supporting documentation for a period of four years following the renewal of an active license.

3. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

4. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

5. The board may grant an extension of the deadline for satisfying continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

6. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R17-4959; Filed January 3, 2017, 9:41 a.m.

Fast-Track Regulation

Title of Regulation: 18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (amending 18VAC85-140-100).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for polysomnographic technologists to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to two hours of continuing

education with six hours of volunteer service, he is still required to have 18 hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow polysomnographic technologists to count up to two hours of the 20 hours required for biennial renewal to be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for polysomnographic technologists to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Medicine (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education biennially for polysomnographic technologists.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from polysomnographic technologists. Polysomnographic technologists perform overnight, daytime, or home sleep studies on individuals with suspected sleep disorders. The limit on the continuing education hours that can be satisfied by volunteer work is two hours every two years. Currently, polysomnographic technologists are

required to take 20 hours of continuing education every two years for biennial renewal of their licenses.

The proposed change will allow affected professionals to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 20 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for polysomnographic technologists to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing polysomnographic technologists who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 425 polysomnographic technologists licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 4,471 establishments in the industry category of the affected entities, which include establishments of other health practitioners (e.g., offices of acupuncturists, allergists, anesthesiologists, etc.) not directly affected by the proposed regulation. All but four of the 4,471 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 20 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

Regulations

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

Small Businesses:

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

Costs and Other Effects. Most if not all of the polysomnographic technologist establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow licensed polysomnographic technologists to substitute six hours of volunteer work for two hours of continuing education biennially.

18VAC85-140-100. Continuing education requirements.

A. In order to renew an active license as a polysomnographic technologist, a licensee shall attest to having successfully completed 20 hours of continuing education in courses directly related to the practice of polysomnographic technology as approved and documented by a provider recognized by one of the following:

1. The Board of Registered Polysomnographic Technologists Education Advisory Board (BRPT-EAC);
2. The American Academy of Sleep Medicine (AASM);
3. The American Medical Association for Category 1 continuing medical education credit;
4. The American Association of Sleep Technologists (AAST);

5. The American Society of Electroneurodiagnostic Technologists, Inc. (ASET);

6. The American Association for Respiratory Care (AARC);

7. The American Nurses Association (ANA); or

8. The American College of Chest Physicians (ACCP).

B. Up to two continuing education hours may be satisfied through delivery of polysomnographic technology services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.

C. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

~~C. D.~~ The practitioner shall retain the completed form with all supporting documentation in his records for a period of four years following the renewal of an active license.

~~D. E.~~ The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

~~E. F.~~ Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

~~F. G.~~ The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

~~G. H.~~ The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R17-4960; Filed January 3, 2017, 9:43 a.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-110).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority § 54.1-2400 of the Code of Virginia, which provides the Board of Nursing the authority to promulgate regulations. In addition, there is statutory authority for the board to approve training and curriculum for medication aide programs and to establish standards of conduct regulations to administer the regulatory system in § 54.1-3005 of the Code of Virginia.

Purpose: The amendments clarify that subcutaneous administration of medication is not within the scope of practice for a medication aide, with the exception of three medications essentially used for emergencies and as taught in the medication aide curriculum. The amendments ensure that medication aides do not inappropriately administer drugs by a subcutaneous route. Since medication aides work solely in assisted living facilities, clearly worded regulations are necessary to protect a very vulnerable population in a facility where it is unlikely that another health care provider is present.

Rationale for Using Fast-Track Rulemaking Process: The board is using the fast-track rulemaking process because the change will ensure that medication aides can administer certain medications that may save the life of a resident in an assisted living facility. Therefore, the board would like to promulgate those amendments as soon as possible. There should be no opposition to the amendment, so a fast-track rulemaking action is appropriate.

Substance: 18VAC90-60-110 is amended to clarify that medication aides are not allowed to administer by subcutaneous route except for insulin medications, glucagon, or auto-injectable epinephrine. An exception for insulin and glucagon is already listed for administration by intramuscular or intravenous routes, but it is more appropriately a subcutaneous administration.

Issues: The primary advantage is to residents of assisted living facilities, which are the only settings in which medication aides practice, for trained individuals to be able to administer a potentially life-saving drug. There are no primary disadvantages to the public. The primary advantage to the Board of Nursing is the clarification about whether medication aides may administer by a subcutaneous route. Such administration is not taught in the training programs and is not part of the curriculum, with the exception of limited rescue medications.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to clarify that medication aides¹ may not administer any medications other than insulin, glucagon and auto-injectable epinephrine by subcutaneous² route.

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

Estimated Economic Impact. Current regulation prohibits medication aides from transmitting verbal orders to pharmacies; making an assessment of a client or deviating from the medication regime ordered by the prescriber; or mixing, diluting or reconstituting two or more drug products (with the exception of insulin and glucagon). Medication aides are also currently prohibited from administering any medication except glucagon via nasogastric or percutaneous endoscopic gastric tube and any medications by intramuscular or intravenous routes. Although medication aides are not allowed to administer any medications by intravenous or intramuscular injection, they are currently trained to administer three types medication via subcutaneous injections: insulin, glucagon and auto-injectable epinephrine.

Board staff reports that they have had inquiries from both medication aides, and the assisted living facilities where they are employed, as to whether they are allowed to administer any subcutaneous injections other than insulin, glucagon or auto-injectable epinephrine. Section 54.1-3408 M of the Code of Virginia requires, among other things, that medication aides practice in accordance with regulations governing their practice promulgated by the Board of Nursing. Board of Nursing regulation 18VAC90-60-120 (2) (b) prohibits medication aides from "assuming duties and responsibilities within the practice of medication aides without adequate training or when competency has not been maintained." Because of this language in the COV and regulation, it is the Board's position that medication aides may not administer any subcutaneous injections other than the three on which they are specifically trained. To clarify this, the Board now proposes to add administering any subcutaneous injections, other than of insulin, glucagon and auto-injectable epinephrine, to the list of prohibited acts for medication aides.

Board staff reports that no assisted living facilities are known to currently allow medication aides to administer subcutaneous injections other than those for which they are specifically trained. Therefore, no assisted living facilities are likely to incur any costs on account of this proposed regulatory change. Medication aides and assisted living facilities, as well as the clients at such facilities, will benefit from this change as it will clear up any confusion that might exist about the limits of practice for medication aides vis-a-vis subcutaneous injections.

Businesses and Entities Affected. Board staff reports that there are approximately 6,000 registered medication aides currently registered with the Board. All of these individuals, as well as any individuals who become registered in the future, will be affected by this proposed regulatory change.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulatory changes.

Regulations

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

Effects on the Use and Value of Private Property. This proposed change will likely not affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. This proposed regulatory change is unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

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

Costs and Other Effects. No small businesses are likely to incur any additional costs on account of this clarifying change.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of this clarifying change.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of this clarifying change.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities. No other entities are likely to be adversely affected by this proposed change.

¹ Medication aides are registered with the Board of Nursing, work in assisted living facilities licensed by the Board of Social Services and are authorized by Code to administer drugs that would normally be self-administered by residents of such facilities.

² Subcutaneous means located beneath the skin. Subcutaneous injections deliver medication to the fatty tissue just under the skin.

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

Summary:

The amendment clarifies that medication aides may not administer any medications other than insulin, glucagon, or auto-injectable epinephrine by subcutaneous route.

18VAC90-60-110. Standards of practice.

A. A medication aide shall:

1. Document and report all medication errors and adverse reactions immediately to the licensed health care professional in the facility or to the client's prescriber;
2. Give all medications in accordance with the prescriber's orders and instructions for dosage and time of

administration and document such administration in the client's record; and

3. Document and report any information giving reason to suspect the abuse, neglect, or exploitation of clients immediately to the licensed health care professional in the facility or to the facility administrator.

B. A medication aide shall not:

1. Transmit verbal orders to a pharmacy;
2. Make an assessment of a client or deviate from the medication regime ordered by the prescriber;
3. Mix, dilute, or reconstitute two or more drug products, with the exception of insulin or glucagon; ~~or~~
4. Administer by intramuscular or intravenous routes or medications via a nasogastric or percutaneous endoscopic gastric tube ~~except for administration of glucagon; or~~
5. Administer by subcutaneous route, except for insulin medications, glucagon, or auto-injectable epinephrine.

VA.R. Doc. No. R17-4696; Filed January 3, 2017, 9:44 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Fast-Track Regulation

Titles of Regulations: 18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-175).

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-70).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email corie.wolf@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Long-Term Care Administrators to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can

satisfy two hours of continuing education with two hours of volunteer service, he is still required to have 18 hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow nursing home administrators and assisted living facility administrators to count two hours of the 20 hours required for annual renewal to be satisfied through delivery of services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for nursing home administrators and assisted living facility administrators to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Long-Term Care Administrators (Board) proposes to allow two hours of volunteer work to be substituted for up to two hours of continuing education annually for nursing home and assisted living facility administrators.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept one hour of volunteer work in satisfaction of one hour of continuing education from nursing home and assisted living facility administrators. The limit on the continuing education hours that can be satisfied by volunteer work is two hours per year. Currently, nursing home and assisted living facility administrators are required

to take 20 hours of continuing education per year for annual renewal of their licenses.

The proposed change will allow affected professionals to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. In addition, the administrators' area of expertise may not be directly related to the services needed at local health departments or free clinics. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 20 hours.

Also, it is not clear whether the ratio of required one hour of volunteer work per continuing education hour is sufficient by itself to provide additional incentives to offer volunteer service. Spending one hour acquiring continuing education would take the same amount of time providing one hour of free services. The proposed regulation will however help those administrators if they have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. An administrator choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 864 nursing home administrators and 602 assisted living facility administrators licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 286 establishments in the industry category of the affected administrators, which include other nursing and rehabilitative services not directly affected by the proposed regulation (e.g., rest homes, retirement homes, etc.). All but one of the 286 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 20 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all administrators.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Regulations

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. Almost all of the affected establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Long-Term Care Administrators concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow nursing home administrators and assisted living facility administrators to substitute two hours of volunteer work for two hours of continuing education annually.

18VAC95-20-175. Continuing education requirements.

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall (i) be related to health care administration and shall be approved or offered by the National Association of Long Term Care Administrator Boards (NAB), an accredited institution, or a government agency, or (ii) as provided in subdivision A 2 of this section.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

- Date or dates the course was taken;
- Hours of attendance or participation;
- Participant's name; and
- Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

18VAC95-30-70. Continuing education requirements.

A. In order to renew an assisted living administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

3. A licensee is exempt from completing continuing education requirements for the first renewal following initial licensure in Virginia.

B. In order for continuing education to be approved by the board, it shall (i) be related to the domains of practice for residential care/assisted living and approved or offered by NAB, an accredited educational institution, or a governmental agency, or (ii) as provided in subdivision A 2 of this section.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

- a. Date or dates the course was taken;
- b. Hours of attendance or participation;
- c. Participant's name; and
- d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R17-4862; Filed January 3, 2017, 9:38 a.m.

BOARD OF OPTOMETRY

Fast-Track Regulation

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-70).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Optometry to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to

include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to two hours of continuing education with six hours of volunteer service, he is still required to have 18 hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow optometrists to count up to two hours of the 20 hours required for annual renewal to be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for optometrists to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Optometry (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education annually for optometrists.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the

Regulations

required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from optometrists. The limit on the continuing education hours that can be satisfied by volunteer work is two hours per year. Currently, optometrists are required to take 20 hours of continuing education per year for annual renewal of their licenses.

The proposed change will allow affected practitioners to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 20 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 1,658 optometrists licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 486 offices of optometrists. All of them satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 20 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. All of the affected offices of optometrists are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow licensed optometrists to substitute six hours of volunteer work for two hours of continuing education annually.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to December 31 unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to December 31 of each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (COPE).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR).
13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.
2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R17-4915; Filed January 3, 2017, 9:45 a.m.

Regulations

BOARD OF PHARMACY

Final Regulation

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

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

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

Effective Date: February 22, 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.

Summary:

The amendments add eight compounds into Schedule I of the Drug Control Act as recommended by the Virginia Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. The compounds added by this regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

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

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

1. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: butyryl fentanyl).
2. Flubromazolam.
3. 5-methoxy-N,N-methylisopropyltryptamine (Other name: 5-MeO-MIPT).
4. Cannabimimetic agents:
 - a. N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide (other name: ADB-FUBINACA);
 - b. Methyl 2-[1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: MDMB-FUBINACA); and
 - c. Methyl 2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other names: 5-fluoro-ADB, 5-Fluoro-MDMB-PINACA).

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

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

1. Beta-keto-N,N-dimethylbenzodioxolylbutanamine (other names: Dibutylone, bk-DMBDB);
2. 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-1-pentanone (other name: N-ethylpentylone);
3. 1-[1-(3-methoxyphenyl)cyclohexyl]piperidine (other name: 3-methoxy PCP);
4. 1-[1-(4-methoxyphenyl)cyclohexyl]piperidine (other name: 4-methoxy PCP);
5. 4-Chloroethcathinone (other name: 4-CEC);
6. 3-Methoxy-2-(methylamino)-1-(4-methylphenyl)-1-propanone (other name: Mexedrone);
7. 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide (other name: U-47700);
8. 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (other name: AH-7921);
9. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-pentanamide (other name: Pentanoyl fentanyl);
10. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2-furancarboxamide (other name: Furanyl fentanyl);
11. N-(3-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide (other name: 3-fluorofentanyl);
12. Clonazolam; and
13. Cannabimimetic agents:
 - a. Methyl 2-({1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonyl}amino)-3-methylbutanoate (other names: AMB-FUBINACA, FUB-AMB);
 - b. N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (other name: FUB-AKB48);
 - c. N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (other name: 5F-AKB48);
 - d. Naphthalen-1-yl 1-pentyl-1H-indazole-3-carboxylate (other name: SDB-005); and
 - e. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide (other name: AB-CHMICA).

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

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

1. 1-propionyl lysergic acid diethylamide (other name: 1P-LSD);
2. (2-Methylaminopropyl)benzofuran (other name: MAPB);

3. Ethyl phenyl(piperidin-2-yl)acetate (other name: Ethylphenidate);
4. 2-(3-fluorophenyl)-3-methylmorpholine (other name: 3-fluorophenmetrazine); and
5. N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: para-fluorobutyrylfentanyl), its optical, positional, and geometric isomers, salts and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until May 10, 2018, unless enacted into law in the Drug Control Act.

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

1. 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)-1-pentanone (other names: N,N-Dimethylpentylone, Dipentylone);
2. 4-chloro-alpha-Pyrrolidinovalerophenone (other name: 4-chloro-alpha-PVP);
3. 4-methyl-alpha-Pyrrolidinohexiophenone (other name: MPHP);
4. 4-fluoro-alpha-Pyrrolidinoheptiophenone (other name: 4-fluoro-PV8);
5. 1-(4-methoxyphenyl)-2-(pyrrolidin-1-yl)octan-1-one (other name: 4-methoxy-PV9);
6. 4-allyloxy-3,5-dimethoxyphenethylamine (other name: Allylescaline);
7. 4-methyl-alpha-ethylaminopentiophenone; and
8. N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: para-fluoroisobutyryl fentanyl).

The placement of drugs listed in this subsection shall remain in effect until August 22, 2018, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R17-4992; Filed December 29, 2016, 7:28 p.m.

BOARD OF COUNSELING

Fast-Track Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-105).**

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-95).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-115).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Counseling to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to two hours of continuing education with six hours of volunteer service, he is still required to have 18 hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for mental health care or substance abuse treatment, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners to count up to two hours of the 20 hours required for annual renewal to be satisfied through delivery of mental health or substance abuse treatment services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Regulations

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Counseling (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education annually for counselors, marriage and family therapists, and substance abuse treatment practitioners.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from counselors, marriage and family therapists, and substance abuse treatment practitioners. The limit on the continuing education hours that can be satisfied by volunteer work is two hours per year. Currently, counselors, marriage and family therapists, and substance abuse treatment practitioners are required to take 20 hours of continuing education per year for annual renewal of their licenses.

The proposed change will allow affected professionals to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 20 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing practitioners who are indecisive at the margin about providing such services. The proposed regulation will also help those practitioners who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A practitioner choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 4,567 counselors, 870 marriage and family therapists, and 179 substance abuse treatment practitioners licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 601 establishments in the industry

category of the affected entities, which include other social assistance services not directly affected by the proposed regulation (e.g., services for crisis intervention, mediation, etc.). All of the 601 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 20 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. All of the affected counselors, marriage and family therapists, and substance abuse treatment practitioners are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners to substitute six hours of volunteer work for two hours of continuing education annually.

18VAC115-20-105. Continued competency requirements for renewal of a license.

A. ~~After July 1, 2004, licensed~~ Licensed professional counselors shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standards of practice₂, or laws governing behavioral science professions in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individuals will only be required to provide the hours set out in subsection A of this section ~~or~~₂ subsection A of 18VAC115-50-95 in the Regulations Governing the Practice of Marriage and Family Therapy, or subsection A of 18VAC115-60-115 in the Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

E. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of counseling services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

18VAC115-50-95. Continued competency requirements for renewal of a license.

A. Marriage and family therapists shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standards of practice₂, or laws governing behavioral science professions in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individuals will only be required to provide the hours set out in subsection A of this section ~~or~~₂ subsection A of 18VAC115-20-105 in the Regulations Governing the Practice of Professional Counseling, or subsection A of 18VAC115-60-115 in the Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

E. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of counseling services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

18VAC115-60-115. Continued competency requirements for renewal of a license.

A. Licensed substance abuse treatment practitioners shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standard of practice₂, or laws governing behavioral science professions in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individuals will only be required to provide the hours set out in subsection A of this section ~~or~~₂ subsection A of 18VAC115-50-95 in the Regulations Governing the Practice of Marriage and Family Therapy, or subsection A of 18VAC115-20-105 in the Regulations Governing the Practice of Professional Counseling.

E. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of counseling services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be

Regulations

credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

V.A.R. Doc. No. R17-4858; Filed January 3, 2017, 9:35 a.m.

BOARD OF PSYCHOLOGY

Fast-Track Regulation

Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-121).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Psychology to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensee can satisfy up to two hours of continuing education with six hours of volunteer service, he is still required to have 12 hours of approved continuing education necessary to acquire new knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow licensed psychologists to count up to two hours of the 14 hours required for annual renewal to be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or

primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for psychologists to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Psychology (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education annually for psychologists

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from psychologists. The limit on the continuing education hours that can be satisfied by volunteer work is two hours per year. Currently, psychologists are required to take 14 hours of continuing education per year for annual renewal of their licenses.

The proposed change will allow affected professionals to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 14 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for practitioners to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing professionals who are indecisive at the margin about providing such services. The proposed regulation will also help those psychologists who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not

mandate it. A psychologist choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 3,291 clinical psychologists, 102 school psychologists, and 32 applied psychologists licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 444 offices of mental health practitioners. All of them satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the annually required 14 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. All of the affected offices of psychologists are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow licensed psychologists to substitute six hours of volunteer work for two hours of continuing education annually.

18VAC125-20-121. Continuing education course requirements for renewal of an active license.

A. Licensees shall be required to have completed a minimum of 14 hours of board-approved continuing education courses each year for annual licensure renewal. A minimum of 1.5 of these hours shall be in courses that emphasize the ethics, laws, and regulations governing the profession of psychology, including the standards of practice set out in 18VAC125-20-150. A licensee who completes continuing education hours in excess of the 14 hours may carry up to seven hours of continuing education credit forward to meet the requirements for the next annual renewal cycle.

B. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the practice of psychology and is provided by a board-approved provider that meets the criteria specified in 18VAC125-20-122.

1. At least six of the required hours shall be earned in face-to-face or real-time interactive educational experiences. Real-time interactive shall include a course in which the learner has the opportunity to interact with the presenter and participants during the time of the presentation.

2. The board may approve up to four hours per renewal cycle for specific educational experiences to include:

a. Preparation for and presentation of a continuing education program, seminar, workshop or course offered by an approved provider and directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the presentation is given, and may not be credited toward the face-to-face requirement.

b. Publication of an article or book in a recognized publication directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the writing is published, and may not be credited toward the face-to-face requirement.

3. The board may approve up to two hours per renewal cycle for membership on a state licensing board in psychology.

C. Courses must be directly related to the scope of practice in the category of licensure held. Continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders.

Regulations

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

F. Up to two of the 14 continuing education hours required for renewal may be satisfied through delivery of psychological services, without compensation, to low-income individuals receiving mental health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services as verified by the department or clinic. Three hours of volunteer service is required for one hour of continuing education credit.

VA.R. Doc. No. R17-4942; Filed January 3, 2017, 10:19 a.m.

BOARD OF SOCIAL WORK

Fast-Track Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-105).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 22, 2017.

Effective Date: March 9, 2017.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Social Work to promulgate regulations to administer the regulatory system with a specific mandate enacted by Chapter 82 of the 2016 Acts of Assembly to include provisions for the satisfaction of board-required continuing education through the delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services.

Purpose: The purpose of the amended regulation is to comply with the mandate of the General Assembly and to provide an incentive for licensees to volunteer professional services to free clinics or public health centers. While a licensed clinical social worker or a licensed social worker can satisfy two hours of continuing education with six hours of volunteer service, the clinical social worker is still required to have 28 hours and the social worker is required to have 13 hours of approved continuing education necessary to acquire new

knowledge and skills. Therefore, the public health is served by a potential increase in badly needed volunteer service for health care, but public safety is not sacrificed by eliminating most or all of the continuing education hours required for renewal.

Rationale for Using Fast-Track Rulemaking Process: The allowance of hours for volunteer service to be counted towards the continuing education requirement is a mandate of the General Assembly. A licensee is not required to provide volunteer service but may be credited with continuing education hours for doing so. The provisions are permissive and not controversial.

Substance: The board has adopted amended regulations to allow licensed clinical social workers to count two hours of the 30 hours and licensed social workers to count two hours of the 15 hours required for annual renewal to be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

Issues: The advantage to the public is the incentive given for clinical social workers and social workers to volunteer their services in exchange for credit towards meeting continuing education requirements. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 82 of the 2016 Acts of Assembly,¹ the Board of Social Work (Board) proposes to allow six hours of volunteer work to be substituted for up to two hours of continuing education biennially for clinical and non-clinical social workers.

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

Estimated Economic Impact. Chapter 82 of the 2016 Acts of Assembly requires all health boards to promulgate regulations to accept volunteer work provided to low-income individuals through local health departments or free clinics in lieu of the required continuing education. Pursuant to the legislative mandate, the Board proposes to accept three hours of volunteer work in satisfaction of one hour of continuing education from clinical and non-clinical social workers. The limit on the continuing education hours that can be satisfied by volunteer work is two hours every two years. Currently, clinical and non-clinical social workers are required to take 30 and 15 hours of continuing education every two years respectively for biennial renewal of their licenses.

The proposed change will allow affected professionals to substitute volunteer work for continuing education. The educational value of volunteer services may vary depending on each person's experience. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 30 or 15 hours.

Also, it is not clear whether the ratio of required three hours per continuing education hour is sufficient by itself to provide enough incentives to offer volunteer service. It appears easier for social workers to spend one hour acquiring continuing education than to spend three hours providing free services. However, it is reasonable to expect that the additional incentive provided by the proposed regulation would lead to increased volunteer hours by convincing social workers who are indecisive at the margin about providing such services. The proposed regulation will also help those professionals who have already been providing volunteer services at the qualified locations by allowing them to earn continuing education credit for their charity work.

In any event, the proposed regulation allows substitution of volunteer work for continuing education, but does not mandate it. A professional choosing to do volunteer work in lieu of the continuing education reveals that he or she benefits more from doing so.

Businesses and Entities Affected. Currently, there are 6,458 clinical social workers and 739 social workers licensed in Virginia. According to data provided by the Virginia Employment Commission, there are 444 establishments in the industry category of the affected entities, which include mental health services not directly affected by the proposed regulation (e.g., clinical psychologists' and psychoanalysts' offices, etc.). All of the 444 establishments in that category satisfy the small business criteria. The number of continuing education providers is not known.

Localities Particularly Affected. The proposed changes apply statewide.

Projected Impact on Employment. The proposed regulation may lead to a decrease in demand for continuing education services. However, the two-hour limit on the continuing education hours that can be gained through this method is a relatively small portion of the biennially required 30 or 15 hours. In addition, the substitution of voluntary work for continuing education hours is voluntary and may not be exercised by all practitioners.

Effects on the Use and Value of Private Property. The potential impact on the asset value of continuing education providers is not known with certainty, but appears to be small.

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

Small Businesses:

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

Costs and Other Effects. All of the affected social work establishments are small businesses. The proposed amendments do not impose costs on them. Most providers of continuing education services are probably small businesses as well. The proposed regulation may decrease the demand for their services by a small amount.

Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimizes the potential small adverse impact on providers of continuing education services while achieving the same goals.

Adverse Impacts:

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

Localities. The proposed amendments will not adversely affect localities.

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

¹ <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0082>

Agency Response to Economic Impact Analysis: The Board of Social Work concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 82 of the 2016 Acts of Assembly, the amendments allow licensed clinical social workers and social workers to substitute six hours of volunteer work for two hours of continuing education required by the Board of Social Work.

18VAC140-20-105. Continued competency requirements for renewal of an active license.

A. Licensed clinical social workers shall be required to have completed a minimum of 30 contact hours of continuing education and licensed social workers shall be required to have completed a minimum of 15 contact hours of continuing education prior to licensure renewal in even years. Courses or activities shall be directly related to the practice of social work or another behavioral health field. A minimum of two of those hours must pertain to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia. Up to two continuing education hours required for renewal may be satisfied through delivery of social work services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services, as verified by the department or clinic. Three hours

Regulations

of volunteer service is required for one hour of continuing education credit.

1. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters upon written request from the licensee prior to the renewal date.

B. Hours may be obtained from a combination of board-approved activities in the following two categories:

1. Category I. Formally Organized Learning Activities. A minimum of 20 hours for licensed clinical social workers or 10 hours for licensed social workers shall be documented in this category, which shall include one or more of the following:

a. Regionally accredited university or college academic courses in a behavioral health discipline. A maximum of 15 hours will be accepted for each academic course.

b. Continuing education programs offered by universities or colleges accredited by the Council on Social Work Education.

c. Workshops, seminars, conferences, or courses in the behavioral health field offered by federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals.

d. Workshops, seminars, conferences or courses in the behavioral health field offered by an individual or organization that has been certified or approved by one of the following:

(1) The Child Welfare League of America and its state and local affiliates.

(2) The National Association of Social Workers and its state and local affiliates.

(3) The National Association of Black Social Workers and its state and local affiliates.

(4) The Family Service Association of America and its state and local affiliates.

(5) The Clinical Social Work Association and its state and local affiliates.

(6) The Association of Social Work Boards.

(7) Any state social work board.

2. Category II. Individual Professional Activities. A maximum of 10 of the required 30 hours for licensed clinical social workers or a maximum of five of the required 15 hours for licensed social workers may be

earned in this category, which shall include one or more of the following:

a. Participation in an Association of Social Work Boards item writing workshop. (Activity will count for a maximum of two hours.)

b. Publication of a professional social work-related book or initial preparation/presentation of a social work-related course. (Activity will count for a maximum of 10 hours.)

c. Publication of a professional social work-related article or chapter of a book, or initial preparation/presentation of a social work-related in-service training, seminar, or workshop. (Activity will count for a maximum of five hours.)

d. Provision of a continuing education program sponsored or approved by an organization listed under Category I. (Activity will count for a maximum of two hours and will only be accepted one time for any specific program.)

e. Field instruction of graduate students in a Council on Social Work Education-accredited school. (Activity will count for a maximum of two hours.)

f. Serving as an officer or committee member of one of the national professional social work associations listed under subdivision B 1 d of this section or as a member of a state social work licensing board. (Activity will count for a maximum of two hours.)

g. Attendance at formal staffings at federal, state, or local social service agencies, public school systems, or licensed health facilities and licensed hospitals. (Activity will count for a maximum of five hours.)

h. Individual or group study including listening to audio tapes, viewing video tapes, reading, professional books or articles. (Activity will count for a maximum of five hours.)

VA.R. Doc. No. R17-4954; Filed January 3, 2017, 10:19 a.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Final Regulation

Titles of Regulations: **18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (repealing 18VAC160-20-10 through 18VAC160-20-150).**

18VAC160-30. Waterworks and Wastewater Works Operators Licensing Regulations (adding 18VAC160-30-10 through 18VAC160-30-370).

18VAC160-40. Onsite Sewage System Professionals Licensing Regulations (adding 18VAC160-40-10 through 18VAC160-40-510).

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Effective Date: April 1, 2017.

Agency Contact: Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email waterwasteoper@dpor.virginia.gov.

Summary:

The amendments repeal the existing regulations and create two separate chapters: 18VAC160-30 (Waterworks and Wastewater Works Operators Licensing Regulations) and 18VAC160-40 (Onsite Sewage System Professionals Licensing Regulations). The regulations include (i) definitions; (ii) fees; (iii) standards of practice and conduct; (iv) qualifications for licensure; (v) requirements for application, examination, continuing education, and renewal and reinstatement of licenses; and (vi) approval and maintenance of training courses. This regulatory action introduces new master and journeyman categories for onsite sewage system professional licensees.

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

CHAPTER 30
WATERWORKS AND WASTEWATER WORKS
OPERATORS LICENSING REGULATIONS

Part I
Definitions

18VAC160-30-10. Definitions.

A. Section 54.1-2300 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Board"

"Onsite sewage system"

"Operator"

"Owner"

"Wastewater works ["]"

"Waterworks"

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

"Applicant" means an individual who submits an application with the appropriate fee and other required documentation.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Category" means a profession under the board's purview, which includes waterworks and wastewater works as applicable to the licensure of waterworks and wastewater works operators.

"Classification" means the division within each category of license as it relates to the classified facility. Class 1 represents the highest classification for each category of license.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"DEQ" means the Virginia Department of Environmental Quality.

"Direct supervision" means being immediately available and fully responsible for the provision of waterworks and wastewater works operation regulated pursuant to Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

"Direct supervisor" means a licensed waterworks or wastewater works operator who assumes the responsibility of direct supervision.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that [~~without such license~~] is unlawful to practice [without such license].

"Maintenance" or "maintain" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. [~~Maintenance shall not include replacement of tanks, drainfield piping, or distribution boxes or work requiring a construction permit and a licensed onsite sewage system installer.~~]

"Operate" means the act of (i) placing into or taking out of service a unit process or unit processes or (ii) making or causing adjustments in the operation of a unit process at a [~~treatment~~ waterworks or wastewater] works.

"Renewal" means the process and requirements for periodically approving the continuance of a license.

"Training credit" means a unit of board-approved training or formal education completed by an individual that may be used to substitute for experience when applying for a license.

"Treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes including [~~, but not limited to,~~] pumping power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment processes or (ii) used for ultimate disposal or residues or effluent resulting from such treatment.

"VDH" means the Virginia Department of Health.

Regulations

Part II Entry

18VAC160-30-20. Application procedures.

A. All applicants seeking licensure shall submit an application with the appropriate fee specified in 18VAC160-30-40. Application shall be made on forms provided by the board or its agent. By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations. The receipt of an application and the deposit of fees by the board does not indicate approval of the application by the board.

B. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained [~~herein~~ in this chapter] and on the application. Applications will not be considered complete until all required documents are received by the board. An applicant will not be permitted to sit for the applicable board-approved examination until the application is complete and approved.

C. The applicant will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. An individual who fails to complete the application process within 12 months of receipt of the application in the board's office must submit a new application. An applicant has 12 months from approval of the application to pass the board-approved examination. Failure to pass the board-approved examination within 12 months of approval will result in the applicant being required to submit a new application to be considered for licensure.

D. The applicant shall immediately report all changes in information supplied with the application, if applicable, prior to issuance of the license or expiration of the application or examination period.

18VAC160-30-30. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC160-30-40. Fee schedule.

Fee Type	Fee Amount	When Due
Initial application (for each profession, class, and category of license)	\$100	With application
Renewal (for each profession, class, and category of license)	[\$100 \$80]	With renewal application

Reinstatement (for each profession, class, and category of license)	[\$125 \$105] (renewal fee + \$25 reinstatement fee)	With reinstatement application
---	---	--------------------------------

18VAC160-30-50. Examination fee.

The fee for examination or reexamination is subject to charges to the department by an outside vendor based on a contract entered into 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 this contract.

18VAC160-30-60. General requirements for licensure.

A. In addition to the specific qualifications for each category and classification of licensure, each applicant for licensure shall meet the requirements provided in this section.

- The applicant shall be at least 18 years old.
- The applicant shall disclose his mailing address. A post office box is only acceptable as a mailing address when a physical address is also provided.
- In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information.

- All felony convictions.
- All misdemeanor convictions in any jurisdiction that occurred within three years of the date of application.

Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

B. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

C. The applicant shall report [~~suspensions, revocations, or surrendering~~ any suspension, revocation, or surrender] of a license, certification, or registration in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure. The board, at its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or [~~surrender~~ surrenders] of licenses based on disciplinary action by any jurisdiction.

18VAC160-30-70. Examination procedures and conduct.

A. Upon approval of the application, the board will notify the applicant of his eligibility to take the applicable examination. The license will not be issued prior to receipt of a passing score for the applicable examination.

B. An applicant who does not receive a passing score within one year after the date of approval of the application by the board to sit for the examination, must submit a new

application and meet the entry requirement in effect at the time of submittal of the new application.

C. The applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include all written instructions communicated prior to the examination date and all instructions communicated at the site, either written or oral, on the date of examination. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination may be grounds for denial of the application, voiding of examination scores, or any combination thereof.

18VAC160-30-80. Individuals certified or licensed in another jurisdiction.

[~~Any~~ An] applicant holding a valid license or certificate in another jurisdiction who meets the requirements of this chapter, including having equivalent experience and education, shall pass [~~the appropriate Virginia~~ a board-approved] examination to become licensed.

18VAC160-30-90. License required.

A. No individual shall serve as [~~an~~ the] operator of a waterworks or wastewater works without possessing a valid category of license issued by the board in a classification equal to or greater than the classification of the [applicable] waterworks or wastewater works [~~to be operated~~].

B. An individual cannot simultaneously hold two licenses of different classifications in the same category.

C. Experience used to qualify for licensure must be obtained under the direct supervision of an operator holding a valid license of the same category and of a classification equal to or higher than the classification of the waterworks or wastewater works at which the experience was gained.

[~~D. Except as provided in subsection E of this section, experience limited solely to the operation and maintenance of wastewater collection systems and water distribution systems,~~

18VAC160-30-110. Qualifications for examination approval.

A. An applicant for licensure as a waterworks or wastewater works operator shall furnish acceptable documentation that one of the following qualifications has been met.

~~laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as an operator or an operator in training.~~

~~E. D.] Experience operating and maintaining water distribution systems shall only be considered for Class 5 or Class 6 waterworks operator license applicants.~~

[~~Except as provided in subsection E of this section, experience~~ E. Experience limited solely to the operation and maintenance of wastewater collection systems, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as an operator or an operator-in-training.]

F. Provisional licensure alone shall not authorize an individual to serve as the operator of a classified waterworks or wastewater works facility.

18VAC160-30-100. Full-time experience or equivalent.

For the purposes of this part, experience requirements are expressed in terms of calendar periods of full-time employment as an operator or as an operator-in-training at a waterworks or wastewater works in the same category for which licensure is sought [pursuant to this chapter].

1. A year of full-time employment is defined as a minimum of 1,760 hours during a 12-month period or a minimum of 220 workdays in a 12-month period. A workday is defined as attendance at a waterworks or wastewater works to the extent required for proper operation. More than 1,760 hours or 220 workdays during a 12-month period will not be considered as more than one year of full-time employment.

2. Partial credit may be given for actual hours of work [~~or workdays~~] experience if the applicant works as an operator or as an operator-in-training less than [full time full time].

TABLE 1
Waterworks and Wastewater Works Operator Experience and Education

Classes	Education Required	Current License	Minimum Experience	Facility Type	Experience with Substitutions
Class 6 (Waterworks Operator Only)	High school diploma or GED	N/A	Six months	Class 6 or higher facility	N/A
	No high school diploma or GED	N/A	One year	Class 6 or higher facility	N/A

Regulations

<u>Class 5</u> <u>(Waterworks</u> <u>Operator</u> <u>Only)</u>	<u>High</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>N/A</u>	<u>Six</u> <u>months</u>	<u>Class 5 or higher facility</u>	<u>N/A</u>
	<u>No high</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>N/A</u>	<u>One year</u>	<u>Class 5 or higher facility</u>	<u>N/A</u>
<u>Class 4</u>	<u>High</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>N/A</u>	<u>Six</u> <u>months</u>	<u>Class 4 or higher facility</u>	<u>N/A</u>
	<u>No high</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>N/A</u>	<u>One year</u>	<u>Class 4 or higher facility</u>	<u>N/A</u>
<u>Class 3</u>	<u>Bachelor's</u> <u>or master's</u> <u>degree</u>	<u>N/A</u>	<u>Six</u> <u>months</u>	<u>Class 4 or higher facility</u>	<u>N/A</u>
	<u>Associate's</u> <u>degree</u>	<u>N/A</u>	<u>Nine</u> <u>months</u>	<u>Class 4 or higher facility</u>	<u>Six months</u>
	<u>High</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>N/A</u>	<u>One year</u>	<u>Class 4 or higher facility</u>	<u>Six months</u>
	<u>No high</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>Class 4</u> <u>license</u>	<u>Three</u> <u>years</u>	<u>Class 3 or higher facility</u>	<u>One and one-half years</u>
<u>Class 2</u>	<u>Bachelor's</u> <u>or master's</u> <u>degree</u>	<u>N/A</u>	<u>One year</u>	<u>Class 3 or higher facility</u>	<u>Six months</u>
	<u>Associate's</u> <u>degree</u>	<u>N/A</u>	<u>18 months</u>	<u>Class 3 or higher facility</u>	<u>Nine months</u>
	<u>High</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>N/A</u>	<u>Two years</u>	<u>Class 3 or higher facility</u>	<u>One year</u>
	<u>No High</u> <u>school</u> <u>diploma or</u> <u>GED</u>	<u>Class 3</u> <u>license</u>	<u>Five years</u>	<u>Class 2 or higher facility</u>	<u>Three and one-half years</u>

<u>Class 1</u>	<u>Bachelor's or master's degree</u>	<u>Class 2 license</u>	<u>Two years</u>	<u>Class 2 or higher facility</u>	<u>One year</u>
	<u>Associate's degree</u>	<u>Class 2 license</u>	<u>Three years</u>	<u>Class 2 or higher facility</u>	<u>One and one-half years</u>
	<u>High school diploma or GED</u>	<u>Class 2 license</u>	<u>Four years</u>	<u>Class 2 or higher facility</u>	<u>Two years</u>
	<u>No high school diploma or GED</u>	<u>Class 2 license</u>	<u>Nine years</u>	<u>Class 2 or higher facility</u>	<u>Four and one-half years</u>

Where applicable, the current license held, minimum experience, and the facility type must coincide with the category of license for which the application is being submitted.

B. The direct supervisor shall certify the experience on the application form as accurate and relevant to the classification and category of license for which is being submitted. In the event that a licensed operator is not available to certify the experience of the applicant, the experience may be certified by a representative of the facility owner with first-hand knowledge of the applicant's experience.

18VAC160-30-120. Provisional licensure for nonclassified facility operation.

An applicant for licensure as a provisional waterworks or wastewater works operator shall furnish acceptable documentation of having met all of the requirements of 18VAC160-30-110 except that the experience requirement may be met through experience gained as an operator or operator-in-training of a nonclassified facility. Such experience must be gained under the following conditions:

1. The experience is obtained at a nonclassified facility that is comparable in size and in treatment process as described in 18VAC160-30-360 and 18VAC160-30-370, as applicable.
2. The experience is obtained while performing nonclassified facility operation duties that provide experience comparable to that obtained at a classified facility. ~~[Experience limited solely to the operation and maintenance of wastewater collection systems and water distribution systems, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as qualifying experience for Class 1, Class 2, Class 3, or Class 4 provisional licenses but may be counted for a provisional Class 5 or Class 6 license~~ Experience operating and maintaining water distribution systems shall only be considered for a Class 5 or Class 6 provisional waterworks operator license. Experience limited solely to the operation and maintenance of wastewater collection system, laboratory work, plant maintenance, and other nonoperating duties shall not be counted as experience as a provisional operator or operator-in-training]
3. Any individual holding a provisional license may apply for licensure by submitting evidence of having met 50% of

the experience required by 18VAC160-30-110 and submitting the appropriate application.

18VAC160-30-130. Experience substitutions.

A. Experience obtained as a [licensed alternative onsite sewage system operator before April 1, 2017, or a] master alternative onsite sewage system operator may be substituted for the Class 4 wastewater works operator-in-training experience requirements.

B. 18VAC160-30-110 A provides the maximum experience substitutions that may be applied for each applicable class of license.

1. Experience gained in either waterworks or wastewater works operations may be substituted for up to one-half of the required experience in the alternate category so long as the experience was gained in an equivalent or higher class of facility.
2. Education may [~~be substituted~~ substitute] for part of the required experience in the category of license applied for at a rate of one month of experience credit for each semester hour of college credit. Coursework must be relevant to the category and classification of the license being sought. The college credit must be from an accredited college or university that is approved or accredited by the Commission [~~of on~~] Colleges [~~of the Southern Association of Colleges and Schools~~], a regional or national accreditation association, or by an accreditation agency that is recognized by the U.S. Secretary of Education.
3. Board-approved waterworks or wastewater works operator training [courses] may be [~~substituted~~ utilized] for experience at a rate of one month experience for each training credit approved by the board.

Regulations

C. Substitutions shall not exceed 50% of the total experience required for licensure.

18VAC160-30-140. Education.

A. Applicants seeking to qualify for licensure based on completion of an associate's, bachelor's, or master's degree shall submit an official transcript from the school where the applicable degree was obtained. Only degrees from an accredited college or university that is approved or accredited by the Commission on Colleges [of the Southern Association of Colleges and Schools], a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education will be considered. Formal education used to meet a specific education requirement for license entry cannot also be used as a training credit for experience substitution.

B. The following degrees shall be considered to qualify in accordance with 18VAC160-30-110:

1. Bachelor's or master's degree in engineering or engineering technology in a related physical, biological, environmental, or chemical science;
2. Bachelor's degree in a related physical, biological, environmental, or chemical science that includes a minimum 40 semester credit hours in any combination of science and math;
3. Master's degree in a related physical, biological, environmental, or chemical science, and a bachelor's degree in any major such that the combined degrees include a minimum 40 semester credit hours in any combination of science and math; or
4. Associate's degree in waterworks, in wastewater works, or in a related physical, biological, environmental, or chemical science that includes a minimum of 20 credit hours in any combination of science and math.

Part III

Renewal and Reinstatement

18VAC160-30-150. Expiration and renewal.

A. Licenses for waterworks operators shall expire on the last day of February of each odd-numbered year. Licenses for wastewater works operators shall expire on the last day of February of each even-numbered year.

B. Prior to the expiration date shown on the license, the board shall mail a renewal notice to the licensee's address of record. The licensee shall return to the board a renewal notice and the applicable renewal fee. Failure to receive a renewal notice from the board does not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee as an application for renewal.

C. By submitting the renewal or reinstatement fee, the licensee is certifying his continued compliance with the Standards of Practice and Conduct (Part VI (18VAC160-30-290 et seq.) of this chapter, as established by the board. In

addition, by submitting the renewal or reinstatement fee, licensees are certifying compliance with the continuing professional education requirements of this chapter.

18VAC160-30-160. Reinstatement.

A. If all of the requirements for renewal of the license as specified in 18VAC160-30-150 are not completed within 30 days of the license expiration date, a reinstatement fee shall be required as established in 18VAC160-30-40.

B. A license may be reinstated for up to one year following the expiration date of the license. [~~Any licensee~~ An individual] who fails to reinstate the license within 12 months after the expiration date shall apply for a new license and meet entry requirements in effect at the time of the submittal of the new application. Such individual shall be deemed to be eligible to sit for the examination for the same category and classification of license as the expired license.

C. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to the prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC160-30-170. Status of license during period prior to reinstatement.

A licensee who applies for reinstatement of the license shall be subject to all laws and regulations as if the licensee had been continuously licensed. The licensee shall remain under and be subject to the disciplinary authority of the board during this entire period.

18VAC160-30-180. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license for the same reasons as the board may refuse initial licensure or discipline a licensee. [The licensee has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).]

The board may deny renewal or reinstatement of a license if the licensee has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid monetary penalties and costs [;] imposed by the board.

Part IV

Continuing Professional Education

18VAC160-30-190. Continuing professional education.

A. Each licensee shall have completed the following number of continuing professional education (CPE) contact hours during each renewal cycle. CPE provisions do not apply for the renewal of licenses that were held for less than two years on the date of expiration [.]

1. Class 1, Class 2, and Class 3 waterworks and wastewater works operators shall obtain a minimum of 20 contact hours.

2. Class 4 waterworks and wastewater works operators shall obtain a minimum of 16 contact hours.

3. Class 5 waterworks operators shall obtain a minimum of eight contact hours.

4. Class 6 operators shall obtain a minimum of four contact hours.

B. CPE contact hours completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license. CPE contact hours completed during a licensing renewal cycle to satisfy the CPE requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for any subsequent renewal cycles.

C. The licensee will not receive CPE credit for completing the same continuing education course with the same content more than once during a license period.

D. A licensee may receive CPE credit for teaching a course that otherwise meets the requirements of this chapter; however, additional credit shall not be given for subsequent offerings of a course or activity with the same content within the same licensing cycle. In addition, a licensee may receive two hours of CPE no more than once during a single licensing cycle for the initial development or substantial updating of [~~the a~~] CPE course.

E. Safety subjects shall not count for more than [~~one-half~~ one-half] of the total required CPE hours.

18VAC160-30-200. CPE subject matter for waterworks operators.

A. The following course topics will be accepted for CPE credit for waterworks operators:

1. Waterworks operations;
2. Monitoring, evaluating, and adjusting treatment processes and systems;
3. Operating and maintaining equipment;
4. Security and safety procedures;
5. General science and mathematical principles;
6. Administrative processes and procedures applicable to licensure; and
7. Laws and regulations applicable to the profession.

B. Of the total 20 hours required, a minimum of five content hours pertaining to utility management is required of Class 1 and Class 2 waterworks operators.

18VAC160-30-210. CPE subject matter for wastewater works operators.

A. The following course topics will be accepted for CPE credit for wastewater works operators:

1. Wastewater works operations;
2. Monitoring, evaluating, and adjusting treatment processes and systems;
3. Operating and maintaining equipment;

4. Security and safety procedures;

5. General science and mathematical principles;

6. Administrative processes and procedures applicable to licensure; and

7. Laws and regulations applicable to the profession.

B. Of the total 20 hours required, a minimum of five content hours pertaining to utility management is required of Class 1 and Class 2 wastewater works operators.

18VAC160-30-220. Use of training credits and formal education for CPE credit.

Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in Part V (18VAC160-30-240 et seq.) of this chapter, shall also be acceptable on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one-quarter hour of college credit shall equal 10 CPE credit hours.

18VAC160-30-230. Maintenance of CPE.

A. For a period of at least two years following the end of the license renewal cycle for which the CPE was taken, the following evidence shall be maintained to document completion of the required hours of CPE:

1. Evidence of completion of a structured training activity, which shall consist of the name, address, and telephone number of the sponsor;
2. The dates the licensee participated in the training;
3. Description of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

B. The board may conduct an audit of its licensees to ensure compliance with the applicable CPE requirements. Licensees who are selected for audit shall provide the necessary documentation stipulated in this section.

Part V
Training Course Approval

18VAC160-30-240. Approval of training courses.

A. Training courses may be substituted for experience pursuant to the provisions of Part II (18VAC160-30-20 et seq.) of this chapter. With the exception of training courses provided pursuant to 18VAC160-30-280, training courses that may be substituted for required experience must be approved by the board prior to commencing.

B. Each training provider seeking course approval shall submit an application for approval on a form provided by the board. [~~Training courses for which experience credit may be granted must be conducted in general conformance with the guidelines of the International Association for Continuing Education and Training (association). The board reserves the right to waive any of the requirements of the association's guidelines on a case by case basis.~~] Only classroom, laboratory, and field trip contact time will be used to compute

Regulations

training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a [~~sponsor~~ provider] that is an identifiable organization with a mission statement outlining its functions, structure, process, and philosophy and that has a staff of one or more persons with the authority to administer and coordinate a training course.

2. Training course records. The board will only approve training offered by a [~~sponsor~~ provider] that maintains training course records for all participants for a minimum of seven years and that has a written policy on retention and release of training course records.

3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, and knowledge of the learning process to be used.

4. Objectives. The board will only approve courses that have a series of stated objectives that are pertinent to the tasks performed by a licensee. The training course content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training course, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, oral examination, or other similar assessment technique.

18VAC160-30-250. Application for training course approval.

A. The board shall consider the following information, to be submitted by the course [~~sponsor~~ provider] or instructor on forms provided by the board:

1. Course information.

a. Course title;

b. Planned audience;

c. Name of [~~sponsor~~ provider];

d. Name, physical address, email address, and phone number of contact person;

e. Scheduled presentation dates;

f. Detailed course schedule, hour-by-hour, including start and ending times;

g. List of planned breaks;

h. Scheduled presentation location; and

i. Identification of the category and classification of license to which the course is applicable and relevancy to the identified license type.

2. Instructor qualifications.

a. Name of instructor;

b. Title;

c. Employer;

d. Board license number or numbers, if applicable; and

e. Summary of qualifications to teach the course.

3. Training materials.

a. Course objectives. A listing of the course objectives stated in terms of the skills and knowledge the participant will be able to demonstrate as a result of the training.

b. Course outline. A detailed outline showing the planned activities that will occur during the training course, including major topics, planned presentation sequence, laboratory and field activities, audiovisual presentation, and other major activities.

c. Course reference materials. A list of the name, publisher, and publication date for commercially available publications. For reference materials developed by the course [~~sponsor~~ provider] or available exclusively through the course, a copy of the reference.

d. Audiovisual support materials. A listing of any commercially available audiovisual support material that will be used in the program. A brief description of any [~~sponsor~~ provider] or instructor generated audiovisual material that will be used.

e. Handouts. Identification of all commercially available handout materials that will be used, as well as copies of all other planned handouts.

4. Determination of successful completion. A description of the means that will be used to assess the learning of each participant to determine successful completion of the training program, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.

B. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the [~~sponsor~~ provider].

1. The board shall consider all of the information listed in subsection A of this section except those items related to specific offerings of the course.

2. Board approval will apply only to those specific offerings certified by the [~~sponsoring organization~~ provider] as having been conducted by instructors meeting the established criteria and in accordance with the board-approved course outlines and objectives.

18VAC160-30-260. Maintenance of training approval.

A. At times established by the board, the board may require that course providers that have previously obtained course approval provide the board with evidence, in a form set forth by the board, that the provider continues to comply with the requirements of this chapter. Failure to continue to comply

with the board's requirements or respond to such a request may result in the board withdrawing its approval.

B. Substantial modifications or changes to the information provided in 18VAC160-30-240 and 18VAC160-30-250 must be reported to the board within 30 days of the change. Failure to report the changes as required may result in the withdrawal of approval by the board.

C. Any change of the address of the training provider shall be reported in writing within 30 days of the change.

D. The board may conduct an audit of the training provider to ensure compliance with this chapter.

18VAC160-30-270. Withdrawal of approval.

The board may withdraw approval of any provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.
2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive [way manner].
3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, and student records.
4. The provider fails to respond to the board or any of its agents.

18VAC160-30-280. Training courses offered by certain entities; board approval not required.

A. Training courses provided by (i) federal, state, or local government agencies; (ii) accredited colleges or universities approved or accredited by the Commission on Colleges [of the Southern Association of Colleges and Schools]; (iii) a regional or national accreditation association; or (iv) an accrediting agency that is recognized by the U.S. Secretary of Education do not require board approval to be used for experience substitution, provided the training course information submitted to the board includes the following:

1. The course must include the continuing education units awarded by the entity.
2. The [course course's subject matter] must be related to the license category and classification, if applicable, for which experience substitution is sought.

B. The board may request additional information from the provider as necessary to ensure compliance with this section. If such assurance cannot be made by the board, the training course may not be used for experience substitution, or the provider may pursue board approval pursuant to this chapter.

Part VI

Standards of Practice and Conduct

18VAC160-30-290. Grounds for disciplinary action.

The board may place a licensee on probation; impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia; or revoke, suspend, or refuse to renew any license when the licensee has been found to have violated or

cooperated with others in violating any provision of the regulations of the board or Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia.

18VAC160-30-300. Maintenance of license.

A. No license issued by the board shall be assigned or otherwise transferred.

B. A licensee shall report, in writing, all changes of address and name to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the licensee holds more than one license, the licensee shall inform the board of all licenses, certificates, and registrations affected by the address change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's failure to report a change of address.

C. Any change in any of the requirements and qualifications for licensure found in Part II (18VAC160-30-20 et seq.) or Part III (18VAC160-30-150 et seq.) of this chapter shall be reported to the board within 30 days of the change.

18VAC160-30-310. Notice of adverse action.

A. Licensees shall notify the board of the following actions against the licensee:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including [but not limited to] any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.
2. Any voluntary surrendering of a related license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.
3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any [(i)] misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, or physical injury, [or] relating to the practice of the profession, or [of any (ii)] felony, there being no appeal pending therefrom or the time for appeal having lapsed. 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 the purpose of this section.

B. The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC160-30-320. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

Regulations

1. Violating, inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), or 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, or any of the regulations of the board.
2. Allowing a license issued by the board to be used by another.
3. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining or renewing a license by false or fraudulent representation.
4. A licensee having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-30-310. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia.
5. Failing to inform the board in writing within 30 days that the licensee was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-30-310.
6. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill, and ability in the performance of the licensee's duties.
7. Having undertaken to perform or performed a professional assignment that the licensee is not qualified to perform by education, experience, training, or any combination thereof.
8. Failing to report a change as required by 18VAC160-30-300.
9. Negligence, misconduct, or incompetence in the practice of the profession.
10. Making any misrepresentation or engaging in acts of fraud or deceit in providing professional services.
11. Failing to adequately supervise and review work performed by licensed or unlicensed employees under direct supervision of the licensee.
12. Submitting or recording or assisting another in the submission or recording of false or misleading operational information relating to the performance and monitoring requirements of a waterworks or wastewater works.
13. Failing to act in providing waterworks and wastewater works operator services in a manner that safeguards the interests of the public.

18VAC160-30-330. Conflicts of interest.

The licensee shall:

1. Promptly and fully inform an employer or client of any business association, interest, or circumstance that may influence the licensee's judgment or the quality of service.
2. Not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the

same project, unless the circumstances are fully disclosed to and agreed to by all interested parties in writing.

3. Neither solicit nor accept financial or other valuable consideration from material or equipment suppliers for specifying their products or services.

4. Not solicit or accept gratuities, directly or indirectly, from contractors or their agents or other parties dealing with a client or employer in connection with work for which the licensee is responsible.

18VAC160-30-340. Licensee responsibility.

A. The primary obligation of the licensee is to the public. If the licensee's judgment is overruled and not adhered to when advising appropriate parties of circumstances of a substantial threat to the public health, safety, or welfare, the licensee shall inform the employer or client, as applicable, of the possible consequences and notify appropriate authorities.

B. The licensee shall not knowingly associate in a business venture with, or permit the use of the licensee's name by, any person where there is reason to believe that person is engaging in activity of a fraudulent or dishonest nature or is violating any law or regulation of the board.

C. A licensee who has direct knowledge that another individual may be violating any of the provisions of this chapter or the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia shall immediately inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

18VAC160-30-350. Response to inquiry and provision of records.

A. A licensee must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a licensee of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the licensee was involved, or for which the licensee is required to maintain records. The board may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A licensee shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a licensee must respond to an inquiry by the board or its agent within 21 days.

18VAC160-30-360. Wastewater works.

A. A Class 4 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works employing biological mechanical methods (i.e., mechanical treatment process defined as

those containing aerated and mixed flows using electrical or outside energy sources) with a design hydraulic capacity greater than 1,000 gallons per day but equal to or less than .04 MGD;

2. A wastewater works employing natural treatment methods (referenced in 9VAC25-790-870 as land treatment utilizing a secondary process for pretreatment followed by irrigation, overland flow infiltration-percolation, or combination thereof or aquatic ponds or constructed wetlands) with a design hydraulic capacity greater than 1,000 gallons per day but equal to or less than 1.0 MGD; or
3. Any other wastewater works classified by DEQ or VDH as a Class 4 wastewater works.

B. A Class 3 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons, (iii) constructed wetlands, (iv) filters or other attached growth contractors, (v) processes utilizing biological nutrient control, or (vi) processes utilizing land treatment having a design hydraulic capacity greater than 0.04 MGD, but equal to or less than 0.5 MGD;

2. A wastewater works using natural treatment methods (referenced in 9VAC25-790-870 as land treatment utilizing a secondary process for pretreatment followed by irrigation, overland flow infiltration-percolation, or combination thereof or aquatic ponds or constructed wetlands) with a design hydraulic capacity greater than 1.0 MGD;

3. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, or (viii) demineralization (i.e., ion exchange, reverse osmosis, or electro dialysis) having a design hydraulic capacity greater than 1,000 gallons per day but equal to or less than 0.1 MGD; or

4. A wastewater works classified by DEQ or VDH as a Class 3 or Class 4 wastewater works facility.

C. A Class 2 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons or constructed wetlands, (iii) filters or other attached growth contactors, (iv) processes utilizing biological nutrient control, or (v) processes utilizing land application having a design hydraulic capacity greater than 0.5 MGD but equal to or less than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breakpoint chlorination, (iii) carbon

adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, (viii) demineralization (i.e., ion exchange, reverse osmosis, or electro dialysis) and having a hydraulic capacity greater than 0.1 MGD but equal to or less than 2.5 MGD; or

3. A wastewater works classified by DEQ or VDH as a Class 2, Class 3, or Class 4 wastewater works.

D. A Class 1 wastewater works licensee may operate any wastewater works as follows:

1. A wastewater works using biological treatment methods consisting of but not limited to (i) suspended growth reactors, (ii) aerated lagoons or constructed wetlands, (iii) filters or other attached growth contactors, (iv) processes utilizing biological nutrient control, (v) processes utilizing land treatment and having a hydraulic capacity greater than 5.0 MGD;

2. A wastewater works using advanced waste treatment methods consisting of but not limited to (i) ammonia stripping, (ii) breaking chlorination, (iii) carbon adsorption, (iv) chemical coagulation, (v) flocculation, (vi) precipitation, (vii) filtration, (viii) demineralization (i.e., ion exchange, reverse osmosis, or electro dialysis) and having a design capacity greater than 2.5 MGD;

3. A wastewater works classified by DEQ or VDH as a Class 1, Class 2, Class 3, or Class 4 wastewater works.

18VAC160-30-370. Waterworks.

A. A Class 6 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving fewer than 400 persons that provides no treatment or employs one or more of the following treatment processes: (i) hypochlorination for disinfection, (ii) corrosion control with calcite or magnesium oxide contactors or solution feed except with caustic, or (iii) sequestration by solution feed; or

2. A waterworks classified by VDH as a Class 6 waterworks.

B. A Class 5 waterworks licensee may operate any waterworks as follows:

1. A waterworks serving 400 or more persons that provides no treatment or employs one or more of the following treatment processes: (i) hypochlorination for disinfection, (ii) corrosion control with calcite or magnesium oxide contactors or solution feed except with caustic, or (iii) sequestration by solution feed; or

2. A waterworks classified by VDH as a Class 5 waterworks.

C. A Class 4 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving fewer than 5,000 persons or having a treatment facility capacity of less than 0.5 MGD and employing one or more of the following: (i) disinfection other than with

Regulations

hypochlorination, (ii) caustic soda feed, (iii) iron and manganese removal, (iv) ion exchange, (v) slow sand filtration, (vi) aeration, (vii) rechlorination other than with hypochlorination, (viii) activated carbon contactors, (ix) membrane or other filtration technologies without chemical coagulation, or (x) fluoridation with a saturator; or

2. A waterworks classified by VDH as a Class 4 waterworks.

D. A Class 3 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving fewer than 5,000 persons or having a treatment facility capacity less than 0.5 MGD, whichever is greater, and employing conventional filtration or chemical coagulation in combination with membrane filtration;

2. A waterworks or treatment facility serving 5,000 or more persons or having a treatment facility capacity of 0.5 MGD or more, whichever is greater, and employing one or more of the following: (i) disinfection other than with hypochlorination, (ii) caustic soda feed, (iii) iron and manganese removal, (iv) ion exchange, (v) slow sand filtration, (vi) aeration, (vii) rechlorination other than with hypochlorination, (viii) activated carbon contactors, (ix) membrane or other filtration technologies without chemical coagulation, or (x) fluoridation with a saturator or acid feed;

3. A waterworks or treatment facility employing fluoridation with other than a saturator not considered a Class 1 or Class 2 waterworks; or

4. A waterworks classified by VDH as a Class 3 waterworks.

E. A Class 2 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving 5,000 or more persons but fewer than 50,000 persons or having a treatment facility capacity of 0.5 MGD or more but less than 5.0 MGD, whichever range applies, and employing rapid rate conventional filtration chemical coagulation in combination with membrane filtration;

2. A waterworks or treatment facility serving fewer than 50,000 persons or having a treatment facility capacity of less than 5.0 MGD employing high rate conventional filtration; or

3. A waterworks classified by the VDH as a Class 2 waterworks.

F. A Class 1 waterworks licensee may operate any waterworks as follows:

1. A waterworks or treatment facility serving 50,000 or more persons or having a treatment facility capacity of 5.0 MGD or more and employing conventional filtration or chemical coagulation in combination with membrane filtration; or

2. A waterworks classified by VDH as a Class 1 waterworks.

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 (18VAC160-30)

~~[[Waterworks Operator License Application, A436-1955LIC v3 \(eff. 7/2016\)](#)~~

~~[Provisional Waterworks Operator License Application, A436-1955PLIC v2 \(eff. 7/2016\)](#)~~

~~[Wastewater Works Operator License Application, A436-1965LIC v2 \(eff. 7/2016\)](#)~~

~~[Provisional Wastewater Works Operator License Application, A436-1965PLIC v2 \(eff. 7/2016\)](#)~~

~~[Waterworks and Wastewater Works Operator Upgrade Provisional License Application, A436-1955-65UPG v3 \(eff. 7/2016\)](#)~~

[Waterworks Operator License Application, A436-1955LIC-v3 \(eff. 4/2017\)](#)

[Provisional Waterworks Operator License Application, A436-1955PLIC-v2 \(eff. 4/2017\)](#)

[Wastewater Works Operator License Application, A436-1965LIC-v2 \(eff. 4/2017\)](#)

[Provisional Wastewater Works Operator License Application, A436-1965PLIC-v2 \(eff. 4/2017\)](#)

[Waterworks and Wastewater Works Operator - Upgrade Provisional License Application, A436-1955-65UPG-v3 \(eff. 4/2017\) \]](#)

[Out-of-State Facility Description and Experience Verification Application, A436-19STATE EXP-v3 \(eff. 4/2015\)](#)

[Waterworks and Wastewater Works Operator Experience Verification Application, A436-19WWEXP-v3 \(eff. 1/2014\)](#)

[Provisional Description and Experience Verification Application, A436-1955-65PEXP-v3 \(eff. 12/2014\)](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

~~[[Training Course Approval Application, A465-19CRS v2 \(eff. 5/2013\)](#)~~

~~[Education and Training Substitution Form, A436-19EDTR-v3 \(eff. 1/2014\)](#)~~

[Training Course Approval Application, A465-19CRS-v3 \(eff. 2/2016\)\]](#)

[Education and Training Substitution Form, A436-19EDTRv4, \(eff. 4/2017\) \]](#)

CHAPTER 40
ONSITE SEWAGE SYSTEM PROFESSIONALS
LICENSING REGULATIONS

Part I
Definitions

18VAC160-40-10. Definitions.

A. Section 54.1-2300 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Board"

"Onsite sewage system"

"Operator"

"Wastewater works"

B. The following words, terms, and phrases when used in this chapter shall have the following [~~meaning~~ meanings] unless the context clearly indicates otherwise:

"Alternative onsite sewage system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Alternative onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional and alternative onsite sewage systems.

"Alternative onsite sewage system operator" means an individual licensed by the board to operate and maintain conventional and alternative onsite sewage systems.

"Alternative onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effect of these properties on the use and management of these soils [~~and~~ as] the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional and alternative onsite sewage systems suitable for the soils.

"Applicant" means an individual who submits an application with the appropriate fee and other required documentation.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Authorized onsite soil evaluator" means an individual holding an authorized onsite soil evaluator certification issued by the Virginia Department of Health that was valid on June 30, 2009.

"Category" means journeyman or master as applicable to the professionals under the board's purview.

"Class" means conventional or alternative as applicable to the professionals under the board's purview.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity,

pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Conventional onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional onsite sewage systems.

"Conventional onsite sewage system operator" means an individual licensed by the board to operate and maintain [~~a~~] conventional onsite sewage [~~system~~ systems].

"Conventional onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional onsite sewage systems suitable for the soils.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervision" means being immediately available and fully responsible for the provision of onsite sewage system services regulated pursuant to Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 and this chapter.

"Interim license" refers to the initial issuance of professional licenses during the implementation of the onsite sewage system [~~professional~~ professionals] licensure program. Such licenses were limited to four years and not renewable.

"Journeyman" means an individual who possesses the minimum skills and competency to [~~assist with the installation or maintenance of~~ install or maintain] onsite sewage systems or assist in the evaluation of soil sites as suitable for conventional and alternative onsite sewage systems and to design [~~conventional~~] onsite sewage systems under the direct supervision of a master licensee.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that [~~without such license~~] is unlawful to practice [without such license].

"Maintenance" or "maintain" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drainfield piping, or distribution boxes or work requiring a construction permit and a licensed onsite sewage system installer.

"Master" means an individual who possess the minimum skills and competency to install or maintain onsite sewage

Regulations

[~~system~~ systems] or evaluate soil sites as suitable for conventional and alternative onsite sewage systems and to design conventional and alternative onsite sewage systems.

"Operate" means the act of (i) placing into or taking out of service a unit process or unit processes or (ii) making or causing adjustments in the operation of a unit process at a treatment works.

"Profession" means the practice of onsite soil evaluation, onsite sewage system installation, and onsite sewage system operation.

"Professional" means an onsite sewage system installer, onsite sewage system operator, or onsite soil evaluator who is licensed pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in this Commonwealth.

"Renewal" means the process and requirements for periodically approving the continuance of a license.

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

"Training credit" means a unit of board-approved training or formal education completed by an individual that may be used to substitute for experience when applying for a license.

"Treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes including [~~; but not limited to;~~] pumping power and other equipment and appurtenances, septic tanks and any works, including land, that are or will be (i) an integral part of the treatment processes or (ii) used for ultimate disposal or residues or effluent resulting from such treatment.

"VDH" means the Virginia Department of Health.

Part II Entry

18VAC160-40-20. Application procedures.

A. All applicants seeking licensure shall submit an application with the appropriate fee in 18VAC160-40-40. Applications shall be made on forms provided by the board.

By submitting the application to the department, the applicant [~~certified~~ certifies] that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval of the application by the board.

B. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained

[~~herein~~ in this chapter] and on the application. Applications will not be considered complete until all required documents are received by the board. If an examination is required for licensure, the applicant will not be permitted to sit for the applicable board-approved examination until the application is complete and approved.

C. The applicant will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. An individual who fails to complete the process within 12 months of receipt of the application in the board's office must submit a new application. If applicable, the applicant has 12 months from approval of the application to pass the board-approved examination. Failure to pass the board-approved examination within 12 months of approval will result in the applicant being required to submit a new application to be considered for licensure.

D. The applicant shall immediately report all changes in information supplied with the application, if applicable, prior to the issuance of the license or expiration of the application or examination period.

18VAC160-40-30. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC160-40-40. Fee schedule.

Fee Type	Fee Amount	When Due
Initial application (for each profession, class, and category of license)	\$100	With application
Renewal (for each profession, class, and category of license)	[\$100 \$80]	With renewal application
Reinstatement (for each profession, class, and category of license)	[\$125 \$105] (renewal fee + \$25 reinstatement fee)	With reinstatement application

18VAC160-40-50. Examination fee.

The fee for examination or reexamination is subject to charges to the department by an outside vendor based on a contract entered into 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 this contract.

18VAC160-40-60. General requirements for licensure.

A. In addition to the specific qualifications for each profession, class, and category of licensure, each applicant for licensure shall meet the requirements provided in this section:

1. The applicant shall be at least 18 years old.
2. The applicant shall disclose his mailing address. A post office box is only acceptable as a mailing address when a physical address is provided.
3. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information:

- a. All felony convictions.
- b. All misdemeanor convictions that occurred within three years of the date of application.

Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

B. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

C. The applicant shall report [~~suspensions, revocations, or surrendering~~ any suspension, revocation, or surrender] of a license, certification, or registration in connection with a disciplinary action or that has been subject of discipline in any jurisdiction prior to applying for licensure. The board at its discretion may deny licensure to any applicant based on prior suspensions, revocations, or [~~surrender or surrenders of~~] licenses based on disciplinary action by any jurisdiction.

18VAC160-40-70. Education and training for experience.

A. Each individual applying for a license may receive credit for up to half of the required experience for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, [engineering, environmental science, agronomy, earth science, environmental health], or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or
2. Satisfactory completion of board-approved onsite sewage system installer or operator or onsite soil evaluation training courses, as applicable to the license sought, at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercises and field trip contact time. Training credit is not earned for breaks, meals, receptions, and time other than classroom, laboratory, and field trip contact time.

B. Education used to meet the education requirements to qualify for licensure may not be substituted for experience.

18VAC160-40-80. Examination procedures and conduct.

A. Upon approval of the application, the board will notify the applicant of his eligibility to take the applicable examination. The license will not be issued prior to the receipt of a passing score for the applicable examination.

B. An applicant who does not receive a passing score within one year after the date of approval of the application by the board to sit for the examination must submit a new application and meet entry requirements in effect at the time of the submittal of the new application.

C. In those instances where the applicant is required to take an examination for licensure, the applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include written instructions communicated prior to the examination date and instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination shall be grounds for denial of the application, voiding of examination scores, or any combination thereof.

18VAC160-40-90. Individuals certified or licensed in another jurisdiction.

Any applicant holding a valid license or certificate in another jurisdiction shall meet the requirements of this chapter, including having equivalent experience and education. The applicant shall pass the appropriate [~~Virginia~~ board-approved] examination [to become licensed] in those instances where an examination for licensure is required.

18VAC160-40-100. Full-time experience or equivalent.

For the purpose of this part, experience requirements are expressed in terms of calendar periods of full-time employment as an operator, installer, or onsite soil evaluator in the same class for which licensure is sought.

1. A year of full-time employment is defined as a minimum of 1,760 hours during a 12-month period or a minimum of 220 workdays in a 12-month period. A workday is defined as performing or assisting in the duties of an installer, operator, or onsite soil evaluator to the extent required for the proper installation or maintenance of onsite sewage systems or the evaluation of soil and soil properties for suitability as locations for onsite sewage systems. More than 1,760 hours or 220 workdays during a 12-month period will not be considered as more than one year of full-time employment.

2. Partial credit may be given for actual hours of work [~~or workdays~~] experience if the applicant works less than full time.

[18VAC160-40-105. Master licenses; conversion of licenses on April 1, 2017.

A. An individual holding a current license issued by the board that was valid on March 31, 2017, will be issued a

Regulations

master license in the same class and category of license, and with the same expiration date.

1. A conventional onsite sewage system installer license that is current on March 31, 2017, will be converted to a master conventional onsite sewage system installer license.

2. An alternative onsite sewage system installer license that is current on March 31, 2017, will be converted to a master alternative onsite sewage system installer license.

3. A conventional onsite sewage system operator license that is current on March 31, 2017, will be converted to a master conventional onsite sewage system operator license.

4. An alternative onsite sewage system operator license that is current on March 31, 2017, will be converted to a master alternative onsite sewage system operator license.

5. A conventional onsite soil evaluator license that is current on March 31, 2017, will be converted to a master conventional onsite soil evaluator license.

6. An alternative onsite soil evaluator license that is current on March 31, 2017, will be converted to a master alternative onsite soil evaluator license.

B. Any license issued pursuant to this section may be subject to disciplinary action in accordance with this chapter for any violation of the regulations that occurred under the license held prior to conversion in accordance with this section.]

Part III

Onsite Sewage System Installers

18VAC160-40-110. License required.

A. No individual shall install a conventional or alternative onsite sewage system without a valid [~~master~~] onsite sewage system installer license issued by the board [in the appropriate class].

B. An individual cannot simultaneously hold valid master and journeyman onsite sewage system installer licenses in the same class. Issuance of a master onsite sewage system installer license in a specific class shall void the journeyman onsite sewage system installer license in the same class.

C. An individual cannot simultaneously hold valid conventional and alternative master onsite sewage system installer licenses or [~~convention~~ conventional] and alternative journeyman [onsite sewage system installer] licenses. Issuance of a master alternative onsite sewage system installer license shall void the conventional onsite sewage system installer license.

D. A journeyman onsite sewage system installer must work under the direct supervision of a licensed master onsite sewage system installer [with the appropriate class of license]. A master onsite sewage system installer is responsible for supervising the provision of onsite sewage system installations by any journeyman onsite sewage system installers under his direct supervision.

E. Experience used to qualify for licensure cannot be verified by a journeyman onsite sewage system installer.

18VAC160-40-120. Qualifications for journeyman conventional onsite sewage system installer licenses.

An applicant for licensure as a journeyman conventional onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors</u>	<u>No</u>	<u>No</u>	<u>Six months of full-time experience assisting with the installation of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
2.	<u>None</u>	<u>No</u>	<u>No</u>	<u>One year of full-time experience assisting with the installation of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>

18VAC160-40-130. Qualifications for master conventional onsite sewage system installer licenses.

An applicant for licensure as a master conventional onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors</u>	<u>Yes</u>	<u>20 hours of training approved by the board covering basic installation of conventional or alternative onsite sewage systems</u>	<u>One year of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
2.	<u>Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors</u>	<u>Yes</u>	<u>No</u>	<u>Two years of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
3.	<u>Interim installer or journeyman license</u>	<u>Yes</u>	<u>20 hours of training approved by the board covering basic installation of conventional or alternative onsite sewage systems</u>	<u>Two years of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
4.	<u>Interim installer or journeyman installer license</u>	<u>Yes</u>	<u>No</u>	<u>Three years of full-time experience installing conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>

~~[18VAC160-40-140. Qualification for exemption from examination for master conventional onsite sewage system installer applicants. (Reserved.)~~

~~Applicants seeking licensure as a conventional onsite sewage system installer may be exempt from the examination, provided the board receives the applicable application before July 1, 2016, and the applicant:~~

- ~~1. Is able to satisfactorily demonstrate that he has been actively engaged in performing the duties of a conventional onsite sewage system installer for at least eight years within the 12 year period immediately preceding the date of the application. Documentation of qualifying experience may be verified by a conventional or alternative onsite soil evaluator, a conventional or alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator certified by VDH before July 1, 2009; and~~
- ~~2. Meets the requirements of 18VAC160-40-60.]~~

18VAC160-40-150. Qualifications for journeyman alternative onsite sewage system installer licenses.

An applicant for licensure as [~~an~~ a journeyman] alternative onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

Regulations

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors</u>	<u>No</u>	<u>No</u>	<u>One year of full-time experience assisting with the installation of alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
2.	<u>None</u>	<u>No</u>	<u>No</u>	<u>Two years of full-time experience assisting with the installation of alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>

18VAC160-40-160. Qualifications for master alternative onsite sewage system installer licenses.

An applicant for licensure as a master alternative onsite sewage system installer shall furnish acceptable documentation that one of the following qualifications has been met:

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors</u>	<u>Yes</u>	<u>No</u>	<u>Two years of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
[2.	<u>Employee, owner, director, or officer of a properly licensed contractor with a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors</u>	<u>Yes</u>	<u>20 hours of training approved by the board covering the basic installation of alternative onsite sewage systems</u>	<u>18 months of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator]</u>
[2. 3.]	<u>No</u>	<u>Yes</u>	<u>20 hours of training approved by the board covering basic installation of alternative onsite sewage systems</u>	<u>Three years of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>

3.4.]	<u>Interim alternative onsite sewage system installer or conventional onsite sewage system installer license</u>	<u>Yes</u>	<u>No</u>	<u>18 months of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
[4.	<u>No</u>	<u>Yes</u>	<u>20 hours of training approved by the board covering the basic installation of alternative onsite sewage systems</u>	<u>18 months of full-time experience installing alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system installer, a professional engineer, or an authorized onsite soil evaluator certified by VDH before July 1, 2009]</u>

Part IV
Onsite Sewage System Operators

18VAC160-40-170. License required.

A. No individual shall operate a conventional or alternative onsite sewage system without a valid [~~master~~] onsite sewage system operator license issued by the board [in the appropriate class].

B. An individual cannot simultaneously hold valid master and [journeyman] onsite sewage system operator licenses in the same class. Issuance of a master onsite sewage system operator license in a specific class shall void the journeyman onsite sewage system operator license in the same class.

C. An individual cannot simultaneously hold valid conventional and alternative [master] onsite sewage system operator licenses or conventional and alternative journeyman onsite sewage system operator licenses. Issuance of a master alternative onsite sewage system operator license shall void the conventional onsite sewage system operator license.

D. A journeyman onsite sewage system operator must work under the direct supervision of a licensed master onsite sewage system operator [with the appropriate class of license]. [~~A~~ A master] onsite sewage system operator is responsible for supervising the operation of the onsite sewage system by any journeyman onsite sewage system operator under his responsibility.

E. Experience used to qualify for licensure cannot be verified by a journeyman onsite sewage system operator.

[F. No individual shall act as an alternative onsite sewage system operator of an alternative onsite sewage system that exceeds 10,000 gallons per day design flow without possessing a Class 4 or higher wastewater works operator license in addition to an alternative onsite sewage system operator license.]

18VAC160-40-180. Qualifications for journeyman conventional onsite sewage system operator licenses.

An applicant for licensure as a journeyman conventional onsite sewage system operator shall furnish acceptable documentation that the following qualification has been met:

<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
<u>None</u>	<u>No</u>	<u>No</u>	<u>Six months of full-time experience assisting with the operation and maintenance of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>

Regulations

18VAC160-40-190. Qualifications for master conventional onsite sewage system operator licenses.

An applicant for licensure as a master conventional onsite sewage system operator shall furnish acceptable documentation that one of the following qualifications has been met:

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>Wastewater works operator license</u>	<u>Yes</u>	<u>No</u>	<u>None</u>
2.	<u>No</u>	<u>Yes</u>	<u>10 hours of education approved by the board covering the basics of operation and maintenance of conventional onsite sewage systems</u>	<u>Six months of full-time experience in the operation and maintenance of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
3.	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>One year of full-time experience in the operation and maintenance of conventional or alternative onsite sewage systems verified by one or more of the following: an onsite soil evaluator, an onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>

18VAC160-40-200. Qualification for exemption from examination for master conventional onsite sewage system operator applicants.

Applicants seeking licensure as a master conventional onsite sewage system operator may be exempt from the examination provided the applicant:

1. Is able to satisfactorily demonstrate that he has been actively engaged in performing the duties of a conventional onsite sewage system operator for at least four years. Documentation of qualifying experience may be verified by a [master] conventional or alternative [onsite] soil [~~evaluation~~ evaluator], a [master] conventional or alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [~~certified by VDH~~ before July 1, 2009]; and
2. Meets the requirements of 18VAC160-40-60.

18VAC160-40-210. Qualifications for journeyman alternative onsite sewage system operator licenses.

An applicant for licensure as a journeyman alternative onsite sewage operator shall furnish acceptable documentation that one of the following qualifications has been met:

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>None</u>	<u>No</u>	<u>20 hours of education approved by the board covering the basics of operation and maintenance of alternative onsite sewage systems</u>	<u>One year of full-time experience assisting with the operation and maintenance of alternative onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
2.	<u>None</u>	<u>No</u>	<u>None</u>	<u>Two years of full-time experience assisting with the operation and maintenance of alternative onsite sewage systems verified by one or more of the following: an alternative</u>

				onsite soil evaluator, an alternative sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]
--	--	--	--	---

18VAC160-40-220. Qualifications for master alternative onsite sewage system operator licenses.

An applicant for licensure as a master alternative onsite sewage system operator shall furnish acceptable documentation that one of the following has been met:

<u>Prerequisites</u>		<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>Held or holds a conventional onsite sewage system operator license</u>	<u>Yes</u>	<u>10 hours of training approved by the board covering the basics of operation and maintenance of alternative onsite sewage systems</u>	<u>One year of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
2.	<u>Held or holds a conventional onsite sewage system operator license</u>	<u>Yes</u>	<u>No</u>	<u>[One year 18 months] of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
3.	<u>None</u>	<u>Yes</u>	<u>20 hours of training approved by the board covering the basics of operation and maintenance of alternative onsite sewage systems</u>	<u>Two years of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>
4.	<u>Wastewater works operator license</u>	<u>Yes</u>	<u>No</u>	<u>Six months of full-time experience in the operation and maintenance of onsite sewage systems verified by one or more of the following: an alternative onsite soil evaluator, an alternative onsite sewage system operator, a professional engineer, or an authorized onsite soil evaluator [certified by VDH before July 1, 2009]</u>

Regulations

5.	<u>Wastewater works operator license</u>	<u>Yes</u>	<u>20 hours of training approved by the board in basics of operation and maintenance of alternative onsite sewage systems</u>	<u>No</u>
----	--	------------	---	-----------

Part V
Onsite Soil Evaluator

18VAC160-40-230. License required.

A. Notwithstanding the provisions of Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, no individual shall [evaluate soils and soil properties for suitability as locations for or design conventional or alternative onsite sewage systems perform the duties of an onsite soil evaluator] without possessing a valid license issued by the board.

B. An individual cannot simultaneously hold master and journeyman onsite soil evaluator licenses in the same class. Issuance of a master onsite soil evaluator license in a specific class shall void the journeyman onsite soil evaluator license in the same class.

C. An individual cannot simultaneously hold valid conventional and alternative [master] onsite soil evaluator licenses or conventional and alternative journeyman onsite soil evaluator licenses. Issuance of an alternative master onsite soil evaluator license shall void the conventional onsite soil evaluator license.

D. A journeyman onsite soil evaluator must work under the direct supervision of a master onsite soil evaluator [with the appropriate class of license]. A master onsite soil evaluator of an equal or greater class is responsible for supervising the provision of onsite soil evaluations and designs by any journeyman onsite soil evaluator under his responsibility.

E. Experience to qualify for licensure cannot be verified by a journeyman onsite soil evaluator.

18VAC160-40-240. Qualifications for journeyman conventional onsite soil evaluator licenses.

An applicant for licensure as a journeyman conventional onsite soil evaluator shall furnish acceptable documentation that one of the following has been met:

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	<u>Virginia professional soil scientist license</u>	<u>No</u>	<u>No</u>	<u>No</u>
2.	<u>No</u>	<u>No</u>	<u>No</u>	<u>One and one-half years of full-time experience assisting in the evaluation of site and soil conditions and design of conventional onsite sewage systems verified by one or more of the following: an authorized soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an onsite soil evaluator</u>
3.	<u>No</u>	<u>No</u>	<u>VDH onsite [sewage] system training [program]</u>	<u>One year of full-time experience assisting in the evaluation of site and soil conditions and design of conventional onsite sewage systems verified by one or more of the following: an authorized soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an onsite soil evaluator</u>

18VAC160-40-250. Qualifications for master conventional onsite soil evaluator licenses.

An applicant for licensure as a master conventional onsite soil evaluator shall furnish acceptable documentation that one of the following qualifications has been met:

<u>Prerequisites</u>		<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	No	Yes	Master's or bachelor's degree	[One and one half Two] years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an onsite soil evaluator
2.	No	Yes	Associate's degree	Three years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an onsite soil evaluator
3.	No	Yes	VDH onsite sewage system [training] program	Two years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an onsite soil evaluator
4.	Journeyman or interim conventional onsite soil evaluator	Yes	No	Three years of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an onsite soil evaluator
[5.	Virginia professional soil scientist license	Yes	No	One year of full-time experience evaluating site and soil conditions and designing conventional onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator, a professional engineer, or an onsite soil evaluator.]

18VAC160-40-260. Qualifications for journeyman alternative onsite soil evaluator licenses.

An applicant for licensure as a journeyman alternative onsite soil evaluator shall furnish acceptable documentation that one of the following qualifications has been met:

<u>Prerequisites</u>		<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	Virginia professional soil scientist license	No	No	One year of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative soil evaluator

Regulations

2.	Possess or held either a <u>valid interim alternative onsite soil evaluator license</u> or a <u>conventional onsite soil evaluator license</u>	No	No	One year of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative soil evaluator
3.	An authorized onsite soil evaluator [certified by VDH before July 1, 2009]	No	No	One year of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative soil evaluator
4.	No	No	No	Two years of full-time experience assisting in the evaluation of site and soil conditions and design of alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative soil evaluator

18VAC160-40-270. Qualifications for master alternative onsite soil evaluator licenses.

An applicant for licensure as a master alternative onsite soil evaluator shall furnish acceptable documentation that one of the following qualifications has been met:

	<u>Prerequisites</u>	<u>Exam Required</u>	<u>Education Required</u>	<u>Documented Qualifying Experience</u>
1.	No	Yes	Master's or bachelor's degree	[One and one half Two] years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative onsite soil evaluator
2.	No	Yes	Associates degree	Three years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative onsite soil evaluator
3.	Held or holds a <u>conventional onsite soil evaluator license</u> [, <u>interim alternative onsite soil evaluator license</u> , <u>journeyman alternative onsite</u>	Yes	No	Two years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative onsite soil evaluator

	<u>soil evaluator license, or authorized onsite soil evaluator license]</u>			
4.	<u>No</u>	<u>Yes</u>	<u>No</u>	[Three <u>Four</u>] years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative onsite soil evaluator
5.	[An authorized onsite soil evaluator certified by VDH before July 1, 2009 Virginia licensed professional soil scientist]	<u>Yes</u>	<u>No</u>	Two years of full-time experience evaluating site and soil conditions and designing alternative onsite sewage systems verified by one or more of the following: an authorized onsite soil evaluator [certified by VDH before July 1, 2009], a professional engineer, or an alternative onsite soil evaluator

18VAC160-40-275. Verification of experience by authorized onsite soil evaluators.

An authorized onsite soil evaluator who is verifying experience pursuant to Part II of this chapter and who holds no other license listed as qualified to verify experience may only verify experience obtained before July 1, 2009.]

18VAC160-40-280. Acceptable degree programs and verification procedures.

A. Applicants seeking to qualify for licensure based on completion of an associate's, bachelor's, or master's degree shall submit an official transcript [~~form~~ from] the school where the applicable degree was obtained. Only degrees from an accredited college or university that is approved or accredited by the Commission on Colleges [of the Southern Association of Colleges and Schools], a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education will be considered. The following degrees shall be considered to qualify in accordance with 18VAC160-40-250 and 18VAC160-40-270:

1. Bachelor's or master's degree in soil science, biology, chemistry, engineering, environmental science, geology, agronomy, earth science, or environmental health.
2. Associate's degree in wastewater works, environmental science, or engineering technology.
3. Bachelor's degree in a related physical, biological, environmental, or chemical science that includes a minimum of 40 semester credit hours in any combination of science and math.

B. Any applicant who has earned a degree from an institution outside of the United States shall have the degree authenticated and evaluated by an education credential evaluation services. The board reserves the right to reject any evaluation submitted by the applicant.

Part VI

Renewal and Reinstatement

18VAC160-40-290. Expiration and renewal.

A. A license shall expire two years from the last day of the month in which it was issued.

B. Prior to the expiration date shown on the license, the board shall mail a renewal notice to the licensee's address of record. The licensee shall return a renewal notice and the applicable renewal fee. Failure to receive a renewal notice from the board does not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee as an application for renewal.

C. By submitting the renewal fee, the licensee is certifying his continued compliance with the Standards of Practice and Conduct (Part [~~VI~~ IX] (18VAC160-40-440 et seq.) of this chapter) as established by the board. In addition, by submitting the renewal fee, licensees are certifying compliance with the continuing professional education requirements of this chapter.

18VAC160-40-300. Reinstatement.

A. If all the requirements for renewal of the license as specified in 18VAC160-40-290 are not completed within 30

Regulations

days of the license expiration date, a reinstatement fee shall be required as established in 18VAC160-40-40.

B. A license may be reinstated for up to one year following the expiration date of the license. Any licensee who fails to reinstate the license within 12 months after the expiration date shall apply for a new license and meet entry requirements in effect at the time of submittal of the new application. The individual shall be deemed to be eligible to sit for the examination for the same profession, class, and category of license as the expired license, if an examination is applicable.

C. By submitting the reinstatement fee, the licensee is certifying his continued compliance with the Standards of Practice and Conduct (Part [~~VI IX~~] (18VAC160-40-440 et seq.) of this chapter) as established by the board. In addition, by submitting the reinstatement fee, licensees are certifying compliance with the continued professional education requirements of this chapter.

D. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

18VAC160-40-310. Status of license during period prior to reinstatement.

A licensee who applies for reinstatement of the license shall be subject to all laws and regulations as if the regulant had been continuously licensed. The licensee shall remain under and be subject to the disciplinary authority of the board during the entire period.

18VAC160-40-320. Board discretion to deny renewal or reinstatement.

A. The board may deny renewal or reinstatement of license for the same reasons as the board may refuse initial licensure or discipline a licensee. [The licensee has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).]

B. The board may deny renewal or reinstatement of a licensee if the licensee has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid monetary penalties and costs imposed by the board.

Part VII

Continuing Professional Education

18VAC160-40-330. Continuing professional education.

A. Each licensee shall have completed the following number of continuing professional education (CPE) contact hours during each renewal cycle. CPE provisions do not apply to licenses that were held for less than two years on the date of expiration.

[~~1. Master alternative and conventional onsite soil evaluators, onsite sewage system installers, and onsite~~

~~sewage system operators shall obtain a minimum of 20 contact hours.~~

~~2. Journeyman alternative and conventional onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators shall obtain a minimum of 10 contact hours.~~

<u>License Type</u>	<u>CPE Contact Hours Required</u>
<u>1. Master alternative onsite soil evaluator</u>	<u>16</u>
<u>2. Master alternative onsite sewage system installer</u>	<u>16</u>
<u>3. Master alternative onsite sewage system operator</u>	<u>16</u>
<u>4. Master conventional onsite soil evaluator</u>	<u>12</u>
<u>5. Master conventional onsite sewage system installer</u>	<u>12</u>
<u>6. Master conventional onsite sewage system operator</u>	<u>8</u>
<u>7. Journeyman alternative onsite soil evaluator</u>	<u>8</u>
<u>8. Journeyman alternative onsite sewage system installer</u>	<u>8</u>
<u>9. Journeyman alternative onsite sewage system operator</u>	<u>8</u>
<u>10. Journeyman conventional onsite soil evaluator</u>	<u>4</u>
<u>11. Journeyman alternative onsite sewage system installer</u>	<u>4</u>
<u>12. Journeyman alternative onsite sewage system operator</u>	<u>4</u>]

B. CPE courses completed during the license period immediately prior to the expiration date of the license shall be acceptable in order to renew the license. CPE courses completed during a license renewal cycle to satisfy the CPE requirements of the preceding licensing renewal cycle shall be valid only for that preceding license renewal cycle and shall not be accepted for subsequent renewal cycles.

C. The licensee will not receive credit for completing the same CPE course with the same content more than once during a license period.

D. A licensee may receive CPE credit for teaching a course that otherwise meets the requirements of this chapter; however, additional credit shall not be given for subsequent offering of a course or activity with the same content within the same licensing cycle. In addition a licensee may receive

two hours of CPE no more than once during a single licensing cycle for the initial development or substantial updating of a CPE course.

E. For all licenses, safety subjects shall not count for more than one half of the total required CPE hours.

18VAC160-40-340. CPE subject matter for onsite sewage system installers.

The following course topics will be accepted for CPE credit for onsite sewage [system] installers:

1. Sewage system installation;
2. Operating and maintaining equipment;
3. Security and safety procedures;
4. General science and mathematical principles;
5. Administrative knowledge and procedures applicable to the profession;
6. Laws and regulations applicable to the profession;
7. Monitoring, evaluating and adjusting treatment processes (alternative onsite sewage system installers only); and
8. Management and supervision principles (master onsite sewage system [~~installer~~ installers] only [~~;~~] maximum of [~~five credit~~ four contact] hours).

18VAC160-40-350. CPE subject matter for onsite sewage system operators.

The following course topics will be accepted for [CPE] credit for onsite sewage system operators:

1. Onsite system operations;
2. Monitoring, evaluating, and adjusting treatment processes;
3. Operating and maintaining equipment;
4. Security and safety procedures;
5. General science and mathematical principles;
6. Administrative knowledge applicable to the profession;
7. Laws and regulations applicable to the profession; and
8. Management and supervision principles (applicable to master onsite sewage system [~~operations~~ operators] only [~~;~~] maximum of [~~five credit~~ four contact] hours).

18VAC160-40-360. CPE subject matter for onsite soil evaluators.

The following course topics will be accepted for [CPE] credit for onsite soil evaluators:

1. Site and soil evaluations;
2. Security and safety procedures;
3. [Mapping, cartography, and geographic information systems;
- ~~3.~~ 4.] System design;
- [4. 5.] Inspections;
- [~~5.~~ 6.] General science and mathematical principles;

[~~6.~~ 7.] Administrative knowledge and procedures applicable to the profession;

[~~7.~~ 8.] Laws and regulations applicable to the profession; and

[~~8.~~ 9.] Management and supervision principles (applicable to master onsite soil evaluators only [~~;~~] maximum of [~~five four~~] contact hours).

18VAC160-40-370. Use of training credits and formal education for CPE credit.

Any course approved by the board for substitution as training credits or formal education semester hours, as provided for in 18VAC160-40-70 or 18VAC160-40-280, shall also be acceptable on an hour-for-hour basis for CPE contact hours. One semester hour of college credit shall equal 15 CPE contact hours, and one-quarter hour of college credit shall equal 10 CPE hours. The training credits or formal education must be applicable to the license for which CPE credit is sought.

18VAC160-40-380. Maintenance of CPE.

A. For a period of at least two years following the end of the license renewal cycle for which the CPE was taken, the following evidence shall be maintained to document completion of the required CPE.

1. Evidence of completion of a structured training activity, which shall consist of the name, address, and telephone number of the sponsor;
2. The dates the licensee participated in the training;
3. Description of the subject matter presented; and
4. A statement from the sponsor verifying the number of hours completed.

B. The board may conduct an audit of its licensees to ensure compliance with the applicable CPE requirements. Licensees who are selected for audit shall provide the necessary documentation stipulated in this section.

Part VIII
Training Course Approval

18VAC160-40-390. Approval of training courses.

A. Training courses may be substituted for experience pursuant to the provisions of 18VAC160-40-70. With the exception of training courses provided pursuant to [~~18VAC160-40-330~~ 18VAC160-40-430], training courses that may be substituted for required experience must be approved by the board prior to commencing in accordance with the provisions of this section.

B. Each training provider seeking course approval shall submit an application for approval on a form provided by the board. [~~Training courses for which experience credit may be granted must be conducted in general conformance with the guidelines of the International Association for Continued Education and Training (association). The board reserves the right to waive any of the requirements of the association's guidelines on a case-by-case basis.~~] Only classroom,

Regulations

laboratory, and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a [~~sponsor~~ provider] that is an identifiable organization with a mission statement outlining its functions structure, process, and philosophy and that has a staff of one or more persons with the authority to administer and coordinate the training course.

2. Training course records. The board will only approve training offered by a [~~sponsor~~ provider] that maintains records for all participants for a minimum of seven years and that has a written policy on retention and release of records.

3. Instructors. The board will only approve training conducted by personnel who have demonstrated competency in the subject being taught, an understanding of the learning objective, and knowledge of the learning process to be used.

4. Objectives. The board will only approve courses that have a series of stated objectives that are pertinent to the tasks performed by the licensee. The training course content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training course, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, oral examination, or other similar assessment techniques.

18VAC160-40-400. Application for training course approval.

A. The board shall consider the following information, to be submitted by the course [~~sponsor~~ provider] or instructor on forms provided by the board:

1. Course information.

a. Course title;

b. Planned audience;

c. Name of [~~sponsor~~ provider];

d. Name, physical address, email address, and phone number of contact person;

e. Scheduled presentation dates;

f. Detailed course schedule, hour-by-hour including begin and end times;

g. List of planned breaks;

h. Scheduled presentation location; and

i. Identification of the profession, category, and class of license to which the course is applicable and relevancy to the identified license type.

2. Instructor qualifications.

a. Name of instructor;

b. Title;

c. Employer;

d. Board license number or numbers, if applicable; and

e. Summary of qualifications to teach the course.

3. Training materials.

a. Course objectives. A listing of the course objectives stated in terms of the skills and knowledge the participant will be able to demonstrate as a result of the training.

b. Course outline. A detailed outline showing the planned activities that will occur during the training course, including major topics, planned presentation sequence, laboratory and field activities, audiovisual presentations, and other major activities.

c. Course reference materials. A list of the name, publisher, and publication date for commercially available publications. For reference materials developed by the course [~~sponsor~~ provider] or available exclusively through the course, a copy of the reference.

d. Audiovisual support materials. A listing of any commercially available audiovisual support material that will be used in the program. A brief description of any [~~sponsor~~ provider] or instructor generated audiovisual material that will be used.

e. Handouts. Identification of all commercially available handout materials that will be used, as well as copies [of] other planned handouts.

4. Determination of successful completion. A description of the means that will be used to assess the learning of each participant to determine successful completion of training program, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.

B. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so [~~required~~ requested] by the [~~sponsor~~ provider].

1. The board shall consider all of the information listed in subsection A of this section except those items related to specific offerings of the course.

2. Board approval will apply only to those specific offerings certified by the [~~sponsoring organization~~ provider] as having been conducted by instructors meeting the established criteria and in accordance with the board-approved course outlines and objectives.

18VAC160-40-410. Maintenance of training course approval.

A. At times established by the board, the board may require that course providers that have previously obtained course

approval provide the board with evidence, in a form set forth by the board, that the provider continues to comply with the requirements of this chapter. Failure to continue to comply with the board's requirements or respond to such a request may result in the board withdrawing its approval.

B. Substantial modifications or changes to the information provided in 18VAC160-40-390 and 18VAC160-40-400 must be reported to the board within 30 days of the change. Failure to report the changes as required may result in the withdrawal of approval by the board.

C. Any change of address of the training provider shall be reported in writing within 30 days of the change.

D. The board may conduct an audit of the training provider to ensure continued compliance with this chapter.

18VAC160-40-420. Withdrawal of approval.

The board may withdraw approval of any provider for the following reasons:

1. The course or courses being offered no longer meet the standards established by the board.
2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.
3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records.
4. The provider fails to respond to the board or any of its agents.

18VAC160-40-430. Training course offered by certain entities, board approval not required.

A. Training courses provided by (i) federal, state, or local government agencies; (ii) accredited colleges or universities approved or accredited by the Commission on Colleges [of the Southern Association of Colleges and Schools]; (iii) a regional or national accreditation association; or (iv) an accrediting agency that is recognized by the U.S. Secretary of Education do not require board approval to be used for experience substitution, provided the training course information submitted to the board includes the following:

1. The course must include the continuing education hours awarded by the entity.
2. The course must be related to the profession, category, or class, if applicable, for which experience substitution is sought.

B. The board may require additional information from the provider as necessary to ensure compliance with this section. If such assurance cannot be made by the board, the training course may not be used for experience substitution, or the provider may pursue board approval pursuant to this chapter.

Part IX

Standards of Practice and Conduct

18VAC160-40-440. Grounds for disciplinary action.

The board may place a licensee on probation; impose a monetary penalty in accordance in § 54.1-202 A of the Code of Virginia; or revoke, suspend, or refuse to renew any license when the licensee has been found to have violated or cooperated with others in violating any provision of the regulations of the board or Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia.

18VAC160-40-450. Maintenance of license.

A. No license issued by the board shall be assigned or otherwise transferred.

B. A licensee shall report, in writing, all changes of the address of record and name to the board within 30 days of the change and shall return the license to the board. In addition to the address of record, a physical address is required for each license. If the licensee holds more than one license, the licensee shall inform the board of all licenses, certificates, and registrations affected by the name or address change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's failure to report a change of name or address.

C. Any change in any of the requirements and qualifications for licensure found in Part II (18VAC160-40-20 et seq.), III (18VAC160-40-110 et seq.), or IV (18VAC160-40-170 et seq.) of this chapter shall be reported to the board within 30 days of the change.

18VAC160-40-460. Notice of adverse action.

A. Licensees shall notify the board of the following actions against the licensee.

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including [~~but not limited to~~] any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.
2. Any voluntary surrendering of a related license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.
3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession or of any felony, there being no appeal pending therefrom or the time for appeal having lapsed. 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 the purpose of this section.

Regulations

B. Notices to the board must be made in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction finding or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC160-40-470. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), or 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia, or any of the regulations of the board.
2. Allowing a license issued by the board to be used by another.
3. Obtaining or attempting to obtain a license by false or fraudulent representation, or maintaining or renewing a license by false or fraudulent representation.
4. A licensee having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-40-460. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia.
5. Failing to inform the board in writing within 30 days that the licensee was convicted or found guilty or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC160-40-460.
6. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill, and ability in the performance of the licensee's duties.
7. Having undertaken to perform or performed a professional assignment that the licensee is not qualified to perform by education, experience, training, [appropriate class or category of licensure,] or any combination thereof.
8. Failing to report a change as required by 18VAC160-40-450.
9. Negligence, misconduct, or incompetence in the practice of the profession.
10. Making any misrepresentation or engaging in acts of fraud or deceit in advertising, soliciting, or in providing professional services.
11. Failing to adequately supervise and review work performed by unlicensed employees or journeyman licensees under the direct supervision of the master licensee.
12. Failure to obtain any permit, approval, or other document required by VDH related to the design, installation, repair, or operation of an onsite sewage system.

13. Knowingly signing plans, drawings, reports, specifications, maps, or other documents related to an onsite sewage system not prepared or reviewed and approved by the licensee.

14. Knowingly misrepresenting factual information in expressing a professional opinion.

15. Failing to act in providing professional services in a manner that safeguards the interests of the public.

18VAC160-40-480. Conflicts of interest.

The licensee shall:

1. Promptly and fully inform an employer or client of any [~~business association,~~] interest, [~~or~~] circumstance [~~, or business association~~] that may influence the licensee's judgment of the quality of service.
2. Not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed to [~~] and agreed to by [~~] all interested parties in writing.~~~~
3. Neither solicit nor accept financial or other valuable consideration from material or equipment suppliers for specifying their products or services.
4. Not solicit or accept gratuities, directly or indirectly, from contractors or their agents or other parties dealing with a client or employer in connection with work for which the licensee is responsible.

18VAC160-40-490. Licensee responsibility.

A. The primary obligation of the licensee is to the public. If the licensee's judgment is overruled and not adhered to when advising appropriate parties of circumstances of a substantial threat to the public health, safety, or welfare, the licensee shall inform the employer and client, as applicable, of the possible consequences and notify appropriate authorities.

B. [The licensee shall sign, date, and include his license number on all final work products prepared or reviewed and approved by the licensee. For work products performed by a journeyman licensee, the master licensee providing direct supervision shall sign, date, and include his license number, along with the journeyman's signature, date, and license number on the final work product. A journeyman licensee shall not submit a work project as final without the applicable master licensee's signature, date, and license number.

C.] The licensee shall not knowingly associate in a business venture with, or permit the use of the licensee's name by, any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating any law or regulation of the board.

[~~C. D.] A licensee who has direct knowledge that another individual or firm may be violating any of the provisions of this chapter or the provisions of Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia shall immediately inform the board in writing and shall cooperate in furnishing any further information or assistance that may be required.~~

[~~D~~. E.] Except as provided in subsection [~~E~~ F] of this section, a licensee shall not utilize the evaluations, design, drawings, or work of another licensee without the knowledge and written consent of the licensee or organization of ownership that originated the design, drawings, or work.

[~~E~~. F.] A licensee who relies on information in VDH files or has received permission to modify or otherwise utilize the evaluation, design, drawings, or work of another licensee pursuant to subsection [~~D~~ or] E of this section [or this subsection] may certify that work only after a thorough review of the evaluation, design, drawings or work and after he determines that he is willing to assume full responsibility for all design, drawings, or work on which he relies for his opinion.

18VAC160-40-500. Response to inquiry and provision of records.

A. A licensee must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a licensee of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the licensee was involved, or for which the licensee is required to maintain records. The board may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A licensee shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsection A or B of this section, a licensee must respond to an inquiry by the board or its agent within 21 days.

18VAC160-40-510. Master licensee's professional responsibilities.

A. Any work performed by a journeyman regulated pursuant to Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter shall be under the direct supervision of the master. Such master and journeyman shall have an employment or written contractual relationship.

B. Each master shall maintain documentation of the employment or contractual relationship with each journeyman under the master's direct supervision. Such documentation shall be kept for a minimum of five years and shall include, at a minimum, the beginning and ending dates of the employment or contractual relationship.

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 (18VAC160-40)

[~~Onsite Soil Evaluator License Application, A465-1940LIC v2 (eff. 7/2016)~~

~~Onsite Sewage System Operator License Application, A465-1942LIC v2 (eff. 7/2016)~~

~~Waiver of Examination Master Conventional Onsite Sewage System Operator License Application, A436-1942WAIV v2 (eff. 7/2016)~~

~~Onsite Sewage System Installer License Application, A465-1944LIC v3 (eff. 7/2016)~~

~~Onsite Sewage System Applicant Experience Verification Application, A436-19OSSPEXP v4 (eff. 7/2016)]~~

[Onsite Soil Evaluator - License Application, A465-1940LIC-v2 \(eff. 4/2017\)](#)

[Onsite Sewage System Operator License Application, A465-1942LIC-v2 \(eff. 4/2017\)](#)

[Waiver of Examination - Master Conventional Onsite Sewage System Operator License Application, A436-1942WAIV-v2 \(eff. 4/2017\)](#)

[Onsite Sewage System Installer License Application, A465-1944LIC-v3 \(eff. 4/2017\)](#)

[Onsite Sewage System Applicant Experience Verification Application, A436-19OSSPEXP-v4 \(eff. 4/2017\) \]](#)

[Continuing Professional Education \(CPE\) Application - Certificate of Completion, A436-19CPE-v3 \(eff. 10/2015\)](#)

[~~Training Course Approval Application, A465-19CRS v2 (eff. 5/2013)~~

~~Education and Training Substitution Form, A436-19EDTR v3 (eff. 1/2014)~~

~~Suspension of Examination License Application Conventional Onsite Sewage System Installer, A436-1944WAIVE v4 (eff. 8/2015)~~

[Training Course Approval Application, A465-19CRS-v3 \(eff. 2/2016\)](#)

[Education and Training Substitution Form, A436-19EDTRv4 \(eff. 4/2017\) \]](#)

VA.R. Doc. No. R15-4114; Filed December 22, 2016, 1:39 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 61 (2017)

Executive Action to Ensure Equal Opportunity and Access for All Virginians in State Contracting and Public Services

Importance of the Initiative

Virginia's founding creed is that all people "are by nature equally free and independent," and that they share the inherent rights to "the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." (Virginia Declaration of Rights, Section 1 (1776)). Indeed, it is the very function of our government to ensure these rights to all Virginians.

Our modern society is more reflective of this fundamental belief than ever before. Virginia today welcomes people from across the globe, of every background, to join in building a prosperous and free society. The work of my administration has been committed to this end of building a new Virginia economy—an economy that embraces the diverse world in which we live.

Recent events have demonstrated the negative effects of allowing prejudice, while also showing the positive growth that comes from an open and inclusive state government. States and localities that have promoted discriminatory laws are seeing businesses abandon development projects. States and localities that have pursued more inclusive policies have reaped the benefits of businesses expanding and relocating to their jurisdictions. Companies with whom Virginia does business, including those critical for building a new Virginia economy with high-paying jobs, have increasingly implemented their own policies prohibiting discrimination based on sexual orientation and gender identity. The global economy in which Virginia must compete demands a dynamic workforce that is competitive, diverse, and educated.

Additionally, federal procurement policy prohibits federal contractors from discrimination based on sexual orientation and gender identity. Federal contractors have thus already changed their internal policies and practices accordingly and are unlikely to reverse course, even if the federal requirement is adjusted. Many federal contractors also deliver services to the Commonwealth. Current procurement policy in Virginia is not sufficiently aligned with these non-discrimination policies to promote economy and efficiency in state procurement. Having Virginia policy align with this federal non-discrimination policy will not only further my administration's goal of building a more diverse, open, and welcoming Virginia, but also will give uniformity to contractors that serve many government entities, resulting in economic benefits to Virginia taxpayers.

Accordingly, by the power vested in me as the Chief Executive by Article V of the Constitution of Virginia and the laws of the Commonwealth, I hereby order the following:

I. Require future state contracting to require prohibitions on discrimination in employment, subcontracting, and delivery of goods and services, including discrimination based on sexual orientation or gender identity.

It is hereby ordered as the policy of the Executive Branch that it will only contract with those who abide by the non-discrimination policies set forward in Executive Order 1 (2014), namely that discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status is prohibited.

All Executive Branch entities are ordered to include in their procurement contracts valued over \$10,000 a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. They must also include a term that the contractor will include the same requirements in every subcontract or purchase order over \$10,000, so that the same provisions will be binding upon each subcontractor or vendor on state procurement contracts. This requirement shall not apply to procurements that have, as of the date of this Order, already progressed to a stage at which changes in contract requirements would materially and adversely impact the completion of a procurement contract. Specific contracts with certain private child-placing agencies pursuant to § 63.2-1709.3 may also be exempted from this requirement.

The Department of General Services and the Virginia Information Technologies Agency are directed to promulgate appropriate policies and regulations to require the same, including consideration of any other applicable laws or regulations. They are also directed to impose appropriate sanctions under the Virginia Public Procurement Act, including but not limited to termination of the contract and debarment from state contracting for any violations of this contract term.

II. Prohibit discrimination, including that based on sexual orientation or gender identity, in the provision of state services.

Building on the requirements of Executive Order 1 (2014), I hereby order that no state employee or agent within the Executive Branch may engage in discrimination in the provision of public services based on race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. Any state employee or agent who engages in such discrimination will be subject to appropriate disciplinary action.

The Department of Human Resource Management is directed to promulgate appropriate policies in the Commonwealth's Standards of Conduct to implement these requirements in accordance with any other applicable laws and regulations.

No Third-Party Rights Created

This Executive Order is intended to provide direction for Executive Branch entities and does not create any rights or remedies enforceable by third parties.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 5th Day of January, 2017.

/s/ Terence R. McAuliffe
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

BM&D Ltd. Notice of Intent - Small Renewable Energy (Solar) Project Permit by Rule - Pulaski County

BM&D Ltd. has provided notice to the Department of Environmental Quality of its intent to submit the necessary documentation for a permit by rule for a small solar energy project sited over two parcels in Pulaski County, Virginia, pursuant to 9VAC15-60. The solar energy project will consist of a facility with 96 700-panel photovoltaic solar generation and a total capacity of 48-megawatt peak installed on two sites totaling approximately 320 acres. The 40-megawatt peak will be installed on a parcel along Cougar Trail Road, and the eight-megawatt peak installed on a parcel in the New River Valley Commerce Park, both in Pulaski County.

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.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on December 22, 2016. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number One Hundred Seventy-Six (16)

Virginia Lottery's "Convenience Cash Raffle Promotion" Final Rules for Operation (this Director's Order becomes effective on January 1, 2017, and shall remain in full force and effect through the end Promotion date unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Seventy-Eight (16)

Certain Virginia Print 'n Play Games; End of Games - Virginia Lottery's Print 'n Play Blackjack (124 16); Virginia Lottery's Print 'n Play Bonus Bingo (125 16); Virginia Lottery's Print 'n Play Daily Crossword (126 16); Virginia Lottery's Print 'n Play Hot 'n Spicy Bingo (132 16); Virginia Lottery's Print 'n Play Smokin' Hot Crossword (129 16) (effective January 7, 2017)

Director's Order Number One Hundred Seventy-Nine (16)

Virginia Lottery's Scratch Game 1733 "2 FOR \$1" Final Rules for Game Operation (effective December 20, 2016)

Director's Order Number One Hundred Eighty (16)

Virginia Lottery's "Q3 FY 17 eXTRA Chances Scratcher Promotion" Final Rules for Operation (effective January 1, 2017)

DEPARTMENT OF MINES, MINERALS AND ENERGY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a small business impact review of **4VAC25-90, Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines**, and determined that this regulation should be retained in its current form. The Department of Mines, Minerals and Energy is publishing its report of findings dated December 21, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation is mandated by statute. In conjunction with the Coal Mine Safety Board, the Chief of the Division of Mines has determined this regulation is effective as currently written and does not burden small businesses.

Contact Information: Michael Skiffington, Policy and Planning Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23223, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmme.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a small business impact review of **4VAC25-145, Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects**, and determined that this regulation should be retained in its current form. The Department of Mines, Minerals and Energy is publishing its report of findings dated December 21, 2016, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation is mandated by statute. The Director of Department of Mines, Minerals and Energy has determined this regulation is effective as currently written and does not burden small businesses.

Contact Information: Michael Skiffington, Policy and Planning Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23223, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmme.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for the Bedford Regional Water Authority

An enforcement action has been proposed with the Bedford Regional Water Authority for violations in Moneta, Virginia. The amendment to a special order by consent will modify the previous special order by consent that addresses and resolves violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 23, 2017, to February 22, 2017.

Proposed Consent Special Order for the ESF, LLC

An enforcement action has been proposed for the ESF, LLC for violations of State Water Control Law and the applicable regulations at the Cottages of Steeplechase subdivision in Botetourt County, Virginia. The proposed enforcement action includes a civil charge. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6777, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from January 23, 2017, to February 22, 2017.

Proposed Consent Special Order for Melvin L. Davis Oil Company, Inc.

An enforcement action has been proposed for Melvin L. Davis Oil Company, Inc. for violations at the Davis C Store in Sussex County, Virginia. The State Water Control Board proposes to issue a special order by consent to the Melvin L. Davis Oil Company, Inc. to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from January 23, 2017, to February 22, 2017.

Total Maximum Daily Load Implementation Plan for the Yeocomico River Watershed

The Virginia Department of Environmental Quality (DEQ) will host an informational meeting to discuss the development of a cleanup plan for the Yeocomico River Watershed in Northumberland and Westmoreland Counties. The meeting will be held on February 2, 2017, from 6 p.m. until 8 p.m. at the Northumberland Public Library, 7204 Northumberland

Highway, Heathsville, VA 22473. This meeting is open to the public, and all are welcome. Participants will have the opportunity to contribute to the watershed cleanup plan by offering input and sharing information about the area and its local streams.

A total maximum daily load (TMDL) implementation plan for the Yeocomico River watershed is being developed by DEQ and the Virginia Institute of Marine Science. Since portions of local streams have high levels of bacteria, they are currently listed on the state's list of impaired waters. TMDLs for fecal coliform were developed in 2008 and now require a TMDL implementation plan. The high bacteria levels have led to the closure of shellfish harvesting in segments of these waterbodies. To restore water quality, pollutant levels must be reduced to meet the current water quality standards in Virginia. The EPA approved TMDL can be located on DEQ's website at: <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>.

Streams with impaired water quality include Gardner, Jackson, and Bonum Creeks in Westmoreland County; Mill Creek in Northumberland County; and portions of the Yeocomico River.

The public comment period begins February 2, 2017, and ends March 3, 2017. Written comments will be accepted by email, fax, or postal mail to Kaitlin Ranger, NPS TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, telephone (804) 527-5018, or email kaitlin.ranger@deq.virginia.gov.

Additional information is also available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation.aspx>.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Proposed IMSAC Guidance Documents on Identity Management of Non-Person Entities and Privacy, Security, and Confidentiality of Identity Information

Notice of action: The Virginia Information Technologies Agency (VITA) is announcing an opportunity for public comment on two proposed guidance documents that were developed by the Identity Management Standards Advisory Council (IMSAC) (§ 2.2-437 of the Code of Virginia). IMSAC was created by the General Assembly in 2015 to advise the Secretary of Technology on the adoption of identity management standards and the creation of guidance documents pursuant to § 2.2-436 of the Code of Virginia.

Regulations affected: There are no regulations affected or proposed by this action.

General Notices/Errata

Purpose of notice: IMSAC is seeking comment on whether the two proposed guidance documents should be submitted as is, or if revisions should be made before the final posting. The guidance documents were developed by IMSAC, acting on behalf of the Secretary of Technology. IMSAC recommends to the Secretary of Technology guidance documents relating to (i) nationally recognized technical and data standards regarding the verification and authentication of identity in digital and online transactions; (ii) the minimum specifications and standards that should be included in an identity trust framework, as defined in § 59.1-550 of the Code of Virginia, so as to warrant liability protection pursuant to the Electronic Identity Management Act (§ 59.1-550 et seq.); and (iii) any other related data standards or specifications concerning reliance by third parties on identity credentials, as defined in § 59.1-550.

Purpose Statement for the Identity Management of Non-Person Entities Guidance Document:

The purpose of this document is to establish minimum specifications for identity management of non-person entities (NPEs) in a digital identity system. The document also outlines a data model for interoperability and discovery of identity information on NPEs.

The document limits its focus to identity management of NPEs. Minimum specifications for other components of a digital identity system have been defined in separate IMSAC guidance documents in this series, pursuant to §§ 2.2-436 and 2.2-437 of the Code of Virginia.

Purpose Statement for the Privacy, Security, and Confidentiality of Identity Information Guidance Document:

The purpose of this document is to establish minimum specifications for the privacy, security, and confidentiality of identity information within a digital identity system. The minimum specifications apply core provisions of the Commonwealth of Virginia's Information Security Standard 501 and National Institute of Standards and Technology Special Publication 800-53-4.

The document limits its focus to privacy, security, and confidentiality of identity information. Minimum specifications for other components of a digital identity system have been defined in separate IMSAC guidance documents in this series, pursuant to §§ 2.2-436 and 2.2-437 of the Code of Virginia.

The proposed guidance documents are available with comments and proposed changes by IMSAC at <https://www.vita.virginia.gov/About/default.aspx?id=6442474173>.

Public comment period: January 23, 2017, through March 6, 2017.

Public hearing: A public meeting will be held on March 6, 2017, at 11 a.m. at the Commonwealth Enterprise Solutions

Center, 11751 Meadowville Lane, Chester VA 23836 in Room 1222.

Public comment stage: The two guidance documents were developed by IMSAC and are being posted as general notices pursuant to § 2.2-437 C of the Code of Virginia. Proposed guidance documents, and general opportunity for oral or written submittals as to those guidance documents, shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations as a general notice following the processes and procedures set forth in § 2.2-4031 B of the Code of Virginia. IMSAC shall allow at least 30 days for the submission of written comments following the posting and publication and shall hold at least one meeting dedicated to the receipt of oral comment no less than 15 days after the posting and publication.

For the purpose of defining the timeframe for public participation and comment, VITA is defining "days" as "calendar days." IMSAC will receive public comment at its March 6, 2017, meeting. For additional information in the definition of "days," please reference page 6 of 15 of VITA's Information Technology Resource Management (ITRM), Policies, Standards and Guidelines (PSGs) Briefs and Supporting Documents found at https://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/Library/PSGs/ITRMPSG_Brief_Supportdocs.pdf.

IMSAC will hold a dedicated meeting to public comment on March 6, 2017. Meeting details will be posted on the Commonwealth Calendar and at <https://www.vita.virginia.gov/About/default.aspx?id=6442474171>.

Description of proposal: The proposed guidance documents are being posted for review by the general public with an opportunity for public comment.

Federal information: No federal information.

How to comment: IMSAC accepts written comments by email and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by VITA by the last day of the comment period. All materials received are part of the public record.

To review regulation documents: The proposed guidance documents and any supporting documents are available at <https://www.vita.virginia.gov/About/default.aspx?id=6442474173>. The documents may also be obtained by contacting the VITA representative named below.

Contact Information: Janice Akers, Virginia Information Technologies Agency, 11751 Meadowville Lane, Chester, VA 23836, telephone (804) 416-6083, or email janice.akers@vita.virginia.gov.

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/cumulatab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE BOARD OF HEALTH

Title of Regulation: 12VAC5-481. Virginia Radiation Protection Regulations.

Publication: 32:13 VA.R. 2025-2051 February 22, 2016.

Correction to Final Regulation:

Page 2046, column two, line 14 of the definition of the term "special nuclear material in quantities not sufficient to form a critical mass," the formula should read:

"(175 grams contained U235/350) + (50 grams U-233/200) + (50 grams Pu/200) = 1"

VA.R. Doc. No. R16-4630; Filed January 5, 2017

