



# VIRGINIA

## REGISTER OF REGULATIONS

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### TABLE OF CONTENTS

|   |      |
|---|------|
| <b>Register Information Page</b> .....  | 1907 |
| <b>Publication Schedule and Deadlines</b> .....   | 1908 |
| <b>Petitions for Rulemaking</b> .....   | 1909 |
| <b>Notices of Intended Regulatory Action</b> .....  | 1910 |
| <b>Regulations</b> .....  | 1911 |
| 9VAC5-10. General Definitions (Rev. 116) (Fast-Track) .....   | 1911 |
| 9VAC20-81. Solid Waste Management Regulations (Final) .....   | 1920 |
| 9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (Final) .....                 | 1922 |
| 13VAC5-31. Virginia Amusement Device Regulations (Extension of Public Comment Period) .....               | 1922 |
| 13VAC5-51. Virginia Statewide Fire Prevention Code (Extension of Public Comment Period) .....             | 1923 |
| 13VAC5-63. Virginia Uniform Statewide Building Code (Extension of Public Comment Period) .....            | 1923 |
| 13VAC5-91. Virginia Industrialized Building Safety Regulations (Extension of Public Comment Period) ..... | 1923 |
| 16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (Final) .....                     | 1924 |
| 16VAC25-90. Federal Identical General Industry Standards (Final) .....                                    | 1924 |
| 16VAC25-90. Federal Identical General Industry Standards (Final) .....                                    | 1925 |
| 16VAC25-100. Federal Identical Shipyard Employment Standards (Final) .....                                | 1925 |
| 16VAC25-175. Federal Identical Construction Industry Standards (Final) .....                              | 1925 |
| 16VAC25-90. Federal Identical General Industry Standards (Final) .....                                    | 1926 |
| 16VAC25-100. Federal Shipyard Employment Standards (Final) .....  | 1926 |
| 16VAC25-175. Federal Identical Construction Industry Standards (Final) .....                              | 1926 |
| 18VAC62-10. Public Participation Guidelines (Fast-Track) .....  | 1927 |
| 18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine (Emergency) .....              | 1928 |
| 18VAC90-19. Regulations Governing the Practice of Nursing (Final) .....                                   | 1933 |
| 18VAC90-50. Regulations Governing the Licensure of Massage Therapists (Final) .....                       | 1933 |
| 18VAC90-60. Regulations Governing the Registration of Medication Aides (Final) .....                      | 1933 |
| 18VAC120-40. Virginia Professional Boxing and Wrestling Events Regulations (Forms) .....                  | 1934 |
| <b>Governor</b> .....   | 1936 |
| <b>General Notices/Errata</b> .....   | 1940 |

Virginia Code Commission

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# VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### April 2017 through April 2018

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u>   | <u>Will Be Published On</u> |
|----------------------|--------------------------------------|-----------------------------|
| 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 2, 2017 ( <b>Friday</b> )       | 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 ( <b>Tuesday</b> ) | December 11, 2017           |
| 34:9                 | December 6, 2017                     | December 25, 2017           |
| 34:10                | December 19, 2017 ( <b>Tuesday</b> ) | January 8, 2018             |
| 34:11                | January 3, 2018                      | January 22, 2018            |
| 34:12                | January 17, 2018                     | February 5, 2018            |
| 34:13                | January 31, 2018                     | February 19, 2018           |
| 34:14                | February 14, 2018                    | March 5, 2018               |
| 34:15                | February 28, 2018                    | March 19, 2018              |
| 34:16                | March 14, 2018                       | April 2, 2018               |
| 34:17                | March 28, 2018                       | April 16, 2018              |
| 34:18                | April 11, 2018                       | April 30, 2018              |

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

#### Initial Agency Notice

**Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

**Name of Petitioner:** Dominique Adkins.

**Nature of Petitioner's Request:** To accept supervised hours of a practicum and internship in a Council for Accreditation of Counseling and Related Educational Programs accredited doctoral program towards the required hours for a residency in counseling.

**Agency Plan for Disposition of Request:** In accordance with Virginia law, the petition will be filed with the Virginia Register of Regulations and published on April 3, 2017, with comment requested until May 3, 2017. It will also be placed on the Virginia Regulatory Town Hall and available for comments to be posted electronically. At its first meeting following the close of comment, scheduled for May 19, 2017, the board will consider the request to amend regulations and all comment received in support or opposition. The requester will be informed of the board's response and any action it approves.

**Public Comment Deadline:** May 3, 2017.

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

VA.R. Doc. No. R17-12; Filed March 10, 2017, 14:00 p.m.

### BOARD OF DENTISTRY

#### Agency Decision

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

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

**Name of Petitioner:** Rodney S. Mayberry, DDS.

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

**Agency Decision:** Request denied.

**Statement of Reason for Decision:** The petition was considered by the board at its meeting on March 10, 2017. While its decision was to take no action at this time, the petitioner's comments and suggestions were referred to the Regulatory/Legislative Committee for further review and consideration. The board will gather additional information and consider various options relating to its regulations regarding dental specialties.

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

VA.R. Doc. No. R17-07; Filed March 10, 2017, 15:20 p.m.

#### Agency Decision

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

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

**Name of Petitioner:** Dr. Jacqueline Carney.

**Nature of Petitioner's Request:** To amend 18VAC60-21-280, 18VAC60-21-291, and 18VAC60-21-301, relating to administration and monitoring of sedation and anesthesia.

**Agency Decision:** Request denied.

**Statement of Reason for Decision:** The petition was considered by the board at its meeting on March 10, 2017. While its decision was to take no action at this time, the petitioner's comments and suggestions were referred to the Regulatory/Legislative Committee for further review and consideration. The board will consider whether there are gaps in its regulations or if additional clarification of its rules for sedation and anesthesia is needed.

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

VA.R. Doc. No. R17-10; Filed March 10, 2017, 15:20 p.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## 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 promulgating **18VAC85-21, Regulations Governing Prescribing of Opioids and Buprenorphine**. The purpose of the proposed action is to respond to a public health emergency in deaths from overdoses and Chapter 291 of the 2017 Acts of Assembly, which mandates promulgation of regulations for prescribing of opioids and buprenorphine.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

Public Comment Deadline: May 3, 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](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R17-5033; Filed March 14, 2017, 3:12 p.m.

### BOARD OF PHARMACY

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy has WITHDRAWN the Notice of Intended Regulatory Action (NOIRA) for **18VAC110-20, Regulations Governing the Practice of Pharmacy**, which was published in [26:4 VA.R. 339 October 26, 2009](#). The NOIRA is unnecessary as the agency proceeded with this regulatory action through the fast-track rulemaking process under § 2.2-4012.1 of the Code of Virginia. The fast-track rulemaking action was published in [27:11 VA.R. 1194-1196 January 31, 2011](#).

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

VA.R. Doc. No. R10-2180; Filed March 3, 2017, 9:01 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Fast-Track Regulation

Title of Regulation: **9VAC5-10. General Definitions (Rev. I16) (amending 9VAC5-10-20).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: May 3, 2017.

Effective Date: May 19, 2017.

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

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Federal Requirements: Section 109(a) of the federal Clean Air Act requires the Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) that provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of volatile organic compounds (VOCs). Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Subpart F of Part 51, Procedural Requirements, includes § 51.100, which consists of a list of definitions. 40 CFR 51.100 contains a definition of VOC. This definition is revised by EPA in order to add or remove VOCs as necessary. If it can be demonstrated that a particular VOC is "negligibly reactive"--that is, if it can be shown that a VOC is not as reactive and therefore does not have a significant effect on tropospheric ozone (ground-level smog)--then EPA may remove that substance from the definition of VOC.

On August 1, 2016 (81 FR 50330), EPA revised the definition of VOC to exclude 1,1,2,2-Tetrafluoro-1-(2,2,2-

trifluoroethoxy) ethane (also known as HFE-347pcf2), which became effective on September 30, 2016.

State Requirements: This specific amendment is not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Purpose: The purpose of the general definitions chapter is not to impose any regulatory requirements in and of itself, but to provide a basis for and support to other provisions of the Regulations for the Control and Abatement of Air Pollution, which are in place in order to protect public health and welfare. The proposed amendment is being made to ensure that the definition of VOC, which is crucial to most of the regulations, is up-to-date and scientifically accurate, as well as consistent with the overall EPA requirements under which the regulations operate.

Rationale for Using Fast-Track Rulemaking Process: The definition of VOC is being revised to add a less-reactive substance to the list of substances not considered to be VOCs. As discussed elsewhere, this amendment is not expected to affect a significant number of sources or have any significant impact, other than a positive one, on air quality overall. Additionally, removal of this substance at the federal level was accompanied by detailed scientific review and public comment. Therefore, no additional information on the reactivity of this substance or the appropriateness of its removal is anticipated.

Substance: The general definitions impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution. The list of substances not considered to be VOCs in Virginia has been revised to add 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane.

Issues: The general public health and welfare will benefit because the revision may encourage the use of the delisted substance in place of products containing more reactive and thereby more polluting substances. This substance is considered to be negligibly reactive in the formation of ground level (tropospheric) ozone and is not considered to be

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# Regulations

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a hazardous air pollutant. Therefore, this substance does not have a negative effect on human health or the environment.

Excluding this substance as a VOC will make it easier and less expensive for industry to use it. Companies that use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.

The amendment will allow the department to focus VOC reduction strategies on substances that have a negative impact on human health and the environment.

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

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to revise the definition of volatile organic compound (VOC) to specifically exclude 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane, a cleaning agent.

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

Estimated Economic Impact. VOCs react with nitrogen oxides on hot summer days to form ozone (smog). Car exhaust, gasoline-powered lawn and garden equipment, gasoline dispensing stations, industrial coating operations, printing shops, paints, household chemicals - are some of the sources of VOC. State VOC regulations have to at least meet a level of stringency the U.S. Environmental Protection Agency calls RACT, or Reasonably Available Control Technology. RACT is defined as the lowest level of emissions that can be achieved taking into account technical and economic considerations.

VOC is defined in the regulation as "any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following: ..." The regulation then includes a long list of organic compounds that are excluded from those considered to be VOCs.

The U.S. Environmental Protection Agency has revised the definition of VOC to add 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2) to the list of substances excluded from the definition of VOC on the basis that this substance makes a negligible contribution to tropospheric ozone formation. Consequently, the Board proposes to add HFE-347pcf2 to the list of substances not considered to be VOC.

Asahi Glass Company, AGC Chemicals America, Inc., manufactures HFE-347pcf2. The company has indicated that HFE-347pcf2 may be used in a variety of applications as a precision cleaning agent to remove contaminants including oil, flux, and fingerprints from items like medical devices, artificial implants, military and aerospace items, electric

components, printed circuit boards, optics, jewelry, ball bearings, aircraft guidance systems, film, relays, and a variety of metal components.

HFE-347pcf2 is not manufactured in Virginia, and there are no facilities in Virginia known to be using this substance. Since there are currently no facilities in the Commonwealth known to be using this substance, no company or other entity would be expected to initially realize any cost savings associated with the removal of this substance as a VOC.

Excluding this compound as a VOC will make it easier and less expensive for industry to use. Companies that choose to use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements. Thus the proposed amendment may encourage the use of HFE-347pcf2 in Virginia.

The general public health and welfare would potentially benefit because the proposed revision may encourage the use of HFE-347pcf2 in place of products containing more reactive and thereby more polluting substances. Due to its low photochemical reactivity, this substance is considered to be negligibly reactive in the formation of ground level ozone, and is not considered to be hazardous. Therefore, HFE-347pcf2 does not have a negative effect on human health or the environment. Also the proposed amendment is beneficial in that it would allow the Department of Environmental Quality to focus VOC reduction strategies on substances that have a negative impact on human health and the environment.

Businesses and Entities Affected. The proposed amendment would affect the manufacturer of HFE-347pcf2, Asahi Glass Company, AGC Chemicals America, Inc., which is not located in Virginia. The proposed amendment would also potentially affect users of precision cleaning agents within the Commonwealth.

Localities Particularly Affected. No localities are particularly affected by the proposed amendment.

Projected Impact on Employment. The proposed amendment is unlikely to directly affect employment in the Commonwealth. The demand for HFE-347pcf2 might increase, but the cleaning agent is not produced in Virginia.

Effects on the Use and Value of Private Property. The proposed amendment may encourage some Virginia firms to switch to using HFE-347pcf2 as a precision cleaning agent.

Real Estate Development Costs. The proposed amendment is unlikely to significantly affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendment may reduce costs for some small businesses that use precision cleaning agents if they choose to use HFE-347pcf2.

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

*The amendment revises the definition of "volatile organic compound" to specifically exclude 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane.*

**9VAC5-10-20. Terms defined.**

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. The term "affected facility" includes any affected source as defined in 40 CFR 63.2.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in 9VAC5-20-200.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in 9VAC5-30 (Ambient Air Quality Standards).

"Board" means the State Air Pollution Control Board or its designated representative.

"Certified mail" means electronically certified or postal certified mail, except that this definition shall only apply to the mailing of plan approvals, permits, or certificates issued under the provisions of these regulations and only where the recipient has notified the department of the recipient's consent to receive plan approvals, permits, or certificates by electronic mail. Any provision of these regulations requiring the use of certified mail to transmit special orders or administrative orders pursuant to enforcement proceedings shall mean postal certified mail.

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9VAC5-20-205.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by



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# Regulations

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which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 9VAC5-30 (Ambient Air Quality Standards).

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable implementation plan.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" or "executive director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. Subdivision 1 of this definition does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction

in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emissions limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emissions limitation or, in the event that no emissions limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emissions limitation" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"Emission standard" means any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources) that prescribes an emissions limitation, or other requirements that control air pollution emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"EPA" means the U.S. Environmental Protection Agency or an authorized representative.

"Excess emissions" means emissions of air pollutant in excess of an emission standard.

"Excessive concentration" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31,

1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose and includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an implementation plan.
5. Limitations and conditions that are part of a § 111(d) or 111(d)/129 plan.
6. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.
7. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.
8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E

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# Regulations

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of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

9. Individual consent agreements issued pursuant to the legal authority of EPA.

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9VAC5-80 (Permits for Stationary Sources),

$$Hg = 2.5H,$$

provided the owner produces evidence that this equation was actually relied on in establishing an emissions limitation;

b. For all other stacks,

$$Hg = H + 1.5L,$$

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Initial emission test" means the test required by any regulation, permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources), control program, compliance schedule or

other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other emissions limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9VAC5-40-30.

"Initial performance test" means the test required by (i) 40 CFR Part 60 for determining compliance with standards of performance, or (ii) a permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources) for determining initial compliance with permit limitations. Initial performance tests shall be conducted in accordance with 9VAC5-50-30 and 9VAC5-60-30.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Mail" means electronic or postal delivery.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9VAC5-20-203.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Monitoring device" means the total equipment used to measure and record (if applicable) process parameters.

"Nearby" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and:

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile); and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9VAC5-20-204.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Organic compound" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM<sub>10</sub> emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of

operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9VAC5-20-204 for a particular pollutant and designated as such in 9VAC5-20-205.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.02 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.
2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.
3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9VAC5-20-21).

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

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# Regulations

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"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111(d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on-site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of 9VAC5-50 (New and Modified Stationary Sources) which prescribes an emissions limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9VAC5-170-160; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9VAC5-80 (Permits for Stationary Sources).

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"These regulations" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Total suspended particulate" or "TSP" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from External Floating-Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9VAC5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21).

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

- a. Methane;
- b. Ethane;

- c. Methylene chloride (dichloromethane);
- d. 1,1,1-trichloroethane (methyl chloroform);
- e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- f. Trichlorofluoromethane (CFC-11);
- g. Dichlorodifluoromethane (CFC-12);
- h. Chlorodifluoromethane (H CFC-22);
- i. Trifluoromethane (H FC-23);
- j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);
- k. Chloropentafluoroethane (CFC-115);
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- m. 1,1,1,2-tetrafluoroethane (HFC-134a);
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
- o. 1-chloro 1,1-difluoroethane (HCFC-142b);
- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- q. Pentafluoroethane (HFC-125);
- r. 1,1,2,2-tetrafluoroethane (HFC-134);
- s. 1,1,1-trifluoroethane (HFC-143a);
- t. 1,1-difluoroethane (HFC-152a);
- u. Parachlorobenzotrifluoride (PCBTF);
- v. Cyclic, branched, or linear completely methylated siloxanes;
- w. Acetone;
- x. Perchloroethylene (tetrachloroethylene);
- y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
- z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
- aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
- bb. Difluoromethane (HFC-32);
- cc. Ethylfluoride (HFC-161);
- dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
- ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);
- ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
- gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);
- hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
- ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
- jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
- kk. Chlorofluoromethane (HCFC-31);
- ll. 1 chloro-1-fluoroethane (HCFC-151a);
- mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
- nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or HFE-7100);
- oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>);
- pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200);
- qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);
- rr. Methyl acetate;
- ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>) (HFE-7000);
- tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);
- uu. 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
- vv. methyl formate (HCOOCH<sub>3</sub>);
- ww. 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
- xx. propylene carbonate;
- yy. dimethyl carbonate;
- zz. trans-1,3,3,3-tetrafluoropropene;
- aaa. HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134);
- bbb. HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2);
- ccc. HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13);
- ddd. HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));
- eee. trans 1-chloro-3,3,3-trifluoroprop-1-ene;
- fff. 2,3,3,3-tetrafluoropropene;
- ggg. 2-amino-2-methyl-1-propanol;
- hhh. t-butyl acetate; ~~and~~
- iii. 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; and
- jjj. Perfluorocarbon compounds that fall into these classes:
- (1) Cyclic, branched, or linear, completely fluorinated alkanes;
  - (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
  - (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
  - (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9VAC5-40-30 or 9VAC5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

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# Regulations

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3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly reactive compounds in the emissions of the source.

4. Exclusion of the compounds listed in subdivision 1 of this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

5. Reserved.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

VA.R. Doc. No. R17-4896; Filed March 3, 2017, 8:47 a.m.

## VIRGINIA WASTE MANAGEMENT BOARD

### Final Regulation

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

**Title of Regulation:** **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-800, 9VAC20-81-810, 9VAC20-81-820).**

**Statutory Authority:** § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Parts 257 and 258.

**Effective Date:** May 3, 2017.

**Agency Contact:** Justin L. Williams, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4185, FAX (804) 698-4234, TTY (804) 698-4021, or email justin.williams@deq.virginia.gov.

**Summary:**

*On August 5, 2016, the U.S. Environmental Protection Agency (EPA) published a final rule in the Federal Register titled "Hazardous and Solid Waste Management*

*System: Disposal of Coal Combustion Residuals from Electric Utilities; Extension of Compliance Deadlines for Certain Inactive Surface Impoundments; Response to Partial Vacatur." The federal rule became effective October 4, 2016.*

*The revised federal rule modified the requirements certain inactive coal combustion residuals (CCR) surface impoundments are required to meet. Prior to this rule, federal regulations allowed inactive CCR surface impoundments to complete closure by April 17, 2018, and meet other notification requirements (early closure provision) to avoid having to meet the same requirements as existing CCR surface impoundments. In response to an order of the United States Court of Appeals for the District of Columbia Circuit, the federal rule now requires inactive CCR surface impoundments that were complying with the early closure provision to meet the same requirements as existing CCR surface impoundments, which includes meeting the requirements for design, operating criteria, groundwater monitoring, corrective action, closure care, and post-closure care. EPA extended the compliance deadlines for qualifying inactive CCR surface impoundments to comply with these requirements.*

*This regulatory action amends Virginia's Solid Waste Management Regulations to incorporate the recently adopted federal standards concerning coal combustion residuals.*

#### Part VIII

#### Requirements for the Management of Coal Combustion Residuals

#### **9VAC20-81-800. Adoption of 40 CFR Part 257 Subpart D by reference - Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments.**

A. Except as otherwise provided, those regulations of the U.S. Environmental Protection Agency set forth in Subpart D of 40 CFR Part 257 promulgated as of October 4, 2016, wherein they relate to standards for the disposal of coal combustion residuals in landfills and surface impoundments, are hereby incorporated as part of the Virginia Solid Waste Management Regulations, 9VAC20-81. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are a part of incorporated sections of 40 CFR Part 257 are also hereby incorporated as part of the Virginia Solid Waste Management Regulations.

B. In all locations in this chapter where text from 40 CFR Part 257 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into this chapter. The following terms, where they appear in the Code of Federal Regulations shall, for the purpose of this chapter, have the following meanings or interpretations:

1. "Director" shall supplant the "State Director" wherever it appears.

2. "Qualified professional engineer" or "engineer" means a "professional engineer" certified to practice in the Commonwealth of Virginia as defined in 9VAC20-81-10.

C. Definitions in 40 CFR 257.53 are incorporated by reference into this part and are applicable to CCR landfills and CCR surface impoundments.

**9VAC20-81-810. Permits for CCR landfills and CCR surface impoundments.**

A. CCR landfills are a specific type of industrial landfill. Permit requirements for industrial landfills are outlined in Part III (9VAC20-81-100 et seq.) and Part V (9VAC20-81-400 et seq.) of this chapter and must be complied with in addition to the requirements applicable to CCR landfills found in this part. Existing CCR landfills shall submit a complete permit application no later than October 17, 2017. Owners and operators of new CCR landfills are required to submit to the director a permit application for an industrial landfill that meets the requirements of this chapter and receive a permit for an industrial landfill prior to the initial receipt of CCR in the CCR unit. An application for a CCR landfill or lateral expansion of a CCR landfill shall include the following:

1. Location restriction demonstrations required by 40 CFR 257.60, 40 CFR 257.61, 40 CFR 257.62, 40 CFR 257.63, and 40 CFR 257.64, as applicable;
2. Description of the CCR landfill's design criteria required by 40 CFR 257.70 (new CCR landfill or lateral expansion of a CCR landfill);
3. Description of how the CCR landfill's operating criteria required by 40 CFR 257.80, 40 CFR 257.81, and 40 CFR 257.84 are met;
4. Explanation of how groundwater monitoring and corrective action criteria required by 40 CFR 257.90, 40 CFR 257.91, 40 CFR 257.93, 40 CFR 257.94, 40 CFR 257.95, 40 CFR 257.96, 40 CFR 257.97, and 40 CFR 257.98 are met;
5. Explanation of how closure and post-closure care requirements found in 40 CFR 257.101, 40 CFR 257.102, 40 CFR 257.103, and 40 CFR 257.104 will be met;
6. Website address for information required to be posted by 40 CFR 257.105, 40 CFR 257.106, and 40 CFR 257.107; and
7. Part III requirements concerning industrial landfills. If more than one standard is listed, the more stringent standard is to be complied with unless the director has granted a variance to a more stringent state specific standard.

B. Existing CCR surface impoundments are required to submit to the director a permit application for a CCR surface impoundment permit that meets the requirements of this chapter before October 17, 2017. New CCR surface impoundments are required to submit to the director a permit application for a surface impoundment that meets the

requirements of this chapter prior to the initial receipt of CCR in the CCR unit. An application for a CCR surface impoundment shall include the following:

1. Location restriction demonstrations required by 40 CFR 257.60, 40 CFR 257.61, 40 CFR 257.62, 40 CFR 257.63, and 40 FR 257.64;
2. Description of the CCR surface impoundment's design criteria required by 40 CFR 257.71 (existing CCR surface impoundments), 40 CFR 257.72 (new CCR surface impoundments and lateral expansions), 40 CFR 257.73 (existing CCR surface impoundments), and 40 CFR 257.74 (new CCR surface impoundments and lateral expansions) as applicable;
3. Description of how the CCR surface impoundment's operating criteria required by 40 CFR 257.80, 40 CFR 257.82, and 40 CFR 257.83 are met;
4. Explanation of how groundwater monitoring and corrective action criteria required by 40 CFR 257.90, 40 CFR 257.91, 40 CFR 257.93, 40 CFR 257.94, 40 CFR 257.95, 40 CFR 257.96, 40 CFR 257.97, and 40 CFR 257.98 are met;
5. Explanation of how closure and post-closure care requirements found in 40 CFR 257.101, 40 CFR 257.102, 40 CFR 257.103, and 40 CFR 257.104 will be met; and
6. Website address for information required to be posted by 40 CFR 257.105, 40 CFR 257.106, and 40 CFR 257.107.

C. CCR landfills and new and existing surface impoundments are required to comply with the applicable permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter, including Virginia public participation requirements.

D. Inactive CCR surface impoundments were not subject to (i) this chapter during their operating life or (ii) a solid waste permit for operation. Inactive CCR surface impoundments are subject to a solid waste permit to address closure and post-closure, as applicable, except where the applicable requirements are included in an existing solid waste permit or a permit issued under State Water Control Law. Such permit shall include conditions to comply with applicable requirements established pursuant to 9VAC20-81-820.

**9VAC20-81-820. Inactive CCR surface impoundments.**

~~A. No later than December 17, 2015, the owner or operator of an inactive surface impoundment must prepare and place in the facility's operating record a notification of intent to initiate closure of the CCR surface impoundment.~~

~~B. An owner or operator of an inactive CCR surface impoundment shall complete closure of the CCR unit as specified in 40 CFR 257.100 no later than April 17, 2018, or submit a permit application for an existing CCR surface impoundment.~~



# Regulations

A. Inactive CCR surface impoundments are subject to all the requirements of an existing CCR surface impoundment in accordance with 40 CFR 257.100(a).

B. Inactive CCR surface impoundments are eligible for the alternative timeframes specified in 40 CFR 257.100(e)(2) through (e)(6) if the owner or operator:

1. Prepared and placed in the facility's operating record by December 17, 2015, a notification of intent to initiate closure of the inactive CCR surface impoundment;

2. Provided notification to the director by January 19, 2016, of the intent to initiate closure of the inactive CCR surface impoundment; and

3. Placed on its CCR website by January 19, 2016, the notification of intent to initiate closure of the inactive CCR surface impoundment.

C. Inactive CCR surface impoundments that did not complete the requirements of subdivisions B 1, B 2, and B 3 of this section are not eligible for the alternative timeframes specified in 40 CFR 257.100(e)(2) through (e)(6) and must be in compliance with the deadlines for an existing CCR surface impoundment.

VA.R. Doc. No. R17-4944; Filed March 1, 2017, 3:54 p.m.

## Final Regulation

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

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

Statutory Authority: §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC §§ 1809 through 1810; 49 CFR Parts 107, 170 through 180, 383, and 390 through 397.

Effective Date: May 3, 2017.

Agency Contact: Debra A. Harris, Planning and Policy Specialist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, or email [debra.harris@deq.virginia.gov](mailto:debra.harris@deq.virginia.gov).

### Summary:

*The Regulations Governing the Transportation of Hazardous Materials incorporate by reference certain federal regulations from Title 49 of the Code of Federal Regulations. This amendment updates the regulation to reflect the version of Title 49 of the Code of Federal Regulations as published on October 1, 2016.*

## Part III

### Compliance with Federal Regulations

#### 9VAC20-110-110. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the U.S. Secretary of Transportation with amendments promulgated as of October 1, ~~2015~~ 2016, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Special Permits. 49 CFR Part 107, Subpart B.
2. Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers in 49 CFR Part 107, Subpart F.
3. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.
4. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.
5. Specifications for Packagings in 49 CFR Part 178.
6. Specifications for Tank Cars in 49 CFR Part 179.
7. Continuing Qualification and Maintenance of Packagings in 49 CFR Part 180.
8. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R17-4978; Filed March 1, 2017, 1:36 p.m.

## TITLE 13. HOUSING

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

#### Extension of Public Comment Period

Title of Regulation: **13VAC5-31. Virginia Amusement Device Regulations (amending 13VAC5-31-40, 13VAC5-31-50).**

Statutory Authority: § 36-98.3 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Virginia Amusement Device Regulations (13VAC5-31) in the February 20, 2017, issue of the Virginia Register of Regulations ([33:13 V.A.R. 1469-1471 February 20, 2017](#)).

The public comment period has been extended through May 26, 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/viewstage.cfm?stageid=7819> by 11:59 p.m. on May 26, 2017.

A public hearing will be held on May 15, 2017, at 10 a.m., VHDA Virginia Housing Center 4224 Cox Road, Glen Allen, Virginia 23060. Oral and written comments are accepted at the public hearing.

**Agency Contact:** Elizabeth O. Rafferty, Policy and Legislative Director, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7011, FAX (804) 371-7090, TTY (804) 371-7089, or email [elizabeth.rafferty@dhcd.virginia.gov](mailto:elizabeth.rafferty@dhcd.virginia.gov).

VA.R. Doc. No. R16-4667; Filed March 17, 2017, 2:14 p.m.

#### Extension of Public Comment Period

**Title of Regulation:** **13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-11 through 13VAC5-51-155; adding 13VAC5-51-144.8; repealing 13VAC5-51-146).**

**Statutory Authority:** § 27-97 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Virginia Statewide Fire Prevention Code (13VAC5-51) in the February 20, 2017, issue of the Virginia Register of Regulations (33:13 V.A.R. 1471-1518 February 20, 2017).

The public comment period has been extended through May 26, 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/ViewStage.cfm?stageid=7820> by 11:59 p.m. on May 26, 2017.

A public hearing will be held on May 15, 2017, at 10 a.m., VHDA Virginia Housing Center 4224 Cox Road, Glen Allen, Virginia 23060. Oral and written comments are accepted at the public hearing.

**Agency Contact:** Elizabeth O. Rafferty, Policy and Legislative Director, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7011, FAX (804) 371-7090, TTY (804) 371-7089, or email [elizabeth.rafferty@dhcd.virginia.gov](mailto:elizabeth.rafferty@dhcd.virginia.gov).

VA.R. Doc. No. R16-4665; Filed March 17, 2017, 2:14 p.m.

#### Extension of Public Comment Period

**Title of Regulation:** **13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-10 through 13VAC5-63-50, 13VAC5-63-70, 13VAC5-63-80, 13VAC5-63-170, 13VAC5-63-200, 13VAC5-63-210, 13VAC5-63-220, 13VAC5-63-230 through 13VAC5-63-264, 13VAC5-63-270 through 13VAC5-63-330, 13VAC5-63-360, 13VAC5-63-370, 13VAC5-63-400, 13VAC5-63-410, 13VAC5-63-430, 13VAC5-63-434, 13VAC5-63-440,**

**13VAC5-63-450, 13VAC5-63-470, 13VAC5-63-480, 13VAC5-63-490, 13VAC5-63-510 through 13VAC5-63-540; adding 13VAC5-63-268, 13VAC5-63-431, 13VAC5-63-432.5, 13VAC5-63-433, 13VAC5-63-433.5, 13VAC5-63-434.5, 13VAC5-63-435, 13VAC5-63-439, 13VAC5-63-524, 13VAC5-63-545, 13VAC5-63-549; repealing 13VAC5-63-225, 13VAC5-63-350).**

**Statutory Authority:** § 36-98 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Virginia Uniform Statewide Building Code (13VAC5-63) in the February 20, 2017, issue of the Virginia Register of Regulations (33:13 V.A.R. 1518-1663 February 20, 2017).

The public comment period has been extended through May 26, 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/ViewStage.cfm?stageid=7821> by 11:59 p.m. on May 26, 2017.

A public hearing will be held on May 15, 2017, at 10 a.m., VHDA Virginia Housing Center 4224 Cox Road, Glen Allen, Virginia 23060. Oral and written comments are accepted at the public hearing.

**Agency Contact:** Elizabeth O. Rafferty, Policy and Legislative Director, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7011, FAX (804) 371-7090, TTY (804) 371-7089, or email [elizabeth.rafferty@dhcd.virginia.gov](mailto:elizabeth.rafferty@dhcd.virginia.gov).

VA.R. Doc. No. R16-4664; Filed March 17, 2017, 2:14 p.m.

#### Extension of Public Comment Period

**Title of Regulation:** **13VAC5-91. Virginia Industrialized Building Safety Regulations (amending 13VAC5-91-160, 13VAC5-91-180, 13VAC5-91-200, 13VAC5-91-240, 13VAC5-91-260, 13VAC5-91-270).**

**Statutory Authority:** § 36-73 of the Code of Virginia.

The Board of Housing and Community Development noticed a public comment period on amendments to the Virginia Industrialized Building Safety Regulations (13VAC5-91) in the February 20, 2017, issue of the Virginia Register of Regulations (33:13 V.A.R. 1663-1666 February 20, 2017).

The public comment period has been extended through May 26, 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/ViewStage.cfm?stageid=7822> by 11:59 p.m. on May 26, 2017.

# Regulations

A public hearing will be held on May 15, 2017, at 10 a.m., Virginia Housing Development Authority, Virginia Housing Center, 4224 Cox Road, Glen Allen, VA 23060. Oral and written comments are accepted at the public hearing.

Agency Contact: Elizabeth O. Rafferty, Policy and Legislative Director, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7011, FAX (804) 371-7090, TTY (804) 371-7089, or email [elizabeth.rafferty@dhdcd.virginia.gov](mailto:elizabeth.rafferty@dhdcd.virginia.gov).

VA.R. Doc. No. R16-4666; Filed March 17, 2017, 2:14 p.m.

## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Final Regulation

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

Title of Regulation: **16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (amend 16VAC25-85-1904.0, 16VAC25-85-1904.4, 16VAC25-85-1904.29, 16VAC25-85-1904.32, 16VAC25-85-1904.33, 16VAC25-85-1904.34, 16VAC25-85-1904.35, 16VAC25-85-1904.40).**

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

Effective Date: May 15, 2017.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, or email [regina.cobb@doli.virginia.gov](mailto:regina.cobb@doli.virginia.gov).

#### Summary:

*In a final rule, federal Occupational and Safety Health Administration (OSHA) amended its Recording and Reporting Occupational Injuries and Illnesses regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The amendments clarify the recordkeeping requirements for the (i) OSHA 300 Log, (ii) OSHA 301 Incident Report, and (iii) year-end records review, preparation of certification, and posting of the Form 300A annual summary. The amendments add no new*

*compliance obligations and do not require employers to make records of any injuries or illnesses for which records are not currently required to be made. In this regulatory action, the board is adopting this final rule.*

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On February 16, 2017, the Safety and Health Codes Board adopted federal OSHA's Final Rule on the Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness, as published in 81 FR 91809 through 81 FR 91810 on December 19, 2016, with an effective date of May 15, 2017.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Recording and Reporting Occupational Injuries and Illnesses is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

| <u>Federal Terms</u> | <u>VOSH Equivalent</u>             |
|----------------------|------------------------------------|
| 29 CFR               | VOSH Standard                      |
| Assistant Secretary  | Commissioner of Labor and Industry |
| Agency               | Department                         |
| January 18, 2017     | May 15, 2017                       |

VA.R. Doc. No. R17-5035; Filed March 6, 2017, 7:50 a.m.

#### Final Regulation

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

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.6, 16VAC25-90-1910.21, 16VAC25-90-1910.22, 16VAC25-90-1910.23, 16VAC25-90-1910.24, 16VAC25-90-1910.25, 16VAC25-90-1910.26, 16VAC25-90-1910.27,**

**16VAC25-90-1910.28, 16VAC25-90-1910.29, 16VAC25-90-1910.30, 16VAC25-90-1910.66, Appendix C to 16VAC25-90-1910.66, Appendix D to 16VAC25-90-1910.66, 16VAC25-90-1910.67, 16VAC25-90-1910.68, 16VAC25-90-1910.132, 16VAC25-90-1910.178, 16VAC25-90-1910.179, 16VAC25-90-1910.261, 16VAC25-90-1910.262, 16VAC25-90-1910.265, 16VAC25-90-1910.268, 16VAC25-90-1910.269; add 16VAC25-90-1910.139, 16VAC25-90-1910.140, Appendix C to Subpart I of Part 1910, Appendix D to Subpart I of Part 1910).**

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

Effective Date: May 15, 2017.

Agency Contact: Jennifer L. Rose, Virginia Occupational Safety and Health Safety Compliance Director, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-7776, or email jennifer.rose@doli.virginia.gov.

Summary:

*In a final rule, federal Occupational and Safety Health Administration (OSHA) revised and updated its general industry standards on walking-working surfaces to prevent and reduce injuries and fatalities associated with walking-working surface hazards. The final rule includes revised and new provisions addressing, for example, fixed ladders, rope descent systems, fall protection systems and criteria, and training on fall hazards and fall protection systems. The final rule also adds requirements on the design, performance, and use of personal fall protection systems. The final rule increases consistency between the general industry and construction standards and updates requirements to reflect advances in technology and to make the requirements consistent with more recent OSHA and national consensus standards.*

*In this regulatory action, the board is adopting this final rule.*

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On February 16, 2017, the Safety and Health Codes Board adopted federal OSHA's Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems), as published in 81 FR 82494 through 81 FR 83006) on November 18, 2016, with an effective date of May 15, 2017.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

| <u>Federal Terms</u> | <u>VOSH Equivalent</u>             |
|----------------------|------------------------------------|
| 29 CFR               | VOSH Standard                      |
| Assistant Secretary  | Commissioner of Labor and Industry |
| Agency               | Department                         |
| January 17, 2017     | May 15, 2017                       |

VA.R. Doc. No. R17-5036; Filed March 2, 2017, 12:47 p.m.

**Final Regulation**

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

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1000; adding 16VAC25-90-1910.1024; Appendix A to 16VAC25-90-1910.1024).**

**16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.1000; adding 16VAC25-100-1915.1024).**

**16VAC25-175. Federal Identical Construction Industry Standards (amending Appendix A to 16VAC25-175-1926.55; adding 16VAC25-175-1926.1124).**

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

Effective Date: May 15, 2017.

Agency Contact: Ron Graham, Director, Occupational Health Compliance, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-0574, or email ron.graham@doli.virginia.gov.

Summary:

*In a final rule, federal Occupational and Safety Health Administration (OSHA) amended its existing standards for occupational exposure to beryllium and beryllium compounds. The final rule (i) establishes new permissible exposure limits of 0.2 micrograms of beryllium per cubic meter of air as an 8-hour time-weighted average and 2.0 micrograms of beryllium per cubic meter of air as a short-term exposure limit determined over a sampling period of 15 minutes and (ii) includes requirements for exposure*

# Regulations

assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping. OSHA issued three separate standards covering general industry, shipyards, and construction, tailoring the requirements to the unique circumstances found in these sectors.

*In this regulatory action, the board is adopting this final rule.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyards Employment Standards), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On February 16, 2017, the Safety and Health Codes Board adopted federal OSHA's Occupational Exposure to Beryllium, as published in 82 FR 2470 through 82 FR 2757) on January 9, 2017, with an effective date of May 15, 2017.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards; Shipyards Employment Standards; and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

| <u>Federal Terms</u> | <u>VOSH Equivalent</u>             |
|----------------------|------------------------------------|
| 29 CFR               | VOSH Standard                      |
| Assistant Secretary  | Commissioner of Labor and Industry |
| Agency               | Department                         |
| March 10, 2017       | May 15, 2017                       |

V.A.R. Doc. No. R17-5037; Filed March 2, 2017, 12:34 p.m.

## Final Regulation

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

interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** 16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1000).

16VAC25-100. Federal Shipyards Employment Standards (amending 16VAC25-100-1915.1000).

16VAC25-175. Federal Identical Construction Industry Standards (amending Appendix A to 16VAC25-175-1926.55).

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

**Effective Date:** May 15, 2017.

**Agency Contact:** Ron Graham, Director, Occupational Health Compliance, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-0574, or email ron.graham@doli.virginia.gov.

### Summary:

*In a final rule, federal Occupational and Safety Health Administration (OSHA) corrected typographical errors in its final rule on occupational exposure to respirable crystalline silica published in the Federal Register on March 25, 2016. The revisions include corrections to the formulas for permissible exposure limits in the pre-2016 final rule.*

*In this regulatory action, the board is adopting this correcting final rule.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyards Employment Standards), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On February 16, 2017, the Safety and Health Codes Board adopted federal OSHA's Occupational Exposure to Respirable Crystalline Silica; Correction, as published in 81 FR 60272 through 81 FR 60274 on September 1, 2016, with an effective date of May 15, 2017.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards; Shipyards Employment Standards; and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

|                      |                                    |
|----------------------|------------------------------------|
| <u>Federal Terms</u> | <u>VOSH Equivalent</u>             |
| 29 CFR               | VOSH Standard                      |
| Assistant Secretary  | Commissioner of Labor and Industry |
| Agency               | Department                         |
| September 1, 2016    | May 15, 2017                       |

VA.R. Doc. No. R17-5038; Filed March 2, 2017, 12:48 p.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**FAIR HOUSING BOARD**

**Fast-Track Regulation**

Title of Regulation: **18VAC62-10. Public Participation Guidelines (amending 18VAC62-10-50).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: May 3, 2017.

Effective Date: June 1, 2017.

Agency Contact: Christine Martine, Executive Director, Fair Housing Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (866) 826-8863, or email fairhousing@dpor.virginia.gov.

Basis: The Fair Housing 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 regulatory board. The amendments conform to Chapter 795 of the 2012 Acts of Assembly, which provides that in formulating any regulation or in evidentiary hearings on regulations, an interested party shall be entitled to be accompanied by and represented by counsel or other qualified representative.

Purpose: The purpose of this action is clarity and conformity to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Participation by the public in the regulatory process is essential to assist the board in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: As the proposed amendment merely conforms the regulation to the underlying statute (subsection B of § 2.2-4007.02 of the Code of Virginia), the rulemaking is not expected to be

controversial and therefore appropriate for the fast-track process.

Substance: The amendment provides that interested persons may be accompanied by and represented by counsel or other representative when presenting their views in the promulgation of any regulatory action.

Issues: Other than conformity and consistency between law and regulation, there are no primary advantages or disadvantages to the public in implementing the amended provisions, since the provisions are already in the Code of Virginia. There are no anticipated primary advantages and disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,<sup>1</sup> the Fair Housing Board (Board) proposes to update its regulation to allow persons interested in the development of regulations to be accompanied by and represented by counsel or other representative.

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

Estimated Economic Impact. Chapter 795 of the 2012 Acts of Assembly allows persons interested in the development of regulations to be accompanied by and represented by counsel or other representative. The main purpose of the public participation guidelines is to facilitate citizen participation in rulemaking. Allowing interested parties to be accompanied by and represented by counsel or other parties is beneficial to the rulemaking process.

The proposed change updates the regulation to reflect the existing right of interested parties under the statute since 2012. Thus, no significant economic impact is expected upon promulgation of this amendment other than improving the consistency between the statute and the regulation.

Businesses and Entities Affected. The proposed amendment to Board's public participation guidelines potentially affects all citizens and entities in the Commonwealth who have an interest in its regulations.

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

Projected Impact on Employment. No impact on employment is expected upon promulgation of the proposed amendment.

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

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and

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# Regulations

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(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 would have the same effect as that discussed above on small businesses interested in the development of Board's regulations.

**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 non-small businesses.

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

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

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<sup>1</sup> <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795>

**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**

**18VAC62-10-50. 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 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. R17-4931; Filed March 8, 2017, 8:51 a.m.

**BOARD OF MEDICINE**

**Emergency Regulation**

**Title of Regulation:** **18VAC85-21. Regulations Governing Prescribing of Opioids and Buprenorphine (adding 18VAC85-21-10 through 18VAC85-21-170).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2928.2 of the Code of Virginia.

**Effective Dates:** March 15, 2017, through September 14, 2018.

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

**Preamble:**

*Regulations Governing Prescribing of Opioids and Buprenorphine are being promulgated as emergency regulations to address the opioid abuse crisis in Virginia. On November 16, 2016, State Health Commissioner Marissa Levine declared the opioid addiction crisis to be a public health emergency in Virginia. In a news conference about the opioid crisis, Governor McAuliffe noted that the declaration would "provide a framework for further actions to fight it, and to save Virginians' lives." One of those "further actions" is adoption of emergency*

regulations by the Board of Medicine setting out rules for prescribing opioids and buprenorphine. Section 2.2-4011 of the Code of Virginia authorizes an agency to adopt emergency regulations when they "are necessitated by an emergency situation." The declaration by Commissioner Levine is indeed evidence that such an emergency situation exists in the Commonwealth. In addition, the board is required to adopt regulations by Chapter 291 of the 2017 Acts of Assembly, effective March 3, 2017.

The regulations establish the practitioners to whom the rules apply and the exceptions or nonapplicability. Regulations for the management of acute pain include requirements for the evaluation of the patient, limitations on quantity and dosage, and medical recordkeeping. Regulations for management of chronic pain include requirements for evaluation and treatment, including a treatment plan, informed consent and agreement, consultation with other providers, and medical recordkeeping. Regulations for prescribing of buprenorphine include requirements for patient assessment and treatment planning, limitations on prescribing the buprenorphine mono-product (without naloxone), dosages, co-prescribing of other drugs, consultation, and medical records for opioid addiction treatment.

## CHAPTER 21 REGULATIONS GOVERNING PRESCRIBING OF OPIOIDS AND BUPRENORPHINE

### Part I General Provisions

#### **18VAC85-21-10. Applicability.**

A. This chapter shall apply to doctors of medicine, osteopathic medicine, and podiatry and to physician assistants.

B. This chapter shall not apply to:

1. The treatment of acute or chronic pain related to (i) cancer, (ii) a patient in hospice care, or (iii) a patient in palliative care;
2. The treatment of acute or chronic pain during an inpatient hospital admission or in a nursing home or an assisted living facility that uses a sole source pharmacy; or
3. A patient enrolled in a clinical trial as authorized by state or federal law.

#### **18VAC85-21-20. Definitions.**

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

"Acute pain" means pain that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances may be prescribed for no more than three months.

"Board" means the Virginia Board of Medicine.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through IV.

"FDA" means the U.S. Food and Drug Administration.

"MME" means morphine milligram equivalent.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"SAMHSA" means the federal Substance Abuse and Mental Health Services Administration.

### Part II Management of Acute Pain

#### **18VAC85-21-30. Evaluation of the acute pain patient.**

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, the practitioner shall give a short-acting opioid in the lowest effective dose for the fewest possible days.

B. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, the prescriber shall perform a history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance abuse.

#### **18VAC85-21-40. Treatment of acute pain with opioids.**

A. Initiation of opioid treatment for patients with acute pain shall be with short-acting opioids.

1. A prescriber providing treatment for acute pain shall not prescribe a controlled substance containing an opioid in a quantity that exceeds a seven-day supply as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the medical record. This shall also apply to prescriptions of a controlled substance containing an opioid upon discharge from an emergency department.

2. An opioid prescribed as part of treatment for a surgical procedure shall be for no more than 14 consecutive days in accordance with manufacturer's direction and within the immediate perioperative period, unless extenuating circumstances are clearly documented in the medical record.

B. Initiation of opioid treatment for all patients shall include the following:

1. The practitioner shall carefully consider and document in the medical record the reasons to exceed 50 MME/day.



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# Regulations

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2. Prior to exceeding 120 MME/day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist.

3. Naloxone shall be prescribed for any patient when risk factors of prior overdose, substance abuse, doses in excess of 120 MME/day, or concomitant benzodiazepine is present.

C. Due to a higher risk of fatal overdose when opioids are prescribed with benzodiazepines, sedative hypnotics, carisoprodol, and tramadol, the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

D. Buprenorphine is not indicated for acute pain in the outpatient setting, except when a prescriber who has obtained a SAMHSA waiver is treating pain in a patient whose primary diagnosis is the disease of addiction.

## **18VAC85-21-50. Medical records for acute pain.**

The medical record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed or administered to include the date, type, dosage, and quantity prescribed or administered.

### **Part III**

#### **Management of Chronic Pain**

## **18VAC85-21-60. Evaluation of the chronic pain patient.**

A. Prior to initiating management of chronic pain with a controlled substance containing an opioid, a medical history and physical examination, to include a mental status examination, shall be performed and documented in the medical record, including:

1. The nature and intensity of the pain;
2. Current and past treatments for pain;
3. Underlying or coexisting diseases or conditions;
4. The effect of the pain on physical and psychological function, quality of life, and activities of daily living;
5. Psychiatric, addiction, and substance abuse history of the patient and any family history of addiction or substance abuse;
6. A urine drug screen or serum medication level;
7. A query of the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia;
8. An assessment of the patient's history and risk of substance abuse; and
9. A request for prior applicable records.

B. Prior to initiating opioid treatment for chronic pain, the practitioner shall discuss with the patient the known risks and benefits of opioid therapy and the responsibilities of the patient during treatment to include securely storing the drug

and properly disposing of any unwanted or unused drugs. The practitioner shall also discuss with the patient an exit strategy for the discontinuation of opioids in the event they are not effective.

## **18VAC85-21-70. Treatment of chronic pain with opioids.**

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids.

B. In initiating and treating with an opioid, the practitioner shall:

1. Carefully consider and document in the medical record the reasons to exceed 50 MME/day;
2. Prior to exceeding 120 MME/day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist.
3. Prescribe naloxone for any patient when risk factors of prior overdose, substance abuse, doses in excess of 120 MME/day, or concomitant benzodiazepine is present; and
4. Document the rationale to continue opioid therapy every three months.

C. Buprenorphine may be prescribed or administered for chronic pain in formulation and dosages that are FDA-approved for that purpose.

D. Due to a higher risk of fatal overdose when opioids, including buprenorphine, are given with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol, the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses of these medications if prescribed.

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation and treatment if indicated.

## **18VAC85-21-80. Treatment plan for chronic pain.**

A. The medical record shall include a treatment plan that states measures to be used to determine progress in treatment, including pain relief and improved physical and psychosocial function, quality of life, and daily activities.

B. The treatment plan shall include further diagnostic evaluations and other treatment modalities or rehabilitation that may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

C. The prescriber shall document in the medical record the presence or absence of any indicators for medication misuse, abuse, or diversion and shall take appropriate action.

**18VAC85-21-90. Informed consent and agreement for treatment for chronic pain.**

A. The practitioner shall document in the medical record informed consent, to include risks, benefits, and alternative approaches, prior to the initiation of opioids for chronic pain.

B. There shall be a written treatment agreement signed by the patient in the medical record that addresses the parameters of treatment, including those behaviors that will result in referral to a higher level of care, cessation of treatment, or dismissal from care.

C. The treatment agreement shall include notice that the practitioner will query and receive reports from the Prescription Monitoring Program and permission for the practitioner to:

1. Obtain urine drug screens or serum medication levels when requested; and
2. Consult with other prescribers or dispensing pharmacists for the patient.

D. Expected outcomes shall be documented in the medical record including improvement in pain relief and function or simply in pain relief. Limitations and side effects of chronic opioid therapy shall be documented in the medical record.

**18VAC85-21-100. Opioid therapy for chronic pain.**

A. The practitioner shall review the course of pain treatment and any new information about the etiology of the pain and the patient's state of health at least every three months.

B. Continuation of treatment with opioids shall be supported by documentation of continued benefit from such prescribing. If the patient's progress is unsatisfactory, the practitioner shall assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

C. The practitioner shall check the Prescription Monitoring Program at least every three months after the initiation of treatment.

D. The practitioner shall order and review a urine drug screen or serum medication levels at the initiation of chronic pain management and at least every three months for the first year of treatment and at least every six months thereafter.

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

**18VAC85-21-110. Additional consultations.**

A. When necessary to achieve treatment goals, the prescriber shall refer the patient for additional evaluation and treatment.

B. When a prescriber makes the diagnosis of opioid use disorder, treatment for opioid use disorder shall be initiated or the patient shall be referred for evaluation and treatment.

**18VAC85-21-120. Medical records for chronic pain.**

The prescriber shall keep current, accurate, and complete records in an accessible manner readily available for review to include:

1. The medical history and physical examination;
2. Past medical history;
3. Applicable records from prior treatment providers or any documentation of attempts to obtain those records;
4. Diagnostic, therapeutic, and laboratory results;
5. Evaluations and consultations;
6. Treatment goals;
7. Discussion of risks and benefits;
8. Informed consent and agreement for treatment;
9. Treatments;
10. Medications (including date, type, dosage, and quantity prescribed and refills);
11. Patient instructions; and
12. Periodic reviews.

**Part IV**

**Prescribing of Buprenorphine for Addiction Treatment**

**18VAC85-21-130. General provisions pertaining to prescribing of buprenorphine for addiction treatment.**

A. Practitioners engaged in office-based opioid addiction treatment with buprenorphine shall have obtained a SAMHSA waiver and the appropriate U.S. Drug Enforcement Administration registration.

B. Practitioners shall abide by all federal and state laws and regulations governing the prescribing of buprenorphine for the treatment of opioid use disorder.

C. Physician assistants and nurse practitioners who have obtained a SAMHSA waiver shall only prescribe buprenorphine for opioid addiction pursuant to a practice agreement with a waived doctor of medicine or doctor of osteopathic medicine.

D. Practitioners engaged in medication-assisted treatment shall either provide counseling in their practice or refer the patient to a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, who has the education and experience to provide substance abuse counseling. The practitioner shall document provision of counseling or referral in the medical record.

**18VAC85-21-140. Patient assessment and treatment planning for addiction treatment.**

A. A practitioner shall perform and document an assessment that includes a comprehensive medical and psychiatric history, substance abuse history, family history and psychosocial supports, appropriate physical examination, urine drug screen, pregnancy test for women of childbearing age and ability, a check of the Prescription Monitoring Program, and, when clinically indicated, infectious disease

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# Regulations

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testing for human immunodeficiency virus, hepatitis B, hepatitis C, and tuberculosis.

B. The treatment plan shall include the practitioner's rationale for selecting medication-assisted treatment, patient education, written informed consent, how counseling will be accomplished, and a signed treatment agreement that outlines the responsibilities of the patient and the prescriber.

## **18VAC85-21-150. Treatment with buprenorphine for addiction.**

A. Buprenorphine without naloxone (buprenorphine mono-product) shall not be prescribed except:

1. When a patient is pregnant;
2. When converting a patient from methadone or buprenorphine mono-product to buprenorphine containing naloxone for a period not to exceed seven days; or
3. In formulations other than tablet form for indications approved by the FDA.

B. Buprenorphine mono-product tablets may be administered directly to patients in federally licensed opioid treatment programs. With the exception of those conditions listed in subsection A of this section, only the buprenorphine product containing naloxone shall be prescribed or dispensed for use off site from the program.

C. The evidence for the decision to use buprenorphine mono-product shall be fully documented in the medical record.

D. Due to a higher risk of fatal overdose when buprenorphine is prescribed with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol, the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

E. Prior to starting medication-assisted treatment, the practitioner shall perform a check of the Prescription Monitoring Program.

F. During the induction phase, except for medically indicated circumstances as documented in the medical record, patients should be started on no more than eight milligrams of buprenorphine per day. The patient shall be seen by the prescriber at least once a week.

G. During the stabilization phase, the prescriber shall increase the daily dosage of buprenorphine in safe and effective increments to achieve the lowest dose that avoids intoxication, withdrawal, or significant drug craving.

H. Practitioners shall take steps to reduce the chances of buprenorphine diversion by using the lowest effective dose, appropriate frequency of office visits, pill counts, and checks of the Prescription Monitoring Program. The practitioner shall also require urine drug screens or serum medication

levels at least every three months for the first year of treatment and at least every six months thereafter.

I. Documentation of the rationale for prescribed doses exceeding 16 milligrams of buprenorphine per day shall be placed in the medical record. Dosages exceeding 24 milligrams of buprenorphine per day shall not be prescribed.

J. The practitioner shall incorporate relapse prevention strategies into counseling or assure that they are addressed by a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, who has the education and experience to provide substance abuse counseling.

## **18VAC85-21-160. Special populations in addiction treatment.**

A. Pregnant women shall be treated with the buprenorphine mono-product, usually 16 milligrams per day or less.

B. Patients younger than the age of 16 years shall not be prescribed buprenorphine for addiction treatment unless such treatment is approved by the FDA.

C. The progress of patients with chronic pain shall be assessed by reduction of pain and functional objectives that can be identified, quantified, and independently verified.

D. Practitioners shall (i) evaluate patients with medical comorbidities by history, physical exam, appropriate laboratory studies and (ii) be aware of interactions of buprenorphine with other prescribed medications.

E. Practitioners shall not undertake buprenorphine treatment with a patient who has psychiatric comorbidities and is not stable. A patient who is determined by the prescriber to be psychiatrically unstable shall be referred for psychiatric evaluation and treatment prior to initiating medication-assisted treatment.

## **18VAC85-21-170. Medical records for opioid addiction treatment.**

A. Records shall be timely, accurate, legible, complete, and readily accessible for review.

B. The treatment agreement and informed consent shall be maintained in the medical record.

C. Confidentiality requirements of 42 CFR, Part 2 shall be followed.

D. Compliance with 18VAC85-20-27, which prohibits willful or negligent breach of confidentiality or unauthorized disclosure of confidential Prescription Monitoring Program information, shall be maintained.

VA.R. Doc. No. R17-5033; Filed March 14, 2017, 3:12 p.m.

## **BOARD OF NURSING**

### **Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Nursing is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards

served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Nursing will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations: 18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-30).**

**18VAC90-50. Regulations Governing the Licensure of Massage Therapists (amending 18VAC90-50-30).**

**18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-30).**

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

Effective Date: May 3, 2017.

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

Summary:

*The amendments (i) reduce the biennial renewal fees for the renewal years of 2017-2019 for registered nurses, licensed practical nurses, certified nurse specialists, and licensed massage therapists and (ii) reduce the annual renewal fee for the renewal year of 2017-2018 for registered medication aides.*

**18VAC90-19-30. Fees.**

A. Fees required by the board are:

|   |       |
|---|-------|
| 1. Application for licensure by examination - RN  | \$190 |
| 2. Application for licensure by endorsement - RN  | \$190 |
| 3. Application for licensure by examination - LPN | \$170 |
| 4. Application for licensure by endorsement - LPN | \$170 |
| 5. Reapplication for licensure by examination     | \$50  |
| 6. Biennial licensure renewal - RN                | \$140 |
| 7. Biennial inactive licensure renewal - RN       | \$70  |
| 8. Biennial licensure renewal - LPN               | \$120 |
| 9. Biennial inactive licensure renewal - LPN      | \$60  |
| 10. Late renewal - RN                             | \$50  |
| 11. Late renewal - LPN                            | \$40  |
| 12. Reinstatement of lapsed license - RN          | \$225 |
| 13. Reinstatement of lapsed license - LPN         | \$200 |
| 14. Reinstatement of suspended or revoked license | \$300 |
| 15. Duplicate license                             | \$15  |
| 16. Replacement wall certificate                  | \$25  |
| 17. Verification of license                       | \$35  |

|  |       |
|--|-------|
| 18. Transcript of all or part of applicant or licensee records | \$35  |
| 19. Returned check charge                                      | \$35  |
| 20. Application for CNS registration                           | \$130 |
| 21. Biennial renewal of CNS registration                       | \$80  |
| 22. Reinstatement of lapsed CNS registration                   | \$125 |
| 23. Verification of CNS registration to another jurisdiction   | \$35  |
| 24. Late renewal of CNS registration                           | \$35  |

B. For renewal of licensure or registration from July 1, 2017, through June 30, 2019, the following fees shall be in effect:

|   |              |
|---|--------------|
| <u>1. Biennial licensure renewal - RN</u>           | <u>\$105</u> |
| <u>2. Biennial inactive licensure renewal - RN</u>  | <u>\$52</u>  |
| <u>3. Biennial licensure renewal - LPN</u>          | <u>\$90</u>  |
| <u>4. Biennial inactive licensure renewal - LPN</u> | <u>\$45</u>  |
| <u>5. Biennial renewal of CNS registration</u>      | <u>\$60</u>  |

**18VAC90-50-30. Fees.**

A. Fees listed in this section shall be payable to the Treasurer of Virginia and shall not be refunded unless otherwise provided.

B. Fees required by the board are:

|  |       |
|--|-------|
| 1. Application and initial licensure                       | \$140 |
| 2. Biennial renewal  | \$95  |
| 3. Late renewal  | \$30  |
| 4. Reinstatement of licensure                              | \$150 |
| 5. Reinstatement after suspension or revocation            | \$200 |
| 6. Duplicate license                                       | \$15  |
| 7. Replacement wall certificate                            | \$25  |
| 8. Verification of licensure                               | \$35  |
| 9. Transcript of all or part of applicant/licensee records | \$35  |
| 10. Returned check charge                                  | \$35  |

C. For renewal of licensure from July 1, 2017, through June 30, 2019, the following fee shall be in effect:

|                         |             |
|-------------------------|-------------|
| <u>Biennial renewal</u> | <u>\$71</u> |
|-------------------------|-------------|

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# Regulations

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## 18VAC90-60-30. Fees.

A. The following fees shall apply:

|  |       |
|--|-------|
| 1. Application for program approval  | \$500 |
| 2. Application for registration as a medication aide                       | \$50  |
| 3. Annual renewal for medication aide                                      | \$30  |
| 4. Late renewal  | \$15  |
| 5. Reinstatement of registration   | \$90  |
| 6. Returned check  | \$35  |
| 7. Duplicate registration  | \$15  |
| 8. Reinstatement following suspension, mandatory suspension, or revocation | \$120 |

B. Fees shall not be refunded once submitted.

C. The fee for the competency evaluation shall be paid directly to the examination service contracted by the board for its administration.

D. For renewal of registration from July 1, 2017, through June 30, 2018, the following fee shall be in effect:

|   |             |
|---|-------------|
| <u>Annual renewal for medication aide</u> | <u>\$22</u> |
|---|-------------|

VA.R. Doc. No. R17-5034; Filed March 3, 2017, 4:00 p.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

### Forms

**REGISTRAR'S NOTICE:** Forms used in administering the following regulation have been filed by the Department of Professional and Occupational Regulation. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

**Title of Regulation: 18VAC120-40. Virginia Professional Boxing and Wrestling Events Regulations.**

**Contact Information:** Kate Nobsisch, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email [kate.nobsisch@dpor.virginia.gov](mailto:kate.nobsisch@dpor.virginia.gov).

FORMS (18VAC120-40)

~~Wrestling License Application, A511-4101LIC v2 (eff. 1/2015)~~

~~Boxing License Application, A511-4102LIC v2 (eff. 1/2015)~~

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

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

~~Wrestling Promoter License Application, A511-4106LIC v2 (eff. 9/2013)~~

~~Wrestling Event License Application, A511-4107LIC v2 (eff. 1/2014)~~

~~Boxing Event License Application, A511-4108LIC v2 (eff. 1/2014)~~

~~Boxing Promoter License Application, A511-4110LIC v1 (eff. 9/2012)~~

~~Limited (Temporary) Wrestling License Application, A511-4121LIC v2 (eff. 1/2015)~~

~~Limited (Temporary) Boxing License Application, A511-4122LIC v2 (eff. 1/2015)~~

~~Martial Arts License Application, A511-4123LIC v4 (rev. 8/2016)~~

~~Martial Arts License Application Onsite, A511-4123LIC v5 (rev. 8/2016)~~

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

~~Amateur Sanctioning Organization Experience Verification Form, A511-4130EXP v2 (rev. 7/2016)~~

~~Event Cash Bond Form, A511-41ECBOND (eff. 9/2012)~~

~~Event Surety Bond Form, A511-41EVBOND (eff. 9/2012)~~

~~Event Card Additions and/or Deletions Form, A511-41EVCHG (eff. 9/2012)~~

~~Promoter Payout Report, A511-41PAYREP (eff. 9/2012)~~

~~Promoter's Fee Report, A511-41PFR (eff. 9/2012)~~

~~Gate Fee Report, A511-41GFR v2 (eff. 10/2015)~~

~~Criminal Conviction Reporting Form, A406-01CCR v1 (eff. 5/2015)~~

### Boxing Forms

[Boxer/Limited Boxer License Application, A511-4102 22LIC-v1 \(eff. 9/2016\)](#)

[Boxing/Martial Arts Event License Application and Proposed Boxing/Martial Arts Bout Card, A511-4108LIC-v4 \(eff. 12/2016\)](#)

[Additions/Substitutions/Deletions to Proposed Boxing/Martial Arts Bout Card, A511-4108AD BMA-v1 \(eff. 12/2016\)](#)

### Martial Arts Forms

[Martial Artist/Limited Martial Artist License Application, A511-4122 23LIC-v1 \(eff. 9/2016\)](#)

[Boxing/Martial Arts Event License Application and Proposed Boxing/Martial Arts Bout Card, A511-4108LIC-v4 \(eff. 12/2016\)](#)

[Additions/Substitutions/Deletions to Proposed Boxing/Martial Arts Bout Card, A511-4108AD BMA-v1 \(eff. 12/2016\)](#)

Wrestling Forms

[Wrestler/Limited Wrestler License Application, A511-4101 21LIC-v1 \(eff. 9/2016\)](#)

[Wrestling Event License Application and Proposed Wrestling Bout Card, A511-4107LIC-v4 \(eff. 12/2016\)](#)

[Additions/Substitutions/Deletions to Proposed Wrestling Bout Card, A511-4107ADBC-v1 \(eff. 12/2016\)](#)

General Forms

[Manager License Application, A511-4103LIC-v1 \(eff. 9/2016\)](#)

[Matchmaker License Application, A511-4104LIC-v1 \(eff. 9/2016\)](#)

[Promoter License Application, A511-4106 10LIC-v1 \(eff. 9/2016\)](#)

[Trainer, Second or Cut Man License Application, A511-4105LIC-v5 \(eff. 9/2016\)](#)

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

[Amateur Sanctioning Organization - Experience Verification Form, A511-4130EXP-v2 \(eff. 7/2016\)](#)

[Event Cash Bond Form, A511-41ECBOND-v2 \(eff. 12/2015\)](#)

[Event Surety Bond Form, A511-41EVBOND-v2 \(eff. 12/2015\)](#)

[Gate Fee Report, A511-41GFR-v3 \(eff. 7/2016\)](#)

[Promoter Payout Report, A511-41PAYPREP-v2 \(eff. 12/2015\)](#)

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

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

[Denial of Licensure Reporting Form, A406-01DEN-v1 \(eff. 5/2015\)](#)

VA.R. Doc. No. R17-5027; Filed March 10, 2017, 1:05 p.m.

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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 63 (2017)

### **DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA DUE TO A SEVERE WINTER WEATHER EVENT**

#### Importance of the Issue

On this date, March 13th, 2017, I am declaring a state of emergency to exist for the Commonwealth of Virginia due to severe winter weather that is expected to affect portions of the Commonwealth beginning on March 13, 2017, creating the potential for significant snow accumulation, hazardous road conditions, and high winds. The storm may create transportation issues and significant power outages.

The health and general welfare of the Commonwealth's citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of this incident constitute a disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on this date, March 13th, 2017, whereby I proclaimed that a state of emergency exists, and I directed that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the winter storm, alleviate any conditions resulting from the incident, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible.

Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I am also directing that the Virginia National Guard and the Virginia Defense Force be called forth to state active duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security, may find necessary.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I

hereby order the following protective and restoration measures:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, along with other appropriate state agency plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VEST coordinate state actions in support of affected localities, other mission assignments to agencies designated in the COVEOP, and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety and Homeland Security, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technologies Agency, and with the consultation of the Secretary of Public Safety and Homeland Security, making all systems assets available for use in providing adequate communications, intelligence, and warning capabilities for the incident, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the winter storm, as appropriate. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response, or recovery effort, pursuant to § 44-146.17(1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the VEOC, acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Also, in those localities that have declared a local emergency pursuant to § 44-146.21 of the Code of Virginia, if the local governing body determines that controlling movement of persons is deemed necessary for the preservation of life, public safety, or other emergency mitigation, response, or recovery effort, pursuant to § 44-146.17(1) of the Code of Virginia, I authorize the control of ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State Coordinator of Emergency Management and the VEOC, shall determine. Violations of any order to citizens to

evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies, livestock or poultry, feed or other critical supplies for livestock or poultry, heating oil, motor fuels, or propane, or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. Weight exemptions are not valid on interstate highways or on posted structures for restricted weight unless there is an associated Federal emergency declaration.

All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This Emergency Declaration implements limited relief from the provisions 49 CFR 390-399. Accordingly, the State Coordinator of Emergency Management recognizes the exemption for hours of service by any carrier when transporting essential emergency relief supplies, passengers, property, livestock, poultry, equipment, food, feed for livestock or poultry, fuel, construction materials, and other critical supplies to or from any portion of the Commonwealth for purpose of providing direct relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia

and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19VAC30-20-40(B) of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety and Homeland Security in consultation with the Secretary of Transportation, whichever is earlier. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement this order as set forth in § 2.2-104 of the Code of Virginia.

G. The authorization of a maximum of \$250,000 in state sum sufficient funds for state and local governments mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act. This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, \$200,000, or more if available, is authorized for the Department of Military Affairs for the state's portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

H. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

I. Designation of members and personnel of volunteer, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Community Emergency Response Teams (CERTs), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(a) and (f) of the Code of Virginia,



in the performance of their specific disaster-related mission assignments.

J. The authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

K. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible during a time of disaster after issuance of a state of emergency. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials. I further request that all appropriate executive branch agencies exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this disaster event.

L. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for this incident and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency

management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

a. Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

b. The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The following conditions apply to service by the Virginia Defense Force:

a. Virginia Defense Force personnel shall receive pay at a rate equivalent to a National Guard soldier of like rank, not to exceed 25 years of service.

b. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

c. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for the expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia;

d. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective March 13, 2017, and shall remain in full force and effect until May 13, 2017, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 13th day of March, 2017.

/s/ Terence R. McAuliffe  
Governor

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### First Solar Development, LLC - Notice of Intent - Small Renewable Energy (Solar) Project

First Solar Development, LLC, has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Montgomery County pursuant to 9VAC15-60. The project is located on approximately 230 acres between I-81 and Mud Pike Road approximately 4 miles southeast of Christiansburg. The project conceptually consists of approximately 61,500 x 430-watt modules across 8 x 2.5-megawatt alternating current arrays, providing a facility net capacity of 20 megawatts alternating current.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### Hollyfield II Solar LLC - Notice of Intent - Small Renewable Energy (Solar) Project

A notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) pursuant to 9VAC15-60 has been received from Hollyfield II Solar LLC. The project will be located in King William County on 170 acres across multiple parcels, on land south of Old Newcastle Road, north of the Pamunkey River, and on either side of Bassettaire Lane. The solar project conceptually consists of 56,000 x 350-watt panels plus 7 x 2-megawatt inverters that will provide a maximum 13 megawatts of nameplate capacity.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## STATE BOARD OF HEALTH

### Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health is conducting a periodic review and small business impact review of **12VAC5-195, Virginia WIC (Women, Infants, and Children) Program**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of

important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins April 3, 2017, and ends on April 24, 2017.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Susan Puglisi, Policy Analyst, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7175, FAX (804) 864-7652, email [susan.puglisi@vdh.virginia.gov](mailto:susan.puglisi@vdh.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

### Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-462, Swimming Pool Regulations Governing the Posting of Water Quality Test Results**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated March 3, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

1. Continuing need: The regulations are necessary to protect the public from potential illnesses associated with exposure to untreated recreational waters.
2. Public comment: One public comment was received concerning the regulation; this comment was in support of the regulation being retained.
3. Complexity of the regulation: This regulation has been in effect since August 1, 1994; the agency is unaware of any complaints concerning the complexity of the regulation.
4. Federal and state laws: This regulation does not conflict with any federal law or regulation. This regulation's water quality standards are in conflict with the Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools (12VAC5-460); the latter regulation will be amended in response to a recent periodic review in order to reflect the modern standards in the Swimming Pool Regulations Governing the Posting of Water Quality Test Results (12VAC5-462).
5. Evaluation of regulation: The regulation is evaluated on an ongoing basis to ensure that its effect on small business is

fair, properly administered, and minimized to the greatest extent possible.

Contact Information: Julie Henderson, Director of Food and General Environmental Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7455, FAX (804) 864-7475, or email [julie.henderson@vdh.virginia.gov](mailto:julie.henderson@vdh.virginia.gov).

### **Small Business Impact Review - Report of Findings**

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-600, Waterworks Operation Fee**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated January 18, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

Continuing need: A number of small business owners provide public drinking water to their customers. A well-regulated drinking water oversight program helps protect these owners from experiencing waterborne disease outbreaks within their waterworks.

Public comments: No public comments were received.

Complexity of the regulation: This regulation has been in effect for a number of years with no complaints concerning any complexities.

Federal laws: The regulations complement the federal Safe Drinking Water Act by helping provide for necessary funding to maintain this program.

Evaluation of regulation: The regulation is evaluated on an ongoing basis to ensure that its effect on small businesses is fair and properly administered.

Contact Information: Drew Hammond, Deputy Director, Office of Drinking Water, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7302, FAX (804) 864-7521, or email [drew.hammond@vdh.virginia.gov](mailto:drew.hammond@vdh.virginia.gov).

## **STATE WATER CONTROL BOARD**

### **Proposed Enforcement Action for the Town of Clifton Forge**

An enforcement action has been proposed for the Town of Clifton Forge regarding operation of the town's sewage collection system. The proposed enforcement action replaces an existing consent order and includes additional injunctive requirements. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Robert Steele will accept comments by email at [robert.steele@deq.virginia.gov](mailto:robert.steele@deq.virginia.gov), FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, 3019

Peters Creek Road, Roanoke, VA 24019, from April 3, 2017, to May 3, 2017.

### **Proposed Enforcement Action for Coastal Precast Systems, LLC**

An enforcement action has been proposed for Coastal Precast Systems, LLC, for violations of the State Water Control Law in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jennifer Coleman will accept comments by email at [jennifer.coleman@deq.virginia.gov](mailto:jennifer.coleman@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from April 3, 2017, to May 3, 2017.

### **Proposed Enforcement Action for Kinder Morgan Virginia Liquids Terminals, LLC (South Hill Terminal)**

An enforcement action has been proposed for Kinder Morgan Virginia Liquids Terminals, LLC (South Hill Terminal), for violations of the State Water Control Law in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jennifer Coleman will accept comments by email at [jennifer.coleman@deq.virginia.gov](mailto:jennifer.coleman@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from April 3, 2017, to May 3, 2017.

### **Proposed Enforcement Action for Little Creek Partners Limited Partnership (Little Creek Marina)**

An enforcement action has been proposed for Little Creek Partners Limited Partnership (Little Creek Marina) for violations of the State Water Control Law in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Jennifer Coleman will accept comments by email at [jennifer.coleman@deq.virginia.gov](mailto:jennifer.coleman@deq.virginia.gov), FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from April 3, 2017, to May 3, 2017.

### **Proposed Consent Order for Spotsylvania Courthouse Village II, LLC**

An enforcement action has been proposed for the Spotsylvania Courthouse Village II, LLC, in Spotsylvania County. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the Spotsylvania Courthouse

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## General Notices/Errata

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Village Area C, Phase 1 Project. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov), FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from April 4, 2017, through May 4, 2017.

### **Proposed Consent Order for Torrissi Transport, LLC**

An enforcement action has been proposed for Torrissi Transport, LLC, in Fairfax County. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the unauthorized discharge of oil to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Daniel Burstein will accept comments by email at [daniel.burstein@deq.virginia.gov](mailto:daniel.burstein@deq.virginia.gov) or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from April 4, 2017, through May 4, 2017.

### **Total Maximum Daily Load for Powell River and Tributaries**

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of a total maximum daily load (TMDL) Implementation Plan for the Powell River and Tributaries watershed in Lee and Wise Counties. There are 10 different impaired stream segments in this study area, including the following streams: Butcher Fork, South Fork Powell River, North Fork Powell River, and Powell River. All segments are listed as impaired on Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria and aquatic life.

There are four segments within the watershed that are impaired for bacteria: Powell River, North Fork Powell, South Fork Powell, and Butcher Fork. In addition, there are eight segments impaired for aquatic life: Powell River (5), North Fork Powell (1), and South Fork Powell (2). A complete list of the Powell River and Tributary impairment segments listing years, river miles, and locations can be found at [http://bit.do/DEQPowellandTributaries\\_Impairments](http://bit.do/DEQPowellandTributaries_Impairments).

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires expeditious implementation of total maximum daily loads when appropriate. The Implementation Plan (IP) will provide measurable goals and the date of expected achievement of water quality objectives. The IP will also include the

corrective actions needed and their associated costs, benefits, and environmental impacts. DEQ completed the bacteria and benthic TMDL for the Powell River and Tributaries in 2011. The TMDL was approved by the Environmental Protection Agency in March of 2011. The TMDL report is available on the DEQ website at <http://bit.do/DEQPowellRiverandTributariesTMDL>.

Because of the large geographic area of the watershed, the Department of Environmental Quality will host two public meetings to initiate the development of a TMDL Implementation Plan for the Powell River and Tributaries watershed. Both meetings will cover the same material; therefore, participation in only one of the meetings is needed. The first meeting will be held on Tuesday, April 11, 2017, from 6 p.m. to 8 p.m., at the Pennington Gap Community Center, 41670 West Morgan Avenue, Pennington Gap, VA 24277.

The second meeting will be held on Thursday, April 13, 2017, from 6 p.m. to 8 p.m., at the Big Stone Gap Town Hall Gymnasium, 505 East 5th Street South, Big Stone Gap, VA 24219. In the event of inclement weather, please call the number provided below to confirm postponement of the meeting.

A 30-day public comment period for the meeting will begin on April 11, 2017, and end on May 12, 2017. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Stephanie Kreps, Department of Environmental Quality, 355A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4803, or emailed to [stephanie.kreps@deq.virginia.gov](mailto:stephanie.kreps@deq.virginia.gov).

### **Amendment of Water Quality Management Planning Regulation**

Notice of action: The State Water Control Board is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt 23 new total maximum daily load (TMDL) waste load allocations.

Public comment period: April 3, 2017, through May 3, 2017.

Description of proposed action: DEQ staff will propose amendments to the state's Water Quality Management Planning regulation for the James River Basin (9VAC25-720-60 A), the Chowan River – Dismal Swamp River Basin (9VAC25-720-100 A), and the Chesapeake Bay-Small

Coastal-Eastern Shore River Basin (9VAC25-720-110 A). Statutory authority for promulgating these amendments can be found in subdivision 10 of § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend 1) that the board approve the four TMDL reports as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, 2) that the board authorize inclusion of the four TMDL reports in the appropriate Water Quality Management Plan, and 3) that the board adopt 23 new TMDL waste load allocations as part of the state's Water Quality Management Planning Regulation in accordance with subdivision A 14 and subsection B of § 2.2-4006 of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL WLAs can receive State Water Control Board approval prior to Environmental Protection Agency (EPA) approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. The four TMDL reports in this public notice have been reviewed by EPA for required TMDL elements; however, they remain in draft form awaiting State Water Control Board approval. The draft reports can be found [at   
http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx](http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx).

Affected Waterbodies and Localities for the 23 new TMDL waste load allocations:

James River Basin (9VAC25-720-60 A):

1. "E. coli TMDL Development for the James River and Tributaries near Lynchburg, VA"

- The James River and Tributaries TMDL, located in the City of Lynchburg and Amherst, Bedford, and Campbell Counties, proposes E. coli reductions for the James River - Upper, James River - Lower, Ivy Creek, Fishing Creek, Blackwater Creek, Tomahawk Creek, Burton Creek, Judith Creek, Beaver Creek, Pedlar Creek, and Harris Creek watersheds and provides E. coli waste load allocations of 2.27E+11 cfu/year, 1.33E+15 cfu/year, 4.07E+12 cfu/year, 3.76E+13 cfu/year, 3.61E+14 cfu/year, 1.01E+12 cfu/year, 3.47E+12 cfu/year, 3.26E+11 cfu/year, 3.26E+11 cfu/year, 7.86E+11 cfu/year, 1.02E+13 cfu/year.

2. "Bacteria TMDL Development for Lower Chickahominy River Watershed Located in Charles City, James City, and New Kent Counties, VA"

- The Lower Chickahominy River Watershed TMDL, located in Charles City, James City, and New Kent Counties, proposes E. coli reductions for the Diascund Creek, Beaverdam Creek, Unnamed Tributary to Beaverdam Creek (XAH), Barrow's Creek, and Mill Creek watersheds and provides E. coli waste load allocations of 2.51E+11 cfu/year, 1.27E+11 cfu/year, 4.52E+10 cfu/year, 6.90E+10 cfu/year, and 9.90E+11 cfu/year.

- The Lower Chickahominy River Watershed TMDL, located in Charles City, James City, and New Kent Counties, proposes Enterococci reductions for the Diascund Creek (tidal), Chickahominy River, and Gordon Creek watersheds and provides Enterococci waste load allocations of 7.12E+12 cfu/year, 9.57E+13 cfu/year, and 6.15E+12 cfu/year.

Chowan River – Dismal Swamp River Basin (9VAC25-720-100 A):

3. "Benthic Total Maximum Daily Load (TMDL) Development for the Kits Creek Watershed"

- The Kits Creek TMDL, located in Lunenburg County, proposes sediment reductions for the Kits Creek watershed and provides a sediment waste load allocation of 2.96 ton/year.
- The Kits Creek TMDL, located in Lunenburg County, proposes total phosphorus reductions for the Kits Creek watershed and provides a total phosphorus waste load allocation of 13.1 lbs/year.

Chesapeake Bay-Small Coastal-Eastern Shore River Basin (9VAC25-720-110 A):

4. "Bacteria Total Maximum Daily Loads for Nassawadox Creek and Tributaries and Westerhouse Creek in Northampton County, Virginia"

- The Nassawadox Creek and Westerhouse Creek TMDLs, located in Northampton County, proposes fecal coliform reductions for the Nassawadox Creek and Westerhouse Creek watersheds and provides fecal coliform waste load allocations of 6.04E+12 counts/year and 2.29E+11 counts/year.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens that submit statements during the comment period may

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# General Notices/Errata

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address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports are available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx>, and by contacting the DEQ representative named below for any report. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Mark Richards, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4329, FAX (804) 698-4032, or email [mark.richards@deq.virginia.gov](mailto:mark.richards@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/connect/commonwealth-calendar>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

## ERRATA

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

**Title of Regulation:** 13VAC5-51. Virginia Statewide Fire Prevention Code.

**Publication:** 33:13 VA.R. 1471-1518 February 20, 2017.

**Correction to Proposed Regulation:**

Page 1475, 13VAC5-51-51, subdivision C, lines 3 and 4, replace "Department of Housing and Community Development (DHCD)" with "DHCD"

VA.R. Doc. No. R16-4665; Filed March 8, 2017, 3:02 p.m.

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**Title of Regulation:** 13VAC5-63. Virginia Uniform Statewide Building Code.

**Publication:** 33:13 VA.R. 1518-1663 February 20, 2017.

**Correction to Proposed Regulation:**

Page 1552, 13VAC5-63-210, subdivision T 45, in the first sentence and in the name of the table, change "R602.7.1(1)" to "R602.7(1)"

Page 1631, 13VAC5-63-320, subdivision B 14, line 1, after "703.7" change "of" to "to"

Page 1638, 13VAC5-63-370, in the description of the section, after "**Appendix F**" strike "**Rodent proofing**" and add "**Rodentproofing**"

VA.R. Doc. No. R16-4664; Filed March 8, 2017, 3:02 p.m.

### BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

**Title of Regulation:** 18VAC160-40. Onsite Sewage System Professionals Licensing Regulations.

**Publication:** 33:11 VA.R. 1262-1293 January 23, 2017.

**Correction to Final Regulation:**

Page 1279, 18VAC160-40-130, subdivision 3 of the table, first column labeled "Prerequisites," after "Interim" insert "conventional onsite sewage system" and after "journeyman" insert "onsite sewage system installer"

Page 1279, 18VAC160-40-130, subdivision 4 of the table, first column labeled "Prerequisites," after "Interim" insert "conventional onsite sewage system" and after "journeyman" insert "onsite sewage system"

VA.R. Doc. No. R15-4114; Filed March 21, 2017