VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

May 2017 through July 2018

Volume: Issue	Material Submitted By Noon*	Will Be Published On
33:20	May 10, 2017	May 29, 2017
33:21	May 24, 2017	June 12, 2017
33:22	June 2, 2017 **(Friday)**	June 26, 2017
33:23	June 21, 2017	July 10, 2017
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34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 **(Tuesday)**	July 23, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-50, Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers**. The purpose of the proposed action is to comprehensively review the regulation. Revisions to the regulation are intended to remove dated terminology, clarify confusing language, correct inaccurate Code of Virginia references, and standardize requirements for testing and documentation.

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

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

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

Public Comment Deadline: June 28, 2017.

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

VA.R. Doc. No. R17-5020; Filed May 8, 2017, 2:09 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-490, Virginia Radiation Protection Regulations: Fee Schedule**. The purpose of the proposed action is to amend the fee schedule used by (i) the X-Ray Program (XRP) for device registrations and inspections and (ii) the Radioactive Materials Program (RMP) for initial licensure and annual licensing renewal. The XRP and RMP are fully supported by these fees, which have not increased since 2009. At that time, fees were sufficient to accommodate program and ancillary business functions as they were supplemented by general funds allocated to the Office of Radiological Health (ORH). Virginia entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) on March 31, 2009, to assume the responsibilities of regulating the use of radioactive materials in the Commonwealth. 12VAC5-490 was promulgated at that time to supply the monetary means for supporting the RMP by charging application and annual licensing fees. In November 2014, the NRC's Integrated Materials Performance Evaluation Program review team evaluated Virginia's RMP and found "the Program experienced a backlog in inspections due, in part, to having a shortage of qualified staff to complete inspections within the required timeframe." Since that time, the RMP has hired and trained two new inspectors and completed the overdue inspection backlog, thus avoiding monitoring, probation, or forfeiture. General funds that were used to support ORH were abolished in 2015. Since that time, the surplus accumulated between 2009 and 2015 has been used to support ORH and is projected to be depleted in 2018. Neither receiving general funds nor reducing staff is an option, thus the fee increase is the best choice to maintain the XRP, the RMP, and associated NRC Agreement State status.

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

Statutory Authority: § 32.1-229.1 of the Code of Virginia.

Public Comment Deadline: June 28, 2017.

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

VA.R. Doc. No. R17-5115; Filed April 26, 2017, 1:35 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services intends to consider promulgating **12VAC35-250, Peer Recovery Specialists**. The purpose of the proposed action is to establish the qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia's public system of behavioral health services demonstrate a baseline of practical knowledge. The availability of peer recovery specialist services is expected to expand through the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder benefit. Under the ARTS benefit, peer support services will be made available to Medicaid members effective July 1, 2017. Peer support resources will be an integral component of community integration, wellness, resiliency, and recovery.

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

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Public Comment Deadline: June 28, 2017.

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.virginia.gov.

VA.R. Doc. No. R17-4808; Filed May 8, 2017, 4:30 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending **18VAC90-30, Regulations Governing the Licensure of Nurse Practitioners** and **18VAC90-40, Regulations for Prescriptive Authority for Nurse Practitioners**. The purpose of the proposed action is to address the opioid abuse crisis in Virginia. 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.

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: June 28, 2017.

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

VA.R. Doc. No. R17-5096; Filed May 1, 2017, 2:23 p.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry intends to consider amending **18VAC105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to consider deleting unnecessary or unenforceable rules, limiting the number of times an applicant can take and fail the licensing examination before additional education is necessary, and specifying the evidence of continued competency required for licensure by endorsement and reinstatement. For reinstatement of a lapsed license, the board will also consider requiring evidence of any disciplinary or malpractice action, and if the applicant is licensed in another state, the board will consider requiring evidence of a current, unrestricted license.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Comment Deadline: June 28, 2017.

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

VA.R. Doc. No. R17-5114; Filed April 26, 2017, 1:17 p.m.

BOARD OF PHARMACY

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 intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to authorize issuance of a controlled substances registration to (i) persons who have been trained in the administration of naloxone in order to possess and dispense the drug to persons receiving training and (ii) an entity for the purpose of establishing a bona fide practitioner-patient relationship for prescribing when treatment is provided by telemedicine in accordance with federal rules. As applicable, regulations for controlled substances registrants will be considered for amendment, including recordkeeping, security, and storage requirements.

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

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

Public Comment Deadline: June 28, 2017.

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

VA.R. Doc. No. R17-5048; Filed May 8, 2017, 8:27 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Proposed Regulation

Title of Regulation: **6VAC20-60. Rules Relating to Compulsory Minimum Training Standards for Dispatchers (amending 6VAC20-60-10 through 6VAC20-60-90).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 28, 2017.

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

Basis: Pursuant to § 9.1-102 of the Code of Virginia, the Department of Criminal Justice Services (DCJS) and the Criminal Justice Services Board are authorized to adopt regulations to administer the regulatory program and establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Section 9.1-107 of the Code of Virginia charges the Director of DCJS with executive and administrative responsibility to carry out the specific duties imposed on DCJS under § 9.1-102.

Purpose: The Rules Relating to Compulsory Minimum Training Standards for Dispatchers identifies the categories of training for compulsory minimum training standards for dispatchers along with the information regarding training schools and the timeline for completing training, grading, and recordkeeping requirements. Dispatchers are often the first responders to emergency situations. Dispatchers must quickly assess the information provided by an individual contacting 911 and dispatch the appropriate resources while calming victims, gathering additional details to relay to law enforcement, or by providing lifesaving instructions for cardiopulmonary resuscitation or the Heimlich maneuver. This regulation protects the health, welfare, and safety of citizens and first responders by ensuring dispatchers who are employed by or in a local or state government agency whose duties include dispatching of law-enforcement personnel receive adequate training.

Substance:

6VAC20-60-10. Definitions.

- Revise the definition of certified training academy.
- Add term and definition for Committee on Training.
- Remove the term and definition for "VCIN/NCIC" because it is not used within the regulation.
- Remove term "emergency medical dispatcher training" because it is not used within the regulation.

6VAC20-60-20. Compulsory minimum training standards.

- Headings identifying academy training versus on-the-job training have been included.

6VAC20-60-25. Approval authority.

- Changes made by the Committee on Training will become effective 30 days after publication rather than 30 days after notice of publication.

6VAC20-60-30. Applicability.

- A technical change removes the reference to the "chapter" in subsection A and replaces it with a reference to the "section."

6VAC20-60-40. Time requirement for completion of training.

- Language referencing the chief of police and sheriff is removed as it is redundant. Agency administrator is defined as any chief of police, sheriff, or agency head of a state or local law-enforcement agency or non-law-enforcement head of a communications center.
- Language is added to ensure a dispatcher is required to complete minimum training prior to resuming job duties if granted an extension for any reason.

6VAC20-60-50. Compliance with compulsory minimum training standards.

- An inaccurate Administrative Code citation is removed.
- All of the language in subsection C regarding a transition period commencing in January 2002 is removed because it is no longer relevant.

6VAC20-60-60. Approved training schools.

- The section name is changed to "Approved training and certified academies."
- Language regarding training, curriculum, and lesson plans has been removed from subsection A and placed in new subsection E.
- Redundant language has been removed from this section.
- Language citing the relevant portions of § 15.-2-1747 of Code of Virginia have been added.

• Language has been added that provides DCJS the ability to suspend or revoke the approval of a previously sanctioned training. Currently DCJS only has the authority to suspend or revoke the certification of an academy.

• Academies have been given 15 business days to respond to suspension or revocation. Academies previously had 15 calendar days.

• Language has been added to require an appeal to the board be in writing and within 15 business days. Adding this language makes the process consistent with the process for requesting an appeal before the director.

6VAC20-60-70 Grading.

• Language has been added to require minimum score of 70% on all tests and to permit the certified training academy to require a score higher than 70%.

• Language referencing records management is removed because it is already in the section on administrative requirements.

• Language requiring individuals who fail to complete the performance outcome or will be required to attend the subject in a subsequent dispatcher training school has been removed. The language in subsection A allows for testing and retesting. Dispatcher academies are held infrequently, and in practice an individual is not required to attend the academy a second time for a particular subject. Instead they are retested. Additionally, references to the dated term "training school" have been or are in the process of being removed from all DCJS regulations.

6VAC20-60-80 Failure to comply with rules and regulations.

• Language is removed that required the director of DCJS receive notification of an expulsion.

• Language is added requiring compliance with board rules and rules within the authority of the academy director.

6VAC20-60-90 Administrative requirements.

• The academy director shall complete a report using the department's electronic records management system for compulsory minimum training standards and in-service training within 60 days of completion of compulsory training conducted at the certified training academy. Current language allows 30 days for submission.

Issues: The primary advantages of this regulation are ensuring that dispatchers who are employed by or in a local or state government agency whose duties include dispatching of law-enforcement personnel receive adequate training. Dispatchers are often the first responders to emergency situations and ensuring proper training serves to protect the lives of those experiencing medical emergencies, victims, and first responders.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Criminal Justice Services Board (Board) proposes to amend its regulation that governs training for dispatchers[1] to 1) update definitions and other regulatory text to make the regulation easier to read and understand, 2) specify that all dispatchers who receive a time requirement extension must complete their training before they take on or resume their job duties, 3) allow the Department of Criminal Justice Services (DCJS) the authority to suspend specific training modules and suspend training academies that are not meeting standards and 4) set a minimum passing score of seventy percent on all training standard tests.

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Most of the regulatory changes proposed by the Board do not change any substantive requirement or duty for any entity but, instead, are aimed at making the regulatory text easier to read and understand. Changes to the definitions in the regulation, as well as language that directs interested parties to the dispatchers' training manual on DCJS's website, fall into this category of change. No affected entity is likely to incur costs on account of changes such as these. To the extent that the current regulation contains outdated definitions, or might be otherwise confusing or opaque, these changes will benefit readers by making the regulation more easily understood.

In addition to these clarifying changes, the Board proposes three substantive changes to this regulation.

Current regulation requires that dispatchers complete their training within 24 months of the date they are appointed as a dispatcher but also contains a list of valid reasons for which they may receive an extension of that time limit. Valid reasons for receiving an extension include: a) illness, b) injury, c) military service, d) special duty assignment required and performed in the public interest, e) administrative leave for worker's compensation, disability retirement issues or suspension pending investigation or adjudication of a crime and f) any other specific reason documented by the agency administrator.[2] Current regulation specifies that individuals granted an extension under a) through e) must complete their training before resuming their duties but f) was inadvertently excluded. The Board now proposes to also require that individuals granted an extension under f) must also complete their training before resuming their duties.

Board staff reports that the Board is making this change to make the process for all extensions consistent. Board staff also reports that they have no specific information that would indicate that state and local agencies are not already requiring individuals granted an extension under f) to complete training before resuming their duties. If any agency has been treating

extensions received under f) as an exemption to the general rule, this proposed change would likely result in delays in returning dispatchers to their duties after the reason for the extension has resolved itself. Regulated entities will benefit from this change as it will allow them greater clarity as to what training needs to happen and when. The public will also benefit as this change will help ensure that dispatchers get their required training in a more timely fashion. Benefits likely exceed costs for this proposed change.

Current regulation allows DCJS to suspend or revoke approval of any training academy that is noncompliant or deficient but only allows DCJS the power to suspend or revoke approval for the whole academy. The Board now proposes to also allow DCJS to also just suspend or revoke individual training modules. Board staff reports that from time to time law changes, court decisions or changes in best practices will make the curriculum of individual training modules obsolete or even erroneous. Right now, DCJS has no way to address this other than to suspend or revoke approval for the entire training academy if it is teaching such a module. Board staff reports that the Board is proposing this change so that DCJS can address problematic training within an academy without adversely affecting the whole academy. This change will benefit academies by limiting suspension and revocations of their operations to only cover specific deficiencies. This change will also benefit dispatcher trainees as it will better forestall obsolete or erroneous training they might receive without impeding their ability to be trained in a timely fashion at all. Benefits likely exceed costs for this proposed change.

Current regulation requires that necessary training be satisfactorily completed but currently does not specify the tests scores that would constitute satisfactory completion. Board staff reports that individual training academies currently set minimum scores. Board staff further reports that DCJS does not know what those minimum scores are and that minimum scores may vary from academy to academy. The Board now proposes to require a minimum score of seventy percent on all tests but also allow academies to require higher passing scores. This change will likely have no effect on training academies that currently require scores of seventy percent or higher for their attendees. If any academies currently allow passing scores below seventy percent, some attendees may have to remediate their knowledge in classes that they failed and retake their tests. Student dispatchers, their employees, and the public will likely benefit, however, from standardizing minimum scores so that dispatchers are competent to complete their job tasks.

Businesses and Entities Affected. These proposed regulatory changes will affect training academies, dispatchers and their employer agencies. Board staff reports that there are approximately 39 training academies, 43 communications centers, and 372 law-enforcement agencies in the Commonwealth.

Localities Particularly Affected. No locality should be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to significantly affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

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

Costs and Other Effects. These proposed regulatory changes are unlikely to affect any small business in the Commonwealth.

Alternative Method that Minimizes Adverse Impact. No small businesses will be adversely affected by these proposed regulatory changes.

Adverse Impacts:

Businesses. Businesses in the Commonwealth are unlikely to experience any adverse impacts on account of this proposed regulation.

Localities. No localities are likely to incur costs on account of these proposed regulatory changes.

Other Entities. These proposed regulatory changes are unlikely to adversely affect other entities in the Commonwealth.

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[1] Dispatchers are individuals who work for any local or state government agency and whose duties include dispatching law-enforcement personnel.

[2] An agency administrator is "any chief of police, sheriff, or agency head of a state or local law-enforcement agency or non-law-enforcement head of a communications center."

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis provided by the Department of Planning and Budget.

Summary:

The proposed amendments (i) specify that dispatchers who receive a time requirement extension must complete their training before resuming job duties; (ii) set a minimum passing score of 70% on all training standard tests and permit an academy to require a higher score; (iii) authorize the Department of Criminal Justice Services to suspend specific training modules and suspend training academies that are not meeting standards; (iv) require that an appeal to the board of the director's decision to suspend

or revoke certification must be in writing and within 15 business days of the date of the decision; and (v) update definitions and clarify text.

6VAC20-60-10. Definitions.

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

"Academy director" means the chief administrative officer of a certified training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency or ~~nonlaw-enforcement~~ non-law-enforcement head of a communications center.

"Board" means the Criminal Justice Services Board.

"Certified training academy" means a training facility in compliance with academy certification standards and operated by the state or local ~~unit(s)~~ unit of government for the purpose of ~~providing instruction of compulsory minimum training standards~~ training criminal justice personnel.

"Committee on Training" means the standing committee of the board that is charged with reviewing proposed changes to the standards, holding public hearings, and approving changes to the standards as needed.

"Compulsory minimum training standards" means the performance outcomes and minimum hours approved by the Criminal Justice Services Board.

"Curriculum Review Committee" or "CRC" means the committee consisting of the following nine individuals: two members of the committee shall represent regional criminal justice academies, two members of the committee shall represent independent criminal justice academies, one member shall represent the Department of State Police Training Academy, and four experienced communications personnel shall represent emergency communication functions. The Committee on Training shall appoint members of the Curriculum Review Committee.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the Department of Criminal Justice Services.

"Dispatcher" means any person employed by or in any local or state government agency either ~~full~~ full-time or part-time whose duties include the dispatching of law-enforcement personnel.

~~"Emergency medical dispatcher training" means training which meets or exceeds the training objectives as provided in Performance Outcome 1.6, which is set out in 6VAC20-60-100.~~

"Standard" means Performance Outcome, Training Objective, Criteria for Testing, and Lesson Plan Guide relating to compulsory minimum training for dispatchers and is found on the department's website.

~~"VCIN/NCIC training" means approved training as specified by the Virginia Department of State Police for dispatchers accessing Virginia Crime Information Network/National Crime Information Center information.~~

6VAC20-60-20. Compulsory minimum training standards.

A. Pursuant to the provisions of subdivision 10 of § 9.1-102 ~~(10)~~ of the Code of Virginia, the board establishes the categories of training ~~as listed below as~~ for the compulsory minimum training standards for dispatchers.

B. Academy training.

1. Category 1 - Communications.
2. Category 2 - Judgment.
3. Category 3 - Legal Issues.
4. Category 4 - Professionalism.

C. On-the-job training.

~~5.~~ Category 5 - On-the-Job Training.

6VAC20-60-25. Approval authority.

A. The Criminal Justice Services Board shall be the approval authority for the training categories of the compulsory minimum training standards. Amendments to training categories shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Committee on Training of the Criminal Justice Services Board shall be the approval authority for the performance outcomes, training objectives, criteria, and lesson plan guides that support the performance outcomes. Performance outcomes, training objectives, criteria, and lesson plan guides supporting the compulsory minimum training standards may be added, deleted, or amended by the Committee on Training based upon written recommendation of a chief of police, sheriff, agency administrator, academy director, ~~nonlaw-enforcement~~ non-law-enforcement head of a communications center, or the Curriculum Review Committee.

Prior to approving changes to the performance outcomes, training objectives, criteria, or lesson plan guides, the Committee on Training shall conduct a public hearing. Sixty days prior to the public hearing, the proposed changes shall be distributed to all affected parties for the opportunity to comment. Notice of change of the performance outcomes, training objectives, criteria, and lesson plan guides shall be filed for publication in the Virginia Register of Regulations upon adoption, change, or deletion. The department shall notify each certified academy in writing of any new, revised, or deleted objectives. Such adoptions, changes, or deletions shall become effective 30 days after ~~notice of~~ publication in the Virginia Register.

6VAC20-60-30. Applicability.

A. All dispatchers employed by or in any local or state government agency whose duties include the dispatching of

law-enforcement personnel and who were hired on or after July 1, 1988, must meet compulsory minimum training standards established at the time of their appointment, unless provided otherwise in accordance with subsection B of this ~~chapter~~ section.

B. The director may grant an exemption or partial exemption of the compulsory minimum training standards established ~~herein~~ in this chapter, in accordance with § 9.1-116 of the Code of Virginia.

6VAC20-60-40. Time requirement for completion of training.

A. Every dispatcher who is required to comply with the compulsory minimum training standards must satisfactorily complete the required training set forth in 6VAC20-60-20, within 24 months of the date of appointment as a dispatcher, unless provided otherwise in accordance with subsection B of this section.

B. The director may grant an extension of the time limit for completion of the compulsory minimum training standards under the following conditions:

1. The ~~chief of police, sheriff, or~~ agency administrator shall present written notification that the dispatcher was unable to complete the required training within the specified time limit due to:

a. Illness;

b. Injury;

c. Military service;

d. Special duty assignment required and performed in the public interest;

e. Administrative leave involving the determination of workers' compensation or disability retirement issues, or suspension pending investigation or adjudication of a crime; or

f. Any other reason documented by the agency administrator. Such reason must be specific and any ~~approval granted~~ approved extension shall not exceed 90 days.

2. Any extension granted under subdivision 1 ~~e~~ of this subsection shall require the dispatcher to complete compulsory minimum training prior to resuming job duties. Requests may be granted for periods not to exceed 12 months.

3. The agency administrator must request such extension prior to expiration of any time limit.

C. Any dispatcher having previously and successfully completed the compulsory minimum training standards who resigns and is reappointed within 24 months from departure will not be required to complete the academy training class.

6VAC20-60-50. Compliance with compulsory minimum training standards.

A. The compulsory minimum training standards shall be accomplished by satisfactory completion of the academy training objectives at a certified training academy and the successful completion of on-the-job training objectives as provided by ~~6VAC20-60-30 B~~ 6VAC20-60-20.

B. Dispatchers attending compulsory minimum training at a certified training academy are required to attend all classes and should not be placed on duty or on call except in cases of emergency.

~~C. The Criminal Justice Services Board will provide a transition period for implementation of this chapter. The transition period shall begin January 1, 2002. During the transition period, certified training academies may conduct dispatcher entry-level training using the performance objectives within the "Rules Relating to Compulsory Minimum Training Standards for Dispatchers," effective January 1, 1994, or the performance outcomes and training objectives. Accordingly, any certified training academy may institute a curriculum transition by replacing existing performance objectives with the revised performance outcomes and training objectives. Effective January 1, 2003, all entry-level training programs shall meet the requirements of 6VAC20-60-100.~~

6VAC20-60-60. Approved training ~~schools~~ and certified academies.

A. ~~Dispatcher classroom training may only be provided by a certified training academy. The certified training academy shall submit to the department the curriculum and other information as designated, within time limitations established by the department.~~

~~B. Each academy director will be required to maintain a file of all current lesson plans and supporting materials for each subject contained in the compulsory minimum training standards.~~

~~C. A certified~~ A certified training academy ~~is~~ shall be subject to inspection and review by the director or staff.

~~D.~~ B. To become a certified academy, a state or local unit of government must demonstrate a need that contains the following elements:

1. The inability to obtain adequate training from existing academies or a sufficient hardship that renders the use of other existing academies impractical.

2. Based upon a training needs assessment, a sufficient number of officers to warrant the establishment of a full-time training function for a minimum of five years.

~~E.~~ C. In addition to the requirements in subsection B of this section, the state or local unit of government must make the following commitments:

1. The provision of a full range of training to include entry-level training and specialized training.

2. The assignment of one position with primary responsibility as academy director and one clerical position to support training and training related functions and instructor certification.

3. The maintenance of a training facility adequate to conduct training in accordance with academy certification standards.

4. The commitment of sufficient funding to adequately support the training function.

~~F.~~ D. Process.

1. The state or local governmental unit shall submit a justification to the Committee on Training as described in subsection ~~D~~ B of this section. The Committee on Training shall review the justification and make a recommendation to the department as to whether the establishment of an academy is warranted.

2. If the Committee on Training recommends the establishment of the proposed academy, the department shall make a determination as to whether the establishment of the academy is warranted.

3. If the establishment of ~~the~~ a regional academy is approved by the department, the governing bodies, political subdivisions, or public bodies of the proposed academy must successfully complete the academy certification process and be in compliance with all the provisions of § 15.2-1747 of the Code of Virginia.

4. If the establishment of an independently operated academy is approved by the department, the governing bodies, political subdivisions, or public bodies of the proposed academy must successfully complete the academy certification process and be in compliance with the provisions of § 15.2-1747 D of the Code of Virginia.

~~G.~~ E. Dispatcher classroom training may only be provided by a certified training academy. The certified training academy shall submit to the department its curriculum and other information as designated within time limitations established by the department. Trainings may be approved that on the basis of curricula, instructors, facilities, and examinations provide the required minimum training. A curriculum listing performance objective by number, the instructors, dates, and times for the proposed session shall be submitted to the department within the time limitations established by the department. An exemption to the established time limitations may be granted by the director for good cause shown by the academy director.

~~H.~~ F. Each academy director shall maintain a file of all current lesson plans and supporting material for training objectives~~,~~ and shall provide this information to the director upon request.

~~I. A certified training academy is subject to inspection and review by the director or his staff.~~

~~J.~~ G. The department may suspend or revoke the approval of previously sanctioned training upon written notice, which shall contain the reason or reasons upon which the suspension or revocation is based, to the academy's director. The academy director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 business days of the date of the notice of the suspension or revocation. The academy director may appeal the decision of the director or his designee to the board. Such request shall be in writing and must be received by the board within 15 business days of the date of the decision of the director or his designee.

H. The department may suspend or revoke the certification of any certified training academy upon written notice, which shall contain the reason or reasons upon which the suspension or revocation is based, to the academy's director. The academy's director may request a hearing before the director. The request shall be in writing and shall be received by the department within 15 business days of the date of the notice of the suspension or revocation. The academy's director may appeal the director's decision to the board. Such request shall be in writing and must be received by the board within 15 business days of the date of the decision of the director or his designee.

6VAC20-60-70. Grading.

A. Dispatchers shall comply with all the requirements of this chapter. All certified training academies shall utilize testing procedures that indicate that every dispatcher has ~~satisfactorily completed the criteria in each training objective approved by the Committee on Training of the Criminal Justice Services Board. A dispatcher may be tested and retested as may be necessary within the time limits of 6VAC20-60-40 and in accordance with each academy's written policy.~~ prior to completion of the certified training academy attained a minimum score of 70% on all tests for each grading category identified in 6VAC20-60-20 to complete compulsory minimum training standards. A certified training academy may require dispatchers attain a score greater than 70% on a test. A dispatcher may be retested within the time limits of 6VAC20-60-40 and in accordance with each academy's written policy.

~~B.~~ Certified training academies shall maintain accurate records of all tests, grades and testing procedures. ~~Academy training records must be maintained in accordance with the provisions of this chapter and §§ 42.1-76 through 42.1-91 of the Code of Virginia.~~

~~C. Every individual attending compulsory minimum training shall satisfactorily complete each required performance outcome, training objective, and criteria, and any optional job related subject performance requirements, where applicable. Any individual who fails to satisfactorily complete any performance outcomes or objectives in any subject will be required to attend that subject in a subsequent approved dispatcher training school and satisfactorily complete the required performance objective or objectives.~~

B. A dispatcher shall not be certified as having complied with the compulsory minimum training standards unless all applicable requirements have been met.

6VAC20-60-80. Failure to comply with rules and regulations.

Any individual attending a certified training academy shall comply with the rules and regulations promulgated by the board, rules of the department, and rules within the authority of the academy director. The academy director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees. If the academy director considers a violation of the rules and regulations detrimental to the welfare of the academy, the academy director may expel the individual from the certified training academy. Notification of such action shall immediately be reported, in writing, to the agency administrator of the dispatcher ~~and the director~~.

6VAC20-60-90. Administrative requirements.

A. ~~Reports will be required from the agency administrator and academy director on forms approved or provided by the department and at such times as designated by the director.~~ The academy director shall complete a report using the department's electronic records management system for compulsory minimum standards and in-service training within 60 days of completion of compulsory training conducted at the certified training academy.

B. The agency administrator shall, within the time requirement set forth in subsection A of 6VAC20-60-40, forward a properly executed on-the-job training form to the department for each dispatcher.

C. The academy director shall~~, within 30 days upon completion of the dispatcher training~~:

1. Submit to the department a roster containing the names of those dispatchers who have satisfactorily completed the compulsory minimum training standards.

2. Submit to the department the ~~final~~ revised curriculum ~~with~~, if applicable, and the training objectives and instructor names ~~listed~~.

D. The academy director shall furnish each instructor with a complete set of course resumes and the applicable performance based training and testing objectives for the assigned subject matter.

E. Each certified training academy shall maintain accurate records of all tests, grades, and testing procedures. Dispatcher training records shall be maintained in accordance with the provisions of ~~these regulations~~ this chapter and ~~§§ 42.1-67 through 42.1-91 of~~ the Virginia Public Records Act (§ 42.1-76 et seq. the Code of Virginia).

~~FORMS (6VAC20-60)~~

~~Application for Exemption From Virginia Compulsory Minimum Training Standards, Form W-2, rev. 04/10.~~

~~On the Job Training Dispatchers, Form D-1, rev. 09/02.~~

VA.R. Doc. No. R16-4634; Filed May 8, 2017, 2:23 p.m.

Proposed Regulation

Title of Regulation: **6VAC20-130. Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases (amending 6VAC20-130-20 through 6VAC20-130-100; repealing 6VAC20-130-10).**

Statutory Authority: § 18.2-308.2:2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 28, 2017.

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

Basis: Subsection H of § 18.2-308.2:2 of the Code of Virginia requires the Department of Criminal Justice Services (DCJS) to promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided by the Virginia Department of State Police (VSP) pursuant to § 18.2-308.2:2.

Purpose: The regulation protects the health, safety, and welfare of citizens by ensuring criminal history record information checks are conducted in a manner that protects the integrity of criminal history record information, guarantees individual rights to privacy, and supports the needs of the VSP and firearms dealers, while facilitating the sales of firearms to the law-abiding public.

This regulatory action is intended to update the regulation to address the current VCheck technology used by VSP. VCheck is an instant criminal background check program authorized by VSP and is available via the Internet to all firearms dealers registered with the VSP Firearms Transaction Center. The current regulation references the use of telephone calls and postal mail to obtain criminal history checks and while these are still options for firearms dealers the telephone and postal mail are rarely used. This regulatory action is also intended to clarify existing regulatory language, remove unnecessary language, remove language that conflicts with the requirements set forth in the Code of Virginia, and eliminate duplication of work by DCJS and VSP.

Substance: DCJS worked with VSP to identify necessary revisions to this regulation. The following substantive revisions have been proposed:

- Removing definitions of terms that are defined in the Code of Virginia and providing the Code citation to the definition. Revising the definition of law-enforcement officer to match the Code of Virginia. Adding a definition for the term VCheck.

- Adding language referencing the use of VCheck or other authorized communication response systems throughout the regulation in all sections referring to obtaining criminal history checks by telephone and mail.

VSP rarely receives a request for a criminal history check by telephone or mail. Adding the reference to VCheck codifies the technology currently used and includes the language "or other authorized communication response system" allows VSP to use alternate systems as technology capabilities advance.

• Adding language requiring that the second form of identification must be current and show an address identical to that shown on the photo-identification form. This revision will make the regulation match the language in the Code of Virginia.

• Modifying language to match the language in the Code of Virginia related to identification and residency requirements for individuals using documents issued by the U.S. Department of Defense. The current regulatory language conflicts with the language in the Code of Virginia and cites outdated sections of the Code of Federal Regulations.

• Adding language referencing the Code of Virginia requirement that dealers not sell, rent, trade, or transfer any assault firearm to any person who is not a citizen of the United States or not lawfully admitted for permanent residence.

• Removing language requiring an after-sale check. Per VSP this language is no longer necessary as the background checks are instantaneous.

• Removing language requiring DCJS to audit dealers who use the criminal history check system improperly in a manner that jeopardizes the confidentiality and security of the system. Dealers do not receive specific criminal history record information related to criminal convictions. When a criminal history record check is conducted the dealer receives one of the following responses: "Yes, approved" and the accompanying approval number is given, or "This transaction is not approved at this time." There is no need for DCJS to conduct audits of dealers. This is a duplication of the work conducted by VSP. VSP monitors criminal history record information transactions, and if there is suspicion or evidence a dealer is inappropriately requesting criminal history records information a criminal investigation is initiated. The possibility of a criminal investigation by VSP is a far greater penalty than any administrative investigation and action that can be taken by DCJS. Additionally, language requiring DCJS to audit VSP records has been removed. The requirements for maintaining records and logs related to the firearms transactions are addressed in the Library of Virginia's State Police Schedule Number 156-050. VSP has an Internal Audit Section that reviews agency compliance with the laws, regulations, policies, and procedures and audits information technology systems and related security of data. Results of all internal audits are reported to VSP management and the Superintendent of VSP.

Issues: The primary advantages to the public and the Commonwealth include removing unnecessary language, correcting language that conflicts with the Code of Virginia, and identifying the VCheck system as the system used by firearms dealers and VSP to determine if any barrier exists to an individual purchasing a firearm. The current regulatory language only identifies the use of calling a toll-free number and using postal mail to request criminal history record information.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases identifies the process for conducting a criminal background check. As a result of a periodic review,[1] the Criminal Justice Services Board (Board) proposes to amend this regulation to: 1) address current VCheck technology, 2) remove language that is either obsolete or conflicts with the requirements set forth in the Code of Virginia (Code), and 3) clarify existing language. VCheck is an online criminal background check program made available to firearms dealers by the Virginia State Police.

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

Estimated Economic Impact. Currently, almost all criminal background checks associated with purchasing a firearm are conducted by using the VCheck system. The VCheck is an instant criminal background check program authorized by the Virginia State Police and is available via the Internet to all firearms dealers registered with the State Police Firearms Transaction Center. The existing regulation references the use of telephone calls and the mail to obtain criminal history checks, but does not mention VCheck. The Board proposes to add a definition of VCheck and add language referencing the use of VCheck or other authorized communication response systems in all sections of the regulation referring to obtaining criminal history checks by telephone and mail. Including VCheck in the regulation would not affect costs or options in practice, but would be beneficial in that readers of the regulation would be better informed of what occurs and is allowed in practice.

The Board's proposal to remove text that is either obsolete or conflicts with the Code would be beneficial in that it would reduce the likelihood that readers of the regulation would be misled concerning requirements in effect. The Board's proposal to amend language to improve clarity would also be beneficial to the extent that it improves comprehension by readers of the regulation.

Businesses and Entities Affected. The regulation affects the Virginia State Police, the 4,374 firearms dealers in the Commonwealth,[2] and individuals attempting to purchase

firearms. Most of the firearms dealers are likely small businesses. For 2014, the Virginia State Police reported processing 405,838 requests for criminal history record information on perspective buyers. The proposed amendments affect anyone who may read the regulation, potentially including persons from the entities listed above.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments do not affect employment.

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

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

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

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

[1] More information about the periodic review can be found on the Virginia Regulatory Town Hall at http://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1476.

[2] Source: Firearms Commerce in the United States Annual Statistical Update 2016, a report by the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives. The report stated that in 2015 the Commonwealth of Virginia had 4,374 federal firearms licensees.

Agency's Response to Economic Impact Analysis: The Department of Criminal Justice Services concurs generally with the economic impact analysis provided by the Department of Planning and Budget.

Summary:

The proposed amendments (i) add the VCheck system, or other communication method authorized by the Department of State Police, as a method to obtain a criminal history record information check; (ii) remove language that is redundant, obsolete, or conflicts with statutory provisions; and (iii) clarify existing language.

Part I
General

6VAC20-130-10. ~~Purpose.~~ (Repealed.)

~~Pursuant to the provisions of § 18.2 308.2:2 of the Code of Virginia, criminal history record information checks are required prior to the sale, rental, trade or transfer of certain firearms. A criminal history record information check shall be requested by licensed dealers from the Department of State Police to determine the legal eligibility of a prospective purchaser to possess or transport certain firearms under state or federal law. The Department of Criminal Justice Services hereby promulgates the following regulations governing these criminal history record information checks as required under § 18.2 308.2:2 H of the Code of Virginia. The purpose of this chapter is to ensure that criminal history record information checks are conducted in a manner which ensures the integrity of criminal history record information, guarantees individual rights to privacy, and supports the needs of law enforcement, while allowing nearly instantaneous sales of firearms to the law abiding public.~~

6VAC20-130-20. Definitions.

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

"Antique firearm" means any firearm~~, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898, and any replica of such a firearm, provided such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade~~ meeting the statutory definition provided in § 18.2-308.2:2 G of the Code of Virginia.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals, consisting of notations of arrests, detentions, indictments, ~~informations~~ information, or other formal charges and any disposition arising therefrom.

"Criminal history record information check," ~~(also~~ "criminal record check," and "record check") ~~means~~ mean a review of a potential purchaser's criminal history record information, to be conducted by the Department of State Police at the initiation of a dealer in order to establish a prospective purchaser's eligibility to possess or transport a firearm, as defined ~~herein~~ in this chapter, under state or federal law.

"Dealer" means any person licensed as a dealer pursuant to 18 ~~U.S.C.~~ USC § 921 et seq.

"Dealer identification number" ~~(DIN)~~ or "DIN" means a unique identifying number assigned by the Department of State Police to each individual dealer as defined in § 18.2-308.2:2 G of the Code of Virginia, in order to identify such

dealers when they request criminal history record information to determine the eligibility of a prospective purchaser to possess or transport a firearm.

"Department" means the Virginia Department of State Police.

"Firearm" ~~means any handgun, shotgun, or rifle which expels a projectile by action of an explosion~~ means any firearm meeting the statutory definition provided in § 18.2-308.2:2 G of the Code of Virginia.

"Handgun" ~~means any firearm including a pistol or revolver designed to be fired by the use of a single hand~~ means any firearm meeting the statutory definition provided in § 18.2-308.2:2 G of the Code of Virginia.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth~~,~~ and shall include any ~~member of the Regulatory Division~~ (i) special agent of the Department of Alcoholic Beverage Control ~~vested with police authority, any~~; (ii) police agent appointed under the provisions of § 56-353 of the Code of Virginia ~~(provides railroad officials with the authority to appoint police agents), or any game warden~~; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115 of the Code of Virginia; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217 of the Code of Virginia; (viii) animal protection police officer employed under § 15.2-632 of the Code of Virginia; (ix) campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 of the Code of Virginia; or (x) private police officer employed by a private police department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department ~~or~~, sheriff's office, or private police department.

"Prospective purchaser" means an individual who intends to buy, rent, trade, or transfer a firearm or firearms as defined ~~herein~~ in this chapter, and has notified a dealer of his intent.

"Resident of Virginia" means a person who resides and has a present intent to remain within the Commonwealth, as shown by an ongoing physical presence and a residential address within Virginia. If a person does not reside in Virginia, but is on active duty as a member of the U.S. Armed Forces and Virginia is the person's permanent duty station, the person shall, for the purpose of these regulations, be considered a resident of Virginia.

"Transfer" means to sell, rent, trade, or transfer a firearm as defined ~~herein~~ in this chapter.

"VCheck" means Virginia's instant criminal background check program authorized by the Department of State Police and available via the Internet to all firearms dealers registered with the State Police Firearms Transaction Center.

"Virginia Firearms Transaction Record Form" or "VFTR form" means the form issued by the Department of State Police provided to dealers and required for obtaining a criminal history record check, also known as ~~"SP-65," the "VFTR form"~~ "SP-65" or the "VFTR."

Part II
Regulations

6VAC20-130-30. Applicability of ~~regulations concerning criminal history record checks for firearm purchase~~ chapter.

A. ~~These regulations apply~~ This chapter applies to:

1. All licensed dealers in firearms; and

2. The Department of State Police.

B. ~~These regulations~~ This chapter shall not apply to:

1. Transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 ~~U.S.C.~~ USC § 921 et seq.;

2. Purchases by or sale to any law-enforcement officer or agent of the United States, the Commonwealth, or any local government; or

3. Antique firearms~~; or~~.

~~4. Transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than § 18.2-308.2:2 of the Code of Virginia.~~

6VAC20-130-40. Responsibilities of dealers.

It shall be the responsibility of dealers that transfer firearms in Virginia to comply with the following:

1. Register with the ~~department and~~ Department of State Police to obtain from the department a dealer identification number (DIN) and to access the ~~toll-free telephone number to participate in the~~ department's criminal history record ~~check~~ VCheck program by telephone or via the Internet.

2. Prior to transferring any firearm, determine if the firearm is a "firearm" as defined in ~~these regulations~~ this chapter and § 18.2-308.2:2 of the Code of Virginia.

3. Deny the transfer of a handgun to a non-Virginia resident in accordance with 18 ~~U.S.C.~~ USC § 922(b)(3).

4. Complete the VFTR form.

5. Request a criminal history record information check prior to the transfer of any such firearm.

6. Request a criminal history record check either by telephone ~~or by,~~ mail, VCheck, or other communication authorized by the Department of State Police prior to the sale of shotguns and rifles to non-Virginia residents.

7. Maintain required forms and records according to the procedures outlined in these regulations.

8. Deny the transfer of a firearm if advised by the Department of State Police that the prospective purchaser is ineligible to possess such a firearm and the department disapproved the transfer of a firearm to the prospective purchaser.

9. ~~Allow the Department of Criminal Justice Services access to all forms and records required by these regulations.~~ Notify the Department of State Police promptly upon any change in registration information (telephone number, address, federal firearms license number, etc.).

10. Provide written notice of the closing of the business to Department State Police in advance of the actual closing date.

6VAC20-130-50. Responsibilities of the Department of State Police.

A. The Department of State Police shall operate ~~a~~ telephone, ~~and~~ mail, VCheck, or other authorized communication response ~~system~~ systems to provide dealers in firearms (as defined ~~herein)~~ in this chapter) with information on the legal eligibility of prospective purchasers to possess or transport firearms covered under these regulations. This information shall be released only to authorized dealers. Prior to the release of the information, the identity of the dealer and the prospective purchaser can be reasonably established.

B. In no case shall the department release to any dealer actual criminal history record information as defined ~~herein~~ in this chapter. The dealer shall only receive from the department a statement of the department's approval or disapproval of the transfer, and an approval code number, if applicable, unique to the transaction. A statement of approval or disapproval shall be based on the department's review of the prospective purchaser's criminal history record information and restrictions on the transfer of firearms to felons enumerated in § 18.2-308.2 of the Code of Virginia or federal law. This statement shall take one of the following two statuses: (i) approval with an approval code number~~,~~ or (ii) disapproval with no approval code number.

C. The department shall provide to dealers a supply of VFTR forms, a DIN, and a toll-free number to allow access to the telephone criminal history record check system available for approval of firearms purchases.

D. The department shall supply all dealers in the Commonwealth with VFTR forms in a manner ~~which~~ that allows the department to use the forms to identify dealers and monitor dealers' use of the system to avoid illegal access to criminal history records and other department information systems.

E. The department shall hire and train such personnel as are necessary to administer criminal history record information checks, ensure the security and privacy of criminal histories used in such record checks, and monitor the record check system.

F. ~~Allow~~ The department shall allow the Department of Criminal Justice Services access to all forms and records required by this chapter.

6VAC20-130-60. Preparing for a criminal history record check.

A. General procedures.

1. If any firearm, which a prospective purchaser intends to obtain in transfer, is a firearm as defined ~~herein~~ in this chapter, the dealer shall request that the Department of State Police conduct a criminal history record check on the purchaser. The dealer may obtain the required record check from the department for purchasers who are residents of Virginia by (i) telephoning the department~~,~~ using the provided toll-free number, (ii) using VCheck, or (iii) using another communication authorized by the Department of State Police and requesting the record check. For out-of-state residents who purchase rifles or shotguns, the dealer may request the record check from the department by telephone, mail, or delivery. However, Virginia residents may, if they elect, request the dealer to obtain a record check by mail. The initial required steps of completion of the VFTR, obtaining consent of the purchaser, determining residency and verifying identity are common to ~~both~~ telephone ~~and~~, mail ~~methods of~~, VCheck, or other communication authorized by the Department of State Police for obtaining the record check.

2. The dealer shall request a criminal history record check and obtain the prospective purchaser's signature on the consent portion of the form for each new transfer of a firearm or firearms to a given purchaser. One record check is sufficient for any number of firearms in a given transfer, but once a transaction has been completed, no transfer to the same purchaser shall proceed without a new record check.

3. A criminal history record check shall be conducted prior to the actual transfer of a firearm.

B. Completing section A of the Virginia Firearms Transaction Record: Obtaining consent for a criminal history record information check for firearms purchase. As a condition of any sale, the dealer shall advise the prospective purchaser to legibly complete and sign section A of a VFTR form.

1. The dealer shall require the prospective purchaser to complete section A of the VFTR form in the prospective purchaser's own handwriting, and without the dealer's assistance. The purchaser shall answer the questions listed

and shall complete the items that establish residency and describe identity, including name, sex, height, weight, race, date of birth and place of birth.

2. If the prospective purchaser cannot read or write, section A of the VFTR form may be completed by any person other than the dealer or any employee of the dealer according to the procedures specified on the reverse side of the VFTR form.

3. The dealer shall also obtain the prospective purchaser's signature or, if he cannot read or write, his mark, following the consent paragraph at the bottom of section A, which shall certify that the information supplied by the purchaser in section A is true and correct.

C. Completing section B of the Virginia Firearms Transaction Record: Establishing purchaser identity and residency and dealer identity. Prior to making a request for a criminal history record information check, the dealer shall complete all of section B of the VFTR form for which the dealer is responsible. Information recorded on the VFTR form shall be sufficient to~~:~~ (i) reasonably establish a prospective purchaser's identity and determine the residency of the prospective purchaser~~;~~ and (ii) identify the dealer.

1. Identify prospective purchaser and determine residency. The dealer shall determine residency and verify the prospective purchaser's identity as required in section B of the VFTR, by requiring at least two forms of identification that denote the address of the prospective purchaser. Only the forms of identification listed in this subsection shall be acceptable to establish identity and residency.

a. For Virginia residents, ~~the primary form of identification shall consist of a valid photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense. Except where the photo identification was issued by the Department of Defense, the prospective purchaser shall furnish a secondary form of identification that includes an address identical to that shown on the primary identification and corroborates the purchaser's identification and residence in Virginia. A Department of Defense photo identification plus one secondary form of identification showing the purchaser's residence in Virginia meets the requirements of the exception. The following are acceptable forms of secondary identification:~~ a dealer shall require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the U.S. Department of Defense.

~~(1) Valid Virginia driver's license or photo identification card issued by the Virginia Department of Motor Vehicles;~~

~~(2) Passport;~~

~~(3) Voter registration card;~~

~~(4) Evidence of paid personal property tax or real estate taxes;~~

~~(5) Automobile registration;~~

~~(6) Hunting or fishing license;~~

~~(7) Lease;~~

~~(8) Utility or telephone bill;~~

~~(9) Bank check; or~~

~~(10) Other identification allowed as evidence of residency by Part 178.124 of Title 27, Code of Federal Regulations, and ATF Ruling 79-7.~~

If, for purposes of this chapter, a prospective purchaser's Virginia residency is based upon active duty status with the Armed Forces of the United States with a permanent duty station in Virginia, including the Pentagon, and the primary form of identification consists of a photo identification issued by the ~~United States~~ U.S. Department of Defense, the purchaser may use as a secondary identification proof of permanent duty station within Virginia signed by the station commander or duly designated representative. ~~If such primary and secondary documentation are presented, the prospective purchaser shall not be required to present any other form of secondary identification listed in subdivisions C 1 a (1) through (10).~~ For the purpose of establishing residency for a firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post.

b. For non-Virginia residents purchasing shotguns or rifles, the dealer shall require the prospective purchaser to furnish one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification as provided in subdivision C 1 a, which corroborates the identity and residency shown on the photo-identification form.

c. The dealer will ensure that the ~~form(s)~~ forms of identification support the listing of the identifying characteristics and the resident's address as supplied by the prospective purchaser in section A of the VFTR.

d. If the dealer discovers any unexplained discrepancy between the two forms of identification (different addresses, birth dates, names), the dealer shall not request a criminal history record check until the prospective purchaser can be adequately identified with two acceptable forms of identification as required.

e. The dealer shall name and identify on the VFTR form the ~~document(s)~~ documents used to verify the prospective purchaser's identity and residence~~,~~ and shall record all pertinent identifying numbers on the VFTR form.

f. While the dealer is required to collect sufficient information to establish the prospective purchaser's identity and residency from the ~~form(s)~~ forms of identification ~~listed above~~, in no case is the dealer authorized to collect more information on the prospective purchaser than is reasonably required to establish identity ~~and~~, state of residence, and citizenship.

2. Identify dealer. The dealer or his employee shall note on section B of the VFTR form:

a. The dealer's or employee's signature;

b. His position title (owner, employee);

c. The trade or corporate name and business address; and

d. The dealer's federal firearms license number.

D. No dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the U.S. State Department, a certificate of citizenship or a certificate of naturalization issued by the U.S. Citizenship and Immigration Services, an unexpired United States passport, a U.S. citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the U.S. Citizenship and Immigration Services.

6VAC20-130-70. Procedures for requesting a criminal history record information check by telephone or other communication authorized by the Department of State Police.

A. Once the prospective purchaser has completed section A of the VFTR form and the dealer has completed the necessary portions of the VFTR form and determined that the prospective purchaser is a resident of Virginia, the dealer shall ~~call~~ contact the Department of State Police and request a criminal history record information check by telephone, through VCheck, or through other authorized communication for the firearm transfer. For non-Virginia residents purchasing rifles or shotguns, the dealer may also request a criminal history record check by telephone. The dealer shall use the toll-free number provided by the Department of State Police. However, no provision of these regulations shall prohibit a Virginia resident from obtaining a written record check through the dealer for any firearm transfer.

B. The dealer shall identify himself to the department by providing his DIN and the printed number on the upper right-hand corner of the VFTR form prepared by the prospective purchaser.

C. The dealer shall allow the department to verify this identifying information. The Department of State Police ~~may~~ shall disapprove a firearm purchase if the department determines that the identifying information supplied by the dealer is incomplete, incomprehensible or in error, raises a reasonable doubt as to the origin of the ~~call~~ request, or is otherwise unusable.

D. The dealer shall then supply to the department over the telephone, through VCheck, or through another authorized communication all identifying data on the prospective purchaser ~~which~~ that is recorded on section A of the VFTR, in the order requested by the department. This information shall be transmitted to the department in a discreet and confidential manner, assuring to the extent possible that the identifying data is not overheard or viewed by other persons in the dealer's place of business. If the dealer cannot provide sufficient information to allow the department to conduct a criminal history record check, the department will not accept the request on the basis of insufficient information to conduct a check. The department may adopt procedures to appropriately address such occurrences.

E. The Department of State Police will respond to the dealer's request for a criminal history record check by consulting the criminal history record information indexes and files, during the dealer's call or VCheck submission. In the event of electronic failure or other difficulties, the department shall immediately advise the dealer of the reason for such delay and provide to the dealer an estimate of the length of such delay.

F. If no evidence of a criminal record or other information is found that would preclude the purchaser from possessing or transporting a firearm under state or federal law, the department will immediately notify the dealer that the transfer may proceed, and will provide the dealer with a unique approval code number, which the dealer shall enter in a clear, visible, and convenient manner on the original of the VFTR form.

G. If the initial search discloses that the prospective purchaser may not be eligible to possess a firearm, the department will notify the dealer that a further check must be completed before the end of the dealer's next business day, to determine if the prospective purchaser has a criminal record that makes him ineligible to possess or transport a firearm under state or federal law. This statement of ineligibility shall then be communicated by the dealer to the prospective purchaser in a discrete and confidential manner, recognizing the individual's rights to the privacy of this information.

H. In any circumstance in which the department must return the dealer's telephone call, whether due to electronic or other failure or in order to allow a further search, the dealer shall await the department's call and make no transfer of a firearm to the individual whose record is being checked until:

1. The dealer receives notification of approval of the transfer by telephone or other authorized communication from the department; or

2. The department fails to disapprove the transaction of the prospective purchaser before the end of the next business day.

~~3.~~ Exception: If the department knows at the time of the dealer's telephone call or VCheck submission that it will not be able to respond to the request by the end of the dealer's next business day, it will so notify the dealer. Upon receiving notification, the dealer shall note in a clear and visible manner on the VFTR that the department was unable to respond. The dealer may in such cases complete the transfer immediately after his telephone call or receipt of an authorized communication.

I. In the event that the department is unable to immediately respond to the dealer's request for a criminal history record check and the prospective purchaser is also unable to await the department's response to the dealer's request and the department ultimately approves of the transfer, the dealer may transfer any firearm or firearms, as listed on the VFTR form that initiated the request for a record check, to the prospective purchaser, after the receipt of the approval of the transfer from the department. The actual transfer of the firearm shall be accomplished in a timely manner. A second record check shall not be required provided that the actual transfer of the firearm occurs within a time period specified by the department.

J. If the dealer is notified by the department that the prospective purchaser is not eligible to possess or transport a firearm or firearms under state or federal law, and the transfer is disapproved, and if he is so notified before the end of the next business day after his accepted telephone request or VCheck confirmation, the dealer shall not complete the transfer.

K. On the last day of the week following transfer of a firearm covered by these regulations on the basis of a telephone inquiry, the dealer shall send by mail or shall deliver to the department the appropriate copies of the VFTR other than the original, with sections A and B properly completed. No information on the type, caliber, serial number, or characteristics of the firearms transferred shall be noted on the copies of the VFTR submitted to the department, but the forms shall otherwise be complete. The dealer shall note the date of mailing on the form, or shall have the form date stamped or receive a dated receipt if the dealer delivers the form.

~~L. After sale check.~~

~~1. Following the receipt of the required copies of a completed VFTR form recording a transfer, the department shall immediately initiate a search of all data bases in order to verify that the purchaser was eligible to possess or transport the firearm(s) under state or federal law.~~

~~2. If the search discloses that the purchaser is ineligible to possess or transport a firearm, the department shall inform the chief law enforcement officer in the jurisdiction where the transfer occurred and the dealer of the purchaser's ineligibility without delay. The department shall mark "disapproved" on a copy of the VFTR submitted by the dealer after the transfer and return the form by mail to the dealer.~~

6VAC20-130-80. Procedures for requesting a criminal history record check by mail.

A. At the request of a Virginia resident or a non-Virginia resident, a dealer may request a record check by mail for a firearm transfer. In either case, the dealer shall follow the procedures as set forth ~~below~~ in this chapter. In addition, the dealer shall follow the provisions for establishing identity and residency as set forth in 6VAC20-130-60 C 1 a and C 1 b ~~of this chapter~~, and, if applicable, 6VAC20-130-60 D.

B. The dealer shall mail or deliver to the department the appropriate copies of the completed VFTR form according to procedures established by the department ~~(which~~ (that shall not describe, list, or note the actual firearms to be transferred) within 24 hours of the prospective purchaser's signing and dating of the consent paragraph in section A of the VFTR form. This shall be evidenced by the dealer's notation of the mailing date on the VFTR, if mailed, or the date stamp of the department on the VFTR form or a receipt provided to the deliverer, if delivered. The original of the completed VFTR form shall be retained at the dealer's place of business.

C. The department will initiate a search only upon receipt of the appropriate copies of the VFTR form at department headquarters. The department may challenge and refuse to accept any VFTR form if there is an unreasonable, extended time period between the date of the mailing and the date of receipt of the copies of the form at the department.

D. Following its search of Virginia and national criminal history record indexes and files, the department will return to the dealer a copy of the VFTR form, marked "approved," or "not approved." When a dealer receives approval, he may transfer any firearm or firearms, as listed on the VFTR form that initiated the request for a record check, to the prospective purchaser, after his receipt of the approval. The actual transfer of the firearm shall be accomplished in a timely manner. A second record check shall not be required provided that the actual transfer of the firearm occurs within a time period specified by the department. If the transfer is disapproved, he is not authorized to transfer any firearm to the prospective purchaser.

E. In the case of written requests for criminal history record check, initiated by the submission of VFTR forms, the dealer shall wait up to 10 days after the mailing date (noted on the form) or delivery date stamp (if not mailed) of the request for written approval from the department, prior to transferring a firearm as defined ~~herein~~ in this chapter.

F. However, if 10 days elapse from the date the VFTR form was mailed (as noted on the VFTR form) or delivered to the Department of State Police (as indicated by the date stamped by the department), and the department has not responded to the request initiated by the form by approving or

disapproving the transaction proposed, the dealer may complete the transfer to the prospective purchaser on his next business day, after the ~~tenth~~ 10th day, or thereafter, and not be in violation of the law or ~~these regulations~~ this chapter. After completion of the transfer in this case, as in all cases, any new or further transfer of firearms not listed on the VFTR form that initiated the request for a record check to the same purchaser will require a new criminal history record check.

6VAC20-130-90. Proper use of the components of the criminal history record check system: Forms, records, toll-free telephone number, VCheck passwords, and DIN.

A. The VFTR forms will be provided to the dealer by the department. VFTR forms shall not be transferred from one dealer to another. All VFTR forms partially completed, torn, defaced or otherwise rendered unusable shall be marked "VOID" and disposed of in a manner ~~which~~ that will not allow their reuse. All unused forms shall remain the property of the Department of State Police and shall be returned to the department in the event that a dealer ceases to engage in the transfer of firearms in a manner which is regulated by the Department of Criminal Justice Services.

B. The dealer will retain the original of the VFTR form for his own files.

C. The dealer shall keep all blank and completed VFTR originals~~,~~ and all returned copies in a secure area, which will restrict access to the information contained on the VFTR forms to authorized employees only.

D. The department shall retain a copy of all VFTR forms received from dealers according to the procedures outlined ~~below~~ in this subsection.

1. Approved transfers. Thirty days after the department has notified the dealer of an approved transfer, the department shall destroy the VFTR form still in its possession and all identifiable information collected pertaining to a prospective purchaser.

2. Disapproved transfers. VFTR forms recording a transfer that was not approved shall be maintained by the department in a separate file, maintained by name of prospective purchaser.

a. The information contained in these forms shall be used by the department for legitimate law-enforcement purposes only~~,~~ and shall be governed by existing regulations concerning the privacy and security of criminal history record information.

b. The department may maintain any other printouts or reports with these copies of the VFTR form, provided they are treated as criminal history record information.

E. The Department of State Police shall maintain a running log of all requests for criminal history record information checks for firearms transfer, which shall include the following:

1. DIN and name of requester;

2. Dealer's transaction number;

3. Approval code number~~,~~ if sale is approved;

4. Date of telephone request ~~or~~, mailing, VCheck, or delivery date of mail request;

5. Notation of type of record request ~~either~~: telephone ~~or~~, mail, or VCheck request;

6. Approved or not approved status; and

7. Date of clearance from department file through mailing of VFTR form to the dealer or other final action.

F. A log shall be retained at the department on each request ~~which~~ that leads to approvals of firearm transfers for 12 months from the date of each request.

G. Requests ~~which~~ that lead to disapprovals shall be maintained by the department on a log for a period of two years from the date the request was accepted by the department for processing.

H. The department shall monitor and distribute all VFTR forms in an appropriate manner to ensure their proper control and use. This includes designing, redesigning, numbering, distributing, tracking, and processing all VFTR forms.

I. No dealer shall provide his DIN or the toll-free number VCheck password to another party for any reason.

J. The ~~DIN's and the toll-free number~~ VCheck password may be changed periodically to ensure that these numbers are not improperly used by unauthorized dealers or unauthorized parties.

6VAC20-130-100. ~~Audits~~ Monitor.

~~A.~~ The Department of State Police shall continuously observe compliance with requirements regarding VFTR form completion, notification of the Department of State Police following firearm transfers, form management and storage, and confidentiality and proper use of the DIN and the ~~toll-free telephone number~~ VCheck password information for Virginia resident telephone and VCheck record checks.

~~B. The Department of State Police shall notify the Department of Criminal Justice Services if a dealer has used or may have used the criminal history record information check system improperly in a manner that may jeopardize the confidentiality and security of criminal history record information systems.~~

~~C. Upon such notification, the Department of Criminal Justice Services shall audit the dealership in question and recommend corrective action without delay.~~

1. ~~Pending the outcome of an audit, the~~ The department may invalidate a particular DIN to ensure the continuous integrity of the criminal history record information. Prior to such invalidation, the department shall notify the dealer orally, ~~telephonically~~ by telephone, or in writing of the reasons for such invalidation and allow the dealer the opportunity to respond. ~~The department shall also notify the Department of Criminal Justice Services when a DIN has been invalidated.~~

~~2. Should the results of an audit reveal that the provisions of these regulations have not been violated, the Department of Criminal Justice Services shall advise the department to immediately reinstate the invalidated DIN.~~

~~3.~~ 2. Should the department identify ~~results of an audit reveal~~ minor violations of the provisions of ~~these regulations~~ this chapter, ~~the Department of Criminal Justice Services may notify~~ the department ~~to~~ may monitor all future requests of the dealer for criminal history record checks ~~for a period not to exceed 90 days. In the event that the DIN of the dealer has been invalidated, the Department of Criminal Justice Services shall also notify the department to reinstate the invalidated DIN. Any additional violations that may occur during this time period shall be reported to the Department of Criminal Justice Services~~ as needed. Occurrences of additional violations ~~shall invoke the provisions of these regulations for the handling of~~ or major or repeated violations~~, as outlined below, and~~ may result in a subsequent ~~audit~~ monitoring or a criminal investigation of the dealer.

~~4. Should the results of an audit reveal major or repeated violations of the provisions of these regulations, the Department of Criminal Justice Services shall advise the department to invalidate the DIN if not invalidated previously and that the invalidated DIN should not be reinstated until the dealer submits a written request to the Department of Criminal Justice Services for reinstatement of the DIN. The request shall demonstrate to the reasonable satisfaction of the Department of Criminal Justice Services that corrective action has been taken by the dealer to comply with the provisions of these regulations.~~

~~5. Should the results of an audit reveal that the privacy and security of criminal history record information have been compromised, the Department of Criminal Justice Services shall send written notification to the dealer, the office of the local commonwealth's attorney and the department.~~

~~D. The Department of Criminal Justice Services shall annually audit the Department of State Police to ensure the following:~~

~~1. That records, VFTR's and other materials, except for the maintenance of the log as outlined above, on purchasers found to be eligible to possess or transport firearms (approved) are being routinely destroyed 30 days from the notification, mailing or delivery date of the accepted request for a record check; and~~

~~2. That VFTR's and other materials gathered on persons found to be ineligible to purchase a firearm (disapproved) are governed by the regulations for criminal history record information; and~~

~~3. That logs recording the approvals and disapprovals of firearm transfers are being correctly maintained according to the provisions of these regulations.~~

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

FORMS (6VAC20-130)

~~Criminal History Record Request, Form SP-167, eff. 7/1/94~~.

Virginia Firearms Transaction Record, Form SP-65, ~~eff. 7/1/94.~~ (eff. 7/2015) (Form SP-65 is obtained directly from the Virginia State Police, Firearms Transaction Center Help Desk, (804) 674-2292 or (804) 674-2788, or email firearms@vsp.virginia.gov.)

VA.R. Doc. No. R16-4648; Filed May 3, 2017, 3:48 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC5-80. Permits for Stationary Sources (Rev. K16) (amending 9VAC5-80-320, 9VAC5-80-340, 9VAC5-80-2270, 9VAC5-80-2280, 9VAC5-80-2310, 9VAC5-80-2330, 9VAC5-80-2340; adding 9VAC5-80-342, 9VAC5-80-2282, 9VAC5-80-2342).**

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

Public Hearing Information:

July 6, 2017 - 10 a.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Training Room, Richmond, VA

Public Comment Deadline: July 28, 2017.

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

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. 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: The federal statutory basis for the regulation is Title V, §§ 501-507 of the federal Clean Air Act (Act) (42 USC 7401 et seq., 91 Stat 685).

The 1990 Clean Air Act Amendments (CAAA) created a major change to the approach taken by the United States Congress in previous promulgations of the federal Clean Air

Act. Title V of the CAAA requires states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under the permit programs must set out standards and conditions that cover all applicable requirements of the Act for each emission unit at each individual stationary source. Section 502 of the Act requires that states develop permit fee programs to pay for the costs of the state's Title V Permit Program.

Section 502(b)(3) of the CAAA sets out the minimum elements that must be included in each state's permit fee program. The owner or operator of all sources subject to the requirements to obtain a permit must pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V, including the cost of the small business technical assistance program. Section 502(b)(3)(A) specifies what is meant by reasonable costs, as follows:

1. Reviewing and acting upon any application for a permit.

2. Implementing and enforcing the terms and conditions of the permit, but not including any court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking systems.

Section 502(b)(3)(B) specifies the requirements for the total amount of fees to be collected by the state permitting authority, as follows:

1. The state must demonstrate that, except as otherwise provided, the program will collect in the aggregate from all sources subject to the program an amount not less than $25 per ton of each regulated pollutant, or such other amount as the U.S. Environmental Protection Agency (EPA) administrator may determine adequately reflects the reasonable costs of the permit program.

2. "Regulated pollutant" means (i) a volatile organic compound; (ii) each pollutant regulated under § 111 or 112 of the Act; and (iii) each pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).

3. In determining the amount to be collected, the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant.

4. The requirements of paragraph 1 above will not apply if the permitting authority can demonstrate that collecting an amount less than $25 per ton of each regulated pollutant will meet the requirements of § 502(b)(3)(A).

5. The fee calculated under paragraph 1 above shall be increased (consistent with the need to cover the reasonable costs authorized by § 502(b)(3)(A) in each year beginning after the year of the enactment of the Act by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

Section 502(b)(3)(C) specifies the requirements of a federal permit fee program if the EPA administrator finds that the fee provisions of a state program are inadequate or if the Title V operating permit program itself is inadequate and EPA has to administer the fee program itself. This section allows the EPA administrator to collect additional fees to cover the administrator's costs of administrating a federal fee program and specifies that the EPA administrator may collect additional penalties and interest for failure to pay fees.

Section 502(b)(4) specifies that the minimum elements for the permit program include requirements for adequate personnel and funding to administer the program.

Section 507(f) specifies that the state may reduce any fee required under Title V to take into account the financial resources of small business stationary sources.

The federal regulatory basis for the Title V Fee Program is 40 CFR 70.9.

40 CFR 70.9(a) specifies that the state program require that the owners or operators of part 70 sources pay annual fees that are sufficient to cover the permit program costs and that any fee required by this section will be used solely for Title V permit program costs.

40 CFR 70.9(b)(1) specifies that the state establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs shall include, but are not limited to:

1. Preparing generally applicable regulations or guidance regarding the Title V permit program or its implementation or enforcement;

2. Reviewing and acting on any permit application including the development of an applicable requirement;

3. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

4. Implementing and enforcing the terms of any Title V permit;

5. Emissions and ambient monitoring;

6. Modeling, analyses, or demonstrations;

7. Preparing inventories and tracking emissions; and

8. Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Programs in determining and meeting their obligations under the Title V permit program.

Section 70.9(b)(2) provides a fee schedule that EPA will presume meets the requirements of 40 CFR 70.9(b)(1), which includes collecting not less than $25 per year per ton of actual emissions of each regulated pollutant adjusted annually for increases in the Consumer Price Index as of August 31 of the most recent calendar year. The presumptive fee includes a greenhouse gas (GHG) adjustment based upon the hourly burden for GHG permit activities. This section also provides certain exclusions from the actual emissions calculation that the state may use, including a 4,000 ton per year cap on actual emissions of regulated pollutants used in the calculation, the actual emissions used in the minimum fee calculation, and actual emissions from insignificant activities not required in the Title V permit application pursuant to 40 CFR 70.5 (c). "Actual Emissions" is defined for 40 CFR Part 70 sources as follows:

> "Actual emissions" means the actual rate of emissions in tons per year of any regulated pollutant (for presumptive fee calculation) emitted from a part 70 source over the preceding calendar year or any other period determined by the permitting authority to be representative of normal source operation and consistent with the fee schedule approved pursuant to this section. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the permitting authority pursuant to the preceding sentence.

Section 70.9(b)(3) specifies that the state's fee schedule may include emissions fees, application fees, service-based fees, other types of fees, or any combination thereof to meet the fee schedule requirement to cover Title V permit program costs. It further specifies that nothing in 40 CFR 70.9 shall require the permitting authority to calculate fees on any particular basis or in the same manner for all sources, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of 40 CFR 70.9(b)(1).

Section 70.9(b)(5) specifies that the state shall provide an accounting that its fee schedule results in the collection and retention of revenues sufficient to cover the permit program costs if (i) the state sets a fee schedule that would result in collections less than the presumptive fee schedule, or (ii) EPA has serious questions as to whether the state's fee schedule is sufficient to cover the program costs.

Sections 70.9(c) and (d) further require the state to provide a demonstration that the collection of fees is sufficient to meet all of the Title V program requirements and that the fees are used solely to cover the costs of meeting those program requirements.

State requirements: Section 10.1-1308 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.

Section 10.1-1322 of the Code of Virginia authorizes the State Air Pollution Control Board to adopt requirements for permits and to collect fees from air pollution sources.

Section 10.1-1322 B authorizes the State Air Pollution Control Board to provide for the collection of annual permit program emissions fees from air pollution sources, based upon actual emissions of each regulated pollutant not to exceed 4000 tons per year of each pollutant for each source. The annual permit program emissions fees are not to exceed a base year amount of $25 per ton using 1990 as the base year and are to be adjusted annually by the Consumer Price Index. Permit program fees for air pollution sources that receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The statute directs that the fees approximate the direct and indirect costs of administering and enforcing the permit program as required by the Clean Air Act. This section also authorizes the board to collect permit application fee amounts not to exceed $30,000 from applicants for a permit for a new major stationary source.

Section 10.1-1322.1 of the Code of Virginia specifies that all moneys collected pursuant to §§ 10.1-1322 and 10.1-1322.2 be paid into the state treasury and credited to a special nonreverting fund known as the Air Pollution Permit Program Fund. Any moneys remaining in this fund are not to revert to the general fund but are to remain in the fund. Utilization of the fees collected pursuant to this section is to be limited to the agency's direct and indirect costs of processing permits.

Item 369 B 1 of Chapter 780 of the 2016 Acts of Assembly continued language initially included in Item 365 B 1 of Chapter 3 of the 2012 Acts of Assembly, Special Session 1, authorizing the board to adjust permit program emissions fees collected pursuant to § 10.1-1322 of the Code of Virginia and to establish permit application fees and permit maintenance fees sufficient to ensure that the revenues collected from all fees cover the direct and indirect costs of the program, consistent with the requirements of Title V of the Clean Air Act. It further specified that (i) permit application fees collected not be credited toward the amount of annual emissions fees owed pursuant to § 10.1-1322, (ii) that all fees be adjusted annually by the Consumer Price Index, (iii) that regulations initially implementing these provisions be exempt from Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, Code of Virginia (the Administrative Process Act), and (iv) that any further amendments to the fee schedule beyond those initially implementing these provisions would not be exempt from provisions of the Administrative Process Act.

Purpose: The purpose of 9VAC5-80 is to minimize the emissions of regulated air pollutants from new and modified stationary sources through air permit programs. Minimizing those emissions protects the health, safety, and welfare of the general public. Title V of the federal Clean Air Act requires

that Title V permit programs be fully funded through Title V program fees. As the permit programs achieve their goal of reducing emissions, Title V permit program fee revenue has decreased and is projected to decrease to the point that it will no longer cover the costs of the Title V permit programs. The purpose of this regulatory action is to (i) increase Title V fees so that they continue to fully fund the Title V permit program, and (ii) to restructure the Title V fee schedule to better reflect the actual costs of the Title V permit program, thereby improving program revenue stability. Fully funding the Title V permit program is essential to continuing to reduce air pollutant emissions in the Commonwealth and continuing to protect the health, safety, and welfare of the citizens of Virginia.

Substance: The substantive provisions were developed based on the consensus proposal of a stakeholder advisory group established by the Department of Environmental Quality that consisted of representatives from industry, environmental groups, and department staff; department analysis; and information gathered from the federal statutes, regulations, and policies. In addition, the new and increased fees more accurately reflect and evenly distribute the permitting and compliance assurance costs incurred by the department.

1. Definitions of "greenhouse gases" and "regulated pollutant (for fee calculation)," are added and the definition of "actual emissions" is revised so that emissions of greenhouse gases will be excluded from the calculation of permit program emissions fees.

2. A new section is added to Chapter 80, Part II, Article 2 providing an equivalent method of calculating permit program emissions fees applicable to future billing years. In this new section, permit program emission fee rates for billing years 2018 and 2019 are specified, reflecting incremental 18.6% and 15% increases in the permit program emission fee rates over those two years, respectively. Also, a new and equivalent method of calculating CPI adjustments is provided for billing years after 2019. That new method of calculating CPI adjustments for permit program emissions fees is the same method that is currently used for annual CPI adjustments for permit application fees and annual permit maintenance fees. Provisions for excess emissions fees are unchanged. Various changes are made to the existing permit program emissions fee calculation section as necessary to conform to and implement this new section.

3. A new section is added to Chapter 80, Part II, Article 10 specifying new, increased base permit application fee amounts that will be applicable in future years. Annual CPI adjustments are applied as before except the annual adjustment for 2019 is specified to be 10% more than the permit application fee rates applicable in the previous calendar year. Provision is made for applications filed before the effective date of this amendment and modified on or after that date such that the new permit application fee structure is applicable to that application but any permit application fee amount previously paid for that application is credited toward the new permit application fee amount. Various changes are made to the existing permit application fee calculation section as necessary to conform to and implement this new section.

4. A new section is added to Chapter 80, Part II, Article 11 specifying new, increased base permit maintenance fee amounts that will be applicable in future years. Annual CPI adjustments are applied as before except that the fee adjustments for certain permit types are individually specified for billing years 2019 and 2020. A new minimum permit maintenance fee is specified for synthetic minor sources and that fee is also adjusted annually. Various changes are made to the existing permit maintenance fee calculation section as necessary to conform to and implement this new section.

Issues: The primary advantage to the public of this proposed action is that it ensures that the Title V permit program will continue to protect the health and welfare of the Commonwealth's citizens and ensures that the Commonwealth will continue to maintain control over the implementation of the Title V permit program within the Commonwealth. The primary disadvantage of this proposed action is that some increases in the direct and indirect costs of the Title V permit program will be borne by businesses in the Commonwealth and will be passed along to the citizens of the Commonwealth. Changing the fee structure will affect different businesses differently; some will pay proportionally more in fees, some proportionally less.

The primary advantage to the department of this proposed action is that the permit Title V permit program will continue to be fully funded and fully staffed. There are no disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Air Pollution Control Board (Board) proposes to raise all of its emissions and maintenance fees, and most of its application fees, for stationary source air pollution permits. The Board also proposes to institute a new maintenance fee for synthetic minor sources of air pollution.

Result of Analysis. Because the program funded by these fees is required by both state and federal law, and the costs of non-compliance would likely be greater than these proposed fee increases, the benefits of the Board's proposed changes likely outweigh their costs.

Estimated Economic Impact. The Department of Environmental Quality (DEQ) and the Board currently manage the stationary source air pollution permitting program required by Title V of the federal Clean Air Act. This program is required by federal law to be self-funding. DEQ staff reports that emissions that are subject to fees per ton have been dropping. While this is beneficial for the

environment as it means that air quality is improving, it also means that fee revenue that supports this program has been decreasing. In order to maintain this program as required by law, the Board now proposes to increase the fee per ton of emissions for all but one of the permit application fees and increase all of the annual permit maintenance fees. The Board also proposes to institute a new maintenance fee for synthetic minor source pollution emitters that only emit, or have the potential to emit, a regulated pollutant at less than 80 percent of the threshold that would qualify them as a major source emitter. Board staff reports that this program has been understaffed so fee increases will allow staffing increases in addition to maintaining current oversight on permit holders. Board staff additionally reports that the number of permits has been basically the same over the past several years. Proposed fee increases will increase costs for permit holders going forward. DEQ reports that large businesses will easily be able to absorb those costs. Small businesses may have a harder time paying increased fees without business disruption; the Board has attempted to minimize any adverse impact of fee increases for small businesses by phasing in some of the larger increases. The costs of these proposed changes are likely outweighed by the benefits to stakeholders of maintaining this state program as the alternative would have the federal government setting up a program in the state to manage Title V permitting. Such a program would likely be more expensive for permit holders and would likely also be less flexible and responsive to their concerns. All current fees and proposed fees are set, as required by federal law, using the Consumer Price Index (CPI) for all urban consumers. Current fees for 2017 and proposed fees for 2018 and going forward are laid out below.

Permit Application Fees:

FEE TYPE	2017 Fee	2018 Fee	$ INCREASE	% INCREASE
Major NSR permit	$31,895	$63,000	$31,105	97.5%
Major NSR permit amendment (except administrative)	$7,442	$10,000	$2,558	34.4%
State major permit	$15,947	$25,000	$9,053	56.8%
Minor NSR permit (that is not also a state major permit)	$1,595	$5,000	$3,405	213.5%
Minor NSR permit amendment (except administrative)	$797	$2,500	$1,703	213.5%
Title V permit	$21,263	$35,000	$13,737	64.6%
Title V permit renewal	$10,632	$15,000	$4,368	41.1%
Title V permit modification (except administrative)	$3,721	$4,000	$279	7.5%
State operating permit	$7,442	$10,000	$2,558	34.4%
State operating permit amendment (except administrative)	$3,721	$4,000	$279	7.5%
Title V General Permit	$531	$531	$0	0.0%
Application fees for sources subject to the requirements of synthetic minor permits				
Minor NSR permit	$532	$3,000	$2,468	464.4%
Minor NSR permit amendment (except administrative)	$266	$1,000	$734	276.2%
State operating permit	$1,595	$5,000	$3,405	213.5%
State operating permit amendment (except administrative)	$851	$2,500	$1,649	193.9%

Going forward this proposal will increase fees by 10% in 2019 and will adjust fees by the CPI for all urban consumers every year thereafter.

Emission Fees:

The emission fee for 2017 is $61.56 per ton. This fee per ton will increase to $73.01 for 2018 and to $83.96 for 2019. Thereafter, the fee per ton will equal the fee for the prior year adjusted for the CPI for all urban consumers for the 12-month period ending August 31 of the prior year.

Maintenance Fees:

FEE TYPE	2017 Fee	2018 Fee	$ INCREASE	% INCREASE
Title V Complex Major Source	$10,632	$21,263	$10,631	100.0%
Title V Major Source	$3,721	$7,442	$3,721	100.0%
Title V Source By Rule	$1,595	$2,392	$797	50.0%
Synthetic Minor 80% Source	$1,063	$1,594	$531	50.0%
Minimum Synthetic Minor	None	$500	$500	New Fee

For 2019, the Board proposes maintenance fees of:

FEE TYPE	2019 Fee	$ INCREASE over 2018	% INCREASE over 2018
Title V Complex Major Source	$23,389	$2,126	10%
Title V Major Source	$8,186	$744	10%
Title V Source By Rule	$2,790	$398	17%
Synthetic Minor 80% Source	$1,860	$266	17%
Minimum Synthetic Minor	$550	$50	10%

For 2020, the Board proposes to raise the "Title V Source By Rule" fee to $3,189 and the "Synthetic Minor 80% Source" fee to $2,126 (both increases are about 14.3%). All other maintenance fees in 2020 and all maintenance fees after 2020 will be equal to the fee for the prior year adjusted for the CPI for all urban consumers for the 12-month period ending August 31 of the prior year.

Businesses and Entities Affected. These proposed regulatory changes will affect all holders of stationary source air pollution permits that are subject to the Title V fee program. Board staff reports that 560 permit holders were billed for Title V program fees in 2016, 85% of which are likely small businesses. Board staff also reports as many as an additional 1,115 sources may be affected by the new fee for synthetic minor air pollution; about 94% of these new affected sources will likely be small businesses. Board staff reports that most permit holders are manufacturers. Some localities, as well as some state sites[1] and federal sites,[2] also have Title V permits.

Localities Particularly Affected. The Counties of Albemarle, Augusta, Brunswick, Fairfax, Franklin, Henrico, Loudoun, Prince William, King and Queen, Shenandoah, Frederick, Gloucester, Grayson, Page, Rockingham, Shenandoah and Smyth, and the Cities of Virginia Beach, Bristol, Chesapeake, Galax, Hampton, Manassas, Norfolk and Harrisonburg, have permits that are subject to Title V program fees. Additionally, the township of Leesburg and the Roanoke Valley Resource Authority[3] have permits that make them subject to Title V program fees. These localities will be particularly affected by increasing Title V permit fees.

Projected Impact on Employment. Increased permit fees will likely marginally decrease profits for affected businesses. For affected businesses that are only marginally profitable under current fees, the proposed fee increases may cause business owners to close the businesses for which they have air pollution permits and move their capital into other endeavors that may be more profitable.

Effects on the Use and Value of Private Property. Increased permit fees will likely marginally decrease profits for affected businesses. For affected businesses that are only marginally profitable under current fees, the proposed fee increases may cause business owners to close the businesses for which they have air pollution permits and move their capital into other endeavors that may be more profitable.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

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

(ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Affected small businesses will incur costs on account of increasing permit fees.

Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods that would be less costly for affected businesses while still meeting the Board's legal mandate to fund this program through program fees.

Adverse Impacts:

Businesses. Affected businesses will incur costs on account of increasing permit fees.

Localities. Localities that are affected will have to pay higher permit fees under this proposed regulation.

Other Entities. State sites listed in footnote 1 and federal sites listed in footnote 2 have permits that are subject to Title V program fees and will see increased costs under this regulatory proposal.

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[1] State sites that have permits subject to Title V program fees include some a state-run training center, nine state-run universities, several community colleges, some prisons, and four state-run mental health hospitals.

[2] Federal sites that currently hold permits subject to Title V program fees include several National Aeronautics and Space Administration installations, several Veterans Health Administration medical facilities, 31 military installations throughout the state, a federal correctional facility, a Central Intelligence Agency installation in Fairfax County, and a US Geological Survey site in Fairfax County.

[3] Roanoke County, the City of Roanoke, and the township of Vinton are part of this Authority, which runs the Smith Gap Regional Landfill.

Agency's Response to Economic Impact Analysis: The Department of Environmental Quality has no comment on the economic impact analysis (EIA) except with regards to the section of the EIA title "Localities Particularly Affected."

The information provided in the EIA on localities particularly affected is based on requirements of the Administrative Process Act. Pursuant to § 2.2-4007.04 of the Code of Virginia, the Department of Planning and Budget (DPB) prepared an EIA of the proposed regulation according to specific requirements in § 2.2-4007.04 A. In § 2.2-4007.04 B, the Code of Virginia states "For purposes of this section, the term 'locality, business, or entity particularly affected' means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities." The wording of this definition and other EIA requirements in subsection A imply that the localities intended for this analysis are local public entities such as cities, counties, townships, and districts, not areas.

Within that context, and with DEQ assistance, the EIA correctly identified 26 local public entities that owned facilities subject to Title V program fees. Those local public entities will be affected by increases in Title V program fees, while local public entities not owning such facilities will not be affected.

However, pursuant to § 10.1-1307.01 of the Code of Virginia, there is no locality particularly affected by the proposed amendments. Under the State Air Pollution Control Board's authority, the Code of Virginia requires that before promulgating any regulation under consideration, if the board finds that there are localities particularly affected by the regulation, the board is required to publish notice in the localities particularly affected. For the purposes of this section, the term "locality particularly affected" is defined to be any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities. Within this context there is no locality particularly affected by this revision. This revision applies only to fees and does not impact emissions or air quality, so there is no locality which bears any material air quality impact which would not be experienced by other localities as a result of this action. In terms of other material impacts, particularly cost, the regulation applies equally in all such localities, and any entity that constructs or owns a facility subject to Title V program fees will pay fees at the same rate that an equivalent facility located in another locality will pay. No locality is identified in the regulation in which facilities located in that area are required to pay fees at a higher or lower rate than equivalent facilities in any other locality.

Summary:

The proposed amendments (i) sequentially increase the emissions fee rate over two years, (ii) change the method of calculating future Consumer Price Index emissions fee adjustments to an equivalent method that is consistent with the annual adjustments to Title V permit application fees and Title V permit maintenance fees, (iii) exclude greenhouse gas emissions from the calculation of emissions fees, (iv) increase permit application fees depending on the permit application type and clarify provisions for application amendments, (v) increase permit maintenance fees and establish a new minimum fee for synthetic minor sources, (vi) add definitions for the terms "greenhouse gases" and "regulated pollutant (for fee calculation)" and revise the definition of "actual emissions" so that emissions of greenhouse gases are excluded from the calculation of permit program emissions fees, and (vii) make various other changes as necessary to clarify and implement the changes.

9VAC5-80-320. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all words and terms not defined in subsection C of this section shall have the meanings given them in 9VAC5-80-5 or 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means, for the purposes of this article, the actual rate of emissions in tons per year of any regulated ~~air~~ pollutant (for fee calculation) emitted from a source subject to this article over the preceding calendar year. Actual emissions may be calculated according to any method acceptable to the department provided such calculation takes into account the source's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Any regulated pollutant which could be classed in more than one category shall be classed in only one category.

"Affected source" means a source that includes one or more affected units.

"Affected unit" means a unit that is subject to any federal acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 77 or 78.

"Area source" means any stationary source that is not a major source. For purposes of this section, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Greenhouse gases" means, for the purposes of this article, the aggregate group of the following gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(9) Hydrofluoric, sulfuric, or nitric acid plants;

(10) Petroleum refineries;

(11) Lime plants;

(12) Phosphate rock processing plants;

(13) Coke oven batteries;

(14) Sulfur recovery plants;

(15) Carbon black plants (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plant;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) Any other stationary source category regulated under § 111 or 112 of the federal Clean Air Act for which the administrator has made an affirmative decision under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO_x requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Permit program costs" means all reasonable (direct and indirect) costs required to develop, administer, and enforce the permit program~~;~~ and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air 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 if the limitation is state and federally enforceable.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated except carbon monoxide.

c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

d. Any pollutant subject to a standard promulgated under § 112 (hazardous air pollutants) or other requirements established under § 112 of the federal Clean Air Act, particularly §§ 112(b), 112(d), 112(g)(2), 112(j), and 112(r); except that any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act shall be exempt from this article.

"Regulated pollutant (for fee calculation)" means, for the purposes of this article, any regulated air pollutant except the following:

a. Carbon monoxide;

b. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance to a standard promulgated under or established by Title VI of the federal Clean Air Act;

c. Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act; or

d. Greenhouse gases.

"Research and development facility" means all the following as applied to any stationary source:

a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge;

b. The source is operated under the close supervision of technically trained personnel; and

c. The source is not engaged in the manufacture of products in any manner inconsistent with clause a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated 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 persons (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., if they have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21). Any research and development facility shall be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

9VAC5-80-340. Annual permit program emissions fee calculation prior to (insert effective date of the regulation).

A. ~~The~~ For annual permit program emissions fees due prior to (insert effective date of the regulation), the annual permit program emissions fee shall not exceed the base year amount of $31.22 per ton of emissions, as provided in subsection B of Item 365 of the 2012 Appropriation Act adjusted annually by the Consumer Price Index as provided in Title V of the federal Clean Air Act and associated regulations and policies.

1. The annual permit program emissions fee shall be increased (consistent with the need to cover reasonable costs) each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the U.S. Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

2. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

B. ~~The~~ For annual permit program emissions fees due prior to (insert effective date of the regulation), the annual permit program emissions fee described in subsection A of this section and the amount billed to the owner as provided in subsection A of 9VAC5-80-350 for a given year shall be calculated in accordance with the following formulae:

$$B = (A)(F)$$

$$F = X(1 + \Delta CPI)$$

$$\Delta CPI = \frac{CPI - 122.15}{122.15}$$

where:

B = the amount billed to the owner during the year after the year in which the actual emissions occurred, expressed in dollars

A = actual emissions covered by permit fees, expressed in tons

F = the maximum adjusted fee per ton for the calendar year in which the actual emissions occurred, expressed in dollars per ton

X = 31.22, expressed in dollars per ton

ΔCPI = the difference between the CPI and 122.15 (the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31, 1989)

CPI = the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31 of the year in which the emissions actually occurred, expressed as a percentage

C. The actual emissions covered by the permit program emissions fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

D. If the assessment of the annual permit program emissions fee calculated in accordance with subsections A, B, and C of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a lesser annual permit program emissions fee may instead be calculated and assessed according to the formula specified in subsection E of this section. Any adjustments made to the annual permit program emissions fee shall be within the constraints of 40 CFR 70.9.

E. The lesser annual permit program emissions fee shall be calculated according to the following formula: the lesser annual permit program emissions fee is equal to the estimated permit program costs divided by the estimated actual emissions. The estimated permit program costs and estimated actual emissions shall be determined from the data specified in subdivisions 1 and 2 of this subsection, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program emissions fee.

9VAC5-80-342. Annual permit program emissions fee calculation on and after (insert effective date of the regulation).

A. On and after (insert effective date of the regulation), the amount of the annual permit program emissions fee shall be calculated as follows:

1. The amount of the annual permit program emissions fee (consistent with the need to cover reasonable costs) for each applicable source shall be the annual permit program emission fee rate (in dollars per ton of emissions) for the billing calendar year multiplied by the total actual emissions for the previous calendar year (in tons per year of emissions).

2. The annual permit program emissions fee rate shall be calculated as follows:

a. For permit program emission fees billed in calendar year 2018 (applied to 2017 emissions), the annual permit program emissions fee rate shall be $73.01 per ton of emissions.

b. For permit program emission fees billed in calendar year 2019 (applied to 2018 emissions), the annual permit program emissions fee rate shall be $83.96 per ton of emissions.

c. For permit program emissions fees billed after calendar year 2019, the annual permit program emissions fee rate shall be adjusted annually by the change in the Consumer Price Index (CPI) as specified in subdivision 3 of this subsection.

3. The annual adjustment of the permit program emissions fees shall be based upon the annual permit program emissions fee rate for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August 31 of the calendar year preceding the calendar year in which the annual permit program emissions fee is assessed and billed.

a. The CPI for all-urban consumers that is published by the U.S. Department of Labor may be obtained online from the Bureau of Labor Statistics website at http://data.bls.gov/cgi-bin/surveymost?cu.

b. No CPI adjustment shall be made for annual permit program emissions fees assessed and billed in calendar years 2018 and 2019.

B. The actual emissions covered by the permit program emissions fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

C. If the assessment of the annual permit program emissions fee calculated in accordance with subsections A and B of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a

lesser annual permit program emissions fee may instead be calculated and assessed according to the formula specified in subsection D of this section. Any adjustments made to the annual permit program emissions fee shall be within the constraints of 40 CFR 70.9.

D. The lesser annual permit program emissions fee shall be calculated according to the following formula: the lesser annual permit program emissions fee is equal to the estimated permit program costs divided by the estimated actual emissions. The estimated permit program costs and estimated actual emissions shall be determined from the data specified in subdivisions 1 and 2 of this subsection, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program emissions fee.

9VAC5-80-2270. General.

A. Any person submitting a permit application subject to this article shall pay a permit application fee in the amount determined in accordance with 9VAC5-80-2280 or 9VAC5-80-2282, as appropriate.

B. Permit application fees collected pursuant to this article for sources subject to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or subject to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

9VAC5-80-2280. Permit application fee calculation prior to (insert effective date of the regulation or January 1, 2018, whichever is later).

Each permit application subject to this article that is received by the appropriate regional office prior to (insert effective date of the regulation or January 1, 2018, whichever is later) shall be subject to a permit application fee. The amount of the application fee shall be calculated as follows:

1. The amount of the permit application fee shall be the largest applicable base permit application fee amount from Table 8-10A, adjusted annually by the change in the Consumer Price Index (CPI) as specified in subdivision 2 of this subsection.

TABLE 8-10A

BASE PERMIT APPLICATION FEES FOR STATIONARY SOURCES

Application for:	Base Permit Application Fee Amount
Sources subject to Title V permitting requirements:	
Major NSR permit	$30,000
Major NSR permit amendment (except administrative)	$7,000
State major permit	$15,000
Minor NSR permit (that is not also a state major permit)	$1,500
Minor NSR permit amendment (except administrative)	$750
Title V permit	$20,000
Title V permit renewal	$10,000
Title V permit modification (except administrative)	$3,500
State operating permit	$7,000
State operating permit amendment (except administrative)	$3,500
Title V General Permit	$500
Sources subject to the requirements of a synthetic minor permit:	
Minor NSR permit	$500
Minor NSR permit amendment (except administrative)	$250
State operating permit	$1,500
State operating permit amendment (except administrative)	$800

2. The annual adjustment of the permit application fees shall be based upon the annually adjusted permit application fee amounts for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August ~~30~~ 31 of the calendar year preceding the calendar year in which the application is first received by the appropriate regional office of the department.

a. The CPI for all-urban consumers published by the U.S. Department of Labor may be obtained online from the

Bureau of Labor ~~Statistics'~~ Statistics website at http://data.bls.gov/cgi-bin/surveymost?cu.

b. There is no CPI adjustment for applications received prior to January 1, 2013.

3. The amount of the annually CPI-adjusted permit application fee shall be rounded down to the nearest whole dollar.

4. Applications that are received prior to (insert effective date of the regulation or January 1, 2018, whichever is later) and that are amended on or after (insert effective date of the regulation or January 1, 2018, whichever is later), are subject to the permit application fee calculated pursuant to the provisions 9VAC5-80-2282 B.

9VAC5-80-2282. Permit application fee calculation on and after (insert effective date of the regulation or January 1, 2018, whichever is later).

A. Each permit application subject to this article that is received by the appropriate regional office on or after (insert effective date of the regulation or January 1, 2018, whichever is later) shall be subject to a permit application fee. The amount of the application fee shall be calculated as follows:

1. The amount of the permit application fee shall be the largest applicable base permit application fee amount from Table 8-10B, adjusted annually on January 1 of each calendar year after 2018 as specified in subdivisions 2 and 3 of this subsection.

TABLE 8-10B

BASE PERMIT APPLICATION FEES FOR STATIONARY SOURCES

Application for:	Base Permit Application Fee Amount
Sources subject to Title V permitting requirements:	
Major NSR permit	$63,000
Major NSR permit amendment (except administrative)	$10,000
State major permit	$25,000
Minor NSR permit (that is not also a state major permit)	$5,000
Minor NSR permit amendment (except administrative)	$2,500
Title V permit	$35,000
Title V permit renewal	$15,000
Title V permit modification (except administrative)	$4,000
State operating permit	$10,000
State operating permit amendment (except administrative)	$4,000
Title V General Permit	$531
Sources subject to the requirements of a synthetic minor permit:	
Minor NSR permit	$3,000
Minor NSR permit amendment (except administrative)	$1,000
State operating permit	$5,000
State operating permit amendment (except administrative)	$2,500

2. Except as provided in subdivision 3 of this subsection, the annual adjustment of the permit application fees shall be based upon the permit application fee amounts for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August 31 of the calendar year preceding the calendar year in which the application is received by the appropriate regional office of the department.

a. The CPI for all-urban consumers published by the U.S. Department of Labor may be obtained online from the Bureau of Labor Statistics website at http://data.bls.gov/cgi-bin/surveymost?cu.

b. There is no CPI adjustment of fees for applications received during calendar year 2019.

3. Instead of a CPI adjustment, each permit application fee amount for applications received in calendar year 2019 shall be increased to 10% more than the base permit application fee amount provided in Table 8-10B.

4. The amount of the permit application fee that is calculated as provided in subdivisions 1, 2, and 3 of this subsection shall be rounded down to the nearest whole dollar.

B. The provisions of this section also apply to permit applications received by the appropriate regional office prior to (insert the effective date of the regulation) and amended on or after (insert the effective date of the regulation). Those amended applications are subject to the permit application fee due as if the application was received on or after (insert the effective date of the regulation), less any prior permit application fee amount paid for that application.

Article 11

Annual Permit Maintenance Fees for Stationary Sources

9VAC5-80-2310. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to any stationary source that has begun normal operation and:

1. The stationary source is subject to the provisions of a permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or pursuant to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation);

2. The stationary source is subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation), and is operating under an application shield under the provisions of 9VAC5-80-80 F or 9VAC5-80-430 F; or

3. The stationary source ~~would be~~ is subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II ~~(9VAC5-85-40~~ (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) in the absence of a permit issued under Article 5 (9VAC5-80-800 et seq.) or Article 6 (9VAC5-80-1100 et seq.) of this part or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

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

C. The provisions of this article shall not apply to ~~the following: 1. Any~~ any stationary source that began normal operation during the calendar year for which the annual permit maintenance fee is assessed.

~~2. Any synthetic minor source that is not a synthetic minor 80% source and is not otherwise subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).~~

D. The department shall make any final determinations required by this article, including but not limited to:

1. The applicability of this article;

2. The amount of permit maintenance fees owed; and

3. The applicability of terms to a particular stationary source or permit.

9VAC5-80-2330. General.

A. The owner of any stationary source subject to this article shall pay an annual permit maintenance fee in the amount determined in accordance with 9VAC5-80-2340 or 9VAC5-80-2342, as appropriate.

B. Annual permit maintenance fees collected pursuant to this article for sources subject to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or subject to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

9VAC5-80-2340. Annual permit maintenance fee calculation prior to (insert effective date of the regulation).

A. ~~Each~~ Prior to (insert effective date of the regulation), each stationary source subject to this article shall be assessed an annual permit maintenance fee.

B. The amount of the permit maintenance fee shall be calculated as follows:

1. The amount of the annual permit maintenance fee shall be the largest applicable base permit maintenance fee amount from Table 8-11A, adjusted annually by the change in the Consumer Price Index (CPI) as specified in subdivision 2 of this subsection.

TABLE 8-11A

BASE PERMIT MAINTENANCE FEES FOR STATIONARY SOURCES

Stationary Source Type	Base Permit Maintenance Fee Amount
Title V Complex Major Source	$10,000
Title V Major Source	$3,500
Title V Source By Rule	$1,500
Synthetic Minor 80% Source	$1,000

2. The annual adjustment of the permit maintenance fees shall be based upon the annual permit maintenance fee amount for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August ~~30~~ 31 of the calendar year preceding the calendar year in which the permit maintenance fee is assessed.

a. The CPI for all-urban consumers published by the U.S. Department of Labor may be obtained online from the Bureau of Labor ~~Statistics'~~ Statistics website at http://data.bls.gov/cgi-bin/surveymost?cu.

b. No CPI adjustment shall be made for annual permit maintenance fees assessed in calendar year 2012.

3. The amount of the annual permit maintenance fee shall be rounded down to the nearest whole dollar.

C. The provisions of this section shall not apply to any synthetic minor source that is not a synthetic minor 80% source and is not otherwise subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

9VAC5-80-2342. Annual permit maintenance fee calculation on and after (insert effective date of the regulation).

A. On and after (insert effective date of the regulation) each stationary source subject to this article shall be assessed a permit maintenance fee on an annual basis.

B. The amount of the annual permit maintenance fee shall be calculated as follows:

1. The amount of the annual permit maintenance fee shall be the largest applicable base permit maintenance fee amount from Table 8-11B, adjusted annually as specified in subdivisions 2 and 3 of this subsection.

TABLE 8-11B

BASE PERMIT MAINTENANCE FEES FOR STATIONARY SOURCES

Stationary Source Type	Base Permit Maintenance Fee Amount
Title V Complex Major Source	$21,263
Title V Major Source	$7,442
Title V Source By Rule	$2,392
Synthetic Minor 80% Source (SM-80 Source)	$1,594
Synthetic Minor Source (other than SM-80 Source)	$500

2. Except as provided in subdivision 3 of this subsection, the annual adjustment of the permit maintenance fees shall be based upon the annual permit maintenance fee amount for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August 31 of the calendar year preceding the calendar year in which the permit maintenance fee is assessed and billed.

a. The CPI for all-urban consumers published by the U.S. Department of Labor may be obtained online from the Bureau of Labor Statistics website at http://data.bls.gov/cgi-bin/surveymost?cu.

b. No annual CPI adjustment shall be made to permit maintenance fees for source types in years for which the adjusted permit maintenance fees for those source types are specified in subdivision 3 of this subsection.

3. Other adjustments to annual permit maintenance fees shall be made as follows:

a. Adjusted permit maintenance fees that are assessed and billed in calendar year 2019 shall be as specified in Table 8-11C.

TABLE 8-11C

ADJUSTED PERMIT MAINTENANCE FEES BILLED IN CALENDAR YEAR 2019

Stationary Source Type	Permit Maintenance Fee Amount
Title V Complex Major Source	$23,389
Title V Major Source	$8,186
Title V Source By Rule	$2,790
Synthetic Minor 80% Source	$1,860
Synthetic Minor Source (other than SM-80 Source)	$550

b. Adjusted annual permit maintenance fees for Title V Sources by Rule and SM-80 Sources that are assessed and billed in calendar year 2020 shall be as specified in Table 8-11D. Annual permit maintenance fees for other stationary source types that are assessed and billed in calendar year 2020 shall be adjusted as specified in subdivision 2 of this subsection.

TABLE 8-11D

ADJUSTED PERMIT MAINTENANCE FEES BILLED IN CALENDAR YEAR 2020

Stationary Source Type	Permit Maintenance Fee Amount
Title V Source By Rule	$3,189
Synthetic Minor 80% Source	$2,126

4. The amount of the annual permit maintenance fee shall be rounded down to the nearest whole dollar.

VA.R. Doc. No. R17-4981; Filed May 10, 2017, 9:02 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Final Regulation

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

Title of Regulation: **9VAC15-40. Small Renewable Energy Projects (Wind) Permit by Rule (amending 9VAC15-40-10, 9VAC15-40-20, 9VAC15-40-30).**

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Effective Date: July 1, 2017.

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

Summary:

Pursuant to Chapter 368 of the 2017 Acts of Assembly, the amendments (i) increase the maximum size of a small renewable wind energy project from 100 to 150 megawatts; (ii) require certification that the project is not proposed, developed, constructed, or purchased by a person that is utility regulated under Title 56 of the Code of Virginia; (iii) stipulate that any project commencing operation after July 1, 2017, is eligible for the wind permit by rule and is exempt from State Corporation Commission environmental review if the project is proposed, developed, constructed, or purchased by (a) a public utility if the costs are not recovered from Virginia customers under base rates or (b) a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56.

Part I

Definitions and Applicability

9VAC15-40-10. Definitions.

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

"Applicant" means the owner or operator who submits an application to the department for a permit by rule pursuant to this chapter.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-40-120 C 1).

"Department" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DGIF" means the Department of Game and Inland Fisheries.

"Disturbance zone" means the area within the site directly impacted by construction and operation of the wind energy project, and within 100 feet of the boundary of the directly impacted area.

"Ecological core" means an area of nonfragmented forest, marsh, dune, or beach of ecological importance that is at least 100 acres in size and identified in DCR's Natural Landscape Assessment web-based application (9VAC15-40-120 C 2).

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Important Bird Areas" means the designation of discrete sites by the National Audubon Society as having local, regional, continental, or global importance for birds because they support significant numbers of one or more high priority avian species (e.g., T&E, SGCN) during the breeding, wintering, or migration seasons.

"Interconnection point" means the point or points where the wind energy project connects to a project substation for transmission to the electrical grid.

"Invasive plant species" means non-native plant species that cause, or are likely to cause, economic or ecological harm or harm to human health as established by Presidential Executive Order 13112 (64 FR 6183, February 3, 1999) and contained on DCR's Invasive Alien Plant Species of Virginia (9VAC15-40-120 B 3).

"Migratory corridors" means major travel routes used by significant numbers of birds during biannual migrations between breeding and wintering grounds.

"Migratory staging areas" means those sites along migratory corridors where significant numbers of birds stop to feed and rest during biannual migrations between breeding and wintering grounds that are essential to successful migration.

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Nearshore waters" means all tidal waters within the Commonwealth of Virginia and seaward of the mean low-water shoreline to three nautical miles offshore in the Atlantic Ocean.

"Operator" means the person responsible for the overall operation and management of a wind energy project.

"Other avian mitigation factors" means Important Bird Areas, migratory corridors, migratory staging areas, and wintering areas within the Coastal Avian Protection Zones.

"Owner" means the person who owns all or a portion of a wind energy project.

"Permit by rule" means provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political

subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Phase of a project" means one continuous period of construction, startup, and testing activity of the wind energy project. A phase is deemed complete when 90 calendar days have elapsed since the last previous wind turbine has been placed in service, except when a delay has been caused by a significant force majeure event, in which case a phase is deemed complete when 180 calendar days have elapsed since the last previous wind turbine has been placed in service.

"Post-construction" means any time after the last turbine on the wind energy project or phase of that project has been placed in service.

"Pre-construction" means any time prior to commencing land-clearing operations necessary for the installation of energy-generating structures at the small wind energy project.

"Rated capacity" means the maximum capacity of a wind energy project based on the sum total of each turbine's nameplate capacity.

"SGCN" or "species of greatest conservation need" means any vertebrate species so designated by DGIF as Tier 1 or Tier 2 in the Virginia Wildlife Action Plan (9VAC15-40-120 B 6).

"Site" means the area containing a wind energy project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding ~~100~~ 150 megawatts that generates electricity only from sunlight~~,~~ or wind~~,~~; (ii) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from falling water, wave motion, tides, or geothermal power; or ~~(ii)~~ (iii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

"Small wind energy project," "wind energy project," or "project" means a small renewable energy project that (i) generates electricity from wind, consisting of one or more wind turbines and other accessory structures and buildings, including substations, post-construction meteorological towers, electrical infrastructure, and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than ~~100~~ 150 megawatts. Two or more wind energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single wind energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of meteorological towers to determine the appropriateness of a site for the development of a wind energy project.

"State-owned submerged lands" means lands that lie seaward of the mean low-water mark in tidal waters or that have an elevation below the ordinary mean high-water elevation in nontidal areas that are considered property of the Commonwealth pursuant to § 28.2-1200 of the Code of Virginia.

"T&E," "state threatened or endangered species," or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130.

"VLR" means the Virginia Landmarks Register (9VAC15-40-120 B 1).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"VMRC" means the Virginia Marine Resources Commission.

"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.

"Wintering areas" means those sites where a significant portion of the rangewide population of one or more avian species overwinter annually.

9VAC15-40-20. Authority and applicability.

This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for wind-powered electric generation projects consisting of wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than ~~100~~ 150 megawatts. The department has determined that a permit by rule is required for small wind energy projects with a rated capacity greater than five megawatts~~,~~ and this regulation contains the permit by rule provisions for these projects in Part II (9VAC15-40-30 et seq.) of this chapter. The department has also determined that a permit by rule is not required for small wind energy projects with a rated capacity of five megawatts or less~~,~~ and this regulation contains notification and other provisions for these projects in Part III (9VAC15-40-130) of this chapter. Projects that meet the criteria in Part III of this chapter are deemed to be covered by the permit by rule.

Part II
Permit by Rule Provisions

9VAC15-40-30. Application for permit by rule for wind energy projects.

A. The owner or operator of a small wind energy project with a rated capacity greater than ~~5~~ five megawatts shall submit to the department a complete application, in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;

5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small wind energy project, as designed, does not exceed ~~100~~ 150 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-40-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-40-60 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of ~~9VAC15-40-30 A 8~~ this subdivision shall only be required if the department determines, pursuant to 9VAC15-40-50, that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-40-40 indicates that significant adverse impacts to wildlife or historic resources are likely. The mitigation plan shall be an addendum to the operating plan of the wind energy project, and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-40-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan that includes a description of how the project will be operated in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-40-50;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-40-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small wind energy project has applied for or obtained all necessary environmental permits;

13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small wind energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia.

14. Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B 13 and ~~10.1-1197.6~~ B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to

9VAC15-40-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project; however, for projects located in nearshore waters or on state-owned submerged lands, the meeting shall be held in the locality that is the closest distance from the approximate center of the project's disturbance zone. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

~~14.~~ 15. In accordance with 9VAC15-40-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural Resources, whether the application is complete and whether it adequately meets the requirements of this chapter, pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a small wind energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

VA.R. Doc. No. R17-5132; Filed May 10, 2017, 11:46 a.m.

Final Regulation

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

Title of Regulation: **9VAC15-60. Small Renewable Energy Projects (Solar) Permit by Rule (amending 9VAC15-60-10, 9VAC15-60-20, 9VAC15-60-30, 9VAC15-60-110).**

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Effective Date: July 1, 2017.

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

Summary:

Pursuant to Chapter 368 of the 2017 Acts of Assembly, the amendments (i) increase the maximum size of a small renewable solar energy project from 100 to 150 megawatts; (ii) require certification that the project is not proposed, developed, constructed, or purchased by a person that is utility regulated under Title 56 of the Code of Virginia; (iii) stipulate that any project commencing operation after July 1, 2017, is eligible for the solar permit by rule and is exempt from State Corporation Commission environmental review if the project is proposed, developed, constructed, or purchased by (a) a public utility if the costs are not recovered from Virginia customers under base rates or (b) a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56.

Part I
Definitions and Applicability

9VAC15-60-10. Definitions.

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

"Applicant" means the owner or operator who submits an application to the department for a permit by rule pursuant to this chapter.

"Archive search" means a search of DHR's cultural resource inventory for the presence of previously recorded archaeological sites and for architectural structures and districts.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-60-120 C 1).

"Concentrating photovoltaics" or "CPV" means PV systems with equipment to focus or direct sunlight on the PV cells. For purposes of this chapter, CPV is included in the definition of PV.

"Department" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DGIF" means the Department of Game and Inland Fisheries.

"DHR" means the Department of Historic Resources.

"Disturbance zone" means the area within the site directly impacted by construction and operation of the solar energy project and within 100 feet of the boundary of the directly impacted area.

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Integrated PV" means photovoltaics incorporated into building materials, such as shingles.

"Interconnection point" means the point or points where the solar energy project connects to a project substation for transmission to the electrical grid.

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Operator" means the person responsible for the overall operation and management of a solar energy project.

"Other solar technologies" means materials or devices or methodologies of producing electricity from sunlight other than PV or CPV.

"Owner" means the person who owns all or a portion of a solar energy project.

"Parking lot" means an improved area, usually divided into individual spaces and covered with pavement or gravel, intended for the parking of motor vehicles.

"Permit by rule" means provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Photovoltaic" or "PV" means materials and devices that absorb sunlight and convert it directly into electricity by semiconductors.

"Photovoltaic cell" or "PV cell" means a solid state device that converts sunlight directly into electricity. PV cells may be connected together to form PV modules, which in turn may be combined and connected to form PV arrays (often called PV panels).

"Photovoltaic system" or "PV system" means PV cells, which may be connected into one or more PV modules or arrays, including any appurtenant wiring, electric connections, mounting hardware, power-conditioning equipment (inverter), and storage batteries.

"Preconstruction" means any time prior to commencing land-clearing operations necessary for the installation of energy-generating structures at the small solar energy project.

"Rated capacity" means the maximum capacity of a solar energy project based on Photovoltaic USA Test Conditions (PVUSA Test Conditions) rating.

"Site" means the area containing a solar energy project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding ~~100~~ 150 megawatts that generates electricity only from sunlight~~,~~ or wind~~,~~; (ii) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from falling water, wave motion, tides, or geothermal power; or ~~(ii)~~ (iii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

"Small solar energy project," "solar energy project," or "project" means a small renewable energy project that (i) generates electricity from sunlight, consisting of one or more PV systems and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than ~~100~~ 150 megawatts. Two or more solar energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single solar energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of test structures to determine the appropriateness of a site for the development of a solar energy project.

"T&E," "state threatened or endangered species," or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to the ~~§ 29.1-563-570~~ §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130.

"VLR" means the Virginia Landmarks Register (9VAC15-60-120 B 1).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.

9VAC15-60-20. Authority and applicability.

A. This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for solar-powered electric generation projects consisting of PV systems and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than ~~100~~ 150 megawatts.

B. The department has determined that a permit by rule is required for small solar energy projects with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the projects do not otherwise meet the criteria for Part III (9VAC15-60-130) of this chapter, and this regulation contains the permit by rule provisions for these projects in Part II (9VAC15-60-30 et seq.) of this chapter.

C. The department has determined that different provisions should apply to projects that meet the criteria as set forth in Part III (9VAC15-60-130) of this chapter, and this regulation contains the requirements, if any, for these projects in Part III (9VAC15-60-130 A and ~~9VAC15-60-130~~ B) of this chapter. Projects that meet the criteria for Part III of this chapter are deemed to be covered by the permit by rule.

D. The department has determined that small renewable energy projects utilizing other solar technologies shall fulfill all of the requirements in 9VAC15-40 as prescribed for small wind energy projects, unless (i) the owner or operator of the proposed project presents to the department information indicating that the other solar technology presents no greater likelihood of significant adverse impacts to natural resources than does PV technology and (ii) the department determines that it is appropriate for the proposed project utilizing the other solar technology to meet the requirements of this chapter or of some modification to either 9VAC15-40 or ~~9VAC15-60~~ this chapter, as prescribed by the department for that particular project.

Part II
Permit by Rule Provisions

9VAC15-60-30. Application for permit by rule for solar energy projects with rated capacity greater than five megawatts and disturbance zone greater than 10 acres.

A. The owner or operator of a small solar energy project with a rated capacity greater than five megawatts and a disturbance zone greater than 10 acres, provided that the project does not otherwise meet the criteria for Part III (9VAC15-60-130 A or B) of this chapter, shall submit to the department a complete application in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;

5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small solar energy project, as designed, does not exceed ~~100~~ 150 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-60-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-60-60 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines, pursuant to 9VAC15-60-50, that the information collected pursuant to § 10.1-1197.6 B 7 of

the Code of Virginia and 9VAC15-60-40 indicates that significant adverse impacts to wildlife or historic resources are likely. The mitigation plan shall be an addendum to the operating plan of the solar energy project, and the owner or operator shall implement the mitigation plan as deemed complete and adequate by the department. The mitigation plan shall be an enforceable part of the permit by rule;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-60-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan that includes a description of how the project will be operated in compliance with its mitigation plan, if such a mitigation plan is required pursuant to 9VAC15-60-50;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-60-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small solar energy project has applied for or obtained all necessary environmental permits;

13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small solar energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause, or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia.

14. Prior to authorization of the project and in accordance with § 10.1-1197.6 B 13 and B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-60-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

~~14.~~ 15. In accordance with 9VAC15-60-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural Resources, whether the application is complete and whether it adequately meets the requirements of this chapter pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a small solar energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

9VAC15-60-110. Fees for projects subject to Part II of this chapter.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule or a modification to an existing permit by rule for a small solar energy project subject to Part II (9VAC15-60-30 et seq.) of this chapter.

B. Permit fee payment and deposit. Fees for permit by rule applications or modifications shall be paid by the applicant as follows:

1. Due date. All permit application fees or modification fees are due on submittal day of the application or modification package.

2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218.

3. Incomplete payments. All incomplete payments shall be deemed nonpayments.

4. Late payment. No application or modification submittal will be deemed complete until the department receives proper payment.

C. Fee schedules. Each application for a permit by rule and each application for a modification of a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit application fee is based on the costs

associated with the permitting program required by this chapter. The fee schedules are shown in the following table:

Type of Action	Fee
Permit by rule application – by rated capacity:	
>5 MW up to and including 25 MW	$8,000
>25 MW up to and including 50 MW	$10,000
>50 MW up to and including 75 MW	$12,000
>75 MW up to and including ~~100~~ 150 MW	$14,000
Permit by rule modification – for any project subject to Part II of this chapter	$4,000

D. Use of fees. Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter including~~, but not limited to,~~ permit by rule processing, permit by rule modification processing, and inspection and monitoring of small solar energy projects to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this chapter and in § 10.1-1197.6 E of the Code of Virginia.

E. Fund. The fees, received by the department in accordance with this chapter, shall be deposited in the Small Renewable Energy Project Fee Fund.

F. Periodic review of fees. Beginning July 1, 2013, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.

VA.R. Doc. No. R17-5131; Filed May 10, 2017, 11:45 a.m.

Final Regulation

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

Title of Regulation: **9VAC15-70. Small Renewable Energy Projects (Combustion) Permit by Rule (amending 9VAC15-70-10, 9VAC15-70-30).**

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Effective Date: July 1, 2017.

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

Summary:

Pursuant to Chapter 368 of the 2017 Acts of Assembly, the amendments (i) adjust the definition of "small renewable energy project"; (ii) require certification that the project is not proposed, developed, constructed, or purchased by a person that is utility regulated under Title 56; and (iii) stipulate that any project commencing operation after July 1, 2017, is eligible for the combustion permit by rule and is exempt from State Corporation Commission environmental review if the project is proposed, developed, constructed, or purchased by (a) a public utility if the costs are not recovered from Virginia customers under base rates, a fuel factor charge, or a rate adjustment clause, or (b) a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56.

9VAC15-70-10. Definitions.

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

"Applicant" means the owner or operator who submits an application to the department for a permit by rule pursuant to this chapter.

"Archive search" means a search of DHR's cultural resource inventory for the presence of previously recorded archaeological sites and for architectural structures and districts.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-70-120 C 1).

"Combustion energy project," or "project" means a small renewable energy project that:

1. Is an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste; and

2. Utilizes a fuel or feedstock that is addressed as a regulated solid waste by ~~9VAC20-81, 9VAC20-60~~ 9VAC20-60, 9VAC20-81, or 9VAC20-120; is defined as biomass pursuant to § 10.1-1308.1 of the Code of Virginia; or both.

"Department" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DGIF" means the Department of Game and Inland Fisheries.

"DHR" means the Department of Historic Resources.

"Disturbance zone" means the area within the site directly impacted by construction and operation of the combustion energy project.

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Interconnection point" means the point or points where the combustion energy project connects to a project substation for transmission to the electrical grid.

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Operator" means the person responsible for the overall operation and management of a combustion energy project.

"Owner" means the person who owns all or a portion of a combustion energy project.

"Parasitic load" means the maximum amount of electricity (in megawatts or kilowatts) a combustion energy project uses to run its electricity-producing processes while operating at the rated capacity.

"Parking lot" means an improved area, usually divided into individual spaces and covered with pavement or gravel, intended for the parking of motor vehicles.

"Permit by rule" means provisions of this chapter stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

"Preconstruction" means any time prior to commencing land-clearing operations necessary for the installation of energy-generating structures at the combustion energy project.

"Rated capacity" means the maximum designed electrical generation capacity (in megawatts or kilowatts) of a combustion energy project, minus the parasitic load; sometimes known as "net capacity."

"Site" means the area encompassed by the combustion energy project, plus appurtenant structures and facilities such as fuel processing, delivery, storage, and associated conveyance equipment areas if they (i) are contiguous and (ii) primarily exist to supply fuel for the generation of electricity at that project, to the extent that these areas are under common ownership or operating control by the owner or operator of the combustion energy project.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding ~~100~~ 150 megawatts that generates electricity only from sunlight~~,~~ or wind~~,~~; (ii) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from falling water, wave motion, tides, or geothermal power~~,~~; or ~~(ii)~~ (iii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

"T&E," "state threatened or endangered species," or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to ~~§ 29.1-563-570~~ §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130.

"VLR" means the Virginia Landmarks Register (9VAC15-70-120 B 1).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in the VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.

Part II
Permit by Rule Provisions for Combustion Energy Projects with Rated Capacity Greater Than Five Megawatts and Not Otherwise Meeting Criteria for Part III

9VAC15-70-30. Application.

A. The owner or operator of a combustion energy project with a rated capacity greater than five megawatts, provided that the project does not otherwise meet the criteria for Part III (9VAC15-70-130) of this chapter, shall submit to the department a complete application in which he satisfactorily accomplishes all of the following:

1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in the project development process as practicable, furnishes to the department a notice of intent, to be published in the Virginia Register of Regulations, that he intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the department a certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the department copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the department a copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the department. The department shall forward a copy of the agreement or study to the State Corporation Commission;

5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the combustion energy project, as designed, does not exceed 20 megawatts;

6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the department an analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the department, where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. The owner or operator shall perform the analyses prescribed in 9VAC15-70-40. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the department a mitigation plan pursuant to 9VAC15-70-70 that details reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions; provided, however, that the provisions of this subdivision shall only be required if the department determines pursuant to 9VAC15-70-50 that the information collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-70-40 indicates that significant adverse impacts to wildlife or historic resources are likely;

9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the department a certification signed by a professional engineer licensed in Virginia that the project is designed in accordance with 9VAC15-70-80;

10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to the department an operating plan describing how any standards established in this chapter applicable to the permit by rule will be achieved;

11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to the department a detailed site plan meeting the requirements of 9VAC15-70-70;

12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to the department a certification signed by the applicant that the combustion energy project has applied for or obtained all necessary environmental permits;

13. In accordance with § 10.1-1197.6 H and I of the Code of Virginia, furnishes to the department a certification signed by the applicant that the small combustion energy project is being proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56 of the Code of Virginia or provides certification that (i) the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge, or a rate adjustment clause, or (ii) the applicant is a utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia.

14. Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B 13 and ~~10.1-1197.6~~ B 14 of the Code of Virginia, conducts a 30-day public review and comment period and holds a public meeting pursuant to 9VAC15-70-90. The public meeting shall be held in the locality or, if the project is located in more than one locality, in a place proximate to the location of the proposed project. Following the public meeting and public comment period, the applicant shall prepare a report summarizing the issues raised by the public and include any written comments received and the applicant's response to those comments. The report shall be provided to the department as part of this application; and

~~14.~~ 15. In accordance with 9VAC15-70-110, furnishes to the department the appropriate fee.

B. Within 90 days of receiving all of the required documents and fees listed in subsection A of this section, the department shall determine, after consultation with other agencies in the Secretariat of Natural Resources, whether the application is complete and whether it adequately meets the requirements of this chapter, pursuant to § 10.1-1197.7 A of the Code of Virginia.

1. If the department determines that the application meets the requirements of this chapter, then the department shall notify the applicant in writing that he is authorized to construct and operate a combustion energy project pursuant to this chapter.

2. If the department determines that the application does not meet the requirements of this chapter, then the department shall notify the applicant in writing and specify the deficiencies.

3. If the applicant chooses to correct deficiencies in a previously submitted application, the department shall

follow the procedures of this subsection and notify the applicant whether the revised application meets the requirements of this chapter within 60 days of receiving the revised application.

4. Any case decision by the department pursuant to this subsection shall be subject to the process and appeal provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

VA.R. Doc. No. R17-5133; Filed May 10, 2017, 11:46 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC5-221. Virginia's Rules and Regulations Governing Cooperative Agreements (adding 12VAC5-221-10 through 12VAC5-221-150).**

Statutory Authority: § 32.1-12 of the Code of Virginia; Chapter 741 of the 2015 Acts of Assembly.

Expiration Date Extended Through: January 16, 2018.

The Governor approved the State Board of Health's request to extend the expiration date of the above-referenced emergency regulation as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through January 16, 2018. The emergency regulation was published in 32:12 VA.R. 1897-1906 February 8, 2016. On March 16, 2017, the State Board of Health approved a fast-track rulemaking action pursuant to § 2.2-4012.1 of the Code of Virginia to promulgate a permanent regulation to replace the emergency regulation.

Agency Contact: Susan Puglisi, Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email susan.puglisi@vdh.virginia.gov.

VA.R. Doc. No. R16-4430; Filed April 26, 2017, 1:10 p.m.

Proposed Regulation

Title of Regulation: **12VAC5-450. Rules and Regulations Governing Campgrounds (amending 12VAC5-450-10, 12VAC5-450-30 through 12VAC5-450-150, 12VAC5-450-170 through 12VAC5-450-200; adding 12VAC5-450-15, 12VAC5-450-115, 12VAC5-450-183, 12VAC5-450-187; repealing 12VAC5-450-210, 12VAC5-450-230).**

Statutory Authority: §§ 35.1-11 and 35.1-17 of the Code of Virginia.

Public Hearing Information:

June 20, 2017 - 1 p.m. - Perimeter Center, Conference Center, 9960 Mayland Drive, Suite 200, Richmond, Virginia 23233

Public Comment Deadline: July 28, 2017.

Agency Contact: David Tiller, Environmental Health Coordinator, Department of Health, P.O. Box 298, Shacklefords, VA 23156, telephone (804) 785-2135, FAX (804) 864-7475, or email dave.tiller@vdh.virginia.gov.

Basis: Section 35.1-11 of the Code of Virginia authorizes the Board of Health to make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of Title 35.1 of the Code of Virginia and to protect the public health and safety. The regulations of the board specifically governing campgrounds pursuant to § 35.1-17 of the Code of Virginia shall include minimum standards for drinking water, sewage disposal, solid waste disposal, maintenance, vector and pest control, toilet and shower facilities, swimming facilities, control of animals and pets, procedures and safeguards for hazardous situations, maintenance and sale of propane gas, and procedures for obtaining a permit. Additionally, the department may also establish classes of campgrounds and concomitant requirements for each as authorized by § 35.1-17 B of the Code of Virginia.

Purpose: The Rules and Regulations Governing Campgrounds (12VAC5-450) have remained unchanged since first becoming effective in 1971. Amending the chapter is essential to protect the health and safety of visitors to the Commonwealth's campgrounds. The current definition of a campground (contained in § 35.1-1 of the Code of Virginia) requires an owner to comply with the regulations when three or more designated campsites are intended for occupancy for periods of overnight or longer. However, festivals and short-term outdoor events occur today that draw large attendance, and temporary camping is often provided. Attempting to meet the requirements of the existing regulations for these short-term duration events has proven burdensome to property owners, and public health and safety can be protected with other controls in place. For these festivals and related events to proceed under the current regulations without undue hardship, waivers must be granted by the commissioner. The commissioner granted 44 waivers to allow for temporary camping throughout the Commonwealth in 2015, and 41 in 2016. Processing waiver requests drains limited staff resources away from mandated services provided by the department and can lead to regulatory inconsistency. Creating new requirements to govern short-term events will provide needed consistency and minimize waiver requests.

Primitive camping, commonly referred to as back country camping, zero-impact camping, or neutral footprint camping, is characterized by the absence of what are generally understood as modern conveniences. Requirements to provide numbered campsites, drinking water, solid waste disposal, and service buildings with modern sanitary facilities for all types of primitive camping is not only an undue hardship placed upon many campground owners, but is also not desired by all campers. By creating an allowance for primitive camping, campers will be permitted to provide their own water supply or means of waste disposal when camping, and campgrounds will not be required to provide numbered

sites or showers and flush toilets. Creating distinct provisions for primitive camping areas will be less burdensome on campground owners, while still protecting public health and safety.

The current regulations do not require campground operators to have an emergency response plan in place. Campgrounds, having few or no permanent structures, can be high risk areas during natural disasters or other weather-related emergency events. The proposed amendments will better protect the safety of campers in Virginia by requiring campground operators to compose and maintain an emergency response plan that prepares for camper safety and potential evacuation, promote availability of emergency contact information for campers, and prepare for the communication of emergency response information to campers.

Substance: The proposed action:

1. Creates a new section, and repeals and replaces certain sections related to enforcement, penalties, constitutionality, and exemptions to comply with the Administrative Process Act.

2. Revises definitions for clarity, removes several definitions not needed or used elsewhere in the regulation, and adds a definition for "operator."

3. Revises the description of campground permits to include temporary camping permits and establishes minimum requirements for campground inspection.

4. Adds a requirement for campgrounds utilizing private wells to test for coliform bacteria and nitrates on an annual basis.

5. Reorganizes provisions for sewage disposal and sanitary facilities for clarity.

6. Creates a new section that describes provisions for cabins and other lodging units.

7. Creates a requirement for emergency preparedness planning.

8. Creates a new section to address primitive campgrounds with exemptions and replacement requirements that will protect public health and safety.

9. Creates a new section to address temporary camping events with exemptions and replacement requirements that will protect public health and safety.

Issues: The primary advantage of the proposed amendments is the removal of burdensome requirements for primitive and temporary camping, while still protecting public health and safety. The proposed amendments provide organization and clarity to the existing text, which better facilitates the public's understanding of the regulation. The agency and regulated businesses will benefit from these revisions as they will reduce or eliminate the need for waivers. Including provisions for cabins and other rental units in the regulations reduces additional permitting requirements borne by both campground operators and the agency, as these units have been permitted under the Sanitary Regulations for Hotels (12VAC5-431) in many local health districts. There are no anticipated disadvantages to the public or the Commonwealth with the adoption of the proposed amendments.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to a 2013 periodic review,[1] the State Board of Health (Board) proposes to amend its Rules and Regulations Governing Campgrounds. The Board proposes to reorganize and make clarifying changes to this regulation. The Board also proposes several substantive changes, which include:

1. Adding new rules for cabins and other lodging units.

2. Adding a new regulatory section for primitive campgrounds

3. Adding a new regulatory section for temporary campgrounds.

4. Restricting temporary camping permits to a total length of 14 days during a 60-day period.

5. Increasing the number of portable toilets required for temporary camping events from one portable toilet to every 100 campers to one portable toilet to every 75 campers.

6. Requiring the Virginia department of Health (VDH) Commissioner issue a decision on variance (waiver) requests within 90 days of receiving a variance (waiver) application.

7. Changing the permit renewal schedule to an annual basis.

8. Eliminating a restriction on campgrounds being located adjacent to swamps, marshes, landfills, or abandoned landfills or breeding places for insects or rodents of public health importance.

9. Requiring campgrounds that use private wells to test for coliform bacteria and nitrates annually.

10. Amending the water supply requirements by prohibiting open-bin type ice machines and increasing the required distance between water and sewer connections at most individual campsites from five to ten feet.

11. Eliminating the requirement for a dump station at campgrounds where all campsites that allow self-contained camping units have direct sewer connections.

12. Requiring campgrounds to supply soap and sanitary disposal bins.

13. Requiring doors to the exterior from service buildings to be self-closing.

14. Requiring emergency preparedness planning to include the development of an emergency response plan, development of a written plan for communicating emergency response information to campers, designation

of an emergency contact and the posting of contact numbers for police, fire response, and emergency medical services.

Result of Analysis. Benefits likely outweigh costs for most proposed changes. For at least one proposed change, there is insufficient information to ascertain whether benefits will outweigh costs.

Estimated Economic Impact. Many of the changes that the Board proposes for this regulation will not add any new requirements for any entity but instead are intended to reorganize rules in a more orderly, logical fashion and change regulatory language so it is more easily understood by interested parties. For instance, current regulatory language authorizes the Health Commissioner to "make such inspections as are necessary to determine satisfactory compliance with" this regulation but is silent on how frequently inspections will be done. Virginia Code § 35.1-22,[2] however, requires that inspections occur at least annually. The Board now proposes to add language to this regulation that specifies inspections will occur at least annually for campgrounds that are annually permitted and will occur at least once during any operational period for temporary campgrounds. Changes such as these do not cause any change in practice, so no affected entity is likely to incur any additional costs. To the extent that these changes better detail what is required of regulated entities, interested parties will benefit from the additional clarity they bring to the regulation. Benefits outweigh costs for all such changes.

Current regulation does not have any statewide rules for cabins and other lodging units that are part of permitted campgrounds. As a consequence, different localities are regulating these facilities differently. Some localities are requiring that cabins and other lodging units be permitted as hotel rooms while other localities are just inspecting these units under general rules that address issues of cleanliness and vermin and insect control. To address this enforcement disparity, and to eliminate the need for cabins in some localities to be permitted as hotel rooms, the Board now proposes to add rules for cabins and other rental units to this regulation.

These proposed rules will require that fixtures, equipment and furnishings in "all cabins, yurts and other camping units" offered for rent be clean, in good repair, free of vermin, and maintained so as to protect the health and safety of people who use such facilities. The Board does not propose to require that cabins and other rental units provide dishes, pots and pans, mattresses, bedding or other linens. If such amenities are provided, however, they must be maintained in a clean, sanitary condition. If the campgrounds do not provide cleaning services that wash dishes, glassware, silverware and cooking implements between occupants, there must be a sign posted that notifies campers that kitchen items are not washed under management supervision.

The proposed rules for cabins and other rental units do not impose any new requirements on campgrounds since such cabins would already be required to be kept clean, in good repair and vermin free. Campgrounds that are in localities that currently impose hotel room requirements on cabins and other rental units, however, may see some fairly large cost savings from these proposed regulations. They could choose, for instance, to not provide linens or bedding in their cabins and rental units. This would save them both the costs of those linens and bedding and the laundering and housekeeping costs associated with keeping linens and bedding clean and in good repair.[3]

Current regulation has a definition for primitive camps (primitive campsites)[4] and exempts such camps (campsites) from regulatory requirements for lavatories and showers. The Board now proposes to add specific rules for primitive campgrounds that also exempt primitive campsites from requirements that individual campsites be marked and that exempt primitive campgrounds with 10 or fewer campsites from having to provide potable water and from normal garbage and refuse disposal requirements (so long as there is signage clearly posted that informs campers that there is no potable water at the campgrounds and signage that informs campers that they are expected to remove their own garbage from the campgrounds). These changes will make rules for primitive campgrounds less strict. These proposed changes will likely lower costs for some primitive campgrounds and may provide an aesthetic benefit for campers who prefer to camp with fewer to no amenities.

Current regulation does not have specific provision for events like music festivals, Civil War reenactments, scout jamborees and other short duration programs that may want to allow camping during the event but would have difficulty meeting campground regulation requirements that, for instance, require permanent bathroom structures or a permanent water supply. Currently, event organizers apply to the VDH Commissioner for a waiver (i.e., a variance from current regulation). The Board now proposes to promulgate current waiver standards for temporary camping into regulation and require the Commissioner to issue a decision on waiver requests within 90 days of application receipt. The Board proposes to restrict the duration of temporary camping permits to 14 days within any 60 day period and proposes to change the number of required portable toilets from one for every 100 campers (event attendants) to one for every 75 campers (event attendants). Most of these proposed changes do not represent a change in practice but are only intended to reduce the number of waivers that are processed and issued each year and provide greater clarity and certainty for event organizers who currently must seek waivers. The Board's proposal to decrease the number of campers per required portable toilet will likely increase costs for larger events. The cost of renting additional portable toilets will likely be between $75 and $100 per toilet. The benefits of these

proposed rules for temporary campgrounds likely outweigh the costs.

Currently, all Board issued campground permits expire on December 31st of each year. This means that some permits issued during any given year may be valid for a far shorter time period than a year. The Board now proposes to have permits expire one year after they are issued. This change will benefit campgrounds as it may allow them to avoid having to pay for two annual permits in the same year. This change may also benefit Board staff by allowing them to spread out the workload of approving permits over the year rather than having to process them all at once.

Current regulation prohibits campgrounds from being located in, or adjacent to, swamps, marshes, landfills or abandoned landfills, or breeding places for insect or rodents of public health importance. The Board proposes to change this prohibition to remove the "adjacent to" language. Bugs and rodents of all sorts breed in the wild, including in woods and forests near campgrounds. As a practical matter, it is impossible for campgrounds not to be adjacent to breeding places for insects and rodents. Additionally, the Board does not think it is necessary to restrict campgrounds from being adjacent to swamps, marshes or landfills in order to protect public health and safety. This change will benefit owners of campgrounds as it will allow them greater freedom as to where they locate their facilities.

Current regulation only requires private wells to be tested for coliform bacteria when the well is dug. The Board proposes to require campgrounds that use private wells to test those wells annually for both coliform bacteria and nitrates. Board staff reports that these tests will cost between $15 and $60 per test, per well, per year. These costs would need to be weighed against any benefit that might accrue to campers from not being exposed to bacteria and nitrates in campground drinking water. There is insufficient information to ascertain whether benefits will outweigh costs for this change.

The Board also proposes to change campground water requirements to prohibit open-bin type ice machines and to require that water and sewer connections at new campsites be located 10 feet apart rather than the currently required five feet. Campsites that were permitted on or before the effective date of this proposed regulation will be exempt from the changing footage requirement between water and sewer connections unless they conduct construction or renovation that would impact those connections. Board staff reports that larger camps already have to meet the 10 feet requirement that is also in regulations for the Office of Drinking Water (ODW).[5] Board staff reports that all other currently permitted campgrounds would be exempt from this requirement unless they are doing renovations that include the water and sewer connections. Board staff reports that campgrounds that are undergoing such renovations would likely incur additional costs of several hundred to $1,000 for moving either the water or the sewer connection so that water and sewer connections are 10 feet apart. Some campgrounds might also incur costs for replacing open-bin type ice machines or modifying them so that they can be closed. These costs would need to be weighed against any benefit that might accrue to campers from not being exposed to bacteria contaminated ice or drinking water. There is insufficient information to ascertain whether benefits will outweigh costs for this change.

Current regulation requires all campgrounds to have dump stations.[6] The Board proposes to exempt campgrounds whose campsites all have direct sewer connections for self-contained camping units (RVs or campers) from also having to have a dump station. This change will not adversely impact any entities as direct sewer connections are at least as protective of public health and safety as dump stations are. Owners of affected campgrounds would likely save between $5,000 and $25,000 on account of not having to install a dump station at qualifying campgrounds.

Current regulation does not require campgrounds to have sanitary disposal bins in women's bathrooms or soap in any bathrooms. The Board proposes to require both of these items. Board staff reports that the Board has not specified the type of soap that campgrounds must provide so campgrounds will have flexibility to use whatever type of soap they choose. Board staff also reports that bar soap can cost between $0.40 to $0.50 per bar and that wall mounted soap dispensers can cost between $9 and $30 (and $12 per gallon for liquid soap to fill dispensers). Board staff did not have an estimate for what sanitary disposal bins might cost but that cost is likely minimal. These changes will provide the benefit of convenience for campers and may also impede the spread of diseases that can be spread by fecal matter on unwashed hands.

The Board also proposes to newly require the exterior doors of service buildings to be self-closing to prevent animals and insects from having unimpeded access to such buildings. Board staff reports that the costs of meeting this requirement could be as little as a few cents for a spring that will swing a door shut after it is opened.

Current regulation does not require that campgrounds have an emergency response plan for natural disasters or other emergencies. In response to a tornado emergency that resulted in deaths at a campground, the Board now proposes to require campgrounds to engage in emergency preparedness planning to include the development of an emergency response plan, designation of an emergency contact, development of a written plan for communicating emergency response information to campers and the posting of contact numbers for police, fire response, and emergency medical services. Owners of campgrounds will incur time costs for developing required emergency plans as well as printing costs for required written plans as well as for printing off emergency numbers to post on account of this proposed change. Campers may greatly benefit from this requirement as it may allow

them to find out about impending or ongoing emergencies in time to minimize the impact of those emergencies.

Businesses and Entities Affected. These proposed regulatory changes will affect all permitted campgrounds located in the Commonwealth as well as any time-limited festivals, events or jamborees that might seek permits as temporary camping sites. Board staff reports there are 370 campgrounds currently permitted in Virginia. Of these, 27 are located in state parks and 13 are owned by the KOA Corporation. The remainder (330) are owned and operated by small businesses.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. These proposed regulatory changes are unlikely to significantly affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

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

Costs and Other Effects. Affected small businesses will likely incur costs for well water testing, providing soap and sanitary disposal bins and for time spent on formulating and writing emergency response plans. Affected small businesses will also likely incur costs for replacing or repairing open-bin type ice machines and for modifying exterior doors for service buildings so that they are self-closing. Affected small businesses may incur costs for moving sewer or water connections if they initiate renovations that affect those connections at some point in the future.

Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods that would both meet the Board's aims and further minimize costs.

Adverse Impacts:

Businesses. Affected businesses will likely incur costs for well water testing, providing soap and sanitary disposal bins and for time spent on formulating and writing emergency response plans. Affected businesses will also likely incur costs for replacing or repairing open-bin type ice machines and for modifying exterior doors for service buildings so that they are self-closing. Affected businesses may incur costs for moving sewer or water connections if they initiate renovations that affect those connections at some point in the future.

Localities. No localities are likely to incur costs on account of these proposed regulatory changes.

Other Entities. These proposed regulatory changes are unlikely to adversely affect other entities in the Commonwealth.

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[1] http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1280

[2] http://law.lis.virginia.gov/vacode/title35.1/chapter3/section35.1-22/

[3] Board staff estimates that such costs may include $12-$24 per sheet set, $3-$13 per pillow case, $100-$2,500 per mattress, $50-$200 per box spring, $6 per towel, $300-$1,300 per washer and $350-$1,200 per dryer. Cost would also include the time spent by campground staff in cleaning and maintenance activities. All of these costs are imposed by hotel room requirements but may be avoided under new rules for cabins and other rental units contained in this proposed regulation.

[4] Campsites that generally do not have water-flushed toilets, showers, sinks or electrical connections are primitive campsites.

[5] ODW rules apply to any campground that "serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year".

[6] Dump stations are a facility specifically designed to receive sewage and grey water from portable toilets and holding tanks in RVs and campers. Dump stations do not include lavatories or restrooms.

Agency's Response to Economic Impact Analysis: The Virginia Department of Health (VDH) concurs, in part, with the findings of the Department of Planning and Budget's (DPB) analysis of the Board of Health Rules and Regulations Governing Campgrounds (12VAC5-450).

As part of the analysis, DPB raised concerns as to whether the cost would outweigh the benefit of a few of VDH's proposed regulatory revisions. Specifically, concerns regarding those revisions that would require campground operators who utilize private wells to test those wells for nitrates and coliform bacteria and the cost associated with replacing or modifying open-bin type ice machines so as to prevent exposing campers to bacteria.

Per the proposed regulations, campground operators will be required to comply with new provisions for private well water quality testing, as well as the prohibition of open-bin type ice machines. These new provisions are intended to decrease the risk of waterborne infections in campers who use campground water supplies and to decrease the risk of nitrate toxicity (methemoglobinemia) in infants.

Testing well water for nitrate content and total coliform would incur additional costs ($15 to $60 per test, per well, per year) to campground operators; however, there are two important points among many that substantiate the new proposed requirement: (1) this practice is currently required as part of the Food Regulations (12VAC5-421) to ensure the safety of consumers at food establishments and is an established process to determine well water safety when potentially the food establishment is the only source of water for the consumer similar to that of a camper at a campground and (2) the testing of well water to prevent nitrate toxicity in small children is strongly recommended by the American Academy of Pediatrics.[1] By including this provision in the

regulations, the board is following a common practice "prevention" public health approach. In addition, methemoglobinemia and waterborne infections (e.g., Norovirus, Cryptosporidium, and E. coli) can be fatal. According to the Centers for Disease Control and Prevention,[2] Norovirus and E. coli accounted for over 45% of the etiologic agents associated with waterborne disease outbreaks from 2011-2012. In 2016,[3] Virginia confirmed 218 cases of Cryptosporidium and 124 cases of E. coli, of which two individuals were hospitalized. The estimated costs associated with treating E. coli alone in 2013 was approximately $271 million dollars nationwide, according to the United States Department of Agriculture.[4]

Requiring campground water supplies to comply with the requirements of the Office of Drinking Water and obtain a permit to operate a waterworks is another viable alternative. However, said requirements are more stringent, with an exponentially higher cost to the campground operator than what is currently proposed.

The proposed language regarding the replacement or modification of open-bin type ice machines is necessary to reduce the risk of waterborne infections to those campers who utilize the campground's ice supply. Open-bin type ice machines are susceptible to contamination from yeast, mold, biofilm, bacteria, and other organic and biological pollution. Many of these agents are not visible to the naked eye and could cause illness similar to those listed above. The use of an automatically dispensing ice machine considerably decreases the risk of contamination, as it reduces the exposure of the ice to the outside environment and the hands and utensils of the campers using the machine. Lastly, the analysis also outlined several areas where the proposed regulations served as a cost savings to campgrounds. In some areas, cost savings rose to several tens of thousands of dollars. VDH has, during this most recent amendment to the regulations, attempted to remove potentially burdensome regulatory requirements with little public health significance and focus on addressing the public health impact of water and sewage at campgrounds.

Many of the day-to-day activities at campgrounds are small gatherings while others host events where the number of campers exceeds 40,000 over a course of several days. Each individual is susceptible to illness if exposed to contaminated water or ice. Such events could have a negative impact on not only the campground and its operator, but on travel tourism in the Commonwealth of Virginia. VDH believes that the benefits resulting from efforts designed to reduce potential events related to contaminated water sources outweigh the minimal costs associated with these efforts.

[1] Greer, Frank R., MD & Shannon, Michael, MD (September 01, 2015) "Infant Methemoglobinemia: The Role of Dietary Nitrate in Food and Water." Pediatrics, Vol 11 No. 3. Doi: 10.1542/peds.2005-1497

[2] Centers for Disease Control and Prevention. (2011-2012) 2011-2012 "Drinking Water-associated Outbreak Surveillance Report: Supplemental Tables." Retrieved from https://www.cdc.gov/healthywater/surveillance/drinking/2011-2012-tables.html

[3] Centers for Disease Control and Prevention. (2016). "Morbidity and Mortality Weekly Report" [Data set Week 52]. Retrieved from: https://wonder.cdc.gov/mmwr/mmwrmorb.asp?mmwr_year=2016&mmwr_week=53

[4] United States Department of Agriculture. 2013. "Cost of Foodborne illness estimates for Escherichia coli" O157.[Data file]. Retrieved from https://www.ers.usda.gov/data-products/cost-estimates-of-foodborne-illnesses/

Summary:

The proposed amendments update the regulations to reflect current public health and camping industry practices and terminology and remove outdated requirements.

12VAC5-450-10. Definitions.

~~For the purpose of this chapter, the~~ The following words and terms when used in this chapter shall have the following meanings ~~respectively indicated~~ unless ~~another meaning is clearly intended or required by~~ the context~~.~~ clearly indicates otherwise:

"Approved" means a procedure of operation or construction ~~which is~~ in accordance with the standards established by the Virginia Department of Health, or ~~which is~~ acceptable to the Health Commissioner based on ~~his~~ a determination as to the conformance with appropriate standards and good public health practice.

"Campgrounds" means ~~and includes, but is not limited to~~ tourist camps, travel trailer camps, recreation camps, family campgrounds, camping resorts, camping communities, or any other area, place, parcel or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites ~~and/or~~ or facilities is granted gratuitously, by a rental fee, by lease, by conditional sale or by covenants, restrictions and easements. This definition is not intended to include summer camps~~,~~ and migrant labor camps as defined in §§ ~~35.1-16~~ 32.1-203 and ~~32.1-203~~ 35.1-16 of the Code of Virginia, construction camps, ~~permanent mobile~~ manufactured home parks, ~~or~~ storage areas for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions and conditions from providing ~~his~~ sanitary facilities within ~~his~~ established property lines.

"Camping unit" means ~~and includes~~ tents, tent trailers, travel trailers, camping trailers, pick-up campers, motor homes, yurts, cabins, or any other device or vehicular-type structure as may be developed marketed and used by the camping trade for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

"Campsite" means ~~and includes~~ any plot of ground within a campground used or intended for the exclusive occupation by a camping unit or units ~~under the control of a camper~~.

~~"Emergency" means a condition that in the exercise of the sound discretion of the Health Commissioner is found deleterious to the public health, safety, and welfare and requires immediate action.~~

"Health Commissioner" means the chief executive officer of the State Board of Health or ~~his~~ authorized agent.

~~"Independent camping unit" means a unit which contains a water-flushed toilet, lavatory and shower as an integral part of the structure, and which requires an on-site sewer connection due to the absence of a waste holding tank on the unit.~~

~~"Non-self-contained camping unit" means a unit which is dependent upon a service building for toilet and lavatory facilities.~~

~~"Outdoor bathing facilities" means lakes, ponds, rivers, tidal waters, impoundments, beaches, streams or other places, whether natural or man-made, in which an area is held out for swimming or bathing purposes.~~

"Operator" means any person employed or contracted by a campground owner who is responsible for the management and general administrative operation of the campground.

"Overflow area" means a plot of ground in or adjacent to the campground set apart for accommodating those campers for whom no designated sites are available in the general geographical area, and which is subject to certain restrictions as to size, length of stay, temporary facilities, etc.

"Overnight" means the occupation of a camping unit as a temporary habitation between the hours of 7 p.m. and 7 a.m., or major portion thereof.

"Permit" means a written permit issued by the Health Commissioner authorizing a designated person to operate a specific camping place.

"Person" means ~~and include~~ any individual or group of individuals, named party, partnership, firm, private or public association or corporation, state, county, city, town, or anyone who by covenant, restriction, or agreement has care, control, custody, ownership, or management of property or parts thereof, or any combination of the above or other legal entity.

"Primitive ~~camps"~~ campsites" means ~~camps which~~ campsites that are characterized by the absence of what is generally understood as modern conveniences such as ~~water-flushed~~ flush toilets, showers, sinks, and electrical connections. ~~A campground shall be classified as a primitive camp when half or more of the required number of toilet seats are nonflush type.~~

"Self-contained camping unit" means a unit which contains a ~~water-flushed~~ flush toilet, lavatory, shower, and kitchen sink, all of which are connected~~,~~ as an integral part of the structure~~,~~ to water storage and sewage holding tanks located within the unit.

"Service building" means a structure housing ~~toilet~~ toilets, showers, or lavatories.

"Sewage" means ~~the~~ water-carried and non-water-carried human excrement ~~from service buildings, sanitary stations, camping units or other places together with such,~~ kitchen, laundry ~~or,~~ shower, bath, or lavatory wastes separately or together with such underground surface, storm, or other water and liquid industrial waste as may be present from residences, buildings, vehicles, industrial establishments, or other places. Other places include service buildings, dump stations, campsites, and camping units.

"Swimming pool" means any swimming, wading, or spray pool, including all appurtenant equipment, structures, and facilities provided for the use of the campers.

12VAC5-450-15. Compliance with the Virginia Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ 2.2–4000 et seq. of the Code of Virginia) shall govern the promulgation and administration of this chapter, including the procedures for rendering and appealing any case decision based upon this chapter.

12VAC5-450-30. Approval of plans required.

A. In order to ~~insure~~ ensure the provision of adequate, properly designed sanitation facilities at campgrounds, any person planning construction, ~~major alteration~~ renovation, or ~~extensive~~ addition to any campground shall, prior to the initiation of any such construction, submit to ~~the Health Commissioner, through~~ the local health department in the ~~county~~ locality in which the proposed project is located, complete plans or statements ~~which~~ that show the following, as applicable:

1. The proposed method and location of the sewage disposal system.

2. The proposed sources and location of the water supply.

3. The number, location, and dimensions of all campsites.

4. The number, description, and location of proposed sanitary facilities such as toilets, privies, dump stations, sewer lines, etc.

5. ~~Name~~ The name and address of applicant.

6. ~~Location~~ The location, boundaries, and dimensions of the proposed project.

7. Such other pertinent information as the Health Commissioner may deem necessary.

B. When, upon review of the plans, the Health Commissioner is satisfied that the proposed plans, if executed, will meet the requirements of this ~~regulation~~ chapter and other pertinent laws and regulations designed to protect the public health, written approval shall be issued.

C. When upon review of the plans, the Health Commissioner determines that the proposed plans ~~preclude~~ prevent a safe, sanitary operation, the plans shall be disapproved and the applicant shall be notified in writing of

any deficiency in the plans that constitute the basis for disapproval.

D. No person shall begin construction, ~~major alteration~~ renovation, or addition to a campground until written approval has been granted by the Health Commissioner.

E. If construction is not begun within one year from the date of the approval of the plans, such approval shall be ~~considered~~ null and void.

F. All construction, ~~reconstruction~~ renovation, or alteration shall be done in accordance with and limited to work covered by the plans and recorded changes ~~which~~ that have been approved by the Health Commissioner.

G. Any person whose plans have been disapproved may request and shall be granted ~~a hearing on the matter under the procedure provided by 12VAC5-450-60~~ an appeal as described by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Owners or operators of temporary campgrounds shall submit complete plans as described in subsection A of this section as a part of the permit application. No written approval of this material is required separate from the campground permit.

12VAC5-450-40. Permits.

A. No person ~~or persons~~, directly or indirectly, shall conduct, control, manage, operate, or maintain a campground, or offer campsites for occupancy within the Commonwealth, without first making application for and receiving a valid permit from the Health Commissioner for the operation of ~~said camp~~ the campground.

B. ~~Any campground for which a permit was not issued during the previous year~~ An authorized representative of a campground shall file an application for a permit with the local health department ~~in writing on a form and~~ in a manner prescribed by the Health Commissioner at least 30 days before such camp is to be opened.

C. If, after receipt of an application to operate a campground, the Health Commissioner finds ~~that~~ the campground ~~is~~ does not ~~in compliance~~ comply with ~~the provisions of~~ this ~~regulation~~ chapter, ~~he~~ the Health Commissioner shall notify the applicant in writing (i) citing the noncomplying items that constitute ~~his reason~~ the reasons for denying ~~the~~ a permit and (ii) providing the applicant with the opportunity for administrative process as provided by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. ~~A permit may be revoked by the Health Commissioner, or his authorized agent, if he finds that the camp for which the permit was issued is operated, maintained, or occupied in violation of this chapter, or any law, ordinance or regulation applicable to such establishments, or in violation of the conditions stated in the permit.~~ If the Health Commissioner finds that the campground complies with this chapter, a permit shall be issued. Permits may be issued to the campground's owner or operator.

E. The permit shall be conspicuously posted in the office of the ~~camp~~ campground or on the premises if no office is available.

F. ~~The permit shall not be transferable~~ Permits shall either be (i) annual and shall expire ~~on December 31 of each year, unless stated otherwise in special permits such as temporary permits that may be granted by the Health Commissioner to allow a reasonable time to conform to the requirements of this chapter, or to correct existing violations~~ 12 months from the date of issuance or (ii) temporary and granted for a specific period of time to allow temporary camping of 14 days duration or less. Temporary permits may be valid for periods of 60 days or less, but the total days of operation may not exceed 14 days during a 60-day period. Permits shall not be transferable.

12VAC5-450-50. Inspection ~~of camping places~~.

A. The Health Commissioner ~~is hereby authorized and directed to make~~ shall conduct such inspections as ~~are~~ necessary to determine satisfactory compliance with this chapter, including the following:

1. Before permit issuance, the Health Commissioner shall conduct one or more preoperational inspections of annually permitted campgrounds that (i) have not been permitted in the previous year; (ii) have undergone modifications in their water delivery, sewage conveyance, or sewage disposal systems; (iii) have modified their sanitary facilities; or (iv) have changed the number of offered campsites since the issuance of their last annual permit.

2. Annually permitted campgrounds shall be inspected at least once per permit period.

3. Temporary campgrounds shall be inspected at least once during each operational period.

4. Campground inspection schedules may be adjusted if the Virginia Department of Health develops a written risk-based plan for adjusting the frequency of inspections, and this plan is uniformly applied throughout the Commonwealth.

B. ~~It~~ Upon presentation of appropriate credentials and consent of the owner, permit holder, or authorized agent of the owner or permit holder, the Health Commissioner shall be ~~the duty of the operator or occupant(s) of a campground to give the Health Commissioner~~ given free access to such premises at reasonable times for the purpose of inspection, in accordance with § 35.1-5 of the Code of Virginia.

~~C. A register shall be kept indicating name and address of the camper, the date of the campsite occupancy, and the number of the campsite occupied. Such register shall be made available to the Health Commissioner, upon request, during his inspection of the campground.~~

C. Whenever an inspection is conducted, a completed inspection report shall be provided to the permit holder of the

campground. The inspection report shall contain descriptions of observed alleged violations and citations to the alleged regulatory violations. The report shall establish reasonable timelines for compliance with this chapter and provide an opportunity for due process in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC5-450-60. Enforcement, notices, ~~hearings~~ informal conferences.

~~A. Whenever the Health Commissioner finds violations of this chapter, an inspection report shall be filled out and left with the person in charge of the campground. Such inspection report shall be legible, contain written notation of the violation and remedial action to be taken to effect compliance with this chapter.~~

~~B. If, after a reasonable time has elapsed for the correction of noted items, the violation is found to continue to exist, a formal notice shall be issued which; (i) includes a written statement of the reasons for its issuance; (ii) sets forth a time for the performance of the corrections; (iii) is served upon the operator or his agent; Provided: that such notice shall be deemed to have been properly served upon such operator or agent when a copy has been sent by certified mail to his last known address; or when he has been served with such notice by any other method authorized or required by the laws of this Commonwealth; (iv) contains an outline of remedial action which, if taken will effect compliance with the provisions of this chapter; (v) informs the person to whom the notice is directed of his right to a hearing and of his responsibility to request the hearing and to whom the request should be made.~~

~~C.~~ Periods of time allowed to elapse between notation of the violation on the inspection report and issuance of a formal notice, and time allowed in formal notice for performance of correction shall depend upon the nature and seriousness of the violation, but shall generally not exceed 30 days.

~~D. Whenever the Health Commissioner finds that an emergency exists which requires immediate action to protect the public health, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he may deem necessary to meet the emergency including the suspension of the permit. Notwithstanding any other provisions of this chapter, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, by upon petition to the Health Commissioner, shall be afforded a hearing as soon as possible.~~

A. The Health Commissioner may, after providing a notice of intent to revoke the permit, and after providing an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia, revoke a permit for flagrant or continuing violation of this chapter. Any person to whom a notice of revocation is directed shall immediately comply with the notice. Upon revocation, the former permit holder shall be given an opportunity for appeal of the revocation in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Health Commissioner may summarily suspend a permit to operate a campground if continued operation constitutes a substantial and imminent threat to public health. Upon receipt of such notice that a permit is suspended, the permit holder shall cease campground operations immediately and begin corrective action. Whenever a permit is suspended, the holder of the permit shall be notified in writing by certified mail or by hand delivery. Upon service of notice that the permit is immediately suspended, the former permit holder shall be given an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia. The request for an informal conference shall be in writing and shall be filed with the local health department by the former holder of the permit. If written request for an informal conference is not filed within 10 working days after the service of notice, the suspension is sustained. Each holder of a suspended permit shall be afforded an opportunity for an informal conference within three working days of receipt of a request for the informal conference. The Health Commissioner may end the suspension at any time if the reasons for the suspension no longer exist.

~~E.~~ C. Any person affected by ~~any notice which has been~~ a determination issued in connection with the enforcement ~~of any provision~~ of this chapter may ~~request and shall be granted a hearing~~ challenge such determination in accordance with the provisions of ~~Title 9, Chapter 1.1:1 of~~ the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~F. If a request for a hearing is not made within 10 days after the receipt of a formal notice of violation of this chapter, or correction of the violation has not taken place within the prescribed time, the permit may be revoked and the continued operation of the campground shall be considered unlawful.~~

~~G. Nothing~~ D. All campgrounds shall be constructed, operated, and maintained in compliance with the requirements as set forth in this chapter. The Health Commissioner may enforce this chapter through any means lawfully available pursuant to § 35.1-7 of the Code of Virginia, and nothing in this chapter shall be construed as preventing the Health Commissioner from making efforts to obtain ~~voluntary~~ compliance through warning, conference, or any other appropriate enforcement means.

12VAC5-450-70. Location.

A. Each campground shall ~~be located on ground which has~~ have good surface drainage and ~~which is~~ be free of natural and man-made hazards such as mine pits, shafts, and quarries. ~~Camps~~ Campgrounds shall not be located on ground ~~which~~ that is in ~~or adjacent to~~ swamps, marshes, landfills or abandoned landfills, or breeding places for insects or rodents of public health importance, unless adequate, approved safeguards or preventive measures are taken.

B. The density of campsites in a campground shall not exceed an average of 20 campsites per acre inclusive of service roads, toilet buildings, recreational areas, etc.

C. Each campsite (including parking space) shall provide a minimum of 1600 square feet of space and shall not be less than 25 feet at its narrowest point.

D. Each campsite shall be identified by number and section. Camping units within a campground shall be required to locate within the designated campsites.

12VAC5-450-80. Water supplies.

A. ~~The water supply, storage reservoirs and distribution system shall be approved by the Health Commissioner.~~ An adequate supply of safe, sanitary, potable water shall be provided. The water supply shall either be an approved private well or a permitted waterworks. Waterworks must be maintained and operated in compliance with 12VAC5-590. Private wells shall be constructed, maintained, and operated in compliance with 12VAC5-630. Additionally, campgrounds utilizing private wells for potable water shall sample and test for total coliform and nitrate annually and prior to permit application; water shall be satisfactory for the total coliform standards identified in 12VAC5-630-370 and shall not have more than 10 mg/L nitrate. Samples shall be analyzed by a laboratory certified by the Department of General Services, Division of Consolidated Laboratory Services.

B. ~~An adequate supply of safe, sanitary, potable water capable of supplying a total capacity of at least 50 gallons per campsite per day if privies are used, and at least 100 gallons per campsite per day if water flushed toilets are used,~~ Water shall be provided at one or more easily accessible locations within the ~~camping area~~ campground. ~~Adequate water storage facilities shall be provided to meet the demands for~~ The water system shall be capable of meeting the demand for water during periods of peak use by the ~~campers~~ campground.

C. Water delivery systems utilizing private wells as a water source must meet the following construction and operational standards:

1. All water storage reservoirs shall be covered, watertight, and constructed of impervious material.

2. Overflows and vents of such reservoirs shall be effectively screened.

3. Manholes shall be constructed with ~~over lapping~~ overlapping covers so as to prevent the entrance of contaminating material.

4. Reservoir overflow pipes shall discharge through an acceptable air gap.

5. All cross connections between approved and unapproved water supply systems are prohibited.

6. All water supplies shall be protected against the hazards of backflow or back siphonage.

~~D. All cross connections, between approved and nonapproved water supply systems are prohibited, and the supply shall be protected against the hazards of backflow or back siphonage.~~

~~E. Drinking fountains and water coolers, if provided, shall be of an approved type~~. D. Common water coolers, drinking cups, glasses, or vessels are prohibited.

~~F. Unsafe~~ E. Unapproved wells or springs in the ~~camp area~~ campground shall be eliminated or made inaccessible for human consumption.

~~G.~~ F. All ice provided shall be from an approved source~~. All ice~~ and shall be handled and stored in ~~such~~ a manner ~~as~~ to prevent contamination. Ice-making machines shall be ~~of approved construction~~ automatic dispensing, and water shall be from a source approved under subsection A of this section. Open-bin type ice machines are prohibited.

~~H.~~ G. Portable water tanks or watering stations shall not be approved~~, except in emergencies, and then~~ unless such tanks, stations, and dispensing ~~shall be~~ are reviewed and approved by the Health Commissioner.

~~I.~~ H. The area surrounding a pump or hydrant used for a water supply shall be maintained in a properly drained and sanitary condition~~,~~ to prevent the accumulation of standing water or the creation of muddy conditions.

~~J.~~ I. The connection for potable water piped to individual campsites shall be ~~so~~ installed so that it will not be damaged by the parking of camping vehicles.

~~K.~~ J. If installed above the ground, the riser shall terminate at least four inches above the ground surface. If installed in a pit, the riser shall terminate at least 12 inches above the floor of the pit, and the pit shall be drained to prevent it from containing standing water. The drain for the pit shall not be connected to a sanitary sewerage system.

~~L.~~ K. If a water connection and a sewer connection are provided at ~~individual campsites~~ a campsite, the two connections shall be separated by a minimum horizontal distance of ~~five~~ 10 feet. Campgrounds that have been issued a permit before (insert the effective date of this regulation) shall be exempt and required to maintain a minimum horizontal distance of five feet between water and sewer connections. If an exempt campground conducts construction or renovation activity impacting water and sewer connections, current regulations shall apply to all campsites where work is conducted. Normal maintenance work will not constitute construction or renovation.

~~M.~~ L. Adequate provisions shall be made to prevent the freezing of service lines, valves, and riser pipes.

12VAC5-450-90. Sewage disposal.

A. Every campground shall be provided with an approved method of collection, conveying, and disposing of all sewage and liquid wastes.

~~B. Privies shall be an acceptable method of sewage disposal when the location, design, construction, and quantity have~~

~~been approved by the Health Commissioner provided their use is not prohibited or restricted by local requirements.~~

~~C.~~ B. All methods or systems of collecting and disposing of sewage and liquid wastes, whether temporary or permanent, shall be subject to the approval of the Health Commissioner.

~~D.~~ C. It shall be unlawful to discharge sewage, sink waste water, shower waste water, or other putrescible wastes in such a manner as to enter the ground surface ~~or~~, subsurface, or a body of water, except following a treatment device or process approved prior to construction by the Health Commissioner.

~~E. A sanitary or~~ D. Campgrounds shall provide a dump station for the disposal of sewage and other liquid wastes from self-contained camping units ~~shall be provided which~~ that complies with the following requirements:

1. Campgrounds having ~~less~~ fewer than 200 campsites shall provide a minimum of one ~~sanitary~~ dump station, unless all campsites that allow self-contained camping units provide direct sewer connections.

2. Campgrounds having more than 200 campsites shall provide an additional ~~sanitary~~ dump station for each additional 200 campsites or major fraction thereof, provided that campsites equipped with sewer connections shall not be included in the total.

3. Where two or more ~~sanitary~~ dump stations are required, they shall be ~~so~~ located ~~as~~ to facilitate the simultaneous discharge of sewage wastes from different units.

4. Each ~~sanitary~~ station shall be ~~so~~ located and designed ~~as~~ to be easily accessible and facilitate ingress and egress for camping vehicles.

~~F.~~ E. The ~~sanitary~~ dump station shall consist of the following:

1. A four-inch sewer pipe trapped below the frost line connected to an approved sewage disposal system or suitable holding tank.

2. The sewer pipe, at the inlet, shall be surrounded by a reinforced, concrete apron sloped to drain to the sewer pipe.

3. The minimum dimensions of the concrete apron shall be 36 inches wide, 60 inches long, and four inches thick. The sewer pipe shall be located such that the major portion of the apron will project under the camping unit when it is discharging.

4. The inlet of the sewer pipe shall be provided with a suitable fly-tight cover.

5. The ~~sanitary~~ station shall be provided with a water outlet to permit wash down of the immediate area after each use and so arranged as to prevent a cross-connection or back siphonage.

6. Each water outlet used for such purposes shall display a sign stating, in effect, "Notice: Unsafe Water Outlet-This water is for wash-down purposes only."

F. A slop sink or suitable drain shall be provided within 500 feet of all campsites for the disposal of liquid cooking and wash water wastes, unless a dump station is accessible for this purpose. Adequate provision shall be made by the permit holder of a campground to assure that the slop sink or other suitable drain is kept in a sanitary condition and is used for the purpose for which it was intended.

G. Individual sewer connections for camping vehicles, if provided, shall be installed in accordance with the following provisions:

1. The individual sewer (equivalent to the building sewer for a permanent building)~~,~~ shall be at least four inches in diameter, shall be trapped below the frost line, and shall be laid at depths sufficient to provide adequate protection against physical injury.

2. The sewer inlet shall (i) consist of a four-inch riser extending, at a minimum, four inches above the surface of the surrounding ground to accommodate a hose connection from the camping vehicle~~,~~ or ~~so~~ (ii) be designed ~~as~~ to divert surface drainage away from the riser. The riser shall be imbedded firmly in the ground and be protected against heaving and shifting.

3. The sewer riser shall be equipped with a standard ferrule and close nipple provided with a tight cap or expanding sewer plug. The screw cap or sewer plug shall be fastened by a durable chain to prevent removal while the sewer riser is in use. When the sewer riser is not in use, it shall be capped or plugged.

4. The sewer hose between the camping vehicle drain and the sewer riser shall be watertight~~,~~ and shall be of flexible, noncollapsible, corrosion and weather-resistant material of suitable diameter to fit the camping vehicle drain. Its lower end shall be secured into the open sewer riser with a gasket of rubber or other suitable material. All joints shall be effected ~~so as~~ to prevent the leakage of sewage~~,~~ or odor or prevent the entrance of rodents.

12VAC5-450-100. ~~Service buildings~~ Sanitary facilities.

A. Each campground shall ~~be provided with one or more service buildings which contain~~ provide an adequate number of ~~toilet and~~ sanitary facilities. The minimum ratio of sanitary facilities to the number of campsites ~~shall be provided according to~~ is established in the following schedule. Facilities shall either be gender-balanced in number or single-occupant access with no gender designation.

~~No. Sites~~	~~Toilets~~		~~Urinals~~	~~Lavatories~~		~~Showers*~~		~~Other Fixtures~~
	~~M~~	~~W~~	~~M~~	~~M~~	~~W~~	~~M~~	~~W~~	
~~1 - 15~~	~~1~~	~~1~~	~~0~~	~~1~~	~~1~~	~~1~~	~~1~~	~~1 slop drain~~
~~16 - 30~~	~~2~~	~~2~~	~~0~~	~~2~~	~~2~~	~~1~~	~~1~~	
~~31 - 45~~	~~2~~	~~3~~	~~1~~	~~3~~	~~3~~	~~1~~	~~1~~	~~See Subsection F of this section~~
~~46 - 60~~	~~3~~	~~4~~	~~1~~	~~3~~	~~3~~	~~2~~	~~2~~	
~~61 - 75~~	~~4~~	~~5~~	~~1~~	~~4~~	~~4~~	~~2~~	~~2~~	
~~76 - 90~~	~~4~~	~~6~~	~~2~~	~~4~~	~~4~~	~~2~~	~~2~~	
~~91 - 105~~	~~5~~	~~7~~	~~2~~	~~4~~	~~4~~	~~3~~	~~3~~	
~~106 - 120~~	~~6~~	~~8~~	~~2~~	~~5~~	~~5~~	~~3~~	~~3~~	
~~121 - 135~~	~~6~~	~~9~~	~~3~~	~~5~~	~~5~~	~~3~~	~~3~~	
~~136 - 150~~	~~7~~	~~10~~	~~3~~	~~5~~	~~5~~	~~4~~	~~4~~	
~~*The providing of showers in the service building(s) is optional on the part of the campground owner, but when are provided the schedule will apply.~~								

Campsites	Toilets	Lavatories	Showers*
1 - 15	2	2	2
16 - 30	4	4	2
31 - 45	6	6	2
46 - 60	8	6	4
61 - 75	10	8	4
76 - 90	12	8	4
91 - 105	14	8	6
106 - 120	16	10	6
121 - 135	18	10	8
136 - 150	20	10	8
*The providing of showers is optional on the part of the campground owner, but when showers are provided the schedule will apply.			

B. For campgrounds having more than 150 campsites located~~, in the opinion of the Health Commissioner, contiguously~~ contiguous to the ~~service building or buildings~~ sanitary facilities required by the schedule in subsection A of this section, there shall be provided ~~one~~ two toilet ~~seat~~ seats and ~~one lavatory for each sex~~ two lavatories for each additional 30 campsites, and ~~one~~ two additional ~~shower~~ showers for each additional 40 campsites ~~and one additional men's urinal for each 100 campsites~~. ~~When~~ Regardless of the number of campsites, when a section or sections of a campground are found to be ~~incontiguous~~ noncontiguous, the Health Commissioner ~~may~~ shall apply the schedule in subsection A ~~above in determining the adequacy of the fixtures~~ of this section for such section of the campground. ~~Whenever the number of campsites fall in between the numbers listed above, the larger number of required fixtures shall apply when a major fraction of the difference in the two numbers is attained.~~

~~C. Primitive camps shall be exempted from the provisions for lavatories and showers. If, however, any showers are provided at a campground designated as a primitive camp, the schedule in subsections A and B shall apply.~~

C. Campsites used solely for self-contained camping units or cabins with approved sewage disposal shall not count towards the number of campsites used to determine the minimum number of fixtures required in subsections A and B of this section. If all campsites in a campground are used solely for self-contained camping units or cabins, then the campground shall provide the required number of facilities for a campground of 15 campsites or fewer.

D. When a campground is operated in connection with a resort or other business operation, the campground facilities provided shall be in excess of those required by the schedules in subsections A and B of this section by the number of facilities required by the Virginia Statewide Building Code (13VAC5-63) or other applicable regulation.

E. Sanitary facilities required by subsections A and B of this section may be in service buildings or may be in other sanitary facilities located outside of service buildings. Privies of a type approved by 12VAC5-610-980 may be substituted for flush toilets and shall be provided according to the schedule in subsection A of this section. Where present,

privies shall be maintained in good repair, pumped as needed, and kept clean and sanitary at all times. When portable privies are used to meet the requirements of the schedule in subsection A of this section, they shall not serve nonprimitive campsites or more than 30 campsites in a campground.

~~D.~~ F. Urinals may be substituted for up to one half of the required male toilets. Where existing urinal troughs are used, two feet of urinal trough shall constitute one urinal.

~~E. Exemptions. Any person desiring to furnish temporary facilities for accommodating a travel trailer rally, or other group of camping units assembled for the purpose of traveling together, shall make application for such activity to the Health Commissioner through the local health department having jurisdiction, 15 days in advance of the intended date of use. The requirements for a service building may be waived by the Health Commissioner on the determination that public health will not be endangered; but the location of the site, the facilities which must be provided, and the method of conducting such rally shall be acceptable to the Health Commissioner before a special permit shall be issued specifying the location of the site, the period of operation not to exceed seven days, and any conditions of issuance.~~

~~F. A slop sink or suitable drain shall be provided within 500 feet of all campsites for the disposal of liquid wastes unless a sanitary station is accessible for this purpose. Adequate provision shall be made by the operator of a campground to assure that the slop sink or other suitable drain, if necessary, is kept in a sanitary condition and is used for the purpose for which it was intended such as the disposal of dish water and wash water.~~

~~G. Lavatories shall be provided adjacent to the toilet fixtures.~~

~~H. When a campground is operated in connection with a resort or other business establishment, the total number of sanitary facilities shall be in excess of those required by the aforementioned schedules and shall be based on the total number of persons using such facilities.~~

~~I. Service buildings shall be located no farther than 500 feet from any campsite served by such building, nor closer than 30 feet to any campsite. When two or more service buildings exist, the ratio of fixtures as specified in subsections A and B shall be in approximate relation to the number of campsites located within a 500 foot radius of each building.~~

~~J.~~ G. All ~~service buildings~~ sanitary facilities and ~~the commodes~~ toilets, urinals, lavatories, ~~shower~~ showers, and other appurtenances located therein shall be maintained in a state of good repair and shall be kept in a clean and sanitary condition at all times. Toilet and shower rooms shall not be used for miscellaneous storage during operation of the campground.

~~K. All doors to the exterior from service buildings shall be self-closing.~~

~~L. Toilet rooms, shower rooms and other areas receiving heavy camper use shall not be used for miscellaneous storage during operation of the camp.~~

~~M.~~ H. Toilet tissue shall be provided at each privy ~~or~~ and toilet ~~seat~~, and a covered receptacle for sanitary product disposal shall be provided at each privy and female toilet. Where provided, lavatories shall be in the immediate vicinity of toilet fixtures, and soap and a method of hand drying shall be provided.

~~N.~~ I. Shower compartments, whether individual type with partitions or group type without partitions, shall have not less than 1,024 square inches in floor area and~~, if rectangular, square or triangular in plan,~~ shall be ~~not less than~~ at least 30 inches in shortest dimension.

~~O. In a campground where there is a combination of campsites, part of which are provided with a water connection and a sewer outlet, the minimum number of fixtures as required in subsections A and B above may be adjusted by the Health Commissioner based on individual conditions provided any request for an adjustment complies with 12VAC5-450-190.~~

J. Sanitary facilities shall be located no farther than 500 feet from any campsite served by such building nor closer than 30 feet from any campsite. However, privies shall be no closer than 50 feet from any campsite. When two or more service buildings or areas with other sanitary facilities exist, the ratio of fixtures as specified in subsections A and B of this section shall be in approximate relation to the number of campsites located within a 500-foot radius of each building.

12VAC5-450-110. Structural requirements for service buildings.

A. All portions of the structure shall be properly protected from damage by ordinary use and by decay and corrosion. Exterior portions shall be of such material and be so constructed and protected as to prevent entrance or penetration of moisture and weather.

B. Effective ventilation of all service buildings shall be provided to prevent condensation, moisture, and odors.

C. Interior of service buildings shall be finished in a light color and provided with adequate natural or artificial illumination, or both.

D. The floors of toilet and shower rooms shall be sloped to a properly trapped floor drain connected to the sewerage system.

E. Partitions between flush toilets in the same room shall be raised a minimum of eight inches from the floor to permit easy cleaning.

F. The interior finish of such buildings shall be of moisture resistant and easily cleanable material ~~which~~ that will withstand frequent washing and cleaning. Special attention shall be given wall finishes immediately around lavatories, urinals, ~~commodes~~ and toilets and in showers to ~~insure~~ ensure

a surface in these heavily used areas ~~which~~ that will withstand commercial use.

G. The floors shall be constructed of material impervious to water and be of easily cleanable material. Duck boards or ~~walk-ways~~ walkways made of wood or other absorptive material shall not be permitted.

H. All windows and openings to the outside from areas containing ~~commodes~~ toilets and urinals shall be provided with fly-proof screening material of at least 16 mesh per inch.

I. Water closets and bathing facilities shall not be located in the same compartment.

J. Permanent service buildings shall be provided with an artificial light at the entrance to the building to facilitate its use at night~~: Provided, that primitive~~. Primitive camps with privies ~~may be exempted~~ are exempt from this requirement.

K. Service buildings shall have appropriate signs ~~to denote its use~~ such as "Men's Toilet," "Women's Toilet," "Showers," etc.

L. Showers shall be equipped with a drain or drains ~~which will~~ that prevent the shower water from running across floors that are used for other purposes.

M. All fixtures shall be of durable material ~~which will be~~ that is capable of withstanding the heavy usage ~~which~~ that public facilities receive.

N. All doors to the exterior from service buildings shall be self-closing.

12VAC5-450-115. Cabins and other rental units.

A. All cabins, yurts, and other camping units offered for rent to campers, including self-contained camping units and other mobile units, and the equipment, fixtures, and furnishings contained therein shall be kept clean, in good repair, free of vermin, and maintained so as to protect the health, safety, and well-being of persons using those facilities.

B. When provided, dishes, glassware, silverware, and other cooking implements must be kept in a clean and sanitary condition. If such items are not washed between occupants, the permit holder must post a sign alerting cabin occupants that kitchen items are not washed under management supervision.

C. When provided, box springs, mattresses, and other furnishings shall be clean and in good repair. Conventional mattress covers or pads shall be used for the protection of mattresses and shall be kept clean and in good repair. When provided, all sheets, pillowcases, towels, washcloths, and bathmats shall be kept clean and in good repair, freshly laundered between occupants, and changed at least once every seven days if used by the same occupant. When a blanket is placed on the bed, the upper sheet shall be of sufficient length to fold and overlap the top section of the blanket. All blankets, quilts, bedspreads, and comforters shall be maintained in a sanitary and good condition, and all clean bedding and linen shall be stored in a clean and dry place.

D. When provided, smoke detectors and fire extinguishers shall be functional and serviced as appropriate.

E. Bed arrangements of lodging units shall provide suitable clear space between each bed, cot, or bunk to allow for ingress to and egress from the lodging unit. There shall be sufficient space between the floor and the underside of the beds to facilitate easy cleaning. In lieu of such space, the bed shall have a continuous base or shall be on rollers.

F. Measures shall be taken to prevent the infestation of cabins and other rental units by rodents, bedbugs, and vector insects.

12VAC5-450-130. Insect, rodent, and weed control.

A. Camping places shall be kept free from cans, jars, buckets, old tires, and other articles ~~which~~ that may hold water and provide temporary breeding places for mosquitoes. Mosquito control measures and supplemental larvicidal measures shall be undertaken by the owner when the need is indicated.

B. Fly and rodent breeding shall be controlled by eliminating ~~the insanitary practices which provide~~ breeding places. The area surrounding the garbage cans shall not be permitted to become littered with garbage nor saturated with waste liquid from garbage.

C. The growth of weeds, grass, poison ivy, or other noxious plants shall be controlled as a safety measure and as a means toward the elimination of ticks and chiggers. Pesticidal measures shall be applied, if necessary, provided the pesticide and its use is in accordance with the rules promulgated by the ~~Pesticide Control Board~~ Board of Agriculture and Consumer Services.

D. The campsite and the premises shall be maintained in a clean and orderly manner.

12VAC5-450-140. Swimming pools ~~and outdoor bathing facilities~~.

The construction, modification, maintenance, operation, and use of any swimming pool at a campground, if provided, shall be subject to the ~~State Board of Health regulations adopted under §§ 35.1-17 of the Code of Virginia~~ Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools (12VAC5-460) and Swimming Pool Regulations Governing the Posting of Water Quality Test Results (12VAC5-462).

12VAC5-450-150. Safety.

A. The electrical installation and electrical hook-up provided travel trailers~~,~~ and other similar units shall be in accordance with the provisions of local electrical ordinances, or if no such ordinance exists, in accordance with the provisions of the National Electrical Code~~,~~ applicable at the time of installation.

B. ~~Adequate precautions shall be exercised by the operator~~ The permit holder shall exercise precautions to prevent the outbreak of fires. If open fires are permitted, ~~there shall be~~ a

definite area shall be provided within the bounds of each campsite for the building of fires by the camper, with a cleared area surrounding the ~~firesite~~ fire site to aid in fire control.

C. ~~Adequate precautions shall be taken by the operator~~ The permit holder shall take precautions in the storage and handling of gasoline, gas cylinders, or other explosive materials, in accordance with local, state, and national safety standards.

D. The ~~operator~~ permit holder shall make ~~adequate~~ provisions for the use and control of ~~mini-bikes~~ all-terrain vehicles, trail bikes, and other similar vehicles within the confines of the camping area to prevent accidents to small children and campers.

E. Broken bottles, glass, and other sharp objects shall not be allowed to create a hazard to children or others.

F. A register shall be kept for recording the names of all campers, the date of campsite occupancy by each camper, and the number and location of occupied campsites.

G. Campground permit holders shall develop and maintain an emergency response plan. This plan shall include identification of a point of contact during emergency incidents and a written plan for communicating emergency response information to campers. The plan shall also include provisions for camper safety, identification, and evacuation in the event of natural disasters, fires, or other emergencies. Contact telephone numbers for local police, fire response, and emergency medical services shall be posted in a central location in all campgrounds.

12VAC5-450-170. Control of animals and pets.

A. ~~Every pet permitted in a campground~~ Pets shall be maintained under control at all times and shall not be permitted to create a public health problem. ~~Dogs shall be kept on leash at all times. Dung~~ Animal waste shall be removed immediately and be disposed of in a waste receptacle or buried in a location ~~which~~ that will not interfere with the use of the ~~site for camping purposes~~ campsite.

B. Any kennels, pens, or other facilities provided for such pets, including horses, shall be maintained in a sanitary condition at all times.

12VAC5-450-180. Overflow areas.

A. It shall be unlawful for any person operating a campground to exceed the design capacity of the campground as stated on the health permit by the use of certain unequipped areas as an overflow area for campers~~, camping clubs or rallies~~ unless and until the overflow area and its proposed use have been approved by the Health Commissioner in writing as to the specific location of the overflow area, number and location of sanitary facilities, size and number of campsites, and such other factors as may be deemed necessary to prevent overcrowding and the accompanying insanitary conditions.

B. The length of stay of any camping unit permitted to use an area specifically designated and approved as an overflow area shall be limited to a 12-hour period. Overflow areas are to be used for incidental traffic only and are not for planned temporary camping.

12VAC5-450-183. Primitive campgrounds.

A. Campgrounds or sections of campgrounds may be permitted as primitive in the absence of flush toilets, showers and lavatories, and electrical connections. Campsites shall be designated primitive at the time of permitting.

B. Primitive campgrounds or sections of campgrounds with only primitive campsites shall be exempt from the following requirements of this chapter:

1. Campsite identification requirements of 12VAC5-450-70 D. Although individual primitive campsites do not need to be marked, the overall campground size shall be large enough to accommodate campsites arranged according to the size and density requirements of 12VAC5-450-70 B and C.

2. Potable water requirements of 12VAC5-450-80, provided that the primitive campground or section thereof has 10 campsites or fewer, and the following signage is clearly posted at the entrance to the primitive campground or section thereof: "No potable water provided at this campground." When potable water is provided, all requirements of 12VAC5-450-80 shall apply.

3. Where water is not provided, slop sink requirements of 12VAC5-450-90 F.

4. Lavatory and shower requirements of 12VAC5-450-100 A. If the primitive campground provides showers or lavatories then the schedule in 12VAC5-450-100 A shall apply.

5. Garbage and refuse disposal requirements of 12VAC5-450-120, provided the primitive campground or section thereof has 10 campsites or fewer, and the campground shall display a sign stating, in effect: "Pack It In, Pack It Out, no garbage collection provided, please remove your own garbage from this campground."

6. Weed, grass, and noxious plant control measures as specified in 12VAC5-450-130 C. If pesticide measures are taken, then all pesticide use must be done in accordance with rules promulgated by the Board of Agriculture and Consumer Services.

12VAC5-450-187. Temporary campgrounds.

Temporary campgrounds, as permitted under 12VAC5-450-40 F, shall be exempt from the following requirements of this chapter:

1. Density, size, and designation requirements of 12VAC5-450-70 A through D. However, temporary campgrounds shall establish a maximum number of campsites and campers. Campground permit holders shall ensure that the size, location, and orientation of campsites do not prohibit

the safe and timely evacuation of campsites in the event of an emergency, and that vehicular traffic routes and parking are located where they do not pose a safety risk to campers.

2. Permanent water supply requirements of 12VAC5-450-80.

a. If potable water is provided in the form of a waterworks or private well, then it must comply with 12VAC5-450-80 A, B, and D through I. If no piped water source is provided, then bottled water that complies with 21 CFR Part 129 shall be available, and the unavailability of piped water must be advertised to campers prior to the time of the temporary camping event.

b. Water may be hauled in from a source that meets the requirements of 12VAC5-450-80 A. Water shall be transported in tanks of food-grade construction and maintain a one-parts-per-million chlorine residual. Any tanks, hoses, or appurtenances that are used to distribute water shall be of food-grade construction, be disinfected between uses, and be protected from contamination.

3. The dump station and slop sink requirements of 12VAC5-450-90 D, E, and F.

a. Greywater disposal barrels or approved equivalents shall be provided and serviced during the event unless all of the following conditions apply: (i) piped water is not available, (ii) portable showers and handwashing sinks are provided, and (iii) cooking and campfires are prohibited. Only water from cooking, washing, or bathing shall be disposed of in greywater barrels.

b. If self-contained camping units are present at the campground, a sewage handler shall be available to pump holding tanks as appropriate during the event. Sewage handlers must possess a valid sewage handling permit as required by 12VAC5-610 and any licensure required by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage Professionals in accordance with that board's regulations (18VAC160-30 and 18VAC160-40) and Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia.

4. Permanent facility requirements in 12VAC5-450-100 A, B, and I. However, portable toilet facilities shall be provided at the ratio of at least one toilet for every 75 campers, and at least one toilet shall comply with the Americans with Disabilities Act (42 USC § 12101 et seq.). No campsite shall be farther than 500 feet from any portable toilet. Portable sinks and showers are not required for events of four days or less, although hand sanitizer must be provided in all portable toilets where portable sinks are not provided. All portable units shall be serviced at least daily during the event unless the applicant can demonstrate that they are provided in numbers significant enough to warrant a reduced-maintenance service schedule. If the temporary campground has permanent bathroom facilities, facilities may count towards the required number of portable privies. Campers who will be camping in self-contained camping units shall not be counted toward the total number of campers in calculating the required number of portable privies.

12VAC5-450-190. ~~Waiver~~ Variances.

A. One or more of the ~~provisions in the above regulation~~ regulations in this chapter may be waived in whole or in part when, in the opinion of the Health Commissioner, ~~there are factors or circumstances which render compliance with such provision(s) unnecessary; provided, that such provision(s) shall be specifically exempt in writing by the Health Commissioner.~~ the hardship imposed by the regulations, which may be economic, outweighs the benefits that may be received by the public and that granting such a variance does not subject the public to unreasonable health risks or environmental pollution. Variances shall be issued in writing by the Health Commissioner.

B. ~~It shall be the duty of the campground operator to file a written request for such waiver in which the reasons for noncompliance of a certain provision(s) are stated fully. If data, test or other adequate information is necessary to the rendering of a decision by the Health Commissioner, it shall be the responsibility of the applicant to provide such evidence.~~ Any permit holder who seeks a variance shall apply in writing to the local health department. The application shall include:

1. A citation to the regulation from which a variance is requested;

2. The nature and duration of the variance requested;

3. Evidence that establishes that the public health and welfare, and the environment would not be adversely affected if the variance were granted;

5. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;

6. Other information believed pertinent by the applicant; and

7. Such other information as the district or local health department or Health Commissioner may require.

C. The Health Commissioner shall issue a case decision regarding the variance request within 90 days of receipt. The campground operator or other named party may appeal any adverse decision regarding a variance request pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC5-450-200. Penalties.

Any person who violates any provision of this chapter ~~shall, upon conviction, be punished by a fine of not less than $10 nor more than $100; and each day's failure of compliance with any provision shall constitute a separate violation~~ may

be subject to penalties provided by § 35.1-7 of the Code of Virginia.

12VAC5-450-210. ~~Constitutionality.~~ (Repealed.)

~~If any provision of any section of this chapter is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the validity and constitutionality of the remainder of such regulations shall not be affected thereby.~~

12VAC5-450-230. ~~Exemptions.~~ (Repealed.)

~~Whenever it is found that existing facilities provided at a campground prior to the effective date of this chapter such as the size of campsites and design of structures are in noncompliance, and that the required changes would work an undue hardship on the operator and not materially affect the public health or safety, such major items shall be exempted from this chapter. Other nonconforming items at existing campgrounds such as dump station requirements and number of sanitary facilities may continue in use for a reasonable period of time not to exceed two years from the effective date, provided that a diligent effort is made by the owner to effect compliance. All new campgrounds, sections added to existing campgrounds and additions and extensions within existing campgrounds shall be subject to the provisions of this chapter.~~

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Fast-Track Regulation

Title of Regulation: **12VAC5-613. Regulations for Alternative Onsite Sewage Systems (amending 12VAC5-613-10, 12VAC5-613-90).**

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 28, 2017.

Effective Date: July 17, 2017.

Agency Contact: Allen Knapp, Director, Office of Environmental Health Services, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7476, or email allen.knapp@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia authorizes the board to make, adopt, promulgate, and enforce regulations that protect, improve, and preserve public health and the environment for the general welfare of the citizens of the Commonwealth. Subsections A and B of § 32.1-164 of the Code of Virginia authorize the board to adopt regulations governing the collection, conveyance, transportation, treatment, and disposal of sewage, including sewerage systems and treatment works as they affect public health and welfare.

Purpose: Currently, there is no single technology that can comply with all of the performance requirements for direct dispersal. Different technologies must be combined. However, the amendments would allow the possibility of using a single treatment technology to meet the performance requirements, thereby reducing costs while still being protective of public health. When the regulations were first adopted in 2011, the general sentiment at that time was to require best available technology, and costs would reduce over time. However, costs have not substantially decreased, and to date, no property owner has submitted an application to comply with the requirements for direct dispersal. Private industry is trying to meet the current standard; however, there is a need to allow for upgrades and repairs in the interim. The change in performance standards improves public health protection and reverts to the regulatory requirements that were in effect under the emergency alternative onsite sewer system (AOSS) regulations from 2009 until December 7, 2011, with the addition of total nitrogen (TN) reduction.

In regulating direct dispersal of treated effluent to ground water, 12VAC5-613-90 D 4 establishes a discharge limit of 3 mg/l TN and 0.3 mg/l TP in the Chesapeake Bay Watershed, which is the limit of technologies available in the marketplace. These requirements took effect on December 7, 2013. The limit of technology is not economically possible for many homeowners with older septic systems that already disperse septic tank effluent directly into ground water. By some estimates, compliance with current requirements can cost nearly $40,000 for many owners with previously developed properties. Operation and maintenance costs can exceed $2,000 per year. In contrast, the cost to comply with the amendments is estimated to be at least 50% less. Any system that fully complies with the more stringent requirements of the regulations (on or after December 7, 2013) would be required to continue adhering to those requirements if repaired or upgraded, unless another solution that fully complied became available.

Many existing systems do not meet site and soil criteria established under current regulations. When the existing system fails, the owner is faced with the cost of installing additional treatment or pressure dosing to repair the system. In some cases, the cost of the new treatment or pressure dosing is a barrier to repairing a failing onsite sewage system. In 2004, the General Assembly approved legislation to address this issue by amending § 32.1-164.1:1 of the Code of Virginia to allow property owners to request a waiver from additional treatment or pressure dosing requirements beyond the level provided by the existing system when repairing a failing onsite sewage system. A waiver granted under § 32.1-164.1:1 to repair a failing system is not transferable (unless specifically exempt) and expires upon property transfer.

In 2011, the General Assembly of Virginia approved legislation, which again amended § 32.1-164.1:1 and added § 32.1-164.1:3 of the Code of Virginia, to allow for the voluntary upgrade of onsite sewage systems and alternative discharging sewage systems. As amended, a property owner who voluntarily upgrades his onsite sewage system can

request a waiver from additional treatment or pressure dosing requirements, similar to a waiver granted to repair failing onsite sewage systems. However, unlike waivers granted to repair failing systems, waivers granted for voluntary upgrades do not become null and void upon sale of the property.

Waivers pursuant to § 32.1-164.1:1 of the Code of Virginia allow homeowners located anywhere within the Commonwealth, including within the Chesapeake Bay Watershed, to waive additional treatment and continue to discharge untreated septic effluent into ground water. Waivers do not apply to operation and maintenance (O&M) requirements. The amendments change the performance requirements and O&M schedule for direct dispersal of a voluntary upgrade or repair; it does not change the statute, and the law allows the property owner to receive a waiver.

12VAC5-613-90 C sets stringent performance and operational requirements for all sewage systems that result in direct dispersal. These stringent requirements include: (i) quarterly sampling and remote monitoring; (ii) BOD_5 and TSS equal to or less than 5 mg/l; (iii) fecal coliform concentration less than or equal to 2.2 col/100 ml with no sample exceeding 14 col/100 ml; (iv) Total Nitrogen less than 5 mg/l; high level disinfection; average turbidity of less than or equal to 2 Nephelometric turbidity units prior to disinfection; (v) a renewable operating permit; and (vi) a hydrogeologic analysis of the receiving ground water. These requirements, while appropriate for new construction and undeveloped properties, present a significant financial barrier for a homeowner wanting to repair or upgrade an older septic system that already disperses effluent to ground water. In many cases, the owner cannot avoid having a repair or upgrade that does not directly disperse effluent to ground water.

Since promulgation of the AOSS regulations on December 7, 2011, and the effective date of December 7, 2013, for 12VAC5-613-90, the Commissioner of Health has granted more than 30 variances to owners claiming financial hardship for repairs and voluntary upgrades, and over 750 owners have waived additional requirements pursuant to § 32.1-164.1:1 of the Code of Virginia. The amendments are essential to protect the health, safety, and welfare of citizens in that they will provide a more financially attainable level of treatment for previously developed properties, still provide a high level of public health protection, and encourage owners to not waive regulatory requirements. The amendments will also eliminate the need for an individualized variance for most situations.

Rationale for Using Fast-Track Rulemaking Process: The amendments will allow more owners to affordably repair or upgrade old sewage systems that already disperse effluent to ground water while upholding strict requirements for new systems seeking to disperse effluent to ground water. This action is not considered to be controversial as it reduces a financial burden to homeowners and small business owners while improving public health and the environment.

For the fast-track rulemaking process, Virginia Department of Health staff consulted with the Sewage Handling and Disposal Advisory Committee (advisory committee), which comprises over 15 stakeholder groups, including homebuilders, realtors, well drillers, septic contractors, professional engineers, operators, onsite soil evaluators, environmental groups, and regulatory interests. On June 3, 2015, and September 16, 2016, the advisory committee discussed the amendments to the AOSS Regulations to address voluntary upgrades and repairs that disperse effluent directly to ground water. At the September 16, 2016, meeting, the advisory committee recommended the amendments be approved for the Board of Health's consideration. Only one stakeholder, Mr. Joel Pinnix, representing the American Council of Engineering Companies of Virginia, opposed the amendment because it did not include undeveloped property or new construction activities, only repairs and upgrades. The amendments do not include new construction activities because that idea is considered controversial, which requires vetting through the routine and normal regulatory adoption process. During executive branch review of the amendments in 2017, staff added 12VAC5-613-90 F to ensure that alternative onsite sewage systems that already comply with direct dispersal requirements will continue to do so when repaired or voluntarily upgraded.

Substance: The amendment to the definition of direct dispersal of effluent to ground water at 12VAC5-613-10 clarifies that excavation excludes a preexisting soil disturbance not designed to create a direct conduit or preferential path to ground water. The amendment to 12VAC5-613-90 adds subsection E to require a repaired or voluntarily upgraded direct dispersal system to meet 50% reduction of total nitrogen as compared to a conventional gravity drainfield system, TL-3 treatment, and standard disinfection in accordance with Table 2 of subdivision 13 of 12VAC5-613-80 for systems with less than 12 inches of vertical separation to ground water. Subsection F clarifies that any system designed to meet the performance requirements of 12VAC5-613-90 D and installed on or after December 7, 2013 (which is the date on which more stringent nitrogen reduction requirements took effect), will have to continue to meet the stringent performance requirements of 12VAC5-613-90 D and will be ineligible for the reduced requirements of 12VAC5-613-90 E unless another design would otherwise fully comply.

Issues: The primary advantages to the public are increased public health protection and a reduced financial burden to repair or upgrade sewage systems when requirements for direct dispersal apply. The public will also receive faster permitting because a variance or waiver to the regulation would no longer be necessary in most cases. The advantage to the agency is it will reduce staff time processing waivers and individual variances to the regulations, and, in most cases, the regulatory amendments will lead to better defined expectations for repairing and upgrading sewage systems.

Currently, the commissioner has granted over 30 variances to allow for the repair or voluntary upgrade of existing direct dispersal systems. The amendments, while having less stringent requirements for treatment and monitoring of older systems seeking repair or upgrade, are still protective of public health and are within the requirements of the EPA's model program for the total maximum daily load. The amendments ease the financial burden on the homeowner or small business owner while streamlining the agency's processing of applications. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Health (Board) proposes amendments to reduce the burden for property owners when the owner has an installed sewage system that disperses effluent into groundwater with an average daily sewage flow of less than 1,000 gallons per day, and the owner wants to repair or upgrade the installed sewage system. Additionally, the Board proposes clarifying amendments.

Result of Analysis. The benefits likely exceed the costs.

Estimated Economic Impact. The Regulations for Alternative Onsite Sewage Systems (Regulations) establish performance and operation and maintenance requirements for alternative onsite sewage systems. In the Regulations, alternative onsite sewage system (AOSS) is defined as "a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge."

Conventional onsite sewage systems use a septic tank and rely on unsaturated soil below the drainfield to treat septic tank effluent. Septic tank effluent has many of the same characteristics as raw sewage and typically contains viruses and bacteria that number in the millions per 100 ml. Typical soil treatment processes include biological breakdown of organic material, physical filtering, predation and die-off between pathogens and naturally occurring microorganisms, and chemical reactions. A septic tank and drainfield combination is the oldest and most common type of conventional onsite sewage system.

AOSSs typically utilize a treatment device that resembles a scaled-down municipal treatment plant to produce an effluent that is "cleaner" than septic tank effluent with respect to the amount of organic material, the total nitrogen load, and the number of microorganisms present in the effluent. Typically, AOSSs remove 90 to 95% of contaminants before the effluent is released into the soil. Using technology to treat wastewater before it is released into the soil allows AOSSs to achieve high performance levels on sites where limited drainfield area, soil permeability, soil saturation, groundwater, or landscape position preclude the use of conventional systems.

Under the current regulation, property owners who have an installed sewage system that disperses effluent into groundwater with an average daily sewage flow of less than 1,000 gallons per day, and wish to repair or upgrade their system, must meet the same requirements that exist for new systems. According to the Department of Health, compliance with current requirements can cost in excess of $40,000 for many owners with previously developed properties, and operation and maintenance costs can exceed $2,000 per year. In order to improve affordability and compliance, the Board proposes less stringent requirements for existing property owners to repair or upgrade systems that would cost less than fifty percent of the compliance cost in the current regulation (see Appendix for detail).

Many existing systems do not meet site and soil criteria established under the current regulations. When the existing system fails the owner is faced with the cost of installing additional treatment or pressure dosing to repair the system. In some cases, the cost of the new treatment or pressure dosing requirements is a barrier for property owners seeking to repair a failing onsite sewage system. In 2004, the General Assembly of Virginia approved legislation to address this issue by amending § 32.1-164.1:1 of the Code of Virginia to allow property owners to request a waiver from additional treatment or pressure dosing requirements beyond the level provided by the existing system when repairing a failing onsite sewage system.

A waiver granted under § 32.1-164.1:1 of the Code of Virginia to repair a failing system is not transferable (unless specifically exempt) and expires upon property transfer. In 2011, the General Assembly of Virginia approved legislation which again amended § 32.1-164.1:1 of the Code of Virginia and added § 32.1-164.1:3 of the Code of Virginia to allow for the voluntary upgrade of onsite sewage systems and alternative discharging sewage systems. As amended, property owners who voluntarily upgrade their onsite sewage system can also request a waiver from additional treatment or pressure dosing requirements, similar to waivers granted to repair failing onsite sewage systems. However, unlike waivers granted to repair failing systems, waivers granted for voluntary upgrades do not become null and void upon sale of the property.

Waivers pursuant to § 32.1-164.1:1 of the Code of Virginia allow homeowners located anywhere within the Commonwealth, including within the Chesapeake Bay Watershed, to simply waive additional treatment and continue to discharge untreated septic effluent into groundwater. Waivers do not apply to operation and maintenance (O&M) requirements. The Board's proposed amendments change the performance requirements and O&M schedule for direct dispersal of a voluntary upgrade or repair; it does not change the statute, and the law allows the property owner to receive a waiver.

Since promulgation of the AOSS Regulations on December 7, 2011, the Commissioner of Health has granted more than 30 variances to owners claiming financial hardship for repairs and voluntary upgrades, and about 750 owners have waived

requirements pursuant to § 32.1-164.1:1 of the Code of Virginia. The proposed amendments will provide a more financially attainable level of treatment for previously developed properties, while still providing a high level of public health protection and encouraging owners to not waive regulatory requirements. The proposed amendments will also eliminate the need for an individualized variance for most situations. To the extent that the proposed less costly requirements do result in more affected property owners complying with the requirements, there will likely be reductions in contaminants released into groundwater and potential improvements in public health. Additional compliance would also produce additional business for septic contractors that repair or upgrade AOSSs, as well as engineering firms and authorized onsite soil evaluators that design AOSSs.

Businesses and Entities Affected. The proposed amendments potentially affect property owners with an installed sewage system that disperses effluent into groundwater with an average daily sewage flow of less than 1,000 gallons per day, septic contractors, authorized onsite soil evaluators, and engineering firms that design alternative onsite sewage systems.

Localities Particularly Affected. The Board proposes amendments that particularly affect localities near the Chesapeake Bay and within the coastal plain physiographic province of the Commonwealth since these regions are more likely to have shallow groundwater and sewage systems dispersing effluent close to, or into, the shallow groundwater.

Projected Impact on Employment. To the extent that the proposed less costly requirements do result in more affected property owners complying with the requirements, septic contractors that repair or upgrade AOSSs, as well as engineering firms and authorized onsite soil evaluators that design AOSSs may have more business, which may moderately increase employment.

Effects on the Use and Value of Private Property. The proposed amendments potentially increase the likelihood that owners of property with an installed sewage system that disperses effluent into groundwater with an average daily sewage flow of less than 1,000 gallons per day have their system repaired or upgraded.

Real Estate Development Costs. The proposed amendments do not affect costs of new real estate development, but do lower costs for repairing or upgrading some sewage systems on existing developed real estate.

Small Businesses:

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

Costs and Other Effects. The proposed amendments reduce the costs of repairing or upgrading sewage systems that disperse effluent to groundwater for small businesses that own property with such systems.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

Appendix:1

Estimated Operation and Maintenance Costs

	Cost	Current Requirements		Proposed Requirements Generally Approved		Proposed Requirements Non-Generally Approved	
Parameter/Action		Frequency	5 year cost	Frequency	5 year cost	Frequency	5 year cost
Sampling:							
BOD5	$43.75	4/yr	$875.00	2 per 5 yr	$87.50	8 total (5 samples over 2 years and annually thereafter)	$350.00
TSS	$25.00	4/yr	$500.00				
TN	$125.00	4/yr	$2,500.00				
TP	$62.50	4/yr	$1,250.00				

Fecal Coliform	$56.25	4/yr	$1,125.00	2 per 5 yr	$112.50	8 total (5 samples over 2 years and annually thereafter)	$450.00
Operator Visits	$250.00 - 400/yr*	4x/yr	$5,000.00	1x per yr	$2,000.00	8 operator visits over 5 years	$2,000.00
Total:			$11,250.00		$2,200.00		$2,800.00

*Typical maintenance contracts for 1-2 visits per year cost about $400/yr based on previous surveys of operators. Costs above assume 4 operator visits per year and that the overall cost per visit would reduce with multiple visits and routine maintenance.

Estimated One-time Installation and Construction Costs		
	Current Requirements	Proposed Requirements
Treatment Unit	$15,000 (membrane bioreactor)	$5,000 - $10,000
UV disinfection	$1,000	
Pump to gravity dispersal	Not allowed	Allowed, $5,000 - $10,000
Pump tank, drip dispersal, site clearing and development	$15,000 - $20,000.	Not required, same cost if used.
Chemical feed for alkalinity	$1,000	Not required
Nitrogen polishing filter	$5,000	Not required
TP filter and chemical feed	$2,500	Not required
Final filter	$2,000	Not required
Disinfection	$1,000	$250 to $500
Total Estimated Cost	$42,500 - $47,500	$10,000 to $15,000 for pump to gravity dispersal $26,000 with drip dispersal

"BOD5" means Biochemical Oxygen Demand 5-day

"TN" means Total Nitrogen

"TP" means Total Phosphorous

"TSS" means Total Suspended Solids

[1] All information in the appendix was provided by the Virginia Department of Health.

Agency's Response to Economic Impact Analysis: The Virginia Department of Health concurs with the Department of Planning and Budget's economic impact analysis that the benefits of the fast-track rulemaking amendments likely exceed the costs.

Summary:

The amendments (i) change the definition of "direct dispersal of effluent to ground water," (ii) add new performance requirements for repairs and voluntary upgrades of systems that already disperse effluent to groundwater, and (iii) specify that any system designed to meet the requirements constructed after December 7, 2013, is not eligible for the new performance and sampling requirements.

Part I
General

12VAC5-613-10. Definitions.

The following words and terms used in this chapter shall have the following meanings. Terms not defined in this chapter shall have the meanings prescribed in Chapter 6 (§ 32.1-163 et seq.) of Title 32.1 of the Code of Virginia or in 12VAC5-610 unless the plain reading of the language requires a different meaning.

"Alternative onsite sewage system," "AOSS," or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Best management practice" means a conservation or pollution control practice approved by the division, such as wastewater treatment units, shallow effluent dispersal fields, saturated or unsaturated soil zones, or vegetated buffers, that manages nutrient losses or other potential pollutant sources to minimize pollution of water resources.

"Biochemical oxygen demand, five-day" or "BOD_5" means the quantitative measure of the amount of oxygen consumed by bacteria while stabilizing, digesting, or treating biodegradable organic matter under aerobic conditions over a five-day incubation period; BOD_5 is expressed in milligrams per liter (mg/l).

"Board" means the State Board of Health.

"Chesapeake Bay Watershed" means the following Virginia river basins: Potomac River Basin (see 9VAC25-260-390 and 9VAC25-260-400), James River Basin (see 9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-420, and 9VAC25-260-430), Rappahannock River Basin (see 9VAC25-260-440), Chesapeake Bay and small coastal basins (see 9VAC25-260-520, Section 2 through Section 3g), and the York River Basin (see 9VAC25-260-530).

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Department" means the Virginia Department of Health.

"Direct dispersal of effluent to ground water" means less than six inches of vertical separation between ground water and the point of effluent application or the bottom of ~~a~~ an effluent-dispersal trench or other excavation ~~and ground water~~. Other excavation excludes the following: minor tillage of the soil surface without soil removal; replacement of fill material with better quality fill material as determined by the Department to improve the ability of the site to treat wastewater; house foundations; tank excavations; force main and header line excavations; and soil disturbances, including preexisting drainfields installed prior to July 17, 2017, that are not designed for surface or ground water drainage, and do not create a direct conduit to ground water.

"Disinfection" means a process used to destroy or inactivate pathogenic microorganisms in wastewater to render them non-infectious.

"Dissolved oxygen" or "DO" means the concentration of oxygen dissolved in effluent, expressed in mg/l or as percent saturation, where saturation is the maximum amount of oxygen that can theoretically be dissolved in water at a given altitude and temperature.

"Division" means the Division of Onsite Sewage and Water Services, Environmental Engineering, and Marina Programs within the department.

"Effluent" means sewage that has undergone treatment.

"General approval" means that a treatment unit has been evaluated in accordance with the requirements of this chapter and 12VAC5-610 and approved for TL-2 or TL-3 in accordance with this chapter.

"GPD/sf" means gallons per day per square foot.

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

"High-level disinfection" means a disinfection method that results in a fecal coliform concentration less than or equal to 2.2 colonies/100 ml. Chlorine disinfection requires a minimum total residual chlorine (TRC) concentration at the end of a 30 minute contact time of 1.5 mg/l. Ultraviolet disinfection requires a minimum dose of 50,000 $\mu W\text{-sec/cm}^2$. Influent turbidity to the disinfection unit shall be less than or equal to 2 Nephelometric turbidity units (NTU) on average.

"Ksat" means saturated hydraulic conductivity.

"Large AOSS" means an AOSS that serves more than three attached or detached single-family residences with a combined average daily sewage flow greater than 1,000 GPD or a structure with an average daily sewage flow in excess of 1,000 GPD.

"Limiting feature" means a feature of the soil that limits or intercepts the vertical movement of water, including seasonal, perched or permanent water table, pans, soil restrictions, and pervious or impervious bedrock.

"Local health department" means the local health department having jurisdiction over the AOSS.

"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drainfield piping, and distribution boxes or work requiring a construction permit and an installer.

"MGD" means million gallons per day.

"MPI" means minutes per inch.

"Operate" means the act of making a decision on one's own volition to (i) place into or take out of service a unit process or unit processes or (ii) make or cause adjustments in the operation of a unit process at a treatment works.

"Operation" means the biological, chemical, and mechanical processes of transforming sewage or wastewater to compounds or elements and water that no longer possess an adverse environmental or health impact.

"Operator" means any individual employed or contracted by any owner who is licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as

being qualified to operate, monitor and maintain an alternative onsite sewage system.

"Organic loading rate" means the biodegradable fraction of chemical oxygen demand (BOD, biodegradable fats, oils, and grease and volatile solids) delivered to a treatment component in a specified time interval expressed as mass per time or area; examples include pounds per day, pounds per cubic foot per day (pretreatment), or pounds per square foot per day (infiltrative surface or pretreatment). For a typical residential system, these regulations assume that biochemical loading (BOD_5) equals organic loading.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, or any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works.

"pH" means the measure of the acid or base quality of water that is the negative log of the hydrogen ion concentration.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Pollution shall include any discharge of untreated sewage into state waters.

"Point source discharge" means any discernible, confined, and discrete conveyance including~~, but not limited to,~~ any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

"Project area" means one or more recorded lots or a portion of a recorded lot owned by the owner of an AOSS or controlled by easement upon which an AOSS is located or that is contiguous to a soil treatment area and that is designated as such for purposes of compliance with the performance requirements of this chapter. In the case of an AOSS serving multiple dwellings, the project area may include multiple recorded lots as in a subdivision.

"Project area boundary" or "project boundary" means the physical limits of the three-dimensional length, width, and depth of the project area, whereby each dimension is identified as follows: (i) the horizontal component is the length and width of the project area; (ii) the upper vertical limit is the ground surface in and around the AOSS; and (iii) the lower vertical limit is the limiting feature.

"Renewable operating permit" means an operation permit that expires and must be revalidated at a predetermined frequency or schedule in accordance with this chapter.

"Reportable incident" means one or more of the following: an alarm event lasting more than 24 hours; an alarm event that reoccurs; any failure to achieve one or more performance requirements; removal of solids; replacement of media; or replacement of any major component of the system including electric and electronic components, pumps, blowers, and valves. The routine cleaning of effluent filters is not a reportable incident.

"Saturated hydraulic conductivity" means a quantitative measure of a saturated soil's capacity to transmit water when subjected to a hydraulic gradient.

"Settleable solids" means a measure of the volume of suspended solids that will settle out of suspension within a specified time, expressed in milliliters per liter (ml/l).

"Sewage Handling and Disposal Regulations" means 12VAC5-610 or its successor.

"Small AOSS" means an AOSS that serves no more than three attached or detached single-family residences with a combined average flow of less than or equal to 1,000 GPD, or a structure with an average daily sewage flow of less than or equal to 1,000 GPD.

"Soil treatment area" means the physical location in the naturally occurring soil medium where final treatment and dispersal of effluent occurs.

"Standard disinfection" means a disinfection process that results in a fecal coliform concentration of less than or equal to 200 colonies/100 ml. Chlorine disinfection requires a minimum TRC concentration at the end of a 30 minute contact time of 1.0 mg/l. Influent TSS to the disinfection unit shall average 30 mg/l or less.

"Standard engineering practice" means the care, diligence, competence, and judgment that a reasonably prudent and experienced professional engineer licensed in the Commonwealth of Virginia would exercise given the circumstances, including site and soil conditions, of a particular AOSS design.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Surface waters" means: (i) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (ii) all interstate waters, including interstate wetlands; (iii) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds and the

use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) that are or could be used by interstate or foreign travelers for recreational or other purposes; (b) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (c) that are used or could be used for industrial purposes by industries in interstate commerce; (iv) all impoundments of waters otherwise defined as surface waters under this definition; (v) tributaries of waters identified in clauses (i) through (iv) of this definition; (vi) the territorial sea; and (vii) wetlands adjacent to waters (other than water that are themselves wetlands) identified in clauses (i) through (vi) of this definition.

"Total nitrogen" or "TN" means the measure of the complete nitrogen content of wastewater including all organic, inorganic, and oxidized forms expressed in mg/l as nitrogen.

"Total residual chlorine" or "TRC" means a measurement of the combined available chlorine and the free available chlorine available in a sample after a specified contact time.

"Total suspended solids" or "TSS" means a measure of the mass of all suspended solids in a sample typically measured in milligrams per liter (mg/l).

"Treatment level 2 effluent" or "TL-2 effluent" means secondary effluent as defined in 12VAC5-610-120 that has been treated to produce BOD_5 and TSS concentrations equal to or less than 30 mg/l each.

"Treatment level 3 effluent" or "TL-3 effluent" means effluent that has been treated to produce BOD_5 and TSS concentrations equal to or less than 10 mg/l each.

"Treatment unit" or "treatment system" means a method, technique, equipment, or process other than a septic tank or septic tanks used to treat sewage to produce effluent of a specified quality before the effluent is dispersed to a soil treatment area.

"Turbidity" means a measurement of the relative clarity of effluent as a result of the presence of varying amounts of suspended organic and inorganic materials or color.

"Vertical separation" means the vertical distance between the point of effluent application to the soil or the bottom of a trench or other excavation and a limiting feature of the soil treatment area such as seasonal high ground water, bedrock, or other restriction.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

12VAC5-613-90. Performance requirements; ground water protection.

A. The AOSS shall not pose a greater risk of ground water pollution than systems otherwise permitted pursuant to 12VAC5-610. After wastewater has passed through a treatment unit or septic tank and through the soil in the soil treatment area, the concentration of fecal coliform organisms shall not exceed 2.2 cfu/100 ml at the lower vertical limit of the project area boundary.

B. Each large AOSS shall comply with TN limit of 5 mg/l at the project area boundary. Prior to the issuance of a construction permit, the designer shall demonstrate compliance with this requirement through modeling or other calculations. Such demonstration may incorporate multiple nitrogen removal methods such as pretreatment, vegetative uptake (only for AOSSs with shallow soil treatment areas), denitrification, and other viable nitrogen management methods. Ground water and other monitoring may be required at the department's discretion.

C. AOSSs with direct dispersal of effluent to ground water are subject to the following requirements:

1. If the concentration of any constituent in ground water is less than the limits set forth at 9VAC25-280, the natural quality for the constituent shall be maintained; natural quality shall also be maintained for all constituents not set forth in 9VAC25-280. If the concentration of any constituent in ground water exceeds the limit in the standard for that constituent, no addition of that constituent to the naturally occurring concentration shall be made. The commissioner shall consult with the Department of Environmental Quality prior to granting any variance from this subsection.

2. Ground water and laboratory sampling in accordance with 12VAC5-613-100 G.

3. The treatment unit or system shall comply with the following at a minimum:

a. The effluent quality from the treatment unit or system shall be measured prior to the point of effluent application to the soil treatment area and shall be as follows: BOD_5 and TSS concentrations each equal to or less than 5 mg/l; fecal coliform concentrations less than or equal to 2.2 col/100 ml as a geometric mean with no sample exceeding 14 col/100 ml; and TN concentration of less than 5 mg/l;

b. High level disinfection is required; and

c. Treatment systems shall incorporate filtration capable of demonstrating compliance with an average turbidity of less than or equal to 2 NTU prior to disinfection.

4. Gravity dispersal to the soil treatment area is prohibited.

5. Loading rates to the soil treatment area shall not exceed the loading rates in Table 1 of ~~this section~~ 12VAC5-613-80.

6. A renewable operating permit shall be obtained and maintained in accordance with 12VAC5-613-60 C.

7. The designer shall provide sufficient hydrogeologic analysis to demonstrate that a proposed AOSS will

function as designed for the life of the structure served without degradation of the soil treatment area. This shall include a determination of ground water flow direction and rate.

D. The following additional nutrient requirements apply to all AOSSs in the Chesapeake Bay Watershed:

1. All small AOSSs shall provide a 50% reduction of TN as compared to a conventional gravity drainfield system; compliance with this subdivision may be demonstrated through the following:

a. Compliance with one or more best management practices recognized by the division such as the use of a NSF 245 certified treatment; or

b. Relevant and necessary calculations provided to show one or both of the following:

(1) Effluent TN concentration of 20 mg/l measured prior to application to the soil dispersal field; or

(2) A mass loading of 4.5 lbs N or less per person per year at the project boundary provided that no reduction for N is allotted for uptake or denitrification for the dispersal of effluent below the root zone (>18 inches below the soil surface).

2. All large AOSSs up to and including 10,000 gallons per day shall provide a 50% reduction of TN at the project boundary as compared to a conventional gravity drainfield system. Compliance with this subdivision may be demonstrated as follows:

a. A demonstrated effluent quality of less than or equal to 20 mg/l TN measured prior to application to the soil treatment area; or

b. In situ monitoring of the treatment works within 24 vertical inches of the point of effluent application to the soil treatment area to demonstrate the effluent leaving the treatment works has a TN concentration of less than or equal to 20 mg/l. The designer shall identify an intermediate compliance point within the treatment system and a corresponding TN concentration for use in the event that a representative in situ sample cannot be obtained. The intermediate compliance point and the corresponding TN concentration for use must be approved by the department and shall be conditions of the operation permit.

The AOSS operation permit shall be conditioned upon compliance with the constituent concentrations approved pursuant to this subdivision.

3. All large AOSSs over 10,000 gallons per day shall comply with the following TN requirements:

a. A demonstrated effluent quality of less than or equal to 8 mg/l TN measured prior to application to the soil treatment area; or

b. In situ monitoring of the treatment works within 24 vertical inches of the point of effluent application to the soil treatment area to demonstrate the effluent leaving the treatment works has a TN concentration of less than or equal to 5 mg/l. The designer shall identify an intermediate compliance point within the treatment system and a corresponding TN concentration for use in the event that a representative in situ sample cannot be obtained. The intermediate compliance point and the corresponding TN concentration for use must be approved by the department and shall be conditions of the operation permit.

The AOSS operation permit shall be conditioned upon compliance with the constituent concentrations approved pursuant to this subdivision.

4. For direct dispersal of effluent to ~~groundwater~~ ground water in the Chesapeake Bay Watershed, TN concentration shall be less than or equal to 3 mg/l and total phosphorus concentration shall be less than or equal to 0.3 mg/l.

E. When an application is filed to repair or voluntarily upgrade an existing sewage system with an average daily sewage flow of 1,000 gallons per day or less, and the existing sewage system already disperses effluent to ground water as defined in 12VAC5-613-10 and the repair or upgrade must also be direct dispersal due to site conditions, then the repair or upgrade shall not be subject to the requirements of subsection C or subdivision D 4 of this section and 12VAC5-613-100 G. The repair or upgrade shall be subject to the following requirements:

1. A minimum 50% reduction of TN as compared to a conventional gravity drainfield system.

2. Provide TL-3 effluent and standard disinfection in accordance with Table 2 of subdivision 13 of 12VAC5-613-80 for systems with less than 12 inches vertical separation to ground water.

3. Monitoring pursuant to 12VAC5-613-100 D or E as appropriate.

F. Subsection E of this section does not apply to any application for repair or voluntary upgrade when the existing sewage system was installed on or after December 7, 2013, and the existing system was designed to meet the performance requirements for direct dispersal of effluent to ground water as set forth in subsection C or subdivision D 4 of this section and 12VAC5-613-100 G.

VA.R. Doc. No. R17-4214; Filed May 9, 2017, 7:17 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Title of Regulation: **12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-740, 12VAC30-141-760).**

Statutory Authority: §§ 32.1-325 and 32.1-351 of the Code of Virginia; 42 USC § 1397aa et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 28, 2017.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and directs that such Plan include a provision for the Family Access to Medical Insurance Security (FAMIS) program, and § 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance when the board is not in session, subject to such rules and regulations as may be prescribed by the board. Section 32.1-351 of the Code of Virginia authorizes DMAS, or the director, as the case may be, to develop and submit to the federal Secretary of Health and Human Services an amended Title XXI plan for the FAMIS Plan and revise such plan and promulgate regulations as may be necessary. Section 2105 of Title XXI of the Social Security Act (42 USC § 1397ee) provides governing authority for payments for services.

Section 1115 of the Social Security Act (42 USC § 1315) provides states with the opportunity to implement demonstration projects that extend benefits to additional population groups with the intent of promoting program objectives, including those of Title XXI. Virginia implements the FAMIS MOMS program through a § 1115 Health Insurance Flexibility and Accountability (HIFA) Demonstration called "FAMIS MOMS and FAMIS Select." The Centers for Medicare and Medicaid Services (CMS) has approved the HIFA waiver amendment to allow state employees and their dependents, who otherwise qualify, to enroll in FAMIS MOMS.

Purpose: Lower-income families face a barrier when accessing health care services. The barrier is high out-of-pocket costs, which for low-income pregnant women can add up to a substantial part of their income. The proposed amendments permit pregnant women in families who have access to state employee benefits, and who have incomes greater than 143% and less than or equal to 200% of the federal poverty level (FPL), to enroll in FAMIS MOMS.

Pregnant women in working families who cannot afford insurance due to high out-of-pocket costs suffer from lack of access to health care. While state employees may be covered through their subsidized employee health insurance, for many low-income families this is not an affordable option due to high out-of-pocket costs such as premium contributions, copayments, and deductibles that can add up to a substantial proportion of earned income. The FAMIS MOMS change permits pregnant women who have access to subsidized health insurance through state employment, and are otherwise eligible (e.g., by virtue of family income, residency) to be enrolled for health coverage under the FAMIS MOMS program. By removing the exclusion of such women from enrollment, the proposed amendments allow the Commonwealth's employees to be treated the same as other families with access to employer-sponsored health insurance.

As a result of the FAMIS MOMS change, more lower-income pregnant women are permitted to obtain insurance coverage for critically important prenatal care. This is essential to protect the health, safety, and welfare of these affected individuals by providing an opportunity to access high quality health care services that they might otherwise not be able to afford. It does not otherwise affect the health, safety, or welfare of other citizens of the Commonwealth.

Substance: DMAS submitted a HIFA § 1115 Waiver amendment, which was approved by CMS, that expands coverage for FAMIS MOMS to include pregnant women with access to state employee health benefit coverage in accordance with the hardship exception specified in § 2110(b)(6)(C) of the Social Security Act.

To meet the financial hardship test, the Commonwealth showed that the annual aggregate amount of premiums and cost-sharing imposed for coverage of the family of the pregnant woman exceeded five percent of such family's income for the year involved. An analysis of annual aggregate out-of-pocket expenses for employees of the Commonwealth of Virginia, University of Virginia, and Virginia Commonwealth University Health System Authority demonstrated that Virginia currently meets the federal financial hardship test.

Under the FAMIS MOMS change, applicable qualified state employees, and their otherwise-eligible dependents, are permitted to enroll in FAMIS MOMS. This change only affects state employees who are qualified for employer-sponsored health insurance; wage employees are not eligible to receive a state contribution toward the cost of their health coverage, but are eligible to enroll in FAMIS MOMS if they otherwise qualify.

In order to alert potentially eligible employees about this policy change, DMAS and the Department of Human Resources Management (DHRM) implemented communication strategies to include agency website postings of a fact sheet, electronic newsletters to state benefit administrators, the annual notice to all state employees about premium assistance, and the state employee open enrollment newsletter for 2015.

Issues: The primary advantage of the FAMIS MOMS change is that more low-income working families had access to the FAMIS MOMS program, with significantly reduced out-of-pocket expenses for pregnancy-related care, perhaps resulting in more disposable income for such families to cover their basic necessities or other expenses. Businesses that offer health insurance to their employees may see a reduction in

health insurance costs if any of their employees have spouses employed by the state, and could enroll their eligible dependents in FAMIS MOMS. The primary disadvantage for the affected families is the administrative process of having to rejoin the state health benefit plan within the 60-day qualifying event period once the pregnancy ends.

One advantage to the Commonwealth is cost savings associated with the state employee health benefit plan. The Commonwealth agencies that currently cover a pregnant woman on the state health plan might have been able to reduce their benefit option to that of an employee only, or employee plus spouse (depending on their family size and situation), thus reducing the state's share of premium for family coverage. Since the state employee health plan is self-insured, a reduction in the costs of claims incurred for pregnant women covered under the state health plan would contribute additional savings if those women were enrolled in FAMIS MOMS instead. Another advantage to the Commonwealth is the sharing of the costs, with the DMAS Federal Financial Participation, of care of these women and their infants. The Federal Financial Participation rate for FAMIS MOMS is 88%.

Another advantage to the Commonwealth is reduction of the social and economic costs associated with reducing the number of births to uninsured women. To the extent that FAMIS MOMS participants deliver fewer preterm or low birth weight infants, the program contributes to reduced medical costs for women in the income range served. In 2013, 7.1% of babies born to FAMIS MOMS were of low birth weight, compared to 8.0% of all births in Virginia; 7.9% of babies born to FAMIS MOMS were delivered preterm, compared to 11% of all births in Virginia ("Calendar Year 2013 Improving Birth Outcomes through Adequate Prenatal Care: Delmarva Foundation 2014").

There is no identified disadvantage to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. On behalf of the Board of Medical Assistance Services, the Director (Director) of the Department of Medical Assistance Services (DMAS) proposes to amend this regulation to allow low income state employees, their spouses, or their dependents to participate in the Family Access to Medical Insurance Security (FAMIS) MOMs program. In practice, DMAS has already implemented this change.

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

Estimated Economic Impact. The Children's Health Insurance Program (CHIP) is the federal program under Title XXI of the Social Security Act that provides funds to states to enable them to initiate and expand the provision of child health insurance to uninsured, low-income children. In Virginia CHIP is known as the Family Access to Medical Insurance Security (FAMIS) Plan and the CHIP waiver program for pregnant women is known as FAMIS MOMS. FAMIS MOMS is only available to uninsured pregnant women whose household meets the family size and income limits in the following table.

FAMIS MOMS INCOME LIMITS* (GROSS INCOME**) - EFFECTIVE JANUARY 31, 2017		
Family Size***	Monthly	Yearly
2	$2,775	$33,292
3	$3,490	$41,861
4	$4,203	$50,430
5	$4,917	$58,999
6	$5,632	$67,568
7	$6,345	$76,137
8	$7,060	$84,706

*includes 5% standard disregard.

**gross income is household income before taxes and deductions

***counts the unborn children as additional family members

This regulation (12VAC30-141, Family Access to Medical Insurance Security Plan) sets out provisions regarding FAMIS and FAMIS MOMS. The current regulation excludes state employees who have access to employer subsidized health coverage from enrolling themselves or their dependents in the FAMIS MOMS program, even if they are otherwise eligible by income, residency, and family size. The Director proposes to remove this exclusion from the regulation. Removing the exclusion allows the Commonwealth's employees to be treated the same as other families with access to employer-sponsored health insurance.

While the Commonwealth of Virginia subsidizes health insurance for full-time state employees, some lower-earning employees may still believe they cannot afford to enroll in one of the state sponsored plans. There are no premiums, copayments, or other charges associated with FAMIS MOMS participation. Thus, the proposal to remove the exclusion for state employees and their dependents may result in some pregnant women enrolling in FAMIS MOMS and receiving prenatal care who otherwise would not have. For these women and their babies there would be reduced risk of adverse health outcomes.[1] For example, a study done for DMAS by the Delmarva Foundation found that in 2013, 7.1% of babies born to FAMIS MOMS were of low birth weight, compared to 8.0% of all births in Virginia; and 7.9% of babies born to FAMIS MOMS were delivered preterm, compared to 11% of all births in Virginia.

The federal government pays 88% of the cost of FAMIS MOMS. Each Virginia participant costs the Commonwealth approximately $5,000.

Additionally, some low-income state employee families who participate in one of the state sponsored plans may choose to drop coverage for a pregnant member of the family, and have her enroll in FAMIS MOMS during the pregnancy. This would enable the family to save on premiums and copayments, while still maintaining pregnancy-related care. Pursuing this strategy may result in gaps in health coverage though. Employees and their family members cannot rejoin the state health plan at any time of the year. There is a 60-day open enrollment period each year where the state employee can change the coverage. Thus there would likely not be many state employee families who would drop state coverage for FAMIS MOMS. To the extent that some do, there would be some cost savings for Virginia. The Commonwealth agencies that currently cover a pregnant woman on the state health plan might be able to reduce their benefit option to that of an employee only, or employee plus spouse (depending on their family size and situation), thus reducing the state's share of premium for family coverage.

In practice, DMAS has accepted and encouraged low-income pregnant state employees to enroll in FAMIS MOMS since the 2015 enrollment period. In order to alert potentially eligible employees about this policy change, DMAS and the Department of Human Resources Management implemented communication strategies to include: agency website postings of a Fact Sheet, electronic newsletters to state benefit administrators, inclusion in the annual notice to all state employees about premium assistance, and the state employee open enrollment newsletter for 2015. DMAS has not formally tracked the number of state employees who have enrolled, but specifically knows of only a couple who did so in 2015, and is not aware of how many have enrolled since.[2]

Businesses and Entities Affected. The proposed amendment potentially affects all state employees and their families with household income that qualifies for FAMIS MOMS (see previous table), and have a household member who could become pregnant.

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

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

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

[1] U.S. Department of Health and Human Services, National Institutes of Health.

[2] DMAS tracks the number of FAMIS MOMS enrollees, but does not know how many are state employees.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget. The agency raises no issues with this analysis.

Summary:

In Virginia the federal Children's Health Insurance Program (CHIP) is known as the Family Access to Medical Insurance Security (FAMIS) Plan, and the CHIP waiver program for pregnant women is known as FAMIS MOMS. FAMIS MOMS is only available to pregnant women, according to their income who are uninsured. Under the authority of the federal Centers for Medicare and Medicaid Services, pregnant, low-income state employees and their pregnant dependents who are otherwise eligible for FAMIS MOMS have been permitted to enroll in the FAMIS MOMS program. The proposed amendments reflect these changes.

12VAC30-141-740. Eligibility requirements.

A. This section shall be used to determine eligibility of pregnant women for FAMIS MOMS.

B. FAMIS MOMS shall be in effect statewide.

C. Eligible pregnant women must:

1. Be determined ineligible for Medicaid due to excess income by a local department of social services or by DMAS eligibility staff co-located at the FAMIS CPU;

2. Be a pregnant woman at the time of application;

3. Be a resident of the Commonwealth;

4. Be either a U.S. citizen, U.S. national or a qualified noncitizen;

5. Be uninsured, that is, not have comprehensive health insurance coverage; and

~~6. Not be a member of a family eligible for subsidized dependent coverage, as defined in 42 CFR 457.310(c)(1)(ii) under any Virginia state employee health~~

~~insurance plan on the basis of the family member's employment with a state agency; and~~

~~7.~~ 6. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.

D. Income.

1. Screening. All applications for FAMIS MOMS coverage received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Pregnant women screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS MOMS until there has been a finding of ineligibility for Medicaid. Pregnant women who do not appear to be eligible for Medicaid due to excess income shall have their eligibility for FAMIS MOMS determined and, if eligible, will be enrolled in the FAMIS MOMS program. Applications for FAMIS MOMS received at a local department of social services shall have a full Medicaid eligibility determination completed. Pregnant women determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS MOMS determined and, if eligible, the local department of social services will enroll the pregnant woman in the FAMIS MOMS program.

2. Standards. Income standards for FAMIS MOMS are based on a comparison of countable income to 200% of the federal poverty level for the family size. Countable income and family size are based on the methodology utilized by the Medicaid program as defined in 12VAC30-40-100 e. Pregnant women who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS MOMS.

3. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS MOMS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS MOMS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a pregnant woman is a resident of Virginia for purposes of eligibility for FAMIS MOMS. A child who is not emancipated and is temporarily living away from home is considered living with her parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.

F. U.S. citizenship or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identify unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.

G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a pregnant woman is a qualified noncitizen for purposes of FAMIS MOMS eligibility.

H. Coverage under other health plans.

1. Any pregnant woman covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS MOMS.

2. No substitution for private insurance.

a. Only uninsured pregnant women shall be eligible for FAMIS MOMS. A pregnant woman is not considered to be insured if the health insurance plan covering the pregnant woman does not have a network of providers in the area where the pregnant woman resides. Each application for FAMIS MOMS coverage shall include an inquiry about health insurance the pregnant woman has at the time of application.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

12VAC30-141-760. Pregnant women ineligible for FAMIS MOMS.

A. If a pregnant woman is:

1. Eligible for Medicaid, or would be eligible if she applied for Medicaid, she shall be ineligible for coverage under FAMIS MOMS. A pregnant woman found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason~~,~~ cannot be enrolled in FAMIS MOMS;

~~2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, she shall be ineligible for FAMIS MOMS;~~

~~3.~~ 2. An inmate of a public institution as defined in 42 CFR 435.1009, she shall be ineligible for FAMIS MOMS; or

~~4.~~ 3. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR 435.1010, she shall be ineligible for FAMIS MOMS.

B. If a pregnant woman age 18 years or older or, if ~~under~~ younger than age 18 years, a parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the pregnant woman shall be ineligible for FAMIS MOMS.

C. If a pregnant woman age 18 years or older, or if ~~under~~ younger than age 18 years, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a pregnant woman who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the pregnant woman for whom the application is made shall be ineligible for FAMIS MOMS. The pregnant woman age 18 years or older, or if ~~under~~ younger than age 18 years, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

VA.R. Doc. No. R16-4365; Filed April 26, 2017, 1:30 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Emergency Regulation

Title of Regulation: **12VAC35-250. Certification of Peer Recovery and Resiliency Specialists (adding 12VAC35-250-10 through 12VAC35-250-50).**

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Effective Dates: May 12, 2017, through November 11, 2018.

Agency Contact: Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which 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, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Chapters 418 and 426 of the 2017 Acts of Assembly authorized the State Board of Behavioral Health and Developmental Specialists to adopt regulations that establish the qualifications, education, and experience for registration of peer recovery specialists by the Board of Counseling.

This emergency regulation is necessary for individuals who will be designated as "peer recovery specialists" to have a pathway to provide peer recovery services through the Virginia Medicaid Addiction and Recovery Treatment Services benefit, which will be made available to Medicaid members receiving addiction treatment services at all levels of care effective July 1, 2017. The emergency regulation will ensure that individuals providing peer recovery services in Virginia's public system of behavioral health services demonstrate a baseline of practical knowledge and appropriate education and qualifications.

CHAPTER 250
PEER RECOVERY SPECIALISTS

12VAC35-250-10. Definitions.

"Certifying body" means an organization approved by DBHDS that has as one of its purposes the certification of peer recovery specialists.

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

"DBHDS peer recovery specialist training" means the curriculum developed and approved by DBHDS for the training of persons seeking registration as peer recovery specialists.

"Individual" means a person who is receiving peer recovery support services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Peer recovery support services" means nonclinical, peer-to-peer activities that engage, educate, and support an individual's self-help efforts to improve his health recovery resiliency and wellness.

"Recovery, resiliency, and wellness plan" means a set of goals, strategies, and actions an individual creates to guide him and his health care team to move the individual toward the maximum achievable independence and autonomy in the community.

"Peer recovery specialist" means a person who by education and experience is professionally qualified to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both.

12VAC35-250-20. Peer recovery specialist.

A. Any person seeking to be a peer recovery specialist under this chapter shall (i) meet the qualifications, education, and experience requirements established in this chapter and (ii) hold a certification as a peer recovery specialist from a certifying body approved by DBHDS.

B. If the conditions in clauses (i) and (ii) of subsection A of this section are met, a person who is one of the following may act as a peer recovery specialist:

1. A parent of a minor or adult child with a mental illness or substance use disorder or co-occurring mental illness and substance use disorder similar to the individual receiving peer recovery services; or

2. An adult with personal experience with a family member with a mental illness or substance use disorder or co-occurring mental illness and substance use disorder similar to the individual receiving peer recovery services.

C. A peer recovery specialist shall provide such services as an employee or independent contractor of DBHDS, a provider licensed by DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

12VAC35-250-30. Qualifications.

A. Any person seeking to be a peer recovery specialist under this chapter shall:

1. Have a high school diploma or equivalent.

2. Sign and abide by the Virginia Peer Recovery Specialist Code of Ethics, Department of Behavioral Health and Developmental Services, effective April 4, 2017.

3. Complete the DBHDS peer recovery specialist training by April 1, 2018.

4. Show current certification in good standing by the U.S. Department of Veterans Affairs or one of the following certifying bodies:

a. National Association for Alcoholism and Drug Abuse Counselors (NAADAC);

b. A member board of the International Certification and Reciprocity Consortium (IC&RC); or

c. Any other certifying body approved by DBHDS.

B. Individuals certified through the Virginia member board of the IC&RC between April 16, 2015, through December 31, 2016, shall be exempt from completing the DBHDS peer recovery specialist training.

12VAC35-250-40. Minimum standards for certifying bodies.

DBHDS may approve a certification obtained from a certifying body that requires its certificate holders to:

1. Adhere to a code of ethics that is substantially comparable to the Virginia Peer Recovery Specialist Code of Ethics, Department of Behavioral Health and Developmental Services, effective April 4, 2017.

2. Have at least one year of recovery for persons having lived experience with mental illness or substance use disorder conditions, or lived experience as a family member of someone with mental illness or substance use disorder conditions.

3. Complete at least 46 hours of training from the list of curriculum subjects in 12VAC35-250-50.

4. Obtain a passing score on an examination offered by the certifying body testing knowledge of the curriculum subjects identified in 12VAC35-250-50.

5. Obtain and document at least 500 hours of supervised paid or volunteer experience providing peer recovery services in the three years prior to applying for certification. The experience hours shall have been in nonclinical, peer-to-peer recovery-oriented support activities designed to address an individual's recovery and wellness goals.

12VAC35-250-45. Continuing education.

Any person seeking to be a peer recovery specialist under this chapter shall be required to complete a minimum of 20 hours of continuing education every two years from the date of his certification by a certifying body. These hours shall be in courses that cover the topics listed in 12VAC35-250-50.

12VAC35-250-50. Curriculum requirements.

A. Any person seeking to be a peer recovery specialist under this chapter shall complete the DBHDS peer recovery specialist training.

B. The curriculum of the peer recovery specialist training shall include training on the following topics:

1. The current body of mental health and substance abuse knowledge;

2. The recovery process;

3. Promoting services, supports, and strategies for recovery;

4. Peer-to-peer services;

5. Crisis intervention;

6. The value of the role of a peer recovery specialist;

7. Basic principles related to health and wellness;

8. Recovery, resiliency, and wellness plans;

9. Stage-appropriate pathways in recovery support;

10. Ethics and ethical boundaries;

11. Cultural sensitivity and practice;

12. Trauma and its impact on recovery;

13. Community resources; and

14. Delivering peer services within agencies and organizations.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-250)

The Virginia Peer Recovery Support Specialist Code of Ethics, Department of Behavioral Health and Developmental Services (eff. 4/2017)

VA.R. Doc. No. R17-4808; Filed May 8, 2017, 4:30 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (amending 18VAC48-50-253, 18VAC48-50-255).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: July 1, 2017.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland

Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

The amendments clarify (i) that the requirement to complete a minimum of two contact hours in common interest community law and regulation in addition to fair housing training applies only to the renewal of certificates for principal or supervisory employees and is not a prerequisite to initial certification and (ii) the topic areas and course of study regarding the two contact hours pertaining to common interest community law and regulation. The board has updated a form since the proposed stage.

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

18VAC48-50-253. Virginia common interest community law and regulation training program requirements.

In order to qualify as a Virginia common interest community law and regulation training program for ~~applicants for and~~ renewal of certificates issued by the board, the common interest community law and regulation program must include a minimum of two contact hours and the syllabus shall encompass updates to Virginia laws and regulations directly related to common interest [~~community~~ communities] ~~management and creation, governance, administration, and operations of associations~~.

18VAC48-50-255. Fair housing training program requirements.

In order to qualify as a fair housing training program for ~~applicants for and~~ renewal of certificates issued by the board, the fair housing training program must include a minimum of two contact hours and the syllabus shall encompass Virginia fair housing laws and any updates, all as related to ~~the management of~~ common interest communities.

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

[FORMS (18VAC48-50)

Common Interest Community Manager Change of Personnel Form, A492-0501MGTCHG-v1 (eff. 10/2013)

Common Interest Community Manager License Application, A492-0501LIC-v1 (eff. 10/2013)

~~Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v1 (eff. 10/2013)~~

Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v2 (eff. 5/2017)

Certified Principals/Supervisory Employee Experience Verification Form, A492-0510EXP-v1 (eff. 10/2013)

Common Interest Community Manager Application Comprehensive Training Program Equivalency Form, A492-0501TREQ-v1 (eff. 9/2013)

Common Interest Community Manager License Renewal Application, A492-0501REN-v1 (eff. 10/2013)

Common Interest Community Manager Principal or Supervisory Employee Certificate Application, A492-0510CERT-v1 (eff. 10/2013)

Common Interest Community Manager Application Supplement Experience Verification Form, A492-0510EXP-v1 (eff. 10/2013)]

VA.R. Doc. No. R16-4618; Filed May 2, 2017, 10:46 a.m.

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30 through 18VAC50-22-60, 18VAC50-22-260).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Information:

June 27, 2017 - 10 a.m. - Commonwealth of Virginia Conference Center, Perimeter Center, 9960 Mayland Drive, Hearing Room 5, Richmond, VA 23233

Public Comment Deadline: July 28, 2017.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the Board of Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the board's discretion, but the content may not be in conflict with the purposes of the statutory authority.

This particular proposed regulation is the result of Chapter 527 of the 2016 Acts of Assembly, which expanded the statutory definition of contractor in § 54.1-1100 of the Code of Virginia to encompass remediation work done in accordance with state guidelines for clean-up of residential property formerly used to manufacture methamphetamine. The Department of Health establishes such guidelines pursuant to § 32.1-11.7 of the Code of Virginia.

Purpose: During the 2016 Session of the General Assembly, legislation was enacted that amended the definition of "contractor" found in § 54.1-1100 of the Code of Virginia to include remediation of residential property formerly used to manufacture methamphetamine. As a result of the legislative action, the Board for Contractors must expand its current list of available specialties to provide for remediation activities

that now require a license. This proposal is intended to ensure that remediation of former methamphetamine labs, which present health and safety risks to residents and the public, is performed by licensed contractors with minimum competency to do so safely.

Substance: The proposed amendments add a specialty designation for contractors that perform remediation of property that was formerly used to manufacture methamphetamine, as well as criteria that must be met in order to obtain and maintain the license specialty.

Issues: The residue left behind at a property where methamphetamine was manufactured can contaminate indoor air and surfaces, causing serious health problems. Many of the ingredients used to make the illegal drug are known to permeate building material such as drywall, carpet, and flooring and include chemicals such as pseudoephedrine, acetone, phosphine, and materials such as drain cleaners, paint thinners, ammonia, lye, engine starting fluid, and more. The production of hazardous waste and toxic vapors, even in residual amounts, can put individuals at risk for cancer, birth defects, and other illnesses. Structures formerly used as methamphetamine labs are treated as hazardous material sites, which require the donning of protective clothing (even by law-enforcement investigators) and special remediation techniques.

There are currently 25 states that have regulations or statutes in place that outline requirements for the remediation of former drug laboratories or regulate the individuals or businesses that perform such work. According to the U.S. Drug Enforcement Agency, in calendar year 2014 there were 309 methamphetamine lab incidents in Virginia (defined as labs, dumpsites, or chemical and glassware seizures).

In 2016, legislation was enacted to add the remediation of former methamphetamine labs to the definition of "contractor" found in § 54.1-1100 of the Code of Virginia. These businesses will now be required to be licensed by the Board for Contractors and must demonstrate that they have both the technical ability and financial stability to perform such work in a way that protects the public's health, safety, and welfare.

Although the board did not have a say in the passage of the legislation - nor is its implementation discretionary - it is generally accepted that the remediation, demolition, or removal of properties that were used for the production of methamphetamine requires additional knowledge and skills that are not generally part of what would be considered regular construction work. The improper removal of the contaminated materials can put people (private citizens and residents, as well as the contractors themselves) at an increased risk of health problems that can even lead to death. Law-enforcement investigators have been taking special precautions for more than a decade when dealing with these structures as first responders, but there was has been no requirement that contractors remediating such properties have any special training or demonstrate any qualifications.

The primary advantage to the public by adding this specialty, and the board's decision to make it an exclusive specialty, is that it will provide an additional layer of protection to citizens who purchase properties that were formerly used to manufacture methamphetamine, as well as to the communities surrounding these properties, by ensuring that the contaminated materials are disposed of properly. The proposed regulatory action also benefits the regulated community of contractors by ensuring those businesses and workers are properly trained in necessary safety precautions.

The advantages to this proposed action include an increased layer of protection for citizens purchasing property used as a former methamphetamine lab and to the community as licensed contractors performing the work would be aware of the special steps that must be taken to remove, encapsulate, and dispose of contaminated materials. There are no disadvantages posed by these regulations to the board, the Department of Professional and Occupational Regulation, or the Commonwealth.

In other states that have found it necessary to regulate businesses and individuals performing this type of remediation work, a stand-alone regulatory program often results. These proposed regulations will incorporate remediation work into the already existing Board of Contractors regulations and will use the same eligibility criteria that are in place for all other contractors, avoiding the need for a separate licensing program and the additional fees and regulatory burden on the businesses. These proposed amendments offer the least burdensome compliance option available to businesses while providing much needed protection to citizens, striking an appropriate balance that should be attained when looking at regulations. No disadvantages have been identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 527 of the 2016 Acts of Assembly, the Board for Contractors proposes to establish a contracting specialty for remediation of properties formerly used to manufacture methamphetamine.

Result of Analysis. The benefits likely exceed the costs for the proposed regulation absent excessive training requirements. A different design specifying content and length of the training would reduce the uncertainty on the magnitude of the potential training costs.

Estimated Economic Impact. Methamphetamine is a potent central nervous system stimulant. It is sometimes illegally produced in makeshift labs commonly referred to as "meth labs." The production uses a variety of chemicals including pseudoephedrine, acetone, phosphine, and materials such as drain cleaners, paint thinners, ammonia, lye, engine starting fluid, and more. These hazardous contaminants permeate into

drywall, carpet, and flooring. Contaminants may be found in waste water and heating, ventilation, and air conditioning systems. Exposure to even small amounts of some of these chemicals can pose serious health risks. Structures formerly used as meth labs are treated as hazardous material sites, which require the donning of protective clothing and special remediation techniques. However, prior to this regulatory action, there had been no requirement that contractors remediating such properties have any special training or experience.

Chapter 527 of the 2016 Acts of Assembly[1] added the remediation of former meth labs to the definition of "contractor" found in § 54.1-1100 of the Code of Virginia. In response to the amendment, the Board for Contractors (Board) proposes to establish a new contracting specialty for remediation of such properties. Currently, there are 47 other contracting classifications or specialties. In general, a firm wishing to perform a specialty contracting is required to designate a qualified individual who has two years of experience in the specialty and who must disclose financial and criminal background information with the application. The Board also proposes to require that the qualified individual take an approved remediation course and pass an examination for the proposed drug lab remediation specialty. The work performed by the specialty contractor is required to conform to the remediation standards set forth by state and federal agencies charged with overseeing such activity.

According to the Department of Professional Occupational Regulation (DPOR), there are twenty-five states that regulate remediation of former meth labs. Furthermore, DPOR reports that based on U.S. Drug Enforcement Agency, in 2014, there were 309 meth lab incidents in Virginia (defined as labs, dumpsites, or chemical and glassware seizures). It is estimated that approximately 50 contractors may be interested in seeking drug lab remediation specialty.

One of the economic effects of the proposed regulation is the added cost of acquiring the required experience, training, taking the exam, and taking continuing education classes. Experience may be gained in other types of remediation activities such as lead or mold remediation. Qualified individuals must have Board approved training in remediation and pass an exam. However, the regulation does not specify the details of the required training such as its content or the length. The Board staff anticipates that a 40-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) training followed by a two-day training on drug lab remediation will likely be required. The examinations are given in Richmond, Virginia Beach, Fairfax, Falls Church, Charlottesville, and Roanoke and will likely have a 120-minute time limit to complete. Furthermore, to stay current in HAZWOPER or remediation certification, the qualified individual will likely be required to take refresher training periodically. The combined course fee for the initial certifications for HAZWOPER and drug lab remediation is estimated to be in $900-$1,100 range. The cost of the exam is estimated to be about $85. The cost of the periodic refresher training is estimated to be in $30-$50 range. In addition to the training, exam, and continuing education fees, the value of the qualified individual's time spent acquiring the required training must be considered.

While the magnitude of the anticipated training costs seems reasonable, the regulation does not specify the content or the length of the required coursework. Without the specific language in the regulation, the Board may choose to require an entirely different training design. Thus, the ultimate cost of the training may vary from what is now anticipated. It should also be noted that while training may come at a cost, the proposed regulation would require hiring of a qualified individual improving his job prospects. On balance, an individual would not be interested in gaining experience or training if the expected benefits did not exceed the costs.

Another economic effect is having to pay a fee to add a specialty. During the initial contractor licensure, a firm may designate as many specialties as it wishes without an extra fee provided it pays the contractor licensing fee, which is $210 for class C, $345 for class B, and $360 for class A license. Therefore, a contractor may add the drug lab remediation specialty without an added cost if it is obtaining the license for the first time. However, a contractor must pay a one-time $110 fee to add a specialty to its existing license later on. In addition, the firm would have to hire a qualified individual who satisfies the criteria. Similar to the qualified individual, a firm would not be interested in hiring a qualified individual and pay additional fees if the expected benefits did not exceed the costs.

The proposed regulation will also provide an additional layer of protection to future residents of former drug labs by ensuring that remediation is done properly as licensed contractors performing the work would be aware of the special steps that must be taken to detect, remove, encapsulate, and dispose of the contaminated materials.

While the proposed regulation introduces additional compliance costs, it appears that exposure to methamphetamine residue or by-products poses significant health risks. Thus, the public health benefits of the proposed drug lab remediation specialty appear to justify the additional costs of compliance assuming that the Board will not establish excessive training requirements.

Businesses and Entities Affected. DPOR estimates that approximately 50 businesses may be interested in pursuing a specialty license in drug lab remediation.

Localities Particularly Affected. The proposed regulation applies statewide. The Board notes that majority of properties formerly used to manufacture methamphetamine were found in the Southwest and Hampton Roads regions while recognizing that such properties are discovered in every area of the Commonwealth.

Projected Impact on Employment. The proposed regulation is unlikely to significantly affect the number of former meth

labs remediated. Thus, no significant impact on employment is expected. However, under the proposed regulation, some individuals or contractors may no longer be able to perform drug lab remediation if they do not comply with the experience and training requirements. In addition, the proposed regulation would increase the demand for HAZWOPER and drug lab remediation training.

Effects on the Use and Value of Private Property. Remediation of private property formerly used as a meth lab by trained and qualified contractors should minimize potential health risks and add to its value relative to what its value would be if such work was performed by untrained contractors.

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

Small Businesses:

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

Costs and Other Effects. Most of the contractors pursuing remediation specialty are expected to be small businesses. The economic effects discussed above apply to them.

Alternative Method that Minimizes Adverse Impact. The proposed regulation establishes a specialty designation instead of establishment of new license type to avoid higher licensing fees and administrative costs. There is no known alternative to reduce compliance costs to perform meth lab remediation work while accomplishing the same goals.

Adverse Impacts:

Businesses. The proposed regulation is not anticipated to have an adverse impact on non-small businesses.

Localities. The proposed regulation is not anticipated to have an adverse impact on localities.

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

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[1] http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0527

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 Chapter 527 of the 2016 Acts of Assembly, the proposed amendments (i) add an exclusive specialty for businesses that perform, manage, or supervise the remediation of property formerly used to manufacture methamphetamine; (ii) establish the criteria to obtain and maintain the license specialty, including experience and examination requirements; and (iii) require that the remediation work is consistent with applicable remediation standards of other federal or state agencies.

18VAC50-22-30. Definitions of specialty services.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting - LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation of asphalt paving or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and CBC are the ~~only other~~ classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to structures not defined as dwellings and townhouses in the USBC. The CBC classification also provides for this function. The CIC specialty does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes ~~but is not limited to~~ finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, and pans, centering, and the use of rebar are also included. The CBC, RBC, and H/H classifications also provide for this function.

"Drug lab remediation contracting" (Abbr: DLR) means the service that provides for the cleanup, treatment, containment, or removal of hazardous substances at or in a property formerly used to manufacture methamphetamine or other drugs and may include demolition or disposal of structures or other property. No other classification or specialty provides for this function.

"Drywall contracting" (Abbr: DRY) means the service that provides for the installation, taping, and finishing of drywall, panels and assemblies of gypsum wallboard, sheathing, and cementitious board and the installation of studs made of sheet metal for the framing of ceilings and nonstructural partitioning. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement, or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery including ~~but not limited to~~ conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code (13VAC5-63) but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping, or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair, or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The CBC classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Finish carpentry contracting" (Abbr: FIN) means the service that provides for the installation, repair, and finishing of cabinets, sash casing, door casing, wooden flooring, baseboards, countertops, and other millwork. Finish carpentry does not include the installation of ceramic tile, marble, and artificial or cultured stone. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems that operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement,

or removal of fire suppression systems including ~~but not limited to~~ halon and other gas systems, dry chemical systems, and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Flooring and floor covering contracting" (Abbr: FLR) means the service that provides for the installation, repair, improvement, or removal of materials that are common in the flooring industry. This includes~~, but is not limited to,~~ wood and wood composite flooring, tack strips or other products used to secure carpet, vinyl and linoleum, ceramic, marble, stone, and all other types of tile, and includes the installation or replacement of subflooring, leveling products, or other materials necessary to facilitate the installation of the flooring or floor covering. This does not include the installation, repair, or removal of floor joists or other structural components of the flooring system. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Framing subcontractor" (Abbr: FRM) means the service which, while serving in the role of a subcontractor to a licensed prime contractor, provides for the construction, removal, repair, or improvement to any framing or rough carpentry necessary for the construction of framed structures, including the installation and repair of individual components of framing systems. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Glass and glazing contracting" (Abbr: GLZ) means the service that provides for the installation, assembly, repair, improvement, or removal of all makes and kinds of glass, glass work, mirrored glass, and glass substitute for glazing; executes the fabrication and glazing of frames, panels, sashes and doors; or installs these items in any structure. This specialty includes the installation of standard methods of weatherproofing, caulking, glazing, sealants, and adhesives. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to dwellings and townhouses as defined in the USBC or structures annexed to those dwellings or townhouses as defined in the USBC. The RBC classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include new construction functions beyond the existing building structure other than decks, patios, driveways, and utility out buildings that do not require a permit per the USBC.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The CBC and RBC classifications also provide for this function.

"Insulation and weather stripping contracting" (Abbr: INS) means the service that provides for the installation, repair, improvement, or removal of materials classified as insulating media used for the sole purpose of temperature control or sound control of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The CBC, RBC, and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing, or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The CBC and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC, or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate, or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The CBC classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVA classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property.

"Steel erection contracting" (Abbr: STL) means the service that provides for the fabrication and erection of structural steel shapes and plates, regardless of shape or size, to be used as structural members, or tanks, including any related riveting, welding, and rigging. This specialty includes the fabrication, placement and tying of steel reinforcing bars (rods), and post-tensioning to reinforce concrete buildings and structures. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement, or removal of in-ground swimming pools. The CBC and RBC classifications and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow, or HVAC work is included in this specialty.

"Tile, marble, ceramic, and terrazzo contracting" (Abbr: TMC) means the service that provides for the preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, terrazzo, encaustic, faience, quarry, semi-vitreous, cementitious board, and other tile, excluding hollow or structural partition tile. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Underground utility and excavating contracting" (Abbr UUC) means the service that provides for the construction, repair, improvement, or removal of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line, or residential or single-occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extend to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. This specialty may install empty underground conduits in rights-of way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings if each conduit system does not include installation of any conductor wiring or connection to an energized electrical system. The H/H classification also provides for this function.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude the PLB, ELE, or HVA classification from installation of pumps and tanks.

Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC, and FIC specialty services, or they may fall under the CBC or RBC classification.

Appliances	Fences	Railings
Awnings	Fiberglass	Rigging
Blinds	Fireplaces	Rubber linings
Bulkheads	Fireproofing	Sandblasting
Carpeting	Fixtures	Scaffolding
Ceilings	Grouting	Screens
Chimneys	Guttering	Shutters
Chutes	Interior decorating	Siding
Curtains	Lubrication	Skylights
Curtain walls	Metal work	Storage bins and lockers
Decks	Millwrighting	Stucco
Doors	Mirrors	Vaults
Drapes	Miscellaneous iron	Wall panels
Epoxy	Ornamental iron	Waterproofing
Exterior decoration	Partitions	Windows
Facings	Protective coatings	

Part II
Entry

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification),

(2) Fire sprinkler (NICET Sprinkler III certification), and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

~~c.~~ d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

~~d.~~ e. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes ~~but is not limited to~~ any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

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

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification),

(2) Fire sprinkler (NICET Sprinkler III certification), and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

~~c.~~ d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

~~d.~~ e. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in

Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes ~~but is not limited to~~ any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed ~~above~~ in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

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

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (DHCD explosive use certification),

(2) Fire sprinkler (NICET Sprinkler III certification), and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

~~c.~~ d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

~~d.~~ e. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes ~~but is not limited to,~~ any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed ~~above~~ in this subdivision have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm

that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, the designated employee, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

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

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following acts are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.

3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.

4. Publishing or causing to be published any advertisement relating to contracting ~~which~~ that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

5. Negligence ~~and/or~~ or incompetence in the practice of contracting or residential building energy analyses.

6. Misconduct in the practice of contracting or residential building energy analyses.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract ~~which~~ that contains the following minimum requirements:

a. When work is to begin and the estimated completion date;

b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;

c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;

d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating ~~time frames~~ timeframes for payment or performance;

e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

f. Disclosure of the cancellation rights of the parties;

g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;

h. Contractor's name, address, license number, class of license, and classifications or specialty services;

i. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and

j. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including~~, but not limited to,~~ the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for ~~and/or~~ or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program.

35. Failure of a residential building energy analyst firm to maintain the general liability insurance required in 18VAC50-22-62 C at any time while licensed by the board.

36. Failure of a contractor holding the drug lab remediation specialty to ensure that remediation work conducted by the

firm or properly licensed subcontractors is consistent with the guidelines set forth by the U.S. Environmental Protection Agency, Virginia Department of Environmental Quality, Virginia Department of Health, or Virginia Department of Forensic Science.

VA.R. Doc. No. R16-4674; Filed May 8, 2017, 2:27 p.m.

BOARD OF NURSING

Emergency Regulation

Titles of Regulations: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-220).**

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10; adding 18VAC90-40-150 through 18VAC90-40-290).

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

Effective Dates: May 8, 2017, through November 7, 2018.

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

Preamble:

The emergency regulations are promulgated 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 Boards of Nursing and 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, Chapter 291 of the 2017 Acts of Assembly, effective March 3, 2017, requires the adoption of regulations for the prescribing of opioids and products containing buprenorphine.

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.

Additionally, the emergency action adds several defined terms, including "acute pain" and "chronic pain," and additional grounds for unprofessional conduct relating to confidentiality.

Part IV
Disciplinary Provisions

18VAC90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner.

The boards may deny licensure or relicensure, revoke or suspend the license, or take other disciplinary action upon proof that the nurse practitioner:

1. Has had a license or multistate privilege to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;

2. Has directly or indirectly represented to the public that the nurse practitioner is a physician, or is able to, or will practice independently of a physician;

3. Has exceeded the authority as a licensed nurse practitioner;

4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing or nurse practitioners;

5. Has become unable to practice with reasonable skill and safety to patients as the result of a physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals or any other type of material;

6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration or distribution of drugs; ~~or~~

7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-30-105;

8. Has willfully or negligently breached the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful; or

9. Has engaged in unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program, the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

Part I
General Provisions

18VAC90-40-10. 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 containing an opioid may be prescribed for no more than three months.

"Boards" means the Virginia Board of Medicine and the Virginia Board of Nursing.

"Certified nurse midwife" means an advanced practice registered nurse who is certified in the specialty of nurse midwifery and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § 54.1-2957 of the Code of Virginia.

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

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

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

"MME" means morphine milligram equivalent.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

"Nurse practitioner" means an advanced practice registered nurse who has met the requirements for licensure as a nurse practitioner as stated in 18VAC90-30.

"Practice agreement" means a written or electronic agreement jointly developed by the patient care team physician and the nurse practitioner for the practice of the nurse practitioner that also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician.

"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 V
Management of Acute Pain

18VAC90-40-150. Evaluation of the patient for acute pain.

A. The requirements of this part shall not apply to:

1. The treatment of acute pain related to (i) cancer, (ii) a patient in hospice care, or (iii) a patient in palliative care;

2. The treatment of acute 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.

B. 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.

C. 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 as a part of the initial evaluation.

18VAC90-40-160. 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 a patient with 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.

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 are present.

C. Due to a higher risk of fatal overdose when opioids are used 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.

18VAC90-40-170. 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 VI
Management of Chronic Pain

18VAC90-40-180. Evaluation of the chronic pain patient.

A. The requirements of this part shall not apply to:

1. The treatment of chronic pain related to (i) cancer, (ii) a patient in hospice care, or (iii) a patient in palliative care;

2. The treatment of 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.

B. 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 histories 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.

C. Prior to initiating opioid analgesia 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.

18VAC90-40-190. 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 opioid treatment for all patients, 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 are 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 if these medications are 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 for treatment if indicated.

18VAC90-40-200. 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 record in the medical records the presence or absence of any indicators for medication misuse, abuse, or diversion and take appropriate action.

18VAC90-40-210. Informed consent and agreement for treatment of 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 screen 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.

18VAC90-40-220. 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 or 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 the 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. Practitioners 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.

18VAC90-40-230. Additional consultation.

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

B. When a practitioner 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.

18VAC90-40-240. Medical records.

The prescriber shall keep current, accurate, and complete records in an accessible manner and 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 VII
Prescribing of Buprenorphine

18VAC90-40-250. General provisions.

A. Practitioners engaged in office-based opioid addiction treatment with buprenorphine shall have obtained a waiver from SAMHSA 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. Nurse practitioners who have obtained a SAMHSA waiver shall only prescribe buprenorphine for opioid addiction pursuant to a practice agreement with a SAMHSA-waivered 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.

18VAC90-40-260. Patient assessment and treatment planning.

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 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 practitioner.

18VAC90-40-270. Treatment with buprenorphine.

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 opiate 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.

18VAC90-40-280. Special populations.

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, and 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 practitioner to be psychiatrically unstable shall be referred for psychiatric evaluation and treatment prior to initiating medication-assisted treatment.

18VAC90-40-290. 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.

VA.R. Doc. No. R17-5096; Filed May 1, 2017, 2:23 p.m.

BOARD OF PHARMACY

Emergency Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-690, 18VAC110-20-700, 18VAC110-20-710; adding 18VAC110-20-735).**

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

Effective Dates: May 8, 2017, through November 7, 2018.

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.

Preamble

Section 2.2-4011 of the Code of Virginia authorizes agencies to adopt emergency regulations in situations in which Virginia statutory law or the appropriation act requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Chapters 55 and 58 of the 2017 Acts of Assembly, which became effective on February 20, 2017, establish additional circumstances under which the Board of Pharmacy is authorized to issue a controlled substance registration and require the board to promulgate regulations within 280 days of the enactment.

The emergency regulation authorizes issuance of a controlled substances registration (i) to persons who have been trained in the administration of naloxone in order to possess and dispense the drug to persons receiving training and (ii) to an entity for the purpose of establishing a bona fide practitioner-patient relationship for prescribing when treatment is provided by telemedicine in accordance with federal rules. The amendments include applicable recordkeeping, security, and storage requirements.

18VAC110-20-690. Persons or entities authorized or required to obtain a controlled substances registration.

A. A person or entity which maintains or intends to maintain a supply of Schedule II through Schedule VI controlled substances, other than manufacturers' samples, in accordance with provisions of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) may apply for a controlled substances registration on forms approved by the board.

B. Persons or entities which may be registered by the board shall include, but not be limited to, hospitals without in-house pharmacies, nursing homes without in-house pharmacies that use automated drug dispensing systems, ambulatory surgery centers, outpatient clinics, alternate delivery sites, crisis stabilization units, persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, and emergency medical services agencies provided such persons or entities are otherwise authorized by law and hold required licenses or appropriate credentials to administer the drugs for which the registration is being sought.

C. In determining whether to register an applicant, the board shall consider factors listed in subsections A and D of § 54.1-3423 of the Code of Virginia and compliance with applicable requirements of this chapter.

1. The proposed location shall be inspected by an authorized agent of the board prior to issuance of a controlled substances registration.

2. Controlled substances registration applications that indicate a requested inspection date, or requests that are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

3. Requested inspection dates that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

4. Any person wishing to change an approved location of the drug stock, make structural changes to an existing approved drug storage location, or make changes to a previously approved security system shall file an application with the board and be inspected.

5. Drugs shall not be stocked within the proposed drug storage location or moved to a new location until approval is granted by the board.

D. The application shall be signed by a person who will act as a responsible party for the controlled substances. The responsible party may be a prescriber, nurse, pharmacist, ~~or~~ pharmacy technician for alternate delivery sites, a person authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, or other person approved by the board who is authorized to administer the controlled substances.

E. The board may require a person or entity to obtain a controlled substances registration upon a determination that Schedule II through VI controlled substances have been obtained and are being used as common stock by multiple practitioners and that one or more of the following factors exist:

1. A federal, state, or local government agency has reported that the person or entity has made large purchases of controlled substances in comparison with other persons or entities in the same classification or category.

2. The person or entity has experienced a diversion, theft, or other unusual loss of controlled substances which requires reporting pursuant to § 54.1-3404 of the Drug Control Act.

3. The person or entity has failed to comply with recordkeeping requirements for controlled substances.

4. The person or entity or any other person with access to the common stock has violated any provision of federal, state, or local law or regulation relating to controlled substances.

F. The board may issue a controlled substance registration to an entity at which a patient is being treated by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically for the purpose of establishing a bona fide practitioner-patient relationship and is being prescribed Schedules II through VI controlled substances when such prescribing is in compliance with federal requirements for the practice of telemedicine and the patient is not in the physical presence of a practitioner registered with the U.S. Drug Enforcement Administration, provided:

1. There is a documented need for such registration, and issuance of the registration of the entity is consistent with the public interest;

2. The entity is under the general supervision of a licensed pharmacist or a practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine; and

3. The application is signed by a person who will act as the responsible party for the entity for the purpose of compliance with provisions of this subsection. The

responsible party shall be a prescriber, nurse, pharmacist, or other person who is authorized by provisions of § 54.1-3408 of the Code of Virginia to administer controlled substances.

18VAC110-20-700. Requirements for supervision for controlled substances registrants.

A. A practitioner licensed in Virginia shall provide supervision for all aspects of practice related to the maintenance and use of controlled substances as follows:

1. In a hospital or nursing home without an in-house pharmacy, a pharmacist shall supervise.

2. In an emergency medical services agency, the operational medical director shall supervise.

3. For any other type of applicant or registrant, a pharmacist or a prescriber whose scope of practice is consistent with the practice of the applicant or registrant and who is approved by the board may provide the required supervision.

B. The supervising practitioner shall approve the list of drugs which may be ordered by the holder of the controlled substances registration; possession of controlled substances by the entity shall be limited to such approved drugs. The list of drugs approved by the supervising practitioner shall be maintained at the address listed on the controlled substances registration.

C. Access to the controlled substances shall be limited to (i) the supervising practitioner or to those persons who are authorized by the supervising practitioner and who are authorized by law to administer drugs in Virginia; (ii) such other persons who have successfully completed a training program for repackaging of prescription drug orders in a CSB, BHA, or PACE site as authorized in § 54.1-3420.2 of the Code of Virginia; ~~or~~ (iii) other such persons as designated by the supervising practitioner or the responsible party to have access in an emergency situation, or (iv) persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal. If approved by the supervising practitioner, pharmacy technicians may have access for the purpose of delivering controlled substances to the registrant, stocking controlled substances in automated dispensing devices, conducting inventories, audits and other recordkeeping requirements, overseeing delivery of dispensed prescriptions at an alternate delivery site, and repackaging of prescription drug orders retained by a CSB, BHA, or PACE site as authorized in § 54.1-3420.2 of the Code of Virginia. Access to stock drugs in a crisis stabilization unit shall be limited to prescribers, nurses, or pharmacists.

D. The supervising practitioner shall establish procedures for and provide training as necessary to ensure compliance with all requirements of law and regulation, including, but not limited to, storage, security, and recordkeeping.

E. Within 14 days of a change in the responsible party or supervising practitioner assigned to the registration, either the responsible party or outgoing responsible party shall inform the board, and a new application shall be submitted indicating the name and license number, if applicable, of the new responsible party or supervising practitioner.

18VAC110-20-710. Requirements for storage and security for controlled substances registrants.

A. Drugs shall be stored under conditions which meet USP-NF specifications or manufacturers' suggested storage for each drug.

B. Any drug which has exceeded the expiration date shall not be administered; it shall be separated from the stock used for administration and maintained in a separate, locked area until properly disposed.

C. If a controlled substances registrant wishes to dispose of unwanted or expired Schedule II through VI drugs, he shall transfer the drugs to another person or entity authorized to possess and to provide for proper disposal of such drugs.

D. Drugs shall be maintained in a lockable cabinet, cart, device or other area which shall be locked at all times when not in use. The keys or access code shall be restricted to the supervising practitioner and persons designated access in accordance with 18VAC110-20-700 C.

E. In a facility not staffed 24 hours a day, the drugs shall be stored in a fixed and secured room, cabinet or area which has a security device for the detection of breaking which meets the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The installation and device shall be based on accepted alarm industry standards.

3. The device shall be maintained in operating order, have an auxiliary source of power, be monitored in accordance with accepted industry standards, be maintained in operating order; and shall be capable of sending an alarm signal to the monitoring entity if breached and the communication line is not operational.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to only designated and necessary persons, and the system shall be activated whenever the drug storage areas are closed for business.

6. An alarm system is not required for researchers, animal control officers, humane societies, alternate delivery sites as provided in 18VAC110-20-275, emergency medical services agencies stocking only intravenous fluids with no added drug, persons authorized by the Department of Behavioral Health and Developmental Services to train

individuals on the administration of naloxone and to dispense naloxone for opioid overdose reversal, and teaching institutions possessing only Schedule VI drugs.

18VAC110-20-735. Requirements for dispensing of naloxone by trained individuals.

A. Persons authorized by the Department of Behavioral Health and Developmental Services to train individuals on the administration of naloxone and dispense naloxone for opioid overdose reversal pursuant to subsection Y of § 54.1-3408 of the Code of Virginia shall maintain the following records:

1. The prescriber's standing order issued in accordance with subsection Y of § 54.1-3408 of the Code of Virginia authorizing the trained individual to dispense naloxone.

2. Invoices or other records showing receipts of naloxone shall be maintained, but may be stored in an electronic database or record as an electronic image that provides an exact, clearly legible image of the document or in secured storage either on site or off site. All records in off-site storage or database shall be retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

3. A manual or electronic log indicating the name, strength, lot, expiration date, and quantity of naloxone transferred to and from the controlled substances registration location to the off-site training location, along with date of transfer and the name of trained individual approved by the Department of Behavioral Health and Developmental Services.

4. Record of dispensing indicating the name of person receiving naloxone, address or contact information if available, date of dispensing, drug name, strength, quantity, lot number, expiration date, and the name of trained individual approved by the Department of Behavioral Health and Developmental Services to dispense naloxone.

B. The naloxone shall be labeled with directions for use in accordance with the prescriber's standing order; date of dispensing; name of person receiving the drug; drug name and strength; and the name and the telephone number for the entity associated with the controlled substances registration.

C. The naloxone shall be stored and transported under appropriate storage conditions in accordance with the manufacturer's directions to protect them from adulteration.

D. In the event of a manufacturer recall, the supervising practitioner or responsible party associated with the controlled substances registration certificate shall ensure compliance with recall procedures as issued by the manufacturer, U.S. Food and Drug Administration, or board to ensure an affected drug is transferred to a person or entity authorized to possess the drug for return or destruction.

E. Except for a prescriber's standing order, which must be maintained on site for a period of not less than two years from the date of the last dispensing, records shall be filed chronologically and maintained for a period of not less than two years from the date of transaction.

VA.R. Doc. No. R17-5048; Filed May 8, 2017, 8:27 a.m.

Final Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-321; adding 18VAC110-20-215).**

Statutory Authority: §§ 54.1-2400, 54.1-3434.05, and 54.1-3434.5 of the Code of Virginia.

Effective Date: June 28, 2017.

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

Summary:

In accordance with Chapter 300 of the 2015 Acts of Assembly, the amendments (i) require facilities engaged in the compounding of sterile drugs and registered with the U.S. Secretary of Health and Human Services as outsourcing facilities to hold a permit to compound or ship compounded drugs into Virginia; (ii) set fees for approval of applications and renewal of permits and registration; (iii) specify requirements for pharmacies that are or are not applicable to outsourcing facilities; (iv) establish requirements for pharmacist supervision, recordkeeping, and renewal; and (v) specify that if a compounding pharmacy shares physical space with an outsourcing facility, the more stringent standards of good manufacturing practices are applicable.

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

18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	$180
2. Pharmacy intern registration	$15
3. Pharmacy technician registration	$25
4. Pharmacy permit	$270
5. Permitted physician licensed to dispense drugs	$270
6. Medical equipment supplier permit	$180
7. Humane society permit	$20
8. Outsourcing facility permit	$270

~~8.~~ 9. Nonresident pharmacy registration	$270
10. Nonresident outsourcing facility registration	$270
~~9.~~ 11. Controlled substances registrations	$90
~~10.~~ 12. Innovative program approval. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.	$250
~~11.~~ 13. Approval of a pharmacy technician training program	$150
~~12.~~ 14. Approval of a continuing education program	$100
~~13.~~ 15. Approval of a repackaging training program	$50

D. Annual renewal fees.

1. Pharmacist active license – due no later than December 31	$90
2. Pharmacist inactive license – due no later than December 31	$45
3. Pharmacy technician registration – due no later than December 31	$25
4. Pharmacy permit – due no later than April 30	$270
5. Physician permit to practice pharmacy – due no later than February 28	$270
6. Medical equipment supplier permit – due no later than February 28	$180
7. Humane society permit – due no later than February 28	$20
8. Outsourcing facility permit – due no later than April 30	$270
~~8.~~ 9. Nonresident pharmacy registration – due no later than the date of initial registration	$270
10. Nonresident outsourcing facility registration – due no later than the date of initial registration	$270
~~9.~~ 11. Controlled substances registrations – due no later than February 28	$90
~~10.~~ 12. Innovative program continued approval based on board order not to exceed $200 per approval period.	
~~11.~~ 13. Approval of a pharmacy technician training program	$75 every two years
~~12.~~ 14. Approval of a repackaging training program	$30 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	$30
2. Pharmacist inactive license	$15
3. Pharmacy technician registration	$10
4. Pharmacy permit	$90
5. Physician permit to practice pharmacy	$90
6. Medical equipment supplier permit	$60
7. Humane society permit	$5
8. Outsourcing facility permit	$90
~~8.~~ 9. Nonresident pharmacy registration	$90
10. Nonresident outsourcing facility registration	$90
~~9.~~ 11. Controlled substances registrations	$30
~~10.~~ 12. Approval of a pharmacy technician training program	$15
~~11.~~ 13. Approval of a repackaging training program	$10

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	$210
2. Pharmacist license after revocation or suspension	$500
3. Pharmacy technician registration	$35
4. Pharmacy technician registration after revocation or suspension	$125

5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Pharmacy permit	$240
b. Physician permit to practice pharmacy	$240
c. Medical equipment supplier permit	$210
d. Humane society permit	$30
e. Outsourcing facility permit	$240
~~e.~~ f. Nonresident pharmacy registration	$115
g. Nonresident outsourcing facility registration	$240
~~f.~~ h. Controlled substances registration	$180
~~g.~~ i. Approval of a pharmacy technician training program	$75
~~h.~~ j. Approval of a repackaging training program	$50

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	$50
2. Change of ownership for any facility	$50
3. Inspection for remodeling or change of location for any facility	$150
4. Reinspection of any facility	$150
5. Board-required inspection for a robotic pharmacy system	$150
6. Board-required inspection of an innovative program location	$150
7. Change of pharmacist responsible for an approved innovative program	$25

H. Miscellaneous fees.

1. Duplicate wall certificate	$25
2. Returned check	$35
3. Duplicate license or registration	$10
4. Verification of licensure or registration	$25

18VAC110-20-215. Outsourcing facilities.

A. Any facility in the Commonwealth engaged in the sterile compounding of drugs or devices to be dispensed without a prescription for a specific patient shall obtain a permit as an outsourcing facility from the board in accordance with § 54.1-3434.05 of the Code of Virginia. Any outsourcing facility located outside of the Commonwealth that delivers in any manner Schedule II through VI drugs or devices into the Commonwealth without a prescription for a specific patient shall be registered with the board in accordance with § 54.1-3434.5 of the Code of Virginia.

B. In order to obtain or renew a permit or registration, outsourcing facilities shall submit to the board (i) documentation that the facility is registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act and (ii) a copy of a current inspection report consistent with § 54.1-3434.05 or 54.1-3434.5 of the Code of Virginia. Outsourcing facilities that fail to demonstrate that the facility is registered as an outsourcing facility under the Federal Food, Drug, and Cosmetic Act or submit a copy of a current inspection report consistent with § 54.1-3434.05 or 54.1-3434.5 shall not meet the requirements for an initial permit or registration or for renewal of a permit or registration.

C. An outsourcing facility shall comply with all provisions of this chapter relating to a pharmacy in Parts IV (18VAC110-20-110 et seq.) and VI (18VAC110-20-240 et seq.), with the following exceptions:

1. Subsections E and F of 18VAC110-20-190, relating to dispensed prescriptions.

2. Subsection A of 18VAC110-20-200, relating to prescriptions awaiting delivery.

3. Subsections B and C of 18VAC110-20-240, relating to prescriptions and chart orders.

4. 18VAC110-20-250, relating to automated data processing prescription records.

5. Subsections C, D, E, and F of 18VAC110-20-270, relating to preparation and dispensing of prescriptions.

D. In addition to applicable requirements for pharmacies, outsourcing facilities shall comply with the following:

1. Pharmacist supervision. At all times, such facilities shall be under the supervision of a PIC who routinely practices at the location designated on the permit application. A pharmacist shall be present at all times when the facility is open for business.

2. Records.

a. All records, including the receipt and disposition of drugs or devices, shall be maintained by the facility for a period of five years and shall be available to the board upon request.

b. Compounding records shall include identification and strength of the drugs and shall provide the ingredients, expiration dates, and the source of such ingredients.

Records shall also include the national drug code number of the source drug or bulk active ingredient, if available; the strength of the active ingredient per unit; the dosage form and route of administration; the package description; the number of individual units produced; the national drug code number of the final product, if assigned, or lot number; and an appropriately assigned expiration date or beyond-use date.

c. Outsourcing facilities shall maintain quality control records to include stability and sterility testing for determining beyond-use dating.

E. No outsourcing facility may distribute or dispense any drug to any person pursuant to a prescription unless it also maintains a current active pharmacy permit. The pharmacy shall comply with all state and federal laws, regulations, and requirements, except it shall compound in compliance with current good manufacturing practices under § 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 USC § 351(a)(2)(B)).

Part VIII
Labeling and Packaging Standards for Prescriptions

18VAC110-20-321. Compounding.

A. The compounding of both sterile and nonsterile drug products by a pharmacy that does not share the same physical space with an outsourcing facility shall be performed in accordance with USP-NF compounding standards and § 54.1-3410.2 of the Code of Virginia.

B. The compounding of sterile drug products by an outsourcing facility or by a pharmacy sharing the same physical space with an outsourcing facility shall be performed in accordance with current good manufacturing practices under § 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 USC § 351(a)(2)(B)).

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

FORMS (18VAC110-20)

Application for Registration as a Pharmacy Intern (rev. 8/07)

Affidavit of Practical Experience, Pharmacy Intern (rev. 8/07)

Application for Licensure as a Pharmacist by Examination (rev. 11/09)

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 3/11)

Application for Approval of a Continuing Education Program (rev. 8/07)

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 6/09)

Application for License to Dispense Drugs (rev. 8/07)

~~Application for a Pharmacy Permit (rev. 6/10)~~

~~Application for a Nonresident Pharmacy Registration (rev. 7/08)~~

Application for a Pharmacy Permit (rev. 12/2015)

Application for a Non-Resident Pharmacy Registration (rev. 12/2015)

Application for a Non-Resident Outsourcing Facility Registration (12/2015)

Application for an Outsourcing Facility Permit (12/2015)

Application for a Permit as a Medical Equipment Supplier (rev. 3/09)

Application for a Controlled Substances Registration Certificate (rev. 4/09)

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 8/07).

Closing of a Pharmacy (rev. 8/07)

Application for Approval of an Innovative (Pilot) Program (rev. 8/07)

Pharmacy Technician Registration Instructions and Application (rev. 3/09)

Instructions for Reinstating a Pharmacy Technician Registration (rev. 3/11)

Application for Approval of a Pharmacy Technician Training Program (rev. 8/07)

Application for Registration for Volunteer Practice (rev. 8/07)

Sponsor Certification for Volunteer Registration (rev. 8/08)

Application for Reinstatement of Registration as a Pharmacy Intern (eff. 9/07)

Affidavit for Limited-Use Pharmacy Technician (rev. 8/07)

Limited-Use Pharmacy Technician Registration Instructions and Application (rev. 7/08)

Registration for a Pharmacy to be a Collection Site for Donated Drugs (eff. 4/09)

Application for Approval of Repackaging Training Program (eff. 12/10)

VA.R. Doc. No. R16-4528; Filed April 26, 2017, 1:18 p.m.

Final Regulation

Title of Regulation: **18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-15, 18VAC110-30-20, 18VAC110-30-30, 18VAC110-30-50 through 18VAC110-30-90; adding 18VAC110-30-21).**

Statutory Authority: §§ 54.1-2400, 54.1-3304.1, and 54.1-3307 of the Code of Virginia.

Effective Date: June 28, 2017.

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

Summary:

The amendments implement the requirements of Chapter 117 of the 2015 Acts of Assembly, which requires practitioners of the healing arts to dispense controlled substances in permitted facilities, and (i) institute permit fees for most facilities where practitioners of the healing arts sell controlled substances; (ii) lower fees for initial individual licensure for doctors of medicine, osteopathic medicine, or podiatry to sell controlled substances; (iii) place requirements for inspections, physical standards for the facility, and notification to the board with the permitted facility rather than the individual licensee; and (iv) clarify that required sinks with hot and cold water must be available within 20 feet of the selling and storage area of the facility and may not be located within an examination room or restroom. Since publication of the proposed stage, a requirement that facilities that change from only one practitioner to more than one shall notify the board within 30 days of such change has been added.

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

18VAC110-30-15. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. ~~Fee for initial license for a practitioner of the healing arts to sell controlled substances~~ Initial application fees.

1. ~~The application fee for initial licensure shall be $240~~ License for practitioner of the healing arts to sell controlled substances: $180.

2. ~~The application fee for reinstatement of a license that has been revoked or suspended indefinitely shall be $500~~ Permit for facility in which practitioners of the healing arts sell controlled substances: $240.

C. ~~Renewal of license for a practitioner of the healing arts to sell controlled substances~~ Annual renewal fees.

1. ~~The annual fee for renewal of an active license shall be $90. For the annual renewal due on December 31, 2009, the fee shall be $50~~ License for practitioner of the healing arts to sell controlled substances: $90.

2. ~~The late fee for renewal of a license within one year after the expiration date is $30 in addition to the annual renewal fee~~ Permit for facility in which practitioners of the healing arts sell controlled substances: $240.

~~3. The fee for reinstatement of a license expired for more than one year shall be $210.~~

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date.

1. License for practitioner of the healing arts to sell controlled substances: $30.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: $40.

E. Reinstatement fees. Any person or entity attempting to renew a license or permit more than one year after the expiration date shall submit an application for reinstatement with any required fees.

1. License for practitioner of the healing arts to sell controlled substances: $150.

2. Permit for facility in which practitioners of the healing arts sell controlled substances: $240.

3. Application fee for reinstatement of a license or permit that has been revoked or suspended indefinitely: $500.

F. Facilities in which only one practitioner of the healing arts is licensed by the board to sell controlled substances shall be exempt from fees associated with obtaining and renewing a facility permit. [Facilities that change from only one practitioner to more than one shall notify the board within 30 days of such change.]

~~D.~~ G. The fee for reinspection of any facility shall be $150.

~~E.~~ H. The fee for a returned check shall be $35.

Part II
Licensure and Permit Requirements

18VAC110-30-20. Application for licensure.

A. Prior to engaging in the sale of controlled substances, a practitioner shall make application on a form provided by the board and be issued a license. After June 7, 2016, the practitioner shall engage in such sale from a location that has been issued a facility permit.

B. In order to be eligible for a license to sell controlled substances, a practitioner shall possess a current, active license to practice medicine, osteopathic medicine, or podiatry issued by the Virginia Board of Medicine. Any disciplinary action taken by the Board of Medicine against the practitioner's license to practice shall constitute grounds for the board to deny, restrict, or place terms on the license to sell.

~~C. For good cause shown, the board may issue a limited use license, when the scope, degree or type of services provided to the patient is of a limited nature. The license to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of regulations may be waived. The following conditions shall apply:~~

~~1. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion must accompany the application. The application shall list the regulatory requirements for which a waiver is requested and a brief explanation as to why each requirement should not apply to that practice; and~~

~~2. The issuance and continuation of such license shall be subject to continuing compliance with the conditions set forth by the board.~~

18VAC110-30-21. Application for facility permit.

A. After June 7, 2016, any location at which practitioners of the healing arts sell controlled substances shall have a permit issued by the board in accordance with § 54.1-3304.1 of the Code of Virginia. A licensed practitioner of the healing arts shall apply for the facility permit on a form provided by the board.

B. For good cause shown, the board may issue a limited-use facility permit when the scope, degree, or type of services provided to the patient is of a limited nature. The permit to be issued shall be based on conditions of use requested by the applicant or imposed by the board in cases where certain requirements of this chapter may be waived.

1. The limited-use facility permit application shall list the regulatory requirements for which a waiver is requested, if any, and a brief explanation as to why each requirement should not apply to that practice.

2. A policy and procedure manual detailing the type and volume of controlled substances to be sold and safeguards against diversion shall accompany the application.

3. The issuance and continuation of a limited-use facility permit shall be subject to continuing compliance with the conditions set forth by the board.

C. The executive director may grant a waiver of the security system when storing and selling multiple strengths and formulations of no more than five different topical Schedule VI drugs intended for cosmetic use.

18VAC110-30-30. Renewal of license or permit.

A. A license or facility permit so issued shall be valid until December 31 of the year of issue. Renewal of the license shall be made on or before December 31 of each year.

B. If a practitioner fails to renew his license or facility permit to sell within the Commonwealth by the renewal date, he must pay the renewal fee plus the late fee. He may renew his license or facility permit by payment of these fees for one year from the date of expiration.

C. Failure to renew the license or facility permit to sell within one year following expiration shall cause the license or permit to lapse. The selling of controlled substances with a lapsed license or permit shall be illegal and may subject the practitioner to disciplinary action by the board. To reinstate a lapsed license or permit, a practitioner shall submit an application for reinstatement and pay the reinstatement fee, plus the reinspection fee if a reinspection is required as set forth in subsection D of this section. Reinstatement is at the discretion of the board and may be granted by the executive director on the board's behalf provided no grounds exist to deny said reinstatement.

D. Prior to reinstatement of a ~~license~~ facility permit that has been lapsed for more than one year, a reinspection of the storage and selling area shall be conducted ~~unless another practitioner at the same location has held an active license to sell controlled substances during that period~~. A practitioner seeking reinstatement of a facility permit shall not stock drugs until approved by the board or its authorized agent.

E. The selling of controlled substances without a current, active license or facility permit is unlawful and shall constitute grounds for disciplinary action by the board.

18VAC110-30-50. Licensees ceasing to sell controlled substances; inventory required prior to disposal.

A. Any licensee who intends to cease selling controlled substances shall notify the board 10 days prior to cessation and surrender his license, and his license will be placed on expired status. If no other practitioner of the healing arts licensed to sell controlled substances intends to sell controlled substances from the same location, the practitioner shall also surrender the facility permit, and the permit will be placed on expired status.

B. Any Schedule II through V controlled substances shall be inventoried and may be disposed of by transferring the controlled substance stock to another licensee or other person authorized by law to possess such drugs or by destruction as set forth in this chapter.

C. The licensee or other responsible person shall inform the board of the name and address of the licensee to whom the controlled substances are transferred.

D. A licensee who has surrendered his license or facility permit pursuant to this section may request that it be made current again at any time within the same renewal year without having to pay an additional fee, provided the licensee is selling from the same location or from another location that has been inspected and approved by the board.

Part III

Inspection Requirements, Standards, and Security for Storage Areas; Disposal of Controlled Substances

18VAC110-30-70. ~~Maintenance of a common stock of controlled substances~~ Practitioner in charge in a permitted facility.

~~Any two or more licensees who elect to maintain a common stock of~~ A facility with a permit for practitioners of the healing arts to sell controlled substances ~~for dispensing~~ shall:

1. Designate a ~~licensee~~ practitioner with a license to sell controlled substances who shall be the primary person responsible for the stock, the required inventory, the records of receipt and destruction, safeguards against diversion and compliance with this chapter;

2. Report to the board the name of the licensee and the location of the controlled substance stock on a form provided by the board;

3. Upon a change in the licensee so designated, an inventory of all Schedule II through V controlled substances shall be conducted in the manner set forth in § 54.1-3404 of the Drug Control Act of the Code of Virginia and such change shall immediately be reported to the board; and

4. Nothing shall relieve the other individual licensees who sell controlled substances at the location of the responsibility for the requirements set forth in this chapter.

18VAC110-30-80. Inspection and notice required.

A. The area designated for the storage and selling of controlled substances shall be inspected by an agent of the board prior to the issuance of the first license to sell controlled substances from that site. Inspection prior to issuance of subsequent licenses at the same location shall be conducted at the discretion of the board.

B. Applications for ~~licenses which~~ facility permits that indicate a requested inspection date, or requests ~~which~~ that are received after the application is filed, shall be honored provided a 14-day notice to the board is allowed prior to the requested inspection date.

C. Requested inspection dates ~~which~~ that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

D. At the time of the inspection, the controlled substance selling and storage area shall comply with 18VAC110-30-90, 18VAC110-30-100, 18VAC110-30-110, 18VAC110-30-120, and 18VAC110-30-130.

E. If an applicant substantially fails to meet the requirements for issuance of a ~~license~~ facility permit and a reinspection is required, or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18VAC110-30-15 prior to a reinspection being conducted.

F. No ~~license~~ facility permit shall be issued to sell controlled substances until adequate safeguards against diversion have been provided for the controlled substance storage and selling area and approved by the ~~the~~ inspector or board staff.

G. The licensee shall notify the board of any substantive changes to the approved selling and storage area including moving the location of the area, making structural changes to the area, or making changes to the alarm system for the area prior to the changes being made and pay a reinspection fee. An inspection shall be conducted prior to approval of the new or altered selling and storage area.

18VAC110-30-90. Physical standards.

Physical standards for the controlled substance selling and storage area:

1. The building in which the controlled substances selling and storage area is located shall be constructed of permanent and secure materials. Trailers and other movable facilities shall not be permitted;

2. There shall be an enclosed area of not less than 40 square feet that is designated as the controlled substances selling and storage area, which shall be used exclusively for storage, preparation, and dispensing. Records related to the sale of controlled substances may be maintained outside the selling and storage area with access limited to the licensee and those persons authorized to assist in the area. The work space used in preparation of the drugs shall be contained within the enclosed area. A controlled substance selling and storage area inspected and approved prior to November 3, 1993, shall not be required to meet the size requirement of this chapter;

3. Controlled substances maintained for ultimate sale shall be maintained separately from any other controlled substances maintained for other purposes. Controlled substances maintained for other purposes such as administration or samples may be stored within the selling and storage area provided they are clearly separated from the stock maintained for sale;

4. The selling and storage area, work counter space and equipment in the area shall be maintained in a clean and orderly manner;

5. A sink with hot and cold running water shall be available within ~~the immediate vicinity~~ 20 feet of the selling and storage area and not located within an examination room or restroom; and

6. The entire area described in this chapter shall be well lighted and ventilated; the proper storage temperature shall be maintained to meet official specifications for controlled substance storage.

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

FORMS (18VAC110-30)

~~Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts (rev. 8/07).~~

Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts (rev. 12/2015)

Application for a Facility Permit for Practitioner(s) of the Healing Arts to Sell Controlled Substances (rev. 12/2015)

VA.R. Doc. No. R16-4532; Filed May 8, 2017, 8:25 a.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-40, 18VAC140-20-50).**

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

Effective Date: June 28, 2017.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

The amendments (i) require submission of an application for licensure within two years of completion of supervised experience and (ii) require registration of supervision whenever there is a change in the supervisor, the supervised practice, or clinical services or location.

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

Part II
Requirements for Licensure

18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.

Every applicant for examination for licensure as a licensed clinical social worker shall:

1. Meet the education requirements prescribed in 18VAC140-20-49 and experience requirements prescribed in 18VAC140-20-50.

2. Submit a completed application to the board office within two years of completion of supervised experience to include:

a. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;

b. The application fee prescribed in 18VAC140-20-30;

c. Official transcript or documentation submitted from the appropriate institutions of higher education that verifies successful completion of educational requirements set forth in 18VAC140-20-49;

d. Documentation of any other health or mental health licensure or certification, if applicable; and

e. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

3. Provide evidence of passage of the examination prescribed in 18VAC140-20-70.

18VAC140-20-50. Experience requirements for a licensed clinical social worker.

A. Supervised experience. Supervised post-master's degree experience without prior written board approval will not be accepted toward licensure, except supervision obtained in another United States jurisdiction may be accepted if it met the requirements of that jurisdiction.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision, or whenever there is an addition or change of supervised practice, supervisor, clinical social work services or location:

a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and

b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services and in ancillary services that support such delivery. A minimum of one hour and a maximum of four hours of face-to-face supervision shall be provided per 40 hours of work experience for a total of at least 100 hours. No more than 50 of the 100 hours may be obtained in group supervision, nor shall there be more than six persons being supervised in a group unless approved in advance by the board. The board may consider alternatives to face-to-face supervision if the applicant can demonstrate an undue burden due to hardship, disability or geography.

a. Supervised experience shall be acquired in no less than two nor more than four consecutive years.

b. Supervisees shall obtain throughout their hours of supervision a minimum of 1,380 hours of supervised experience in face-to-face client contact in the delivery of clinical social work services. The remaining hours may be spent in ancillary services supporting the delivery of clinical social work services.

3. An individual who does not complete the supervision requirement after four consecutive years of supervised experience may request an extension of up to 12 months. The request for an extension shall include evidence that demonstrates extenuating circumstances that prevented completion of the supervised experience within four consecutive years.

B. Requirements for supervisors.

1. The supervisor shall hold an active, unrestricted license as a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least two years of post-licensure clinical social work experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability or if supervision was obtained in another United States jurisdiction.

2. The supervisor shall have received professional training in supervision, consisting of a three credit-hour graduate course in supervision or at least 14 hours of continuing education offered by a provider approved under 18VAC140-20-105. The graduate course or hours of continuing education in supervision shall be obtained by a supervisor within five years immediately preceding registration of supervision.

3. The supervisor shall not provide supervision for a family member or provide supervision for anyone with whom he has a dual relationship.

4. The board may consider supervisors from jurisdictions outside of Virginia who provided clinical social work supervision if they have commensurate qualifications but were either (i) not licensed because their jurisdiction did not require licensure or (ii) were not designated as clinical social workers because the jurisdiction did not require such designation.

C. Responsibilities of supervisors. The supervisor shall:

1. Be responsible for the social work activities of the supervisee as set forth in this subsection once the supervisory arrangement is accepted;

2. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor;

3. Provide supervision only for those social work activities for which the supervisor has determined the applicant is competent to provide to clients;

4. Provide supervision only for those activities for which the supervisor is qualified by education, training and experience;

5. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, understanding the requirements of law for reporting any harm or risk of harm to self or others, and implementing a professional and ethical relationship with clients;

6. Be available to the applicant on a regularly scheduled basis for supervision;

7. Maintain documentation, for five years post-supervision, of which clients were the subject of supervision; and

8. Ensure that the board is notified of any change in supervision or if supervision has ended or been terminated by the supervisor.

D. Responsibilities of supervisees.

1. Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous practitioners, or licensed clinical social workers.

2. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications.

3. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

4. Supervisees shall not supervise the provision of clinical social work services provided by another person.

VA.R. Doc. No. R16-4574; Filed April 26, 2017, 1:18 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following amendments are exempt from the Virginia Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which provides that minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of the Virginia Administrative Process Act.

Titles of Regulations: **20VAC5-307. Rules Governing the Safety of Master-Metered Natural Gas Systems (amending 20VAC5-307-10).**

20VAC5-308. Rules Governing the Safety of Intrastate Hazardous Liquid Pipeline Systems (amending 20VAC5-308-10).

Statutory Authority: § 56-257.2 of the Code of Virginia (20VAC5-307-10).

§§ 12.1-13 and 56-555 of the Code of Virginia (20VAC5-308-10).

Effective Date: May 29, 2017.

Agency Contact: Angela Bowser, Deputy Director, Division of Information Resources, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9142, FAX (804) 371-9240, or email angela.bowser@scc.virginia.gov.

Summary:

The amendments correct the telephone number for the State Corporation Commission's Manager of Gas Pipeline Safety.

20VAC5-307-10. Master-metered natural gas systems.

A. These rules are adopted pursuant to § 56-257.2 of the Code of Virginia to establish safety and inspection requirements for master-metered natural gas systems as defined by federal regulations promulgated under the Natural Gas Pipeline Safety Act of 1968 (49 USC App. § 1671 et seq.), as amended.

B. Parts 191 and 192 of Title 49 of the Code of Federal Regulations are hereby adopted by reference as the minimum pipeline safety regulations applicable to master-metered systems within the commission's jurisdiction under § 56-257.2 of the Code of Virginia.

C. Telephonic notices regarding incidents involving master-metered gas systems shall be made, at the earliest practicable moment following discovery of the incident, to the commission's Division of Energy Regulation during the division's daily hours and to the commission's Manager of Gas Pipeline Safety ~~(pager~~ (telephone number (804) ~~351-4100)~~ 343-0863) during all other times. Such notices shall include the information listed in 49 CFR 191.5(b)(1) through (b)(5).

D. The commission's Division of Energy Regulation may require certain written reports from the jurisdictional master-metered systems to aid the commission staff in administering an effective gas pipeline safety program.

E. The commission's Division of Energy Regulation shall be empowered to submit and sign on behalf of the commission, such forms and applications as necessary to assure participation in natural gas pipeline safety programs, as deemed advisable by the commission to assure an effective safety program in Virginia, but that the commission comptroller shall be empowered to sign on behalf of the commission those applications and forms pertaining to grants or reimbursement of expenses incurred by the commission in conducting the gas pipeline safety program in Virginia.

20VAC5-308-10. Safety of intrastate hazardous liquid pipeline systems.

A. These rules are adopted pursuant to § 56-555 of the Code of Virginia to establish safety and inspection requirements for intrastate hazardous liquid pipeline systems as defined by federal regulation promulgated under 49 USC § 60101.

B. Parts 195 and 199 of Title 49 of the Code of Federal Regulations are hereby adopted by reference as the minimum pipeline safety regulations applicable to intrastate hazardous liquid pipeline systems within the commission's jurisdiction.

C. Telephonic notices regarding incidents involving hazardous liquid pipeline systems shall be made, at the earliest practicable moment following discovery of the incident, to the commission's Division of Energy Regulation during the division's daily hours and to the commission's Manager of Pipeline Safety ~~(pager~~ (telephone number (804) ~~351-4100)~~ 343-0863) during all other times. Such notices shall include the information listed in 49 CFR 195.52(b)(1) through (b)(6).

D. The commission's Division of Energy Regulation may require certain written reports from the jurisdictional hazardous liquid pipeline systems to aid the commission staff in administering an effective pipeline safety program.

E. The commission's Division of Energy Regulation shall be empowered to submit and sign on behalf of the commission, such forms and applications as necessary to assure participation in hazardous liquid pipeline safety programs, as deemed advisable by the commission to assure an effective safety program in Virginia, but that the commission comptroller shall be empowered to sign on behalf of the commission those applications and forms pertaining to grants or reimbursement of expenses incurred by the commission in conducting the pipeline safety program in Virginia.

VA.R. Doc. No. R17-5120; Filed May 3, 2017, 2:52 p.m.

Forms

Title of Regulation: **20VAC5-330. Limitations on Disconnection of Electric and Water Service.**

Agency Contact: Angela Bowser, Deputy Director, Division of Information Resources, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9142, or email angela.bowser@scc.virginia.gov.

REGISTRAR'S NOTICE: A form used in administering the following regulation has been filed by the State Corporation Commission. The form is 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 form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (20VAC5-330)

~~Serious Medical Condition Certification Form, Form SMCC (10/11).~~

Serious Medical Condition Certification Form, Form SMCC (rev. 1/2017)

VA.R. Doc. No. R17-4939; Filed May 3, 2017, 3:21 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department for Aging and Rehabilitation Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department for Aging and Rehabilitation Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC30-80. Auxiliary Grants Program (adding 22VAC30-80-80).**

Statutory Authority: §§ 51.5-131 and 51.5-160 of the Code of Virginia; § 416-2001 of Title XX of the Social Security Act.

Effective Date: June 30, 2017.

Agency Contact: Tishaun Harris-Ugworji, Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA, VA 23229, telephone (804) 662-7531, or email tishaun.harrisugworji@dars.virginia.gov.

Summary:

The action reflects changes made by Chapters 803 and 835 of the 2012 Acts of Assembly regarding the relocation of adult services and administration of auxiliary grants from the Department of Social Services to the Department for Aging and Rehabilitative Services (DARS). The amendment changes the chapter and section number so that the regulation appears under DARS in the Virginia Administrative Code.

~~22VAC40-410-10.~~ 22VAC30-80-80. Foreign government restitution payments to Holocaust survivors.

The value of foreign government restitution payments made to Holocaust survivors on or after August 1, 1994, shall be disregarded in the determination of eligibility or amount of assistance for the Auxiliary Grants Program as defined in § 51.5-160 of the Code of Virginia.

VA.R. Doc. No. R17-5084; Filed May 4, 2017, 5:01 p.m.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-195, Prevention and Control of Avian Influenza in the Live-Bird Marketing System**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated April 3, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that there is a continuing need for this regulation in order to protect the Virginia poultry industry, which includes many small businesses, from the spread of avian influenza through the live-bird marketing system.

There have been no complaints from the public concerning the regulation. The regulation is not unnecessarily complex. The regulation does not specifically duplicate any federal or state law or regulations. The regulation is reviewed periodically but has not changed substantially since it was adopted in 2006. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that the current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Dr. Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, or email carolynn.bissett@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-220, Virginia Horse Breeder Incentive Program**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated April 3, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that there is a continuing need for this regulation in order to encourage the growth of the Virginia horse breeding industry, which includes many small businesses.

There have been no complaints from the public concerning the regulation. The regulation is not unnecessarily complex. There is no overlap with federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that the current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Heather Wheeler, Business and Marketing Specialist, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-8993, FAX (804) 371-7786, or email heather.wheeler@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-318, Rules and Regulations for Enforcement of the Virginia Pest Law - Thousand Cankers Disease Quarantine**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated April 12, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation was put in place to help prevent the artificial spread of thousand cankers disease to uninfested areas of the Commonwealth by regulating the movement of the articles that are capable of transporting the disease. Spread of this disease by the Walnut Twig Beetle, which is the vector for this disease, could impact Virginia's walnut tree population by infecting and ultimately killing walnut trees. The agency has determined that this regulation should be retained in order to provide protection against spread of this potentially harmful disease of walnuts.

There have been no complaints from the public concerning the regulation. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that the current version of this regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative

Contact Information: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email debra.martin@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted

a small business impact review of **2VAC 5-325, Regulations Governing Pine Shoot Beetle**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated April 12, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The purpose of this regulation is to delay the long distance (artificial) spread of the Pine Shoot Beetle (PSB) from infested areas to noninfested areas in order to reduce its impact on Virginia landowners, including Christmas tree growers, many of whom are small business owners, and forest users. The agency has determined that this regulation should be retained in order to provide protection against the artificial spread of the PSB.

There have been no complaints from the public concerning the regulation. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that the current version of this regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email debra.martin@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-390, Rules and Regulations for the Enforcement of the Virginia Seed Law**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated April 12, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The provisions of this regulation ensure that seeds continue to be tested to determine the accuracy of the labels on seeds offered for sale in the Commonwealth as to seed purity, germination, trueness to variety, and absence of noxious weeds. The regulation provides for testing for farmers, seed producers, and consumers. In carrying out its seed testing responsibilities, the seed laboratory works with the Virginia Crop Improvement Association, the VCIA Foundation Seed Farm for its certification program, and the Federal Seed Laboratory for the enforcement of the Federal Seed Act. The agency has determined that this regulation should be retained in order to continue to protect and support the economic welfare of farmers and processors, many of whom are small business owners, as well as consumers.

There have been no complaints from the public concerning the regulation. The regulation is not unnecessarily complex. There is no overlap with federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that the current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email debra.martin@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-450, Rules and Regulations Relating to the Virginia Plants and Plant Products Inspection Law**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated April 3, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that there is a continuing need for this regulation in order to provide protection against spread of potentially harmful pests and diseases. Provisions of this regulation require inspection of certain plants, thereby minimizing the spread of plant diseases and the associated negative impact to nursery operations, many of which are small businesses, from the plant disease.

There have been no complaints from the public concerning the regulation. The regulation is not unnecessarily complex. There is no overlap with federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that the current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, or email debra.martin@vdacs.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Agriculture and Consumer Services conducted a small business impact review of **2VAC5-600, Regulations Pertaining to Food for Human Consumption**, and determined that this regulation should be retained in its current form. The Department of Agriculture and Consumer Services is publishing its report of findings dated March 29, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation is necessary for the protection of public health and the safety and welfare of citizens in the Commonwealth. Without specific regulations to address safety related requirements for multiple commodities, multiple food processes, adulterants in food products, food additives, and proper labeling as well as sanitary requirements for food establishments there is no reasonable way to provide an appropriate level of food safety oversight for the various food product processes and food products that are prepared, held, and sold to consumers in Virginia. However, it does provide an appropriate level of guidance as well as the requirements necessary to ensure that consumers in Virginia purchase and consume safe food products.

This regulation adopts by reference certain parts of the Code of Federal Regulations (Title 21), so it is duplicative of existing federal regulations. However, the enforcement of regulatory requirements for food establishments, food products, and food processes within Virginia's boundaries lies primarily with the Commonwealth and not with the federal government. Therefore, the adoption and enforcement of these regulations at a state level are appropriate and necessary to ensure a proper level of food safety within the Commonwealth. The agency has determined that minimal changes have occurred in technology and economic conditions in the area affected by this regulation since the last periodic review, but these changes do not necessitate amending or repealing the regulation. The regulations, as they currently exist, provide basic, essential requirements for food establishments, food commodities, and food processes while simultaneously minimizing the negative economic impact on small businesses. The agency has determined that that current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8910, FAX (804) 371-7792, or email ryan.davis@vdacs.virginia.gov.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Amendments to Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services

Notice of action: The Department of Behavioral Health and Developmental Services (DBHDS) is announcing an opportunity for public comment on preliminary draft text to the definitions section (12VAC35-105-20) of Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services.

Purpose of notice: DBHDS is required to alert interested stakeholders to the changes in law and the subsequent need for regulatory changes. Chapter 136 of the 2017 Acts of Assembly directs the State Board of Behavioral Health and Developmental Services to adopt changes related to professional qualifications of Qualified Mental Health Professionals (QMHPs) regarding Occupational Therapists. Specifically, the board shall amend 12VAC35-105-20 of the Virginia Administrative Code to include (i) occupational therapists in the definitions of Qualified Mental Health Professional-Adult, Qualified Mental Health Professional-Child, and Qualified Mental Retardation Professional and (ii) occupational therapy assistants in the definition of Qualified Paraprofessional in Mental Health. In amending these definitions, the board shall require educational and clinical experience for occupational therapists and occupational therapy assistants that is substantially equivalent to comparable professionals listed in current regulations.

DBHDS will provide a draft, along with any public comments received, to the State Board of Behavioral Health at its next meeting on July 12, 2017.

Draft text on which to comment:

"Qualified Mental Health Professional-Adult (QMHP-A)" means a person registered with the Board of Counseling, who is in the human services field and is trained and experienced in providing psychiatric or mental health services to ~~individuals~~ adults who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes

at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; (viii) a licensed occupational therapist with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; or (ix) any other licensed mental health professional.

"Qualified Mental Health Professional-Child (QMHP-C)" means a person registered with the Board of Counseling who is in the human services field and is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience ~~with~~ providing direct services to children ~~and~~ or adolescents with a diagnosis of mental illness; (vi) be a licensed occupational therapist with at least one year of clinical experience providing direct services to children or adolescents with a diagnosis of mental illness, or ~~(vi)~~ (vii) be a licensed mental health professional.

"Qualified Mental Health Professional-Eligible (QMHP-E)" means a person who has: (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience ~~or~~, (ii) a licensed occupational therapist with less than one year of clinical experience providing direct services to individuals with a diagnosis of mental illness, or ~~(ii)~~ (iii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS-approved supervision training program.

"Qualified Paraprofessional in Mental Health (QPPMH)" means a person registered with the Board of Counseling who must meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; ~~or~~ (iii) is licensed as an occupational therapy assistant and is supervised by a licensed occupational therapist with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

Public comment period: May 29, 2017, through June 29, 2017.

How to comment: DBHDS accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DBHDS by the last day of the comment period. All information received is part of the public record.

Contact Information: Cleopatra L. Booker, Psy.D., Director, Office of Licensing, Virginia Department of Behavioral Health and Developmental Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, telephone (804) 786-1747, FAX (804) 692-0066, or email cleopatra.booker@dbhds.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 4, 2017

Administrative Letter 2017-02

To: All Insurers and Other Interested Parties

Re: Insurance-Related Legislation Enacted by the 2017 Virginia General Assembly

We have attached for your reference summaries of certain insurance-related statutes enacted or amended and re-enacted during the 2017 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2017, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills referred to in this letter may be obtained at http://lis.virginia.gov/cgi-bin/legp604.exe?171+men+BIL or via the links we have provided in the summary headings. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter

are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2017 Session. Each person or organization is responsible for review of relevant statutes.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Chapter 39 (Senate Bill 994)

The bill authorizes the State Corporation Commission (Commission) to refund assessment overpayments to insurers and surplus line brokers without issuing a refund order. The measure conforms these procedures to other refunding provisions administered by the Bureau of Insurance (Bureau).

Chapter 287 (House Bill 1656) Effective March 3, 2017

The bill prohibits health insurance policies and plans from holding proton radiation therapy to a higher standard of clinical evidence for benefit coverage decisions than is applied for other types of radiation therapy treatment. The measure applies to policies and plans that provide coverage for cancer therapy. The bill was effective from its passage.

Chapter 477 (House Bill 1471)

The bill adopts revisions to the Credit for Reinsurance Model Law adopted by the NAIC. It authorizes the Commission to adopt regulations specifying additional requirements relating to or setting forth the valuation of assets or reserve credits; the amount and forms of security supporting certain reinsurance arrangements; and the circumstances pursuant to which credit will be reduced or eliminated. The new regulation will address reinsurance arrangements entered into with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting or solvency requirements as U.S.-based multi-state life/health insurers.

Chapter 482 (House Bill 1835)

The bill allows a funeral service provider to request, and allows a life insurer to provide, information about a deceased person's life insurance policy, including the name and contact information of any beneficiaries of record. The bill requires a funeral service provider to whom such information is provided to make all reasonable efforts to contact all beneficiaries of record, if the beneficiary is not the decedent's estate, within four calendar days of receiving such information and provide to the beneficiaries all information provided to the funeral service provider by the insurance carrier. The bill also requires the funeral service provider to inform the beneficiaries that the beneficiary of a life insurance policy has no legal duty or obligation to pay any amounts associated with the provision of funeral services or the debts or obligations of the deceased.

Chapter 588 (House Bill 2037)

The bill provides that when there is no amount actually paid or payable by a health insurer, health services plan, or health maintenance organization to a provider for covered services, the insurer, health services plan, or health maintenance organization is required to calculate the cost-sharing obligation of the insured, subscriber, or enrollee based on a pre-established allowed amount.

Chapter 615 (House Bill 1450)

The bill provides that if a pharmacy has provided notice through an intermediary of its agreement to accept reimbursements at rates applicable to preferred providers, the insurer or its intermediary may elect to respond directly to the pharmacy instead of the intermediary. The measure does not require an insurer to contract with a pharmacy's intermediary and does not prohibit an insurer or its intermediary from contracting with or disclosing confidential information to a pharmacy's intermediary.

Chapter 643 (House Bill 2102) Effective January 1, 2018

This new article outlines the requirements for completing and submitting a Corporate Governance Annual Disclosure (CGAD) with the Commission, and provides for the confidential treatment of the CGAD and related information. The bill requires all domestic insurers, or the insurance group of which they are a member, to file a CGAD on June 1 of each calendar year. The CGAD is a confidential report related to an insurer or insurance group's internal operations which summarizes its corporate governance structure, policies and practices.

Chapter 648 (House Bill 2422)

The bill provides that an insurance institution or agent which shares nonpublic personal information with non-affiliated parties only in accordance with § 38.2-613 does not have to continue to provide the annual privacy notice if the insurance institution's or agent’s sharing practices have not changed since the last time a notice was given. If the insurance institution or agent changes its sharing practices, then a notice outlining the new practices must be given to the consumer.

Chapter 653 (Senate Bill 1074)

Chapter 250 of the 2016 Acts of Assembly repealed provisions relating to the licensure and operations of automobile clubs. This bill amends the definition of "insurance" in § 38.2-100 to clarify that service agreements (defined in § 38.2-514.1) offered by automobile clubs are not "insurance."

Chapter 655 (Senate Bill 1158)

The bill requires a foreign reciprocal to obtain a license to transact the business of insurance in the Commonwealth if an affiliate of the foreign reciprocal is licensed to write the class of insurance it proposes to write in Virginia and is writing actively that class of insurance in its state of domicile or at least two other states. The measure also provides that a foreign or alien reciprocal is prohibited from transacting the business of insurance in Virginia until it obtains from the SCC both a certificate of authority and a license to transact the business of insurance in the Commonwealth.

Chapter 716 (House Bill 2267)

The bill requires any health benefit plan that is amended, renewed, or delivered on or after January 1, 2018, that provides coverage for hormonal contraceptives, to cover up to a 12-month supply of hormonal contraceptives when dispensed or furnished at one time for a covered person by a provider or pharmacy or at a location licensed or otherwise authorized to dispense drugs or supplies.

Chapter 727 (House Bill 1542) Effective January 1, 2018

The bill transfers responsibility for regulating home service contract providers from the Commission to the Commissioner of the Department of Agriculture and Consumer Services.

Chapter 756 (House Bill 2318) Effective January 1, 2018

The bill removes from the definition of "birth-related neurological injury" a provision that it applies retroactively to any child born on and after January 1, 1988, who suffers from an injury to the brain or spinal cord caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate post-delivery period in a hospital. The bill also requires the Commission to prepare a report containing options and recommendations for improving the actuarial soundness of financing for the Virginia Birth-Related Neurological Injury Compensation Program for the Governor and Chairmen of the House Appropriations and Senate Finance Committees no later than November 1, 2017.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Gloucester Solar, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Gloucester County

The Department has received a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Gloucester County from Gloucester Solar, LLC. The project is located on 203.55 acres of agricultural land off of Route 14. The project will be sized to 19.8 megawatts of alternating current, with approximately 75,000 solar panels on single axis tracter technology.

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.

OneEnergy Solidago, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Isle of Wight County

The department has received a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy solar project from OneEnergy Renewables for the OneEnergy Solidago, LLC project in Isle of Wight County. The OneEnergy Solidago, LLC, project is a 20-megawatt project near Isle of Wight. The project will be sited on rought 160 acres over multiple parcels south of Isle of Wight along Courthouse Highway and Redhouse Road.

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.

OneEnergy Sweetspire, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Hanover County

The department has received a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy solar project from OneEnergy Renewables for the OneEnergy Sweetspire, LLC project in Hanover County. The OneEnergy Sweetspire, LLC, project is a 20-megawatt project near Old Church, Hanover County and will cover approximately 165 acres over multiple parcels north of Old Church along Mechanicsville Turnpike.

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.

Powells Farm Solar, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Halifax County

On April 21, 2017, Department of Environmental Quality received a notice of intent to submit the necessary documentation for a permit by rule for a small renewable solar energy project. Powells Farm Solar, LLC is proposing to develop a 50-megawatt solar farm to be located in Halifax County on three parcels totaling approximately 397 acres off of Hendricks Lane. The project will be comprised of arrays of polycrystalline solar collectors, inverters, and associated equipment.

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

Proposed Consent Order for John T. Russell, Jr. Doing Business as Russell's Auto Truck Parts

An enforcement action has been proposed for John T. Russell, Jr., d/b/a Russell's Auto Truck Parts for alleged violations of its stormwater permit at 24513 Russell Lane, Petersburg, VA. The consent order requires Mr. Russell to develop a pollution prevention plan and begin implementing evaluations and recordkeeping as required by the permit. The order also requires payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov, FAX (804) 527-5106, or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from May 29, 2017, to June 30, 2017.

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 **12VAC5-11, Public Participation Guidelines**. 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 May 29, 2017, and ends June 19, 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 Joe Hilbert, Director of Governmental and Regulatory Affairs, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7006, FAX (804) 864-7022, or email joe.hilbert@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.

BOARD OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Amend the Virginia State Plan for Medical Assistance (Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)))

This notice was posted on April 28, 2017.

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at william.lessard@dmas.virginia.gov.

This notice is available for public review on the Virginia Regulatory Town Hall on the General Notices page, found at https://townhall.virginia.gov/L/generalnotice.cfm**.**

Reimbursement Changes Affecting Other Types of Care (12VAC30-80)

12VAC30-80-30 is being amended to update the average commercial rate calculation of supplemental payments for physicians affiliated with Type One Hospitals in Virginia effective May 1, 2017. The updated average commercial rate percentage of Medicare is 258% (combined).

The expected increase in annual expenditures is $ 8,774,629.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Notice of Intent to Amend the Virginia State Plan for Medical Assistance (Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80).

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42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via email at william.lessard@dmas.virginia.gov.

This notice is available for public review on the Virginia Regulatory Town Hall on the General Notices page, found at https://townhall.virginia.gov/L/generalnotice.cfm.

Reimbursement Changes Affecting Other Types of Care (12VAC30-80)

12VAC30-80-30 is being amended to show that the agency's fee schedule is being updated on July 1, 2017, to include updated dental procedure codes.

There is no expected increase or decrease in aggregate annual expenditures.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE MILK COMMISSION

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Milk Commission conducted a small business impact review of **2VAC15-20, Regulations for the Control and Supervision of Virginia's Milk Industry**, and determined that this regulation should be retained in its current form. The State Milk Commission is publishing its report of findings dated April 11, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The agency has determined that there is a continuing need for this regulation in order to support the Virginia dairy industry. The climate in Virginia and other regions of the Southeastern United States is not considered ideal for dairy production. These State Milk Commission regulations provide some incentive for dairy farmers, many of whom are small business owners, to continue operations within the Commonwealth because the regulations allow for farms that own milk quota to be paid an amount greater than the price established by the federal government.

There have been no complaints from the public concerning the regulation. The regulation is not unnecessarily complex. There is no overlap with the federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that the current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

Contact Information: Crafton Wilkes, Administrator, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Room 206, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 371-8700, or email crafton.wilkes@vdacs.virginia.gov.

BOARD OF PHARMACY

Scheduling of Chemicals

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The public hearing will be conducted at 9 a.m. on June 27, 2017, at the Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233. Public comment may also be submitted electronically or in writing prior to June 13, 2017, to Caroline Juran, Executive Director of the Board of Pharmacy to caroline.juran@dhp.virginia.gov.

Public comment period: May 3, 2017, through June 13, 2017.

The Virginia Department of Forensic Science has identified three compounds for recommended inclusion into the Code of Virginia. A brief description and chemical name for each compound is as follows:

The following compound is classified as a research chemical. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446) in previous legislative sessions.

4-Bromo-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (25B-NBOH), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compound is classified as a cannabimimetic agent. Compounds of this type have been placed in Schedule I (subdivision 7 of § 54.1-3446) in previous legislative sessions.

Methyl N-[1-(cyclohexylmethyl)-1H-indole-3-carbonyl]valinate (MMB-CHMICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compound is a powerful synthetic opioid. Compounds of this type have been placed in Schedule I (subdivision 1 of § 54.1-3446) in previous legislative sessions.

N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (Tetrahydrofuran fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

Contact Information: Caroline Juran, RPh, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4578, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Social Services is conducting a periodic review and small business impact review of **22VAC40-12, Public Participation Guidelines**.

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 May 29, 2017, and ends June 19, 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 Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.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.

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

22VAC40-160, Fee Requirements for Processing Applications

Agency Contact: Tammy Trestrail, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7382, FAX (804) 726-7132, or email tammy.trestrail@dss.virginia.gov.

22VAC40-411, General Relief Program

Agency Contact: Monique Majeus, Senior Economic Assistance and Employment Consultant for TANF, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7940, FAX (804) 726-7357, or email monique.majeus@dss.virginia.gov.

22VAC40-690, Virginia Child Care Provider Scholarship Program

Agency Contact: Stephanie Daniel, Training and Education Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7457, FAX (804) 726-7655, or email stephanie.daniel@dss.virginia.gov.

The comment period begins May 29, 2017, and ends June 19, 2017.

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

STATE WATER CONTROL BOARD

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 Environmental Quality on behalf of the State Water Control Board is conducting a periodic review and small business impact review of **9VAC25-640, Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements**. 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 May 29, 2017, and ends June 20, 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 Melissa Porterfield, Office of Regulatory Affairs. P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.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.

Water Quality Study Total Maximum Daily Load for Rudee Inlet Watershed

Community meeting: A community meeting will be held Monday, June 5, 2017, at 6 p.m. at W.T. Cooke Elementary, 1501 Mediterranean Avenue, Virginia Beach, VA 23451. This meeting will be open to the public and all are welcome to participate. For more information, please contact Rachel Hamm at telephone (757) 518-2024, or email rachel.hamm@deq.virginia.gov.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Institute of Marine Science, will discuss population data for the development of a water quality study known as a total maximum daily load (TMDL) for the Rudee Inlet watershed located in the City of Virginia Beach. This is an opportunity for local residents to learn about the condition of these waters, share information about the area, and become involved in the process of local water quality improvement. A public comment period will follow the meeting (June 5, 2017, through July 5, 2017). An advisory committee to assist in development of this TMDL will be established. Any person interested in assisting should notify the DEQ contact person, Rachel Hamm, by the end of the comment period and provide name, address, telephone number, email address, and the organization being represented (if any). Notification of the composition of the panel will be sent to all applicants.

Meeting description: A public meeting will be held to introduce the local community to the water quality improvement process in Virginia, known as the TMDL process, invite participation and solicit contributions, showcase the citizen monitoring studies in the local community, and review next steps. 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.

Description of study: Portions of the Rudee Inlet watershed including Lake Rudee, Lake Wesley, and Owl Creek were identified in Virginia's 2014 Water Quality Assessment & Integrated Report as impaired due to violations of the state's water quality standards for Enterococci and Fecal Coliform and do not support the designated uses of "primary contact (recreational or swimming)" and "shellfishing." In addition, Lake Wesley and Owl Creek do not meet the state's water quality standard for dissolved oxygen and do not support the "aquatic life" designated use. Virginia agencies are working to identify sources of bacteria and will determine the pollutant cause of the aquatic life impairments as well as identify sources of this pollutant through a weight of evidence approach. Reductions and TMDLs for the causes of the impairments will be developed during the water quality study process.

How to comment and participate: The meetings of the TMDL process are open to the public and all interested parties are welcome. Written comments will accepted through July 5, 2017, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, please contact: Rachel Hamm, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2024, FAX (757) 518-2024, or email rachel.hamm@deq.virginia.gov

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information through Thursday, June 15, 2017: *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.

New Contact Information beginning Monday, June 19, 2017: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 11th Floor, Richmond, VA 23219; *Telephone:* Voice will be available at a later date.

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 https://commonwealthcalendar.virginia.gov.

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.

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