VIRGINIA REGISTER OF REGULATIONS

VOL. 33 ISS. 24 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | JULY 24, 2017

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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).

July 2017 through July 2018

Volume: Issue	Material Submitted By Noon*	Will Be Published On
33:24	July 5, 2017	July 24, 2017
33:25	July 19, 2017	August 7, 2017
33:26	August 2, 2017	August 21, 2017
34:1	August 16, 2017	September 4, 2017
34:2	August 30, 2017	September 18, 2017
34:3	September 13, 2017	October 2, 2017
34:4	September 27, 2017	October 16, 2017
34:5	October 11, 2017	October 30, 2017
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017
34:8	November 21, 2017 **(Tuesday)**	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 **(Tuesday)**	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
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 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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 Funeral Directors and Embalmers intends to consider amending **18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers**. The purpose of the proposed action is to amend 18VAC65-20-151, which provides requirements for continued competency for renewal of an active license. The board intends to amend the section by offering one hour of continuing education credit every other year for attendance at a board meeting, an informal conference, or a formal hearing. In the year the one hour of credit is granted, the credit would meet the statutory requirement for "one hour per year covering compliance with federal or state laws and regulations governing the profession" as required by § 54.1-2816.1 of the Code of Virginia.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2816.1 of the Code of Virginia.

Public Comment Deadline: August 23, 2017.

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

VA.R. Doc. No. R17-5113; Filed July 1, 2017, 1:03 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: **2VAC5-425. Vapor Pressure Requirements for Gasoline Ethanol Blends (adding 2VAC5-425-10, 2VAC5-425-20).**

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Effective Date: August 24, 2017.

Agency Contact: Joel Maddux, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1274, FAX (804) 786-1571, or email joel.maddux@vdacs.virginia.gov.

Summary:

The regulatory action establishes a new chapter, 2VAC5-525, to address the vapor pressure requirements for ethanol blended gasoline in Virginia. Specifically, it provides a 1.0 pounds per square inch exception to the maximum vapor pressure set by ASTM International as currently outlined the National Institute of Standards and Technology Handbook 130, Section 2.1.2., which is incorporated into Virginia's motor fuels and lubricating oils law.

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

CHAPTER 425
VAPOR PRESSURE REQUIREMENTS FOR GASOLINE ETHANOL BLENDS

2VAC5-425-10. Definitions.

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

"ASTM D4806-16a" means the Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel published by ASTM International in February 2016.

"ASTM D4814-16a" means the Standard Specification for Automotive Spark-Ignition Engine Fuel published by ASTM International in February 2016.

"psi" means pounds per square inch.

"Volatility class A" means fuel with a vapor pressure and distillation designation of "A" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM D4814-16a.

"Volatility class B" means fuel with a vapor pressure and distillation designation of "B" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM D4814-16a.

"Volatility class C" means fuel with a vapor pressure and distillation designation of "C" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM D4814-16a.

"Volatility class D" means fuel with a vapor pressure and distillation designation of "D" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM D4814-16a.

"Volatility class E" means fuel with a vapor pressure and distillation designation of "E" set forth in Table 1 Vapor Pressure and Distillation Class Requirements of ASTM D4814-16a.

2VAC5-425-20. Vapor pressure requirements; exceptions.

When gasoline is blended with ethanol, the ethanol shall meet the requirements of ASTM D4806-16a and the blend shall meet the requirements of ASTM D4814-16a, with following permissible exceptions:

1. For blends containing nine to 10 volume percent ethanol, the maximum vapor pressure shall not exceed the ASTM D4814-16a limits by more than 1.0 psi during the period of June 1 through September 15.

2. For blends containing one or more volume percent ethanol for volatility class A, B, C, or D, the maximum vapor pressure shall not exceed ASTM D4814-16a limits by more than 1.0 psi during the period of September 16 through May 31.

3. For blends containing one or more volume percent ethanol for volatility class E, the maximum vapor pressure shall not exceed ASTM D4814-16a limits by more than 0.5 psi during the period of September 16 through May 31.

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-425)

Standard Specification for Automotive Spark-Ignition Engine Fuel, ASTM D4814-16a, February 2016, ASTM International, P.O. Box C700, West Conshohocken, PA 19428, www.astm.org

Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel, ASTM D4806-16a, February 2016,

ASTM International, P.O. Box C700, West Conshohocken, PA 19428, www.astm.org

VA.R. Doc. No. R16-4644; Filed June 30, 2017, 3:20 p.m.

Final Regulation

Title of Regulation: **2VAC5-670. Rules and Regulations for Enforcement of the Virginia Pesticide Law (amending 2VAC5-670-10, 2VAC5-670-30, 2VAC5-670-40, 2VAC5-670-50, 2VAC5-670-60, 2VAC5-670-70, 2VAC5-670-80, 2VAC5-670-130, 2VAC5-670-140, 2VAC5-670-150, 2VAC5-670-160, 2VAC5-670-180, 2VAC5-670-220).**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: August 24, 2017.

Agency Contact: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendments update the regulation and align it with current agency practices and federal requirements by (i) changing the title and format to be consistent with other pesticide-related regulations; (ii) amending the language of the regulation to reflect the current agency policy regarding requirements for submission of pesticide labels; (iii) clarifying the registration requirements involving mixtures of pesticides and fertilizers, animal feed, animal remedies, or other pesticides; (iv) amending language to more closely align the regulation with the Virginia Pesticide Control Act; (v) removing duplicative registration requirements; (vi) amending and clarifying regulatory label requirements to more closely align with federal requirements; (vii) amending ingredient statement requirements for consistency throughout the regulation; and (viii) clarifying warning or caution statements to more closely align with federal requirements.

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

CHAPTER 670

~~RULES AND~~ REGULATIONS ~~FOR ENFORCEMENT~~ GOVERNING PESTICIDE PRODUCT REGISTRATION, HANDLING, STORAGE, AND DISPOSAL UNDER AUTHORITY OF THE VIRGINIA PESTICIDE ~~LAW~~ CONTROL ACT

2VAC5-670-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. ~~Words used in singular form in this chapter include the plural, and vise versa, as appropriate.~~

"Active ingredient" means an ingredient ~~which~~ that:

1. Is independently capable of:

a. Preventing, destroying, repelling, or mitigating insects, fungi, rodents, weeds, nematodes, or other pests; or

b. Altering through physiological action the behavior of ornamental or crop plants or their produce; or

c. Causing leaves or foliage to drop from a plant; or

d. Artificially accelerating the drying of plant tissue.

2. Is present in the product in an amount sufficient to be effective; and

3. Is not antagonistic to the activity of the principal active ingredients. The commissioner may require an ingredient to be designated as an active ingredient if, in his opinion, it sufficiently increases the effectiveness of the pesticide to warrant such action.

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

"Custom mixture" means a pesticide containing product that has been blended or mixed to a customer's specifications, usually a pesticide-fertilizer, pesticide-pesticide, pesticide-animal feed, or pesticide-animal remedy mixture, when:

1. The blend is prepared to the order of the customer and is not held in inventory by the blender;

2. The blend is to be used on the customer's property, including leased or rented property;

3. The pesticides used in the blend bear end-use labeling directions that do not prohibit use of the product in such a blend;

4. The blend is prepared from registered pesticides; and

5. The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.

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

"Distributor" means a person or business, also referred to as a supplemental distributor or sub-registrant, that contracts with a basic federal registrant to produce a product that will be distributed and sold with labels bearing the distributor's own name and address instead of the name and address of the basic federal registrant.

"EPA" means the U.S. Environmental Protection Agency or any program thereof.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 et seq.).

[~~"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, including any algae or other aquatic weed.~~]

"Law" means Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, known as the Virginia Pesticide Control Act.

"Minimum risk pesticide" means pesticides that are described in 40 CFR 152.25(f), which addresses the exemptions for pesticides of a character not requiring FIFRA regulation, revised as of July 1, 2015. Minimum risk

pesticides are exempted from federal registration requirements under 7 USC § 136 w(b).

"Producer" means a person who manufactures, prepares, compounds, propagates, or processes any pesticide, device, or active ingredient used in producing a pesticide. The dilution by an individual of formulated pesticides for his own use in accordance with the directions on registered labels shall not alone result in the department considering the individual a producer for the purposes of this chapter.

"Rodent" means any animal of the order Rodentia including, but not limited to, rats, mice, rabbits, gophers, prairie dogs, and squirrels.

"Temporary storage" means the storage of a pesticide in a container other than the original container in which it was purchased.

2VAC5-670-30. Label.

A. The name and address of the ~~manufacturer~~ producer, registrant, or person for whom the product was produced shall appear on the label. If the registrant's name appears on the label and the registrant is not the manufacturer, or if the name of the person for whom the pesticide was manufactured appears on the label, it must be qualified by appropriate wording such as "Packed for . . .," "Distributed by.. .," or "Sold by...," to show that the name is not that of the manufacturer.

B. The name, brand, or trademark of the pesticide appearing on the label shall be that under which the pesticide is registered.

C. The net content declaration shall comply with the Weights and Measures Act of Virginia, Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2 of the Code of Virginia and its regulations.

D. Directions for use are required for the protection of the public. ~~The public includes not only users of pesticides, but also those who handle them or may be affected by their use, handling, or storage.~~ Pesticides restricted by this chapter shall be registered only for their permitted uses, and the label shall have a prominent statement to the effect that the product is to be used only as directed. Directions for use are considered necessary in the case of most retail containers~~, with the following exceptions.~~ and must include:

1. The statement of use classification.

2. The statement, "It is a violation of federal law to use this product in a manner inconsistent with its labeling." if the product requires federal registration.

3. The site of application, for example the crops, animals, areas, or objects to be treated.

4. The target pest associated with each site.

5. The dosage rate associated with each site and pest.

6. The method of application, including instructions for dilution, if required, and type of application apparatus or equipment required.

7. The frequency and timing of applications necessary to obtain effective results without causing unreasonable adverse effects on the environment.

8. Specific directions concerning the storage, residue removal, and disposal of the pesticide and its container.

9. Any limitations or restrictions on use required to prevent unreasonable adverse effects.

E. Directions may be omitted:

1. If the pesticide is to be used by manufacturers in their regular manufacturing processes, provided that the label clearly shows that the product is intended for use only in manufacturing processes, and bears an ingredient statement giving the name and percentage of each of the active ingredients.

2. If (i) the pesticide is sold to ~~distributors~~ a producer for dilution or mixing with carriers to prepare pesticides for sale to the public, provided that the label bears an ingredient statement giving the name and percentage of each of the active ingredients; ~~and~~ (ii) the pesticide is a well-known substance or mixture of substances; and (iii) there is readily available general knowledge of the composition, methods of use, and effectiveness of the product for pesticide purposes.

2VAC5-670-40. Ingredient statement.

A. Location of ingredient statement. The ingredient statement shall appear on the front of the label or that part of the label displayed under customary conditions of purchase~~;~~, except in cases where the commissioner determines that, due to the size or form of the container, a statement on that portion of the label is impractical~~,~~ and permits the statement to appear on another side or panel of the label. When so permitted, the ingredient statement shall be in larger ~~type~~ font and be more prominent than would otherwise be required. The ingredient statement shall run parallel with other printed matter on the panel of the label on which it appears~~,~~ and shall be on a clear contrasting background.

B. Names of ingredients. The well-known common name of the ingredient shall be given or, if the ingredient has no common name, the correct chemical name. If there is no common name and the chemical composition is unknown or complex, the commissioner may permit the use of a new or coined name which he finds to be appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the commissioner may prescribe the terms under which it may be used. A trademark or trade name may not be used as the name of an ingredient, except when it has become a common name.

C. Percentages of ingredients. Percentages of ingredients shall be determined by weight, and the sum of the percentages of the ingredients shall be 100. Sliding scale forms of ingredient statements shall not be used. Plant incorporated protectant products bearing an ingredient statement approved by the EPA are permitted to have ingredient statements where

the sum of the percentages of the ingredients do not equal 100.

D. Designation of ingredients. Active ingredients and inert ingredients shall be so designated, and the term "inert ingredient" shall appear in the same size ~~type~~ font and be as prominent as the term "active ingredient."

2VAC5-670-50. Pesticides highly toxic to humans.

A. Pesticides ~~which~~ that fall within any of the following categories when tested on laboratory animals as specified in ~~subdivisions~~ subdivision 1, 2, or 3 of this subsection are highly toxic to humans or contain substances or quantities of substances highly toxic to humans within the meaning of the law. Such pesticides shall be referred to as pesticides highly toxic to humans. Upon application and after an opportunity for a hearing, the commissioner may exempt any pesticide from these requirements ~~which~~ that is not highly toxic to humans:

1. Oral toxicity. A pesticide ~~which~~ that has single dose LD50 of 50 milligrams or less per kilogram of body weight~~,~~ when administered orally to both male and female rats ~~which~~ that have been fasted for a period of 24 hours (or to other rodent or nonrodent species specified by the commissioner); ~~or~~

2. Toxicity on inhalation. A pesticide ~~which~~ that has an LC50 of 2,000 micrograms or less of dust or mist per liter of air or 200 parts per million or less by volume of a gas or vapor, when administered by continuous inhalation for one hour to both male and female rodent or nonrodent species specified by the commissioner, if he finds that it is reasonably foreseeable that such concentration will be encountered by humans; or

3. Toxicity by skin absorption. A pesticide ~~which~~ that has an LD50 of 200 milligrams or less per kilogram of body weight~~,~~ when administered by continuous contact for 24 hours with the bare skin of rabbits (or other rodent or nonrodent species specified by the commissioner).

B. Test on other species. Tests on other specified rodent or nonrodent species may be required by the commissioner whenever he finds that tests on other species are necessary to determine whether a pesticide is highly toxic to humans.

C. Terms LD50 and LC50. An LD50, as used in connection with oral toxicity and skin absorption toxicity tests, is the dose~~,~~ that is expected to cause death within 14 days in 50% of the test animals so treated, and LC50, as used in connection with inhalation tests, is also the concentration~~, which~~ that is expected to cause death within 14 days in 50% of the test animals so treated.

D. Toxicity based on human experience. If the commissioner finds, after an opportunity for hearing, that available data on human experience with any pesticide indicates a greater toxicity than found in the tests on animals, the human data shall take precedence~~;~~, and if he finds that the protection of the public so requires, the commissioner shall declare such a pesticide to be highly toxic to humans for the purposes of this law and its regulations.

2VAC5-670-60. Warning or ~~caution statement~~ precautionary statements.

A. Warning or ~~caution~~ precautionary statements ~~which~~ that are necessary and~~,~~ adequate to prevent injury to humans, useful vertebrate~~,~~ and invertebrate animals, and useful vegetation, must appear on the label in a place sufficiently prominent to warn the user. They shall state clearly and in nontechnical language the particular hazard involved in the use of the pesticide (e.g., ingestion, skin absorption, inhalation, flammability, or explosion), and the precautions to be taken to avoid accident, injury, or damage.

B. The label of every pesticide shall bear warnings or ~~cautions which~~ precautionary statements that are necessary for the protection of the public, including the statement, "Keep out of reach of children," ~~and a signal word such as "DANGER," "WARNING," or "CAUTION," which the commissioner may prescribe,~~ on the front panel or that part of the label displayed under customary conditions of purchase. However, the commissioner may permit reasonable variations in the placement of that part of the required warnings and ~~cautions~~ precautionary statements other than the statement "Keep out of reach of children" ~~and the required signal word,~~ if in his opinion such variations would not be injurious to the public. If a pesticide is marketed in channels of trade where the likelihood of contact with children is extremely remote, or if the nature of the product is such that it is likely to be used on infants or small children without causing injury under any reasonably foreseeable conditions, the commissioner may waive the requirements of the statement "Keep out of reach of children." The commissioner may permit a statement such as "Keep away from infants and small children" instead of the statement "Keep out of reach of children," if he determines that such a variation would not be injurious to the public.

~~C. The label of every pesticide which is highly toxic to humans shall bear the words "DANGER" and "POISON" in red on a contrasting background next to the skull and crossbones, and an antidote statement including directions to call a physician immediately, on the front panel or that part of the label displayed under customary conditions of purchase. However, the commissioner may permit reasonable variations in the placement of the antidote statement if some reference such as "See antidote statement on back panel" appears on the front panel near the word "POISON" and the skull and crossbones.~~

~~D. Warning or caution statements which comply with the requirements of the regulations for the enforcement of the Federal Insecticide, Fungicide and Rodenticide Act shall be considered in compliance with the requirements of this chapter.~~

2VAC5-670-70. Registration.

A. Eligibility. Any manufacturer, packer, seller, distributor, or shipper of a pesticide is eligible as a registrant and may register the pesticide.

B. Pesticides requiring registration. All products that require registration under FIFRA, as well as "minimum risk pesticides," are required to be registered annually with the department. All products requiring federal registration must have and maintain a valid federal registration to be registered in the Commonwealth.

~~B.~~ C. Procedure for registration. Application for registration should be made on ~~the~~ a form provided by the department. Application forms will be furnished upon request to the Virginia Department of Agriculture and Consumer Services, Office of Pesticide Services, Post Office Box 1163, Richmond, Virginia 23218. ~~Application~~ A completed application form should be submitted as far in advance as possible~~,~~ before the time registration is desired to take effect and must be accompanied by:

1. The final container label and all associated labeling;

2. The material safety data sheet or safety data sheet; and

3. The fees required under 2VAC5-675-20.

~~C.~~ D. Effective date of registration. Registration of a pesticide shall become effective on the date the certificate of registration is issued.

~~D.~~ E. Responsibility of a registrant. The registrant is responsible for the accuracy and completeness of all information submitted in connection with his application for registration of a pesticide.

~~E.~~ F. Changes in labeling or formula.

1. Changes in the labeling, or formula of a registered pesticide, shall be submitted in advance to the Office of Pesticide Services. The registrant shall describe the exact changes desired and the proposed effective date; and upon request, shall submit a description of tests which justify such changes.

2. After the effective date of a change in labeling or formula, the product shall be marketed only under the new label or formula, except that a reasonable time may be permitted by the commissioner to dispose of properly labeled stocks of old products.

~~F.~~ G. Claims shall conform to registration. Claims made for a pesticide shall not differ in substance from representations made in connection with registration, including representations with respect to effectiveness, ingredients, directions for use, or pests against which the product is recommended.

2VAC5-670-80. Coloration and discoloration.

A. Unless exempted by 2VAC5-670-130 ~~of this chapter~~, the white pesticides ~~hereinafter named~~ listed in subsections C and D of this section shall be colored or discolored in compliance with this section. The hues, values, and chromas specified are those contained in the Munsell Book of Color, Munsell Color Company, Baltimore, Maryland.

B. Coloring agent. The coloring agent shall produce a uniformly colored product not subject to change in color beyond the minimum requirements specified in this chapter during ordinary conditions of marketing or storage. They must not cause the product to become ineffective, or cause damage when used as directed.

C. Arsenicals and barium fluosilicate. Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, and barium fluosilicate shall be colored any hue except the yellow-reds and yellows, having a value of not more than eight and a chroma of not less than four, or shall be discolored to a neutral lightness value not over seven.

D. Sodium fluoride and sodium fluosilicate. Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than eight and a chroma of not less than four, or shall be discolored to a neutral lightness value not over seven.

E. Exceptions. The commissioner, after the opportunity for a hearing, may permit other hues to be used for any particular purpose, if the prescribed hues are not feasible for the purpose, and if this action will not be injurious to the public.

2VAC5-670-130. Exemption.

A. Any pesticide specified in 2VAC5-670-80 ~~of this chapter which~~ that is intended solely for use by a textile manufacturer or commercial laundry, cleaner, or dyer as a mothproofing agent, or used in the manufacture or processing ~~or~~ of rubber, glue, or leather goods~~, which~~ that would not be suitable for such use if colored and ~~which~~ that will not come into the hands of the public except when incorporated into a fabric and will not be present in these finished goods in sufficient quantities to cause injury to any person, shall be exempt from the requirements of 2VAC5-670-80.

B. The following products are exempt from the requirements of this chapter:

1. Substances described in 40 CFR 152.6, revised as of July 1, 2015, that are excluded from regulation by FIFRA.

2. Products described in 40 CFR 152.8, revised as of July 1, 2015, that are not pesticides because they are not for use against "pests."

3. Products described in 40 CFR 152.10, revised as of July 1, 2015, that are not pesticides because they are not intended for a pesticidal purpose.

4. Pesticides or classes of pesticides described in 40 CFR 152.20, revised as of July 1, 2015, that are regulated by a federal agency other than the EPA.

5. Treated articles or substances as described in 40 CFR 152.25(a), revised as of July 1, 2015. An article or substance treated with or containing a pesticide to protect

the article or substance itself if the pesticide is registered with the EPA for such use.

6. Pheromones and pheromone traps as described in 40 CFR 152.25(b), revised as of July 1, 2015.

7. Preservatives and embalming fluids as described in 40 CFR 152.25(c), revised as of July 1, 2015.

8. Foods as described in 40 CFR 152.25(d), revised as of July 1, 2015.

9. Natural cedar as described in 40 CFR 152.25(e), revised as of July 1, 2015.

2VAC5-670-140. Declaration of pests.

In addition to those pests defined in Article 1 of the law, the commissioner hereby declares as pests the following forms of plant and animal life and viruses:

1. Mammals, including but not limited to dogs, cats, moles, bats, wild carnivores, armadillos, and deer;

2. Birds, including but not limited to starlings, English sparrows, crows, and blackbirds;

3. Fishes, including but not limited to the jawless fishes such as the sea lamprey, the cartilaginous fishes such as the sharks, and the bony fishes such as the carp;

4. Amphibians and reptiles, including but not limited to poisonous snakes;

5. Aquatic and terrestrial invertebrates, including but not limited to slugs, snails, and crayfish;

6. Roots and other plant parts growing where not wanted; and

7. Viruses, other than those on or in humans or animals.

2VAC5-670-150. Handling and storage.

No person shall handle, transport, store, display, or distribute pesticides in a manner ~~which~~ that may endanger humans and the environment, or food, feed, or any other products that may be transported, stored, displayed, or distributed with the pesticides.

2VAC5-670-160. Disposal.

No person shall dispose of, discard, or store any pesticides or pesticide containers in a manner ~~which~~ that may cause injury to humans, vegetation, crops, livestock, wildlife, or pollinating insects~~,~~ or pollute any water supply or waterway. Pesticides or pesticide containers must be disposed of in accordance with all local, state, and federal solid waste and hazardous waste laws and regulations.

2VAC5-670-180. Cancellation authority.

All pesticides ~~which~~ that have been ~~cancelled~~ canceled or suspended by the United States Government are subject to cancellation in Virginia. No registration shall be revoked or refused until the registrant has been given an opportunity for a hearing by the commissioner. Any appeal of cancellation at the federal level shall not affect cancellation proceedings with this Commonwealth.

2VAC5-670-220. Mixtures.

A. General sale.

~~Regardless of type container mixtures of pesticides with fertilizers or with other pesticides, when offered for general sale to the public shall be registered prior to sale, distribution, or use. In addition, any pesticide/fertilizer mixture shall be registered or labeled as required by the Virginia Fertilizer Law.~~ 1. All pesticide-fertilizer, pesticide-pesticide, pesticide-animal feed, and pesticide-animal remedy mixtures shall be registered under the requirements of the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia) and this chapter prior to sale or distribution to or use by the public. All bulk containers shall bear the registered pesticide product label and a copy of the label shall accompany each shipment or delivery.

2. Any pesticide-fertilizer mixture shall be registered as required by the Virginia Fertilizer Law (§ 3.2-3600 et seq. of the Code of Virginia). Labeling must meet the requirements of the Virginia Pesticide Control Act, this chapter, and the Virginia Fertilizer Law.

3. Any pesticide-animal feed or pesticide-animal remedy mixtures shall be registered as required by the Virginia Commercial Feed Law (§ 3.2-4800 et seq. of the Code of Virginia) and the Animal Remedies Law (§ 3.2-4900 et seq. of the Code of Virginia). Labeling must meet the requirements of the Virginia Pesticide Control Act, this chapter, the Virginia Commercial Feed Law, and the Animal Remedies Law.

B. Custom mixtures. Pesticides may be mixed with fertilizers ~~or with~~, other pesticides, or animal feed without ~~label~~ registration when the pesticide product is duly registered~~,~~ and when such mixtures are not prohibited by the registered pesticide label.

C. When these mixtures are intended for the production of agricultural commodities, the person making the mixtures shall provide the following written or printed information to the applicator or customer:

1. Brand ~~name(s)~~ name and EPA registration ~~no.(s)~~ number of pesticide ~~product(s);~~ product;

2. ~~Percentage(s)~~ Percentage by weight of active ~~ingredient(s)~~ ingredients;

3. Directions for application, use, harvest limitations, and cropping restrictions; and

4. Precautionary and warning statements sufficient to ensure proper~~,~~ and safe use~~,~~ and disposal of the mixture.

D. The registered pesticide product ~~label(s)~~ label will suffice. All such labeling shall be subject to approval by the commissioner.

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (2VAC5-670)

~~Application for New Pesticide Product Registration Form, VDACS 07208 (rev. 7/12).~~

Application for New Pesticide Product Registration, VDACS 07208 (rev. 9/2014)

VA.R. Doc. No. R16-4505; Filed June 30, 2017, 3:03 p.m.

Final Regulation

Title of Regulation: **2VAC5-680. Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act (amending 2VAC5-680-10, 2VAC5-680-20, 2VAC5-680-60, 2VAC5-680-65, 2VAC5-680-70, 2VAC5-680-80).**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Effective Date: August 24, 2017.

Agency Contact: Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, FAX (804) 371-2283, TTY (800) 828-1120, or email liza.fleeson@vdacs.virginia.gov.

Summary:

The amendments align the regulation with current agency practices and federal requirements by (i) adding a definition of the term "distribute" or "distribution" and amending the definition of the term "pesticide business location" to address current industry practices; (ii) adding a definition of the term "limited household use" in order to clarify the requirements for merchants who are exempt from pesticide business licenses under the Virginia Pesticide Control Act; (iii) adding a definition of the term "multiple violations"; (iv) clarifying the current requirements for the application for a pesticide business license; (v) clarifying the current requirement regarding evidence of financial responsibility; and (vi) amending the recordkeeping requirements to be consistent with other pesticide labeling requirements in 2VAC5-670, Rules and Regulations for Enforcement of the Virginia Pesticide Law, and this chapter.

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

Part I
Definitions

2VAC5-680-10. ~~Definition of terms~~ Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. ~~An asterisk following a definition denotes that the definition has been taken from § 3.2-100 or Article 1 (§ 3.2-3900 et seq.) of Chapter 39 of Title 3.2 of the Code of Virginia.~~

"Board" means the Board of Agriculture and Consumer Services.~~*~~

"Bulk pesticide" means any registered pesticide concentrate ~~which~~ that is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or greater than 100 pounds net dry weight.

"Certification" or "certified" means the recognition granted by the Board of Agriculture and Consumer Services to an applicator upon satisfactory completion of board approved requirements.~~*~~

"Commercial applicator" means any person who has completed the requirements for certification as determined by the board to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.~~*~~

"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~*~~

"Department" means the Department of Agriculture and Consumer Services.~~*~~

"Distribute" or "distribution" means the act of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment or receiving and, having so received, delivering or offering to deliver, or releasing for shipment to any person in any state. The term includes the sale of pesticides to wholesalers, retailers, and other merchants or to industrial, institutional, and commercial businesses for use by the employees of the business.

"EPA" means the ~~United States~~ U.S. Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act as amended, and ~~herein~~ incorporated by reference in this chapter.

"Licensed" or "licensee" means those businesses which, upon meeting the requirements established by the Board of Agriculture and Consumer Services, are issued a license to engage in the sale, storage, distribution, ~~recommend the~~ recommendation for use, or application of pesticides in Virginia in exchange for compensation.~~*~~

"Limited household use" means the use of any general use pesticide product in or on a person's own dwelling and associated grounds such as lawn, garden, pool, or outbuildings. The term also means the use of a general use pesticide applied to animals owned as pets or raised for personal use and the use of personal use products such as mosquito repellents.

"Limited quantities" means purchases, at cost, for resale, of less than $50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

"Multiple violations" means more than one violation of the Act or regulations pursuant to the Act.

"Pest management consultant" means any person, who may or may not apply pesticides himself, who has obtained a business license in accordance with the requirements listed ~~below~~ in this chapter, and who is authorized by this chapter to provide technical advice, supervision or aid, or recommendations for pesticide application commercially in Virginia.

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses or bacteria, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is intended to become an active ingredient in any substance defined in clauses (i) and (ii) of this definition.~~*~~

"Pesticide business" means any person engaged in the business of distributing, applying, or recommending the use of a product~~;~~ or storing, selling, or offering for sale pesticides for distribution directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations that produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) of this definition are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.~~*~~

"Pesticide business location" means any ~~fixed~~ physical location of a pesticide business ~~with either a telephone that is~~ used to transact business ~~or give advice,~~ financial transactions, arrangement of services, or assignment of work or where products, supplies, or business mail is delivered. ~~Residences of service technicians who are employed by a licensed pesticide business are exempt, if no business solicitation is conducted from that location.~~ The term excludes buildings or locations, including employees' residences, used solely for storage of service vehicles, equipment, or supplies or telephone answering services.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~*~~

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the ~~United States~~ U.S. Environmental Protection Agency.~~*~~

"Sale" or "sell" means the transfer of goods to or to render services to another in exchange for compensation of any kind.

"Virginia Pesticide Control Act" or "Act" means Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

Part II
Procedures for Obtaining a Business License

2VAC5-680-20. General requirements for all pesticide businesses; exemptions.

A. Any person or business ~~operating in Virginia, which~~ that, in exchange for compensation, sells, stores, distributes, mixes, applies, or recommends for use pesticides~~,~~ in Virginia shall obtain a valid pesticide business license pursuant to this chapter. Each pesticide business location shall be licensed.

B. Exempted from the provisions of this chapter are the following:

1. Merchants of limited quantities of nonrestricted use pesticides who sell pesticides primarily intended for limited household use;

2. Federal, state and local governmental agencies;

3. Certified applicators not for hire; including those who use or supervise the use of pesticides as part of their job duties only on property owned or leased by themselves or their employer; and

4. Providers of janitorial, cleaning or sanitizing services if the providers use no pesticides other than sanitizers, disinfectants and germicides.

C. Application for a pesticide business license is made by submitting to the department (i) a completed application form ~~and,~~ (ii) a check or money order in the amount of the annual business license fee established by the board, and (iii) evidence of financial responsibility, as required in 2VAC5-680-80.

D. Each applicant for a pesticide business license, or an employee designated by the applicant, shall demonstrate to the commissioner his knowledge of (i) pesticide laws and regulations; (ii) potential hazards of pesticides to man and the environment; and (iii) safe distribution, use, and disposal of pesticides by passing a written examination prior to his being issued a business license. If the applicant is already certified as a commercial applicator, he shall be exempt from the initial examination requirement.

E. All licensed pesticide businesses shall maintain written records pertaining to their operations, as required in this chapter.

F. All licensed pesticide business locations or outlets which sell restricted use pesticides, or distribute restricted use pesticides for purposes of selling, shall have a certified commercial applicator present who shall bear immediate responsibility for the correct and safe operation of the location or outlet. Each business shall notify the department of the name of the commercial applicator assigned to each location or outlet, and shall also notify the department within three business days of any change in the applicator assignments during the license period.

G. All licensed pesticide businesses that store, repack and distribute bulk pesticides shall meet the requirements established by the board for the storage, repackaging and distribution of bulk pesticides.

H. All pesticide business licenses shall expire at midnight on March 3l of each year. Licensees shall renew their licenses annually by application to the department and payment of the annual fee on or before close of business March 31. The department shall charge a 20% penalty in addition to the regular fee for renewal applications filed after March 31.

2VAC5-680-60. Recordkeeping of restricted use pesticide sales by pesticide businesses.

A. Pesticide businesses that sell restricted use pesticides shall maintain a record of each restricted use pesticide sold. Each sales record shall contain the following:

1. Name, address, certified applicator number or business license number, and certificate or license expiration date of the person to whom the restricted use pesticide was sold or delivered;

2. Date of sale;

3. Brand, trademark, or ~~common~~ product name appearing on the product's label;

4. EPA registration number; and

5. Quantity of pesticide sold or delivered.

B. The restricted use pesticide sales recordkeeping requirement may be satisfied by invoices, if (i) such invoices are kept separate from the licensee's other sales records, and (ii) the invoices contain the ~~above~~ information required by subsection A of this section.

2VAC5-680-65. Recordkeeping of pesticide applications by licensed pesticide businesses.

Licensed pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, address, and telephone number of customer and address or location, if different, of site of application;

2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;

3. Day, month and year of application;

4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;

5. Acreage, area, or number of plants or animals treated;

6. Brand ~~name~~, trademark, or ~~common~~ product name appearing on the product's label;

7. EPA registration number;

8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and

9. Type of application equipment used.

2VAC5-680-70. Recordkeeping of pesticide applications by pesticide businesses.

Pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, address, and telephone number of customer and address or location, if different, of site of application;

2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;

3. Day, month and year of application;

4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;

5. Acreage, area, or number of plants or animals treated;

6. Brand ~~name~~, trademark, or ~~common~~ product name appearing on the product's label;

7. EPA registration number;

8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; and

9. Type of application equipment used.

Part IV
Evidence of Financial Responsibility

2VAC5-680-80. Evidence of financial responsibility required of a licensed pesticide business.

A. Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility, consisting of a liability insurance policy from a person authorized to do business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant.

B. The liability insurance policy shall meet the following conditions:

1. The certificate of insurance shall include the name of the insurance company, policy number, insurance amount, type of coverage afforded, any exclusions relating to damage arising from the use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating to completed operations.

2. The policy shall be in an amount specified in subsection C of this section.

3. The licensee shall forward a current certificate of insurance to the board at each insurance renewal date.

C. The amount of financial responsibility as provided for in this section shall be a minimum of $100,000 for property damage, and $100,000 for personal injury or death of one person; and $300,000 per occurrence. ~~The licensee shall maintain at least the minimum coverage at all times during the license period, and shall notify the board at least 10 days prior to any reduction at the request of the licensee or~~

~~cancellation of such financial responsibility by the insurer.~~ If the deductible of an applicant for a business license is greater than $1,000, evidence of financial responsibility shall be furnished to the board to satisfy the difference between the applicant's deductible and the $1,000 deductible. This evidence may consist of a financial statement.

D. The licensee shall maintain at least the minimum coverage at all times during the license period and shall notify the board at least 10 days prior to any reduction at the request of the licensee or cancellation of such financial responsibility by the insurer.

VA.R. Doc. No. R16-4506; Filed June 30, 2017, 3:08 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Effective Date: August 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) remove reference to red fox from the list of animals defined as domestic animals, (ii) clarify the definition of a European rabbit to differentiate between domestic rabbit breeds and wild European rabbits, and (iii) allow individuals who already own red foxes and European rabbits as pets to keep them in captivity until the animal dies, provided the individual declares such possession to the department prior to January 1, 2018.

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal," and "domestic animal."

A. In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's 2014 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's 2014 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus.

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries) including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa), including pot-bellied pig excluding any swine that are wild or for which no claim of ownership can be made.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

~~Domesticated races of red fox (Vulpes vulpes) where their coat color can be distinguished from wild red fox.~~

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated ~~races~~ breeds of European rabbit (Oryctolagus cuniculus) recognized by the American Rabbit Breeders Association, Inc. and any lineage resulting from crossbreeding recognized breeds. A list of recognized rabbit breeds is available on the department's website.

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (Columba domestica and Columba livia) and domesticated races of pigeons.

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.

B. Exception for red foxes and European rabbits. Domesticated red foxes (Vulpes vulpes) having coat colors distinguishable from wild red foxes and [wild] European rabbits possessed in captivity on July 1, 2017, may be maintained in captivity until the animal dies, but the animal may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes or European rabbits without a permit from the department must declare such possession in writing to the department by January 1, 2018. This written declaration must include the number of individual animals in possession and date acquired, sex, estimated age, coloration, and a photograph of each fox or European rabbit. This written declaration shall (i) serve as a permit for possession only, (ii) is not transferable, and (iii) must be renewed every five years.

VA.R. Doc. No. R17-5066; Filed June 29, 2017, 2:53 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-50).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Effective Date: August 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments authorize (i) Department of Game and Inland Fisheries staff, federal employees involved in wildlife management, animal control officers, and commercial nuisance animal permit holders to humanely dispatch wildlife when necessary and (ii) the department director to set policy regarding the methods of and documentation for the capture, possession, transport, release, and humane dispatch of wildlife.

4VAC15-30-50. Possession, transportation, and release of wildlife by authorized persons.

A. Department employees in the performance of their official duties; U.S. government agencies' employees whose responsibility includes fisheries and wildlife management; ~~and~~ county, city, or town animal control officers in the performance of their official duties related to public health concerns or problem wildlife removal~~;~~; and individuals operating under conditions of a commercial nuisance animal permit issued by the department pursuant to §§ 29.1-412 and 29.1-417 of the Code of Virginia will be deemed to be permitted pursuant to this section to capture, temporarily hold or possess, transport, release, and when necessary humanely ~~euthanize~~ dispatch wildlife, provided that the methods of and documentation for the capture, possession, transport, release, and ~~euthanasia~~ humane dispatch shall be in accordance with ~~board~~ director policy.

B. Local animal shelters operating under the authority of, or under contract with, any county, city, or town with animal control responsibilities shall be authorized to receive, temporarily confine, and humanely euthanize wildlife, except for state or federal threatened and endangered species; federally protected migratory bird species; black bear; white-tailed deer; and wild turkey, provided that the methods of and documentation for the possession, confinement, and euthanasia shall be in accordance with conditions defined by the agency director. Provided further that any person may legally transport wildlife, except for those species listed ~~above~~ in this subsection, to an authorized animal shelter after contacting the facility to confirm the animal will be accepted.

C. Employees or agents of other state wildlife agencies while in the performance of their official duty in transporting wildlife through the Commonwealth will be deemed to be permitted pursuant to this section, provided that a list of animals to be transported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a letter of authorization from both the forwarding and receiving state agencies are provided to the department 24 hours prior to the transporting of such animals, and further provided that such animals shall not be liberated within the Commonwealth.

D. Employees or agents of government agencies, while in the performance of their official duties, may temporarily possess, transport, and dispose of carcasses of wild animals killed by vehicles, except for state or federal threatened and endangered species, and federally protected migratory bird species.

E. With prior written approval from the director or his designee and under conditions of an applicable department permit, institutions with bona fide accreditation from the Association of Zoos and Aquariums may possess, transport,

have transported, export, or import native and naturalized species defined in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference into 4VAC15-20-50.

VA.R. Doc. No. R17-5067; Filed June 29, 2017, 12:42 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-40. Game: In General (amending 4VAC15-40-30, 4VAC15-40-275; adding 4VAC15-40-225, 4VAC15-40-287).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia (4VAC15-40-30, 4VAC15-40-225, and 4VAC15-40-275).

§§ 29.1-103, 29.1-501, and 29.1-527.2 (4VAC15-40-287).

Effective Date: August 1, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The amendments (i) add raccoons to the list of species that may be taken by the use or aid of recorded animal or bird calls or sounds; (ii) specifically allow humane dispatch methods for animals captured in traps; (iii) limit the requirement for a fur dealer permit to those who purchase raw fur or unskinned carcasses of fur-bearing animals; (iv) provide for the purchase and sale of pelts not defined as being raw, skinned carcasses, and other furbearer parts by any person at any time without a permit; (v) define "raw fur"; and (vi) provide a model ordinance for cities and towns to prohibit feeding deer.

4VAC15-40-30. Recorded wild animal or wild bird calls or sounds prohibited in taking game; bobcats, coyotes, crows, ~~and~~ foxes, and raccoons excepted.

It shall be unlawful to take or attempt to take wild animals and wild birds with the exception of bobcats, coyotes, crows, ~~and~~ foxes, and raccoons by the use or aid of recorded animal or bird calls or sounds or recorded or electrically amplified imitation of animal or bird calls or sounds; provided, that electronic calls may be used on private lands for hunting bobcats, coyotes, ~~and~~ foxes, and raccoons with written permission of the landowner and on public lands except where specifically prohibited.

4VAC15-40-225. Killing of animals captured in live traps permitted [~~; drowning of animals captured in cage traps prohibited~~].

It shall be lawful to kill wild animals legally captured in live traps using any humane method of dispatch not specifically prohibited by law [~~; however, it shall be unlawful to intentionally drown any wild animal captured in a cage or box trap~~].

4VAC15-40-275. Sale of furbearer pelts, carcasses, and parts.

~~Carcasses, including portions of carcasses, of legally taken and possessed fur-bearing animals may be sold at any time to buyers permitted~~ It shall be unlawful to buy, sell, barter, traffic or trade in, bargain for, or solicit for purchase raw pelts and unskinned carcasses of fur-bearing animals defined in § 29.1-100 of the Code of Virginia without having first obtained a fur dealer permit in accordance with §§ 29.1-400 through 29.1-407 of the Code of Virginia [~~. A~~, except that a] permit shall not be required of [~~any~~:

1. Any] hunter or trapper, or any person lawfully engaged in the business of fur farming, to sell or dispose of legally taken or possessed raw pelts and unskinned carcasses of fur-bearing animals at any time. [~~Provided further, that a permit shall not be required for any~~

2. Any person to purchase legally taken or possessed raw pelts or unskinned carcasses of fur-bearing animals at any time if the pelts are to be tanned or used in taxidermy mounts for personal use and not for resale, trade, or other commercial purposes.

3. Any] person to buy or sell at any time pelts that are not defined as being raw, skinned carcasses [, such as taxidermy mounts,] or any other parts of legally taken and possessed fur-bearing animals defined in § 29.1-100 of the Code of Virginia. Such parts shall include skulls, teeth, claws, bones, glands, and secretions. For the purposes of this section, "raw pelt" shall be defined as any pelt with its hair or fur intact that has not been tanned, cured, chemically preserved, or converted to any usable form beyond initial cleaning, stretching, and drying. Salt-cured and sun-cured pelts shall be considered raw pelts.

4VAC15-40-287. Model ordinances related to feeding of deer in cities and towns.

Per the provisions of § 29.1-527.2 of the Code of Virginia, the following model ordinance related to the feeding of deer may be adopted by a city or town. Any city or town must notify the director of the Department of Game and Inland Fisheries of the adoption of such an ordinance by registered mail.

Model ordinance:

A. Pursuant to § 29.1-527.2 of the Code of Virginia, it shall be unlawful for any person to place, distribute, or allow the placement of food, salt, minerals, or similar substances to feed or attract deer at any time.

B. No person shall continue to place, distribute, or allow the placement of food, salt, minerals, or similar substances for any purpose if the placement of these materials results in the presence of deer.

C. No part of this ordinance shall be construed to restrict agricultural, commercial, noncommercial, or residential plantings (including wildlife food plots); bona fide distribution of food to livestock; or wildlife management activities conducted or authorized by the Department of Game and Inland Fisheries.

VA.R. Doc. No. R17-5068; Filed June 29, 2017, 3:10 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-70. Game: Bobcat (amending 4VAC15-70-60).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

August 23, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: August 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments allow hunting bobcats with the slingbow, which is a type of bow and arrow.

4VAC15-70-60. Archery hunting with bow and arrow or crossbow.

A. Season. It shall be lawful to hunt bobcats with bow and arrow ~~or~~, crossbow, or slingbow from the first Saturday in October through October 31, both dates inclusive.

B. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow ~~or~~, crossbow, or slingbow during the special archery seasons.

C. Use of dogs prohibited during the special archery season. It shall be unlawful to use dogs when hunting with bow and arrow ~~or~~, crossbow, or slingbow during any special archery season.

VA.R. Doc. No. R17-5195; Filed July 5, 2017, 1:43 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-90. Game: Deer (amending 4VAC15-90-70).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Public Hearing Information:

August 23, 2017 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228

Public Comment Deadline: August 10, 2017.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendment allows a county participating in the urban archery deer hunting season to exclude geographic areas from the season, when consistent with the Department of Game and Inland Fisheries deer management objectives.

4VAC15-90-70. Archery hunting.

A. It shall be lawful to hunt deer during the early special archery season with archery equipment from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with archery equipment from the Sunday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), Patrick and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with archery equipment during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

E. It shall be unlawful to use dogs when hunting with archery equipment during any special archery season, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

F. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Sunday following the first Saturday in January through the last Sunday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season. When consistent with the department's deer management objectives and subject to the director's approval, a participating county may exclude from this season a geographic area or areas by submitting a clear description of such area or areas in a certified letter to the department prior to April 1.

G. It shall be lawful to hunt antlerless deer during the special antlerless archery season with archery equipment from the Monday following the last Sunday in March through the last Sunday in April, both dates inclusive, in Arlington, Fairfax, Loudoun, and Prince William counties (including the cities and towns within).

VA.R. Doc. No. R17-5196; Filed July 5, 2017, 1:25 a.m.

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-40, 4VAC20-270-51, 4VAC20-270-55).**

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

Effective Dates: July 5, 2017, through August 4, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendments modify (i) the 2017 and 2018 seasons for the harvest of crabs by crab pot, (ii) the time for harvesting at a higher bushel limit, and (iii) the start date of the lower bushel limit season.

4VAC20-270-40. Season limits.

A. In ~~2016~~ 2017, the lawful season for the commercial harvest of crabs by crab pot shall be March ~~17~~ 1 through ~~December 20~~ November 30. In ~~2017~~ 2018, the lawful season for the commercial harvest of crabs by crab pot shall be March ~~1~~ 17 through ~~December 20~~ November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be ~~April 21 through October 31 in 2016 and~~ April 1 through October 31 ~~in 2017~~.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish, or leave any hard crab pot in any tidal waters of Virginia from December ~~21, 2016~~ 1, 2017, through ~~February 28, 2017~~ March 16, 2018. It shall be unlawful for any person knowingly to place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot, or as described in 4VAC20-460-25, in any tidal waters of Virginia from November 1, ~~2016~~ 2017, through March 31, ~~2017~~ 2018.

D. It shall be unlawful for any person knowingly to place, set, fish, or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500-50.

E. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in the areas described in subdivision D 1 of this section.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.

3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than 3 bushels of crabs.

B. From July 5, ~~2016~~ 2017, through ~~November 15, 2016~~ October 31, 2017, and April 1, ~~2017~~ 2018, through July 4, ~~2017~~ 2018, any Commercial Fisherman Registration Licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. 10 bushels, or 3 barrels and 1 bushel, of crabs if licensed for up to 85 crab pots.

2. 14 bushels, or 4 barrels and 2 bushels, of crabs if licensed for up to 127 crab pots.

3. 18 bushels, or 6 barrels, of crabs if licensed for up to 170 crab pots.

4. 29 bushels, or 9 barrels and 2 bushels, of crabs if licensed for up to 255 crab pots.

5. 47 bushels, or 15 barrels and 2 bushels, of crabs if licensed for up to 425 crab pots.

C. From November ~~16, 2016~~ 1, 2017, through ~~December 20, 2016~~ November 30, 2017, and March ~~1, 2017~~ 17, 2018, through March 31, ~~2017~~ 2018, any Commercial Fisherman Registration Licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits for any of the following crab pot license categories:

1. 8 bushels, or 2 barrels and 2 bushels, of crabs if licensed for up to 85 crab pots.

2. 10 bushels, or 3 barrels and 1 bushel, of crabs if licensed for up to 127 crab pots.

3. 13 bushels, or 4 barrels and 1 bushel, of crabs if licensed for up to 170 crab pots.

4. 21 bushels, or 7 barrels, of crabs if licensed for up to 255 crab pots.

5. 27 bushels, or 9 barrels, of crabs if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, Commercial Fisherman Registration License number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a seafood buyers boat license and buy any crabs on any day.

4VAC20-270-55. Minimum size limits.

A. From March ~~1~~ 17 through July 15, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16 through ~~December 20~~ November 30, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16 through ~~December 20~~ November 30, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton Counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

VA.R. Doc. No. R17-5190; Filed June 28, 2017, 7:38 a.m.

Emergency Regulation

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-42, 4VAC20-490-46).**

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

Effective Dates: July 1, 2017, through July 31, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendments reduce the commercial spiny dogfish quota, clarify the yearly period, and streamline the buyer reporting process.

4VAC20-490-42. Spiny dogfish commercial quota and catch limitations.

A. ~~For the 12-month period of~~ From May 1~~, 2016,~~ of the current calendar year through April 30~~, 2017~~ of the following calendar year, the ~~spiny dogfish~~ commercial spiny dogfish landings quota shall be limited to ~~4,356,944~~ 4,220,814 pounds.

B. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

C. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia more than 5,250 pounds of spiny dogfish per day for commercial purposes. However, if landings are less than 80% of the quota specified in subsection A of this section, by February 15, 2017, it shall be unlawful to take, harvest, or possess aboard any vessel or to land in Virginia more than 6,000 pounds of spiny dogfish per day for commercial purposes.

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

F. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

4VAC20-490-46. Spiny dogfish monitoring requirements.

~~A. Any Virginia seafood buyer purchasing spiny dogfish shall provide written reports to the Marine Resources Commission of weekly landings for each registered commercial fisherman to include that commercial fisherman's registration license number and exact weight of the spiny dogfish landed, in pounds, until it is projected and announced that 80% of Virginia spiny dogfish quota has been landed.~~

~~B.~~ When it has been projected and announced by the Marine Resources Commission that 80% of the Virginia spiny dogfish quota has been landed, each Virginia seafood buyer shall call the Marine Resources Commission's interactive voice recording system on a daily basis to report the ~~daily landings for each registered commercial fisherman to include the commercial fisherman's registration license number and~~ exact weight of spiny dogfish ~~landed~~ received or purchased, in pounds, until it is projected and announced that the Virginia spiny dogfish quota has been landed and the fishery closed.

VA.R. Doc. No. R17-5189; Filed June 28, 2017, 7:36 a.m.

Emergency Regulation

Title of Regulation: **4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-20).**

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

Effective Dates: July 5, 2017, through August 4, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendment closes the crab dredge fishery season from December 1, 2017, through March 31, 2018.

4VAC20-1140-20. Crab dredging prohibited.

In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, ~~2016~~ 2017, through March 31, ~~2017~~ 2018, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

VA.R. Doc. No. R17-5188; Filed June 28, 2017, 7:39 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Effective Date

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-5, 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-155, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-440, 9VAC25-260-450, 9VAC25-260-470, 9VAC25-260-510, 9VAC25-260-520, 9VAC25-260-530, 9VAC25-260-540).**

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

Effective Date: June 27, 2017.

On January 14, 2016, the State Water Control Board adopted revisions to the Water Quality Standards in 9VAC25-260-5, 9VAC25-260-50, 9VAC25-260-140, 9VAC25-260-155, 9VAC25-260-185, 9VAC25-260-187, 9VAC25-260-310, 9VAC25-260-390, 9VAC25-260-400, 9VAC25-260-410,

9VAC25-260-415, 9VAC25-260-440, 9VAC25-260-450, 9VAC25-260-460, 9VAC25-260-470, 9VAC25-260-510, 9VAC25-260-520, 9VAC25-260-530, and 9VAC25-260-540. These revisions relate to water quality criteria, use designations, antidegradation, and other policies related to water quality. The amendments were published as final regulations in 32:26 VA.R. 3461-3542 August 22, 2016, to be effective upon the agency filing notice of U.S. Environmental Protection Agency (EPA) approval with the Registrar of Regulations. The State Water Control Board received a letter from Dominique Lueckenhoff, EPA Region III Regional Acting Director, Water Protection Division, dated June 5, 2017, that approved the amendments except for the amendment to 9VAC25-260-460, which removed a natural trout waters designation from Lovills Creek Lake; approval of that amendment was deferred. Therefore, the amendments to 9VAC25-260 in this regulatory action are effective as regulation with the exception of the EPA-deferred amendment in 9VAC25-260-460.

Agency Contact: David Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4032, TTY (804) 698-4021, toll free (800) 592-5482 ext. 4121, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R13-3788; Filed June 27, 2017, 1:18 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Proposed Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-220).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 22, 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 the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance, 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 according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Item 306 OOOO of Chapter 780 of the 2016 Acts of Assembly directs DMAS to cover low-dose computed tomography (LDCT) lung cancer screenings for high-risk adults.

Purpose: At present, DMAS does not cover LDCT screening for adults as a preventive service. There is evidence that this policy puts adults at increased risk of developing advanced-stage lung cancer. This regulatory action will permit DMAS to cover LDCT screenings for at-risk adults, thereby enabling DMAS to help make further reductions in lung cancer morbidity and mortality. Additionally, DMAS would align itself with established federal recommendations that support LDCT screening.

These regulatory changes will improve the health, safety, and welfare of the affected Medicaid individuals by providing care coordination and well-person preventive services. Additionally, this regulation will provide Medicaid coverage of annual LDCT lung cancer screening as a preventive measure, in the absence of symptoms, for at-risk beneficiaries.

Substance: DMAS has determined that this regulatory action is needed to increase the potential to diagnose lung cancer at earlier stages and reduce incidences of advanced-stage lung cancer and to help reduce the costs associated with lung cancer. The U.S. Preventive Services Task Force (USPSTF), an independent panel of experts authorized by Congress to make recommendations about specific preventive services for patients with no signs or symptoms of disease, issued a statement in 2013 giving LDCT scans a grade of "B" and recommending that certain individuals get an LDCT scan every year. Criteria include individuals between the ages of 55 and 80 years who are current smokers, have quit smoking within the last 15 years, or have a history of smoking at least one pack of cigarettes per day for 30 or more years.

The proposed amendment to 12VAC30-50-220 aligns Medicaid coverage with the coverage provided by Medicare and commercial health plans to achieve consistency among the fee-for-service and the managed care organization programs and to bring DMAS in line with USPSTF recommendations by providing for LDCT scans for certain individuals.

Issues: USPSTF estimates that a minimum of 20,000 lives can be saved each year through these preventive screenings. Nineteen percent of adults in Virginia were current smokers over the last several years compared to the national average of 17%. Additionally, according to the Centers for Medicare and Medicaid Services, nationwide 37% of Medicaid insured individuals smoke with total Medicaid expenditures attributable to smoking of nearly $22 billion annually, representing 11% of all expenditures. According to a Quit Now report, approximately 25% of Medicaid insured

individuals in Virginia were current smokers in 2015, a figure that has been as high as 27% in the past three fiscal years. DMAS currently covers LDCT for adults when it is deemed medically necessary (i.e., symptoms are present). As a result, lung cancer in the Medicaid population can go undetected until its third and fourth stages when treatment is most costly and morbidity is at its highest. Nationwide, only 16% of lung cancers are stage one (localized) at the time of diagnosis when the five-year survival rate is highest (nearly 55%), while 22% are stage two (having spread regionally) and 57% are stage three (having spread distantly). Tragically, the five-year survival rate is only 4.0% for stage three lung cancer and just over 27% for stage two.

In Virginia, there were 3,041 inpatient hospitalizations for lung cancer in 2012 (non-Medicaid as well as Medicaid) at a total cost of about $167 million. The average length of stay was 6.5 days, and the average cost per stay was $55,122.16. Moreover, because many studies only examine direct medical costs incurred during hospitalization, these figures underestimate the true economic consequences of undetected lung cancer.

By covering LDCT screenings as a preventive service, DMAS can help reduce lung cancer morbidity and mortality in Virginia. The procedure is safe, with no adverse effects to the recipient.

To establish the population that would benefit from preventive LDCT screenings, DMAS begins with the at-risk age range of individuals from 55 to 80 years of age. Since Medicare coverage (which begins at age 65) includes this service as a preventive measure, we can shorten the range to 55 to 64 years of age. For the past three state fiscal years, Virginia's average monthly Medicaid enrollment in this age range was approximately 21,684.17 Next, given that nearly 25% of Medicaid beneficiaries are current smokers, we can assume the at-risk population to be roughly 5,421.

The primary advantages to the public, the Agency, and the Commonwealth from this regulatory package include enhanced service delivery to Medicaid beneficiaries, and greater consistency between Virginia regulations and established federal recommendations which support LDCT screening. There are no disadvantages to the public or the Commonwealth as a result of these regulatory changes.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 780 of the 2016 Acts of Assembly, the Director (Director) of the Department of Medical Assistance Services (DMAS) proposes to provide Medicaid coverage of annual low-dose computed tomography (LDCT) lung cancer screening as a preventive measure, in the absence of symptoms, for at-risk beneficiaries.

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

Estimated Economic Impact. Under the current regulation DMAS does not cover LDCT screening for adults as a preventive service under Medicaid. The Director proposes to specify that "Low-dose computed tomography lung cancer screening shall be covered annually for individuals between the ages of 55 years and 80 years who are current smokers, have quit smoking within the last 15 years, or have a history of smoking at least one pack of cigarettes per day for 30 or more years." Lung cancer is by far the leading cause of cancer deaths accounting for 26% of all cancer deaths nationwide.[1] Each year, more people die of lung cancer than of colon, breast, and prostate cancers combined.[2] Nationally, individuals with lung cancer have a five-year relative survival rate of 54% if cancer is diagnosed in its earliest (localized) stage.[3] Unfortunately, most lung cancers have spread widely and are at an advanced stage by the time that they are first detected, making them very difficult to treat or cure. In Virginia, only 19% of lung cancers were diagnosed at the localized stage between 2007 and 2011.[4]

LDCT can be used to screen for those at high risk for lung cancer and help detect cancer earlier, thus lowering the risk of death. These screenings are safe for the patient, using lower amounts of radiation than a standard chest scan and not requiring the use of intravenous contrast dye.[5] A large clinical trial conducted by the U.S. National Institutes of Health, National Cancer Institute (the National Lung Screening Trial) compared LDCT screenings to standard chest x-rays in people at high risk of lung cancer to ascertain if these scans could help lower the risk of dying from lung cancer. The researchers concluded that LDCT scans provided more detailed pictures than chest x-rays and are better at finding small abnormalities in the lungs.[6] Additionally, certain cancer cells were detected at the earliest stage more frequently by LDCT screenings than by standard chest x-rays.[7] The researchers also found that people who got LDCT had a 16% lower chance of dying from lung cancer than those who got chest x-rays.[8]

Thus to the extent that covering LDCT lung cancer screening as a preventive measure in the absence of symptoms for at-risk beneficiaries leads to increased use of early LDCT use, the proposal would likely somewhat increase lung cancer survival rates in the Commonwealth. The annual cost for covering the LDCT lung cancer screening has been estimated to be $118,650 annually.[9] The benefits of likely increased survival rates would for most observers exceed the estimated costs.

Businesses and Entities Affected. The proposed amendment potentially affects health care facilities that provide lung cancer screenings and Medicaid recipients between the ages of 55 years and 80 years who are current smokers, have quit smoking within the last 15 years, or have a history of smoking at least one pack of cigarettes per day for 30 or more years.

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

Projected Impact on Employment. The proposed amendment may have a positive impact on employment for technicians who conduct LDCT lung cancer screenings.

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 significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

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[1] Source: U.S. National Institutes of Health, National Cancer Institute.

[2] Source: "Lung Cancer Prevention and Early Detection." American Cancer Society. Feb. 6, 2015.

[3] Source: American Cancer Society. "Cancer Facts & Figures 2014."

[4] Source: Virginia Cancer Registry. Based on combined 2007-2011 data. Incidence rates are age-adjusted to the 2000 U.S. standard population; Percent of Local Stage cancers reported using the Derived Summary Staging System.

[5] Source: "Lung Cancer Prevention and Early Detection." American Cancer Society. Feb. 6, 2015.

[6] Source: NIH, National Cancer Institute. National Lung Screening Trial, NLST Study Facts. Sep. 8, 2014.

[7] Ibid.

[8] Ibid.

[9] The $118,650 figure is the amount listed in the state budget for this service.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

Item 306 OOOO of Chapter 780 of the 2016 Acts of Assembly, the 2016 Appropriation Act, directs the Department of Medical Assistance Services to cover low-dose computed tomography lung cancer screenings for high-risk adults. The proposed amendment conforms the regulation to this requirement.

12VAC30-50-220. ~~Other diagnostic~~ Diagnostic, screening, preventive, and rehabilitative services~~, i.e.,~~ other than those provided elsewhere in this plan.

A. Diagnostic services are provided but only when necessary to confirm a diagnosis.

B. Screening services.

1. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

2. Screening PSA (prostate specific antigen) and the related DRE (digital rectal examination) for males shall be covered, consistent with the guidelines published by the American Cancer Society.

3. Screening Pap smears shall be covered annually for females, consistent with the guidelines published by the American Cancer Society.

4. Screening services for colorectal cancer, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations.

5. Low-dose computed tomography lung cancer screening shall be covered annually for individuals between the ages of 55 years and 80 years who are current smokers, have quit smoking within the last 15 years, or have a history of smoking at least one pack of cigarettes per day for 30 or more years.

C. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, are discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care," 4th Edition, August 1997, as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists. The mother and newborn, or the newborn alone if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied directly to an early discharge.

2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate

with the provider of his choice to provide the early discharge follow-up visit, within the following limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health departments' clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.

VA.R. Doc. No. R17-4949; Filed June 30, 2017, 3:33 p.m.

Proposed Regulation

Titles of Regulations: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-5).**

12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-570).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 22, 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 to make, adopt, promulgate, and enforce regulations to implement the state plan. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this action is to implement regulatory changes to more clearly reflect DMAS utilization review procedures. This action will not affect the health, safety, or welfare of Medicaid individuals or citizens of the Commonwealth.

Substance: Currently, DMAS regulations do not establish the steps that are involved in a utilization review. Specifically, the regulations do not include how a utilization review is initiated, what letters or communications are sent, and what the deadlines for document submission are. DMAS is proposing these regulations to provide greater clarity to providers, Medicaid members, and members of the public about this process. The proposed changes reflect current DMAS process and do not include changes in the utilization review process.

Issues: The advantages to these proposed changes are that they will provide more information and clarity to Medicaid and FAMIS providers and members and the general public about the utilization review process. There are no disadvantages to the public, businesses, or the Commonwealth related to these proposed changes.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Director (Director) of the Department of Medical Assistance Services (DMAS) proposes to amend these regulations to outline the process of utilization review for the Medicaid and State Children's Health Insurance Program (SCHIP) programs.

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

Estimated Economic Impact. Current regulations require service providers to maintain certain records and states that DMAS or its designee will perform reviews of the utilization of all Medicaid-covered services but does not detail how those reviews will take place. The Director proposes to expand the description of a utilization review to include rules for the utilization review that have been set by case law or are part of the provider agreement that all providers must sign in order to receive Medicaid reimbursement. This additional description includes a requirement that providers supply documentation to DMAS or its designee "immediately upon demand or upon a timeframe specified in writing by DMAS or its designee" and requirements for Preliminary Findings Letters and for additional documentation allowed.

As all additional requirements in the proposed regulations are already part of the enforceable contract between DMAS and providers, or are likely enforceable due to prior court decision, no providers are likely to incur costs on account of these proposed regulatory changes. To the extent that these proposed changes add clarity to the requirements for utilization reviews, all interested parties will benefit.

Businesses and Entities Affected. These proposed regulatory changes will affect all Medicaid and SCHIP providers.

Localities Particularly Affected. No locality is likely to be particularly affected by these proposed regulatory changes.

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

Effects on the Use and Value of Private Property. These proposed 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. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Localities. Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

Agency Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with the analysis.

Summary:

The proposed amendments standardize the utilization review process for all provider types, including (i) what letters are sent to providers, (ii) what documentation may be submitted and when it may be submitted, and (iii) what deadlines apply.

12VAC30-60-5. ~~Applicability of utilization~~ Utilization review ~~requirements.~~

A. ~~These utilization~~ The requirements in this section shall apply to all Medicaid covered services and all Medicaid providers unless otherwise specified.

1. Providers shall be required to maintain documentation detailing all required information about the individuals who are in the provider's care. Such documentation shall fully disclose the extent of services provided in order to support the provider's claims for reimbursement for services rendered. All provider documentation about individuals in the provider's care shall be written, signed, and dated at the time the services are rendered.

2. Medicaid providers shall provide all requested records to DMAS or its designee immediately upon demand or upon a timeframe specified in writing by DMAS or its designee.

3. Notwithstanding any other DMAS regulation, claims selected for utilization review shall not be corrected or re-billed.

B. DMAS or its designee shall perform utilization reviews of all Medicaid services.

1. A utilization review is initiated when DMAS or its designee:

a. Issues a written notice;

b. Requests onsite access to records;

c. Issues a preliminary findings letter; or

d. Commences a claims analysis.

2. After a utilization review is initiated, DMAS or its designee shall issue a preliminary findings letter. The preliminary findings letter shall include a date by which the provider may submit any additional documentation. DMAS or its designee shall only consider documentation identified and submitted by the provider prior to the specified deadline. DMAS or its designee shall only consider documentation that was created contemporaneously with the date of service.

3. Following a review of documentation submitted according to subdivision 2 of this subsection, if any, DMAS or its designee shall issue a final overpayment letter.

4. Providers who are determined not to be in compliance with DMAS requirements shall be subject to §§ 32.1-312 and 32.1-313 of the Code of Virginia, 12VAC30-80-130, and 12VAC30-90-250 through 12VAC30-90-257 for the repayment of any overpayments to DMAS that are identified in the final overpayment letter.

~~B.~~ C. Some Medicaid ~~covered~~ services require an approved service authorization prior to service delivery in order for reimbursement to occur. ~~1.~~ To obtain service authorization, all providers' information supplied to the Department of Medical Assistance Services (DMAS), service authorization contractor, or the behavioral health service authorization contractor shall be fully substantiated throughout individuals' medical records. ~~2. Providers shall be required to maintain documentation detailing all relevant information about the Medicaid individuals who are in providers' care. Such documentation shall fully disclose the extent of services provided in order to support providers' claims for reimbursement for services rendered. This documentation shall be written, signed, and dated at the time the services are rendered unless specified otherwise.~~

~~C. DMAS, or its designee, shall perform reviews of the utilization of all Medicaid covered services pursuant to 42 CFR 440.260 and 42 CFR Part 456.~~

~~D. DMAS shall recover expenditures made for covered services when providers' documentation does not comport with standards specified in all applicable regulations.~~

~~E. Providers who are determined not to be in compliance with DMAS requirements shall be subject to 12VAC30-80-130 for the repayment of those overpayments to DMAS.~~

~~F.~~ D. Utilization review requirements specific to the community mental health services~~, as set out~~ in 12VAC30-50-130 and 12VAC30-50-226~~,~~ shall be as follows:

1. To apply to be reimbursed as a Medicaid provider, the required Department of Behavioral Health and Developmental Services (DBHDS) license shall be either a full, annual, triennial, or conditional license. Providers must be enrolled with DMAS or the BHSA to be reimbursed. Once a health care entity has been enrolled as a provider, it shall maintain, and update periodically as DMAS requires, a current Provider Enrollment Agreement for each Medicaid service that the provider offers.

2. Health care entities with provisional licenses shall not be reimbursed as Medicaid providers of community mental health services.

3. Payments shall not be permitted to health care entities that either hold provisional licenses or fail to enter into a Medicaid Provider Enrollment Agreement for a service prior to rendering that service.

4. The behavioral health service authorization contractor shall apply a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual Criteria, or an equivalent standard authorized in advance by DMAS. Services that fail to meet medical necessity criteria shall be denied service authorization.

12VAC30-141-570. Utilization control - State Children's Health Insurance Program.

A. Each ~~MCHIP~~ managed care health insurance program shall implement a utilization review system as determined by contract with DMAS, or administered by DMAS.

B. For the fee-for-service program, DMAS shall use the utilization controls already established and operational in the State Plan for Medical Assistance, including those specified in 12VAC30-60-5.

C. DMAS may collect and review comprehensive data to monitor utilization after receipt of services.

VA.R. Doc. No. R16-4492; Filed June 30, 2017, 2:46 p.m.

Proposed Regulation

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

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-61).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (adding 12VAC30-80-97).

12VAC30-120. Waivered Services (amending 12VAC30-120-380).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 22, 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 to make, adopt, promulgate, and enforce regulations to implement the state plan, 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 according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Section 1905 of the Social Security Act requires state Medicaid programs to provide early and periodic screening, diagnosis, and treatment (EPSDT) services for individuals who are eligible under the plan and are younger than the age of 21 years, to include "Such other necessary health care, diagnostic services, treatment, and other measures described in § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." If an individual is determined through an EPSDT screening to need a medical service that is not otherwise covered in Virginia's State Plan, then this provision in federal law requires the Commonwealth to cover that service. Behavioral therapy services are an EPSDT service.

Purpose: The proposed regulatory action is intended to promote an improved quality of Medicaid-covered behavioral therapy services provided to children and adolescents. The proposed regulation will differentiate Medicaid's coverage of behavioral therapy and applied behavior analysis services from coverage of community mental health and other developmental services. This regulatory action is essential to protect the health, safety, and welfare of these affected individuals and to ensure the quality of services rendered to children and adolescents who demonstrate the medical need for EPSDT behavioral therapy services. Regulations are needed to establish clear criteria for Medicaid payment of these services. Regulatory action is needed to ensure that Medicaid individuals and their families and service providers are well informed about service specifications prior to receiving or providing these services. These services will allow children receiving services to improve interactions with their schools, families, communities, future employers, and jobs and thus benefit a broad range of citizens. These regulations are not expected to negatively affect the health, safety, or welfare of citizens of the Commonwealth.

Substance: Currently, Medicaid payment for behavioral therapy services is being authorized on an individual case basis under the authority provided by the basic EPSDT

definition found in 12VAC30-50-130 B. The absence of consistently applied definitions, service requirements, required provider qualifications, and quality assurance standards might result in arbitrary decisions that cannot be sustained in an appeal. With increasing numbers of children being diagnosed with autism and autism spectrum disorders in need of such services, the individual-case-basis method of covering these services is no longer satisfactory or appropriate.

DMAS proposes to initiate uniform coverage of behavioral therapy services for individuals under the age of 21 years who meet the medical necessity criteria. Trained professionals rendering early intensive treatment, including applied behavior analysis techniques, has been shown to be effective in ameliorating impairments in major life functions arising from autism spectrum disorders and other diagnosed conditions. Coverage of EPSDT behavioral therapy services will not cause more individuals to be eligible for this service but will ensure appropriate treatment of eligible children who are already in the care delivery system as well as those initiating behavioral therapy services.

Prior to treatment, an appropriate health care practitioner conducts an intake documenting the child's medical and psychiatric diagnosis and describing how service needs can best be met through behavioral therapy interventions. The assessment includes a description of the behavior or behaviors targeted for treatment, including data on the frequency, duration, and intensity of the behavior or behaviors. An individualized service plan (ISP) is developed based on the assessment. The ISP describes each targeted behavior, the behavioral modification strategy to be used to manage each targeted behavior, and the measurement and data collection methods to be used for each targeted behavior in the plan.

Behavioral analysis treatment strategies are systematic interventions that are primarily provided in the family home. Family training and counseling related to the implementation of the behavioral therapy shall be included as part of the behavioral therapy service. Behavioral therapy may be intermittently provided in community settings when approved settings are deemed by DMAS or its contractor as medically necessary treatment. These services are designed to enhance communication skills and decrease maladaptive patterns of behavior that, if left untreated, could lead to more complex problems and the need for a greater or a more restrictive level of care, such as institutionalization. Successful implementation of behavioral therapy services requires the participation of a parent or guardian.

The service goal is to ensure that the member's family is trained to successfully manage clinically designed behavioral modification strategies in the home setting. The family involvement in therapy is meant to increase the child's adaptive functioning by training the family in effective methods of behavioral modification strategies. Family members do not have to be present during all hours of therapy. Family members must be present and participate with their treatment plan objectives in an effective manner as documented by the clinical supervisor.

EPSDT behavioral therapy services are intended to improve the functional behaviors of the member by integrating multidisciplinary clinical and medical services with the behavioral therapy protocol to increase the member's adaptive functioning and communicative abilities. Treatment results must be documented to indicate a generalization of behaviors across different settings to maintain the targeted functioning outside of the treatment setting in the patient's residence and the larger community within which the individual resides.

Behavioral therapy services are currently excluded from Medicaid managed care contracts and reimbursed by the behavioral health services administrator (currently, Magellan) on a fee-for-service basis. Technical corrections are made to the catchlines of several existing services in 12VAC30-60-61 to create consistency in regulatory text and improve readability.

Issues: The proposed regulation is advantageous to individuals and their families by ensuring that Medicaid funded behavioral therapy services are provided by licensed practitioners with the education, experience, and clinical training necessary to effectively correct or ameliorate problematic behaviors through the use of evidence based behavior modification principles. Regulatory action will ensure that individuals, their families, and service providers are well informed about Medicaid service requirements prior to receiving or providing these services, thereby avoiding DMAS recovery of provider payments made for inappropriate or inadequate services. This regulatory action will also support the efforts of DMAS and its contractors to provide effective care coordination and administrative oversight of service delivery by clarifying provider requirements and service delivery requirements in the Virginia Administrative Code. The primary advantage to the Commonwealth, in the setting of these criteria and standards, will be the statewide uniform application of policies that should result in fewer costly provider appeals and reduced risks for fraud, waste, and abuse. There are no disadvantages to the Commonwealth for this action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed regulation establishes in the Virginia Administrative Code uniform and specific standards for diagnosis and provision of behavioral therapy services under Medicaid for young people from birth through the age of 21.

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

Estimated Economic Impact. The proposed regulation establishes in the Virginia Administrative Code Medicaid coverage for behavioral therapy services for young people

from birth through the age of 21 under the authority of the Early and Periodic Screening, Diagnosis and Treatment program. To be covered for this service, children and adolescents must have autism or autism spectrum disorders, or other similar developmental delays as demonstrated by their lack of communication skills or lack of interaction with their environments.

Prior to 2012 these services were already covered by Medicaid, but there were no uniform standards. The coverage decisions were made on a case-by-case basis. In 2012, the Department of Medical Assistance Services (DMAS) adopted a service manual setting out uniform rules for coverage and provision of behavioral therapy services (e.g., rules for provider enrollment, eligibility criteria, limitations, service authorization requirements, etc.). In December 2013, DMAS contracted Magellan Health to administer the provision of behavioral therapy services. Selection of a behavioral services administrator to run the program marked the beginning of a significant increase in provision of these services. In fiscal year 2013, 524 individuals received these services at a cost of approximately $12.2 million. In calendar year 2014, $28.2 million was spent on services provided to 1,831 individuals. In calendar year 2015, the expenditures and recipients increased to $41.6 million and 2,313, respectively. In calendar year 2016, expenditures stood at $60.6 million and the number of recipients was 2,996.

While the provision of behavioral therapy services has grown significantly in the recent past, the impact of the proposed regulation on utilization is expected to be neutral. These services have been provided according to the uniform standards set out in the service manual since 2012. Consistent with the service manual, this action specifies in the regulation the behavioral service requirements, medical necessity criteria, provider clinical assessment and intake procedures, service planning and progress measurement requirements, care coordination, clinical supervision, and other standards.

The main effect of the proposed changes is establishing clear criteria for Medicaid payment of these services in the Virginia Administrative Code and consequently providing legal basis for the programs administration. Having clear criteria in regulations is also expected to help protect the health, safety, and welfare of the affected children by improving the uniformity of service quality across providers.

Businesses and Entities Affected. As of August 2016, 348 behavioral therapy providers were credentialed with Magellan (only 89 of which actively provided services in 2016) and there were 488 licensed behavioral analysts and 103 licensed assistant behavioral analysts in the Commonwealth. In 2016, 2,996 individuals received these services.

Localities Particularly Affected. The proposed regulation does not disproportionally affect particular localities.

Projected Impact on Employment. No significant impact on employment is expected.

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

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

Small Businesses:

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

Costs and Other Effects. The Department of Medical Assistance Services estimates that 90% of the current providers are small businesses. The proposed amendments are not anticipated to create significant costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments are not anticipated to have an adverse impact on small businesses.

Adverse Impacts:

Businesses. DMAS estimates that 10% of the current providers are non-small businesses. The proposed amendments are not anticipated to create significant costs or other effects on non-small businesses.

Localities. The proposed amendments will not adversely affect localities.

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

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The proposed amendments establish Medicaid coverage for behavioral therapy services for children under the authority of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. EPSDT is a mandatory Medicaid-covered service that offers preventive, diagnostic, and treatment health care services to young people from birth through the age of 21 years. To be covered for this service, a child must have a psychiatric diagnosis relevant to the need for behavioral therapy services, including autism, autism spectrum disorders, or other similar developmental delays and must meet the medical necessity criteria. The proposed regulations define the behavioral therapy service requirements, medical necessity criteria, provider clinical assessment and intake procedures, service planning and progress measurement requirements, care coordination, clinical supervision, and other standards to assure quality. The behavioral therapy service will be reimbursed by DMAS outside of the Medallion 3 managed care contracts.

12VAC30-50-130. Nursing facility services, EPSDT, including school health services and family planning.

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

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

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

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

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

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

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

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

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

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

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

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

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

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

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

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

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

"EPSDT" means early and periodic screening, diagnosis, and treatment.

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

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

"Licensed mental health professional" or "LMHP" means a licensed physician, licensed clinical psychologist, licensed

psychiatric nurse practitioner, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

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

"LMHP-resident in psychology" or "LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident in Psychology" after their signatures to indicate such status.

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

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

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

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

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

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

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

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

diagnosis, (xiii) professional summary and clinical formulation, (xiv) recommended care and treatment goals, and (xv) the dated signature of the LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

"Services provided under arrangement" means the same as defined in 12VAC30-130-850.

b. Intensive in-home services (IIH) to children and adolescents under age 21 shall be time-limited interventions provided in the individual's residence and when clinically necessary in community settings. All interventions and the settings of the intervention shall be defined in the Individual Service Plan. All IIH services shall be designed to specifically improve family dynamics, provide modeling, and the clinically necessary interventions that increase functional and therapeutic interpersonal relations between family members in the home. IIH services are designed to promote psychoeducational benefits in the home setting of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from an out-of-home placement due to a documented medical need of the individual. These services provide crisis treatment; individual and family counseling; communication skills (e.g., counseling to assist the individual and his parents or guardians, as appropriate, to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); care coordination with other required services; and 24-hour emergency response.

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

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

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

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

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

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

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

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

d. Community-based services for children and adolescents under 21 years of age (Level A) pursuant to 42 CFR 440.031(d).

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

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

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

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

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

(6) These residential providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Behavioral Health and

Developmental Services under the Standards for Licensed Children's Residential Facilities (22VAC40-151), Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41), or Regulations for Children's Residential Facilities (12VAC35-46).

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

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

(9) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for intakes and ISPs are set out in 12VAC30-60-61.

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

e. Therapeutic behavioral services (Level B) pursuant to 42 CFR 440.130(d).

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

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

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

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

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

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

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

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

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

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

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays in inpatient psychiatric facilities described in 42 CFR 440.160(b)(1) and (b)(2) for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by (i) a psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations or (ii) a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the Commission on Accreditation of Rehabilitation Facilities. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric

hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of 12VAC30-130.

a. The inpatient psychiatric services benefit for individuals younger than 21 years of age shall include services defined at 42 CFR 440.160 that are provided under the direction of a physician pursuant to a certification of medical necessity and plan of care developed by an interdisciplinary team of professionals and shall involve active treatment designed to achieve the child's discharge from inpatient status at the earliest possible time. The inpatient psychiatric services benefit shall include services provided under arrangement furnished by Medicaid enrolled providers other than the inpatient psychiatric facility, as long as the inpatient psychiatric facility (i) arranges for and oversees the provision of all services, (ii) maintains all medical records of care furnished to the individual, and (iii) ensures that the services are furnished under the direction of a physician. Services provided under arrangement shall be documented by a written referral from the inpatient psychiatric facility. For purposes of pharmacy services, a prescription ordered by an employee or contractor of the facility who is licensed to prescribe drugs shall be considered the referral.

b. Eligible services provided under arrangement with the inpatient psychiatric facility shall vary by provider type as described in this subsection. For purposes of this section, emergency services means the same as is set out in 12VAC30-50-310 B.

(1) State freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order these services: (i) pharmacy services and (ii) emergency services.

(2) Private freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order these services: (i) medical and psychological services including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) outpatient hospital services; (iii) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (iv) laboratory and radiology services; (v) vision services; (vi) dental, oral surgery, and orthodontic services; (vii) transportation services; and (viii) emergency services.

(3) Residential treatment facilities, as defined at 42 CFR 483.352, shall arrange for, maintain records of, and ensure that physicians order these services: (i) medical and psychological services, including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) pharmacy services; (iii) outpatient hospital services; (iv) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (v) laboratory and radiology services; (vi) durable medical equipment; (vii) vision services; (viii) dental, oral surgery, and orthodontic services; (ix) transportation services; and (x) emergency services.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with (i) 42 CFR Part 441 Subpart D, specifically 42 CFR 441.151(a) and (b) and 441.152 through 441.156, and (ii) the conditions of participation in 42 CFR Part 483 Subpart G. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

d. Service limits may be exceeded based on medical necessity for individuals eligible for EPSDT.

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

8. Behavioral therapy services shall be covered for individuals under the age of 21 years.

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

"Behavioral therapy" means systematic interventions provided by licensed practitioners acting within the scope of practice defined under a Virginia Health Professions Regulatory Board and covered as remedial care under 42 CFR 440.130(d) within the home to individuals under 21 years of age. Behavioral therapy includes applied behavioral analysis and is primarily provided in the family home. Family counseling and training related to the implementation of the behavioral therapy shall be included as part of the behavioral therapy service. Behavioral therapy services shall be subject to clinical reviews and determined as medically necessary. Behavioral therapy may be intermittently provided in community settings when approved settings are deemed by DMAS or its contractor as medically necessary treatment.

"Individual" means the child or adolescent under the age of 21 who is receiving behavioral therapy services.

"Primary care provider" means a licensed medical practitioner who provides preventive and primary health care and is responsible for providing routine EPSDT

screening and referral and coordination of other medical services needed by the individual.

b. Behavioral therapy services shall be designed to enhance communication skills and decrease maladaptive patterns of behavior, which if left untreated, could lead to more complex problems and the need for a greater or a more intensive level of care. The service goal shall be to ensure the individual's family or caregiver is trained to effectively manage the individual's behavior in the home using modification strategies. The services shall be provided in accordance with the individual service plan and clinical assessment summary.

c. Behavioral therapy services shall be covered when recommended by the individual's primary care provider or other licensed physician, licensed physician assistant, or licensed nurse practitioner and determined by DMAS or its contractor to be medically necessary to correct or ameliorate significant impairments in major life activities that have resulted from either developmental, behavioral, or mental disabilities. Criteria for medical necessity are set out in 12VAC30-60-61 H. Service-specific provider intakes shall be required at the onset of these services in order to receive authorization for reimbursement. Individual service plans (ISPs) shall be required throughout the entire duration of services. The services shall be provided in accordance with the individual service plan and clinical assessment summary. These services shall be provided in settings that are natural or normal for a child or adolescent without a disability, such as his home, unless there is justification in the ISP, which has been authorized for reimbursement, to include service settings that promote a generalization of behaviors across different settings to maintain the targeted functioning outside of the treatment setting in the patient's residence and the larger community within which the individual resides. Covered behavioral therapy services shall include:

(1) Initial and periodic service-specific provider intake as defined in 12VAC30-60-61 H;

(2) Development of initial and updated ISPs as established in 12VAC30-60-61 H;

(3) Clinical supervision activities. Requirements for clinical supervision are set out in 12VAC30-60-61 H;

(4) Behavioral training to increase the individual's adaptive functioning and communication skills;

(5) Training a family member in behavioral modification methods;

(6) Documentation and analysis of quantifiable behavioral data related to the treatment objectives; and

(7) Care coordination.

~~8.~~ 9. Addiction and recovery treatment services shall be covered under EPSDT consistent with 12VAC30-130-5000 et seq.

C. School health services.

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

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

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

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

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

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

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

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

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

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

4. Covered services include:

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

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. The licensed practical nurse is under the supervision of a registered nurse.

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

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

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

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

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

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D (12VAC30-50-530). Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

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

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

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

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

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility or

services to promote fertility. Family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage, or make direct referrals for abortions.

3. Family planning services as established by § 1905(a)(4)(C) of the Social Security Act include annual family planning exams; cervical cancer screening for women; sexually transmitted infection (STI) testing; lab services for family planning and STI testing; family planning education, counseling, and preconception health; sterilization procedures; nonemergency transportation to a family planning service; and U.S. Food and Drug Administration approved prescription and over-the-counter contraceptives, subject to limits in 12VAC30-50-210.

12VAC30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health services for children; behavioral therapy services for children.

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

"At risk" means one or more of the following: (i) within the two weeks before the intake, the individual shall be screened by an LMHP for escalating behaviors that have put either the individual or others at immediate risk of physical injury; (ii) the parent/guardian is unable to manage the individual's mental, behavioral, or emotional problems in the home and is actively, within the past two to four weeks, seeking an out-of-home placement; (iii) a representative of either a juvenile justice agency, a department of social services (either the state agency or local agency), a community services board/behavioral health authority, the Department of Education, or an LMHP, as defined in 12VAC35-105-20, and who is neither an employee of nor consultant to the intensive in-home (IIH) services or therapeutic day treatment (TDT) provider, has recommended an out-of-home placement absent an immediate change of behaviors and when unsuccessful mental health services are evident; (iv) the individual has a history of unsuccessful services (either crisis intervention, crisis stabilization, outpatient psychotherapy, outpatient substance abuse services, or mental health support) within the past 30 days; (v) the treatment team or family assessment planning team (FAPT) recommends IIH services or TDT for an individual currently who is either: (a) transitioning out of residential treatment facility Level C services, (b) transitioning out of a group home Level A or B services, (c) transitioning out of acute psychiatric hospitalization, or (d) transitioning between foster homes, mental health case management, crisis intervention, crisis stabilization, outpatient psychotherapy, or outpatient substance abuse services.

"Failed services" or "unsuccessful services" means, as measured by ongoing behavioral, mental, or physical distress, that the service or services did not treat or resolve the individual's mental health or behavioral issues.

"Individual" means the Medicaid-eligible person receiving these services and for the purpose of this section includes children from birth up to 12 years of age or adolescents ages 12 through 20 years.

"Licensed assistant behavior analyst" means a person who has met the licensing requirements of 18VAC85-150 and holds a valid license issued by the Department of Health Professions.

"Licensed behavior analyst" means a person who has met the licensing requirements of 18VAC85-150 and holds a valid license issued by the Department of Health Professions.

"New service" means a community mental health rehabilitation service for which the individual does not have a current service authorization in effect as of July 17, 2011.

"Out-of-home placement" means placement in one or more of the following: (i) either a Level A or Level B group home; (ii) regular foster home if the individual is currently residing with his biological family and, due to his behavior problems, is at risk of being placed in the custody of the local department of social services; (iii) treatment foster care if the individual is currently residing with his biological family or a regular foster care family and, due to the individual's behavioral problems, is at risk of removal to a higher level of care; (iv) Level C residential facility; (v) emergency shelter for the individual only due either to his mental health or behavior or both; (vi) psychiatric hospitalization; or (vii) juvenile justice system or incarceration.

"Service-specific provider intake" means the evaluation that is conducted according to the Department of Medical Assistance Services (DMAS) intake definition set out in 12VAC30-50-130.

B. Utilization review requirements for all services in this section.

1. The services described in this section shall be rendered consistent with the definitions, service limits, and requirements described in this section and in 12VAC30-50-130.

2. Providers shall be required to refund payments made by Medicaid if they fail to maintain adequate documentation to support billed activities.

3. Individual service plans (ISPs) shall meet all of the requirements set forth in 12VAC30-60-143 B 7.

C. ~~Intensive~~ Utilization review of intensive in-home (IIH) services for children and adolescents.

1. The service definition for intensive in-home (IIH) services is contained in 12VAC30-50-130.

2. Individuals qualifying for this service shall demonstrate a clinical necessity for the service arising from mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals

must meet at least two of the following criteria on a continuing or intermittent basis to be authorized for these services:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that documented, repeated interventions by the mental health, social services or judicial system are or have been necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

3. Prior to admission, an appropriate service-specific provider intake, as defined in 12VAC30-50-130, shall be conducted by the licensed mental health professional (LMHP), LMHP-supervisee, LMHP-resident, or LMHP-RP, documenting the individual's diagnosis and describing how service needs can best be met through intervention provided typically but not solely in the individual's residence. The service-specific provider intake shall describe how the individual's clinical needs put the individual at risk of out-of-home placement and shall be conducted face-to-face in the individual's residence. Claims for services that are based upon service-specific provider intakes that are incomplete, outdated (more than 12 months old), or missing shall not be reimbursed.

4. An individual service plan (ISP) shall be fully completed, signed, and dated by either an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E and the individual and individual's parent/guardian within 30 days of initiation of services. The ISP shall meet all of the requirements as defined in 12VAC30-50-226.

5. DMAS shall not reimburse for dates of services in which the progress notes are not individualized and child-specific. Duplicated progress notes shall not constitute the required child-specific individualized progress notes. Each progress note shall demonstrate unique differences particular to the individual's circumstances, treatment, and progress. Claim payments shall be retracted for services that are supported by documentation that does not demonstrate unique differences particular to the individual.

6. Services shall be directed toward the treatment of the eligible individual and delivered primarily in the family's residence with the individual present. As clinically indicated, the services may be rendered in the community if there is documentation, on that date of service, of the necessity of providing services in the community. The documentation shall describe how the alternative community service location supports the identified clinical needs of the individual and describe how it facilitates the implementation of the ISP. For services provided outside of the home, there shall be documentation reflecting therapeutic treatment as set forth in the ISP provided for that date of service in the appropriately signed and dated progress notes.

7. These services shall be provided when the clinical needs of the individual put him at risk for out-of-home placement, as these terms are defined in this section:

a. When services that are far more intensive than outpatient clinic care are required to stabilize the individual in the family situation, or

b. When the individual's residence as the setting for services is more likely to be successful than a clinic.

The service-specific provider intake shall describe how the individual meets either subdivision a or b of this subdivision.

8. Services shall not be provided if the individual is no longer a resident of the home.

9. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful. The individual and responsible parent/guardian shall be available and in agreement to participate in the transition.

10. At least one parent/legal guardian or responsible adult with whom the individual is living must be willing to participate in the intensive in-home services with the goal of keeping the individual with the family. In the instance of this service, a responsible adult shall be an adult who lives in the same household with the child and is responsible for engaging in therapy and service-related activities to benefit the individual.

11. The enrolled ~~service~~ provider shall be licensed by the Department of Behavioral Health and Developmental Services (DBHDS) as a provider of intensive in-home services. The provider shall also have a provider enrollment agreement with DMAS or its contractor in effect prior to the delivery of this service that indicates that the provider will offer intensive in-home services.

12. Services must only be provided by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-C, or QMHP-E. Reimbursement shall not be provided for such services when they have been rendered by a QPPMH as defined in 12VAC35-105-20.

13. The billing unit for intensive in-home service shall be one hour. Although the pattern of service delivery may vary, intensive in-home services is an intensive service provided to individuals for whom there is an ISP in effect which demonstrates the need for a minimum of three hours a week of intensive in-home service, and includes a plan for service provision of a minimum of three hours of service delivery per individual/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the individual and family

initially with a lessening or tapering off of intensity toward the latter weeks of service. Service plans shall incorporate an individualized discharge plan that describes transition from intensive in-home to less intensive or nonhome based services.

14. The ISP, as defined in 12VAC30-50-226, shall be updated as the individual's needs and progress changes and signed by either the parent or legal guardian and the individual. Documentation shall be provided if the individual, who is a minor child, is unable or unwilling to sign the ISP. If there is a lapse in services that is greater than 31 consecutive calendar days without any communications from family members/legal guardian or the individual with the ~~service~~ provider, the provider shall discharge the individual. If the individual continues to need services, then a new intake/admission shall be documented and a new service authorization shall be required.

15. The provider shall ensure that the maximum staff-to-caseload ratio fully meets the needs of the individual.

16. If an individual receiving services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the ~~service~~ provider shall contact the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the individual's status. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date. ~~Service providers~~ Providers and case managers who are using the same electronic health record for the individual shall meet requirements for delivery of the notification, monthly updates, and discharge summary upon entry of the information in the electronic health records.

17. Emergency assistance shall be available 24 hours per day, seven days a week.

18. Providers shall comply with DMAS marketing requirements at 12VAC30-130-2000. Providers that DMAS determines violate these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

19. The provider shall determine who the primary care provider is and, upon receiving written consent from the individual or guardian, shall inform him of the individual's receipt of IIH services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

D. ~~Therapeutic~~ Utilization review of therapeutic day treatment for children and adolescents.

1. The service definition for therapeutic day treatment (TDT) for children and adolescents is contained in 12VAC30-50-130.

2. Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who (i) have deficits in social skills, peer relations or dealing with authority; (ii) are hyperactive; (iii) have poor impulse control; (iv) are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

3. The service-specific provider intake shall document the individual's behavior and describe how the individual meets these specific service criteria in subdivision 2 of this subsection.

4. Prior to admission to this service, a service-specific provider intake shall be conducted by the LMHP as defined in 12VAC35-105-20.

5. An ISP shall be fully completed, signed, and dated by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or QMHP-E and by the individual or the parent/guardian within 30 days of initiation of services and shall meet all requirements of an ISP as defined in 12VAC30-50-226. Individual progress notes shall be required for each contact with the individual and shall meet all of the requirements as defined in 12VAC30-50-130.

6. Such services shall not duplicate those services provided by the school.

7. Individuals qualifying for this service shall demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals shall meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that documented, repeated interventions by the mental health, social services, or judicial system are or have been necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

8. The enrolled provider of therapeutic day treatment for child and adolescent services shall be licensed by DBHDS to provide day support services. The provider shall also have a provider enrollment agreement in effect with DMAS prior to the delivery of this service that indicates that the provider offers therapeutic day treatment services for children and adolescents.

9. Services shall be provided by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-C or QMHP-E.

10. The minimum staff-to-individual ratio as defined by DBHDS licensing requirements shall ensure that adequate staff is available to meet the needs of the individual identified on the ISP.

11. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service shall be defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

12. Time required for academic instruction when no treatment activity is going on shall not be included in the billing unit.

13. Services shall be provided following a service-specific provider intake that is conducted by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP. An LMHP, LMHP-supervisee, or LMHP-resident shall make and document the diagnosis. The service-specific provider intake shall include the elements as defined in 12VAC30-50-130.

14. If an individual receiving services is also receiving case management services pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider shall collaborate with the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the individual's status. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date. ~~Service providers~~ Providers and case managers using the same electronic health record for the individual shall meet requirements for delivery of the notification, monthly updates, and discharge summary upon entry of this documentation into the electronic health record.

15. The provider shall determine who the primary care provider is and, upon receiving written consent from the individual or parent/legal guardian, shall inform him of the child's receipt of community mental health rehabilitative services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted. The parent/legal guardian shall be required to give written consent that this provider has permission to inform the primary care provider of the child's or adolescent's receipt of community mental health rehabilitative services.

16. Providers shall comply with DMAS marketing requirements as set out in 12VAC30-130-2000. Providers that DMAS determines have violated these marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

17. If there is a lapse in services greater than 31 consecutive calendar days, the provider shall discharge the individual. If the individual continues to need services, a new intake/admission documentation shall be prepared and a new service authorization shall be required.

E. ~~Community-based~~ Utilization review of community-based services for children and adolescents under 21 years of age (Level A).

1. The staff ratio must be at least 1 to 6 during the day and at least 1 to 10 between 11 p.m. and 7 a.m. The program director supervising the program/group home must be, at minimum, a QMHP-C or QMHP-E (as defined in 12VAC35-105-20). The program director must be employed full time.

2. In order for Medicaid reimbursement to be approved, at least 50% of the provider's direct care staff at the group home must meet DBHDS paraprofessional staff criteria, defined in 12VAC35-105-20.

3. Authorization is required for Medicaid reimbursement. All community-based services for children and adolescents under 21 (Level A) require authorization prior to reimbursement for these services. Reimbursement shall not be made for this service when other less intensive services may achieve stabilization.

4. Services must be provided in accordance with an individual service plan (ISP), which must be fully completed within 30 days of authorization for Medicaid reimbursement.

5. Prior to admission, a service-specific provider intake shall be conducted according to DMAS specifications described in 12VAC30-50-130.

6. Such service-specific provider intakes shall be performed by an LMHP, an LMHP-supervisee, LMHP-resident, or LMHP-RP.

7. If an individual receiving community-based services for children and adolescents under 21 (Level A) is also receiving case management services, the provider shall collaborate with the case manager by notifying the case manager of the provision of Level A services and shall send monthly updates on the individual's progress. When the individual is discharged from Level A services, a discharge summary shall be sent to the case manager

within 30 days of the service discontinuation date. ~~Service providers~~ Providers and case managers who are using the same electronic health record for the individual shall meet requirements for the delivery of the notification, monthly updates, and discharge summary upon entry of this documentation into the electronic health record.

F. ~~Therapeutic~~ Utilization review of therapeutic behavioral services for children and adolescents under 21 years of age (Level B).

1. The staff ratio must be at least 1 to 4 during the day and at least 1 to 8 between 11 p.m. and 7 a.m. The clinical director must be a licensed mental health professional. The caseload of the clinical director must not exceed 16 individuals including all sites for which the same clinical director is responsible.

2. The program director must be full time and be a QMHP-C or QMHP-E with a bachelor's degree and at least one year's clinical experience.

3. For Medicaid reimbursement to be approved, at least 50% of the provider's direct care staff at the group home shall meet DBHDS paraprofessional staff criteria, as defined in 12VAC35-105-20. The program/group home must coordinate services with other providers.

4. All therapeutic behavioral services (Level B) shall be authorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

5. Services must be provided in accordance with an ISP, which shall be fully completed within 30 days of authorization for Medicaid reimbursement.

6. Prior to admission, a service-specific provider intake shall be performed using all elements specified by DMAS in 12VAC30-50-130.

7. Such service-specific provider intakes shall be performed by an LMHP, an LMHP-supervisee, LMHP-resident, or LMHP-RP.

8. If an individual receiving therapeutic behavioral services for children and adolescents under 21 (Level B) is also receiving case management services, the therapeutic behavioral services provider must collaborate with the care coordinator/case manager by notifying him of the provision of Level B services and the Level B services provider shall send monthly updates on the individual's treatment status. When the individual is discharged from Level B services, a discharge summary shall be sent to the care coordinator/case manager within 30 days of the discontinuation date.

9. The provider shall determine who the primary care provider is and, upon receiving written consent from the individual or parent/legal guardian, shall inform him of the individual's receipt of these Level B services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted. If these individuals are children or adolescents, then the parent/legal guardian shall be required to give written consent that this provider has permission to inform the primary care provider of the individual's receipt of community mental health rehabilitative services.

G. Utilization review. Utilization reviews for community-based services for children and adolescents under 21 years of age (Level A) and therapeutic behavioral services for children and adolescents under 21 years of age (Level B) shall include determinations whether providers meet all DMAS requirements, including compliance with DMAS marketing requirements. Providers that DMAS determines have violated the DMAS marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000(E).

H. Utilization review of behavioral therapy services for children.

1. In order for Medicaid to cover behavioral therapy services, the provider shall be enrolled with DMAS or its contractor as a Medicaid provider. The provider enrollment agreement shall be in effect prior to the delivery of services for Medicaid reimbursement.

2. Behavioral therapy services shall be covered for individuals younger than 21 years of age when recommended by the individual's primary care provider, licensed physician, licensed physician assistant, or licensed nurse practitioner and determined by DMAS or its contractor to be medically necessary to correct or ameliorate significant impairments in major life activities that have resulted from either developmental, behavioral, or mental disabilities.

3. Behavioral therapy services require service authorization. Services shall be authorized only when eligibility and medical necessity criteria are met.

4. Prior to treatment, an appropriate service-specific provider intake shall be conducted, documented, signed, and dated by a licensed behavior analyst (LBA), licensed assistant behavior analyst (LABA), or LMHP, LMHP-R, LMHP-RP, or LMHP-S, acting within the scope of his practice, documenting the individual's diagnosis (including a description of the behavior or behaviors targeted for treatment with their frequency, duration, and intensity) and describing how service needs can best be met through behavioral therapy. The service-specific provider intake shall be conducted face-to-face in the individual's residence with the individual and parent or guardian. A new service-specific provider intake shall be conducted and documented every three months, or more often if needed, to observe the individual and family interaction, review clinical data, and revise the ISP as needed.

5. The ISP shall be developed upon admission to the service and reviewed within 30 days of admission to the service to ensure that all treatment goals are reflective of the individual's clinical needs and shall describe each treatment goal, targeted behavior, one or more measurable

objectives for each targeted behavior, the behavioral modification strategy to be used to manage each targeted behavior, the plan for parent or caregiver training, care coordination, and the measurement and data collection methods to be used for each targeted behavior in the ISP. The ISP shall be fully completed, signed, and dated by an LBA, LABA, LMHP, LMHP-R, LMHP-RP, or LMHP-S and the individual and individual's parent or guardian. The ISP shall be reviewed every three months (at the same time the service-specific provider intake is conducted and documented) and updated as the individual progresses and his needs change, but at least annually, and shall be signed by either the parent or legal guardian and the individual. Documentation shall be provided if the individual, who is a minor child, is unable or unwilling to sign the ISP.

6. Reimbursement for the initial service-specific provider intake and the initial ISP shall be limited to five hours without service authorization. If additional time is needed to complete these documents, service authorization shall be required.

7. Clinical supervision shall be required for Medicaid reimbursement of behavioral therapy services that are rendered by an LABA, LMHP-R, LMHP-RP, or LMHP-S or unlicensed staff consistent with the scope of practice as described by the applicable Virginia Department of Health Professions regulatory board. Clinical supervision shall occur at least weekly and, as documented in the individual's medical record, shall include a review of progress notes and data and dialogue with supervised staff about the individual's progress and the effectiveness of the ISP.

8. The following shall not be covered under this service:

a. Screening to identify physical, mental, or developmental conditions that may require evaluation or treatment. Screening is covered as an EPSDT service provided by the primary care provider and is not covered as a behavioral therapy service under this section.

b. Services other than the initial service-specific provider intake that are provided but are not based upon the individual's ISP or linked to a service in the ISP. Time not actively involved in providing services directed by the ISP shall not be reimbursed.

c. Services that are based upon an incomplete, missing, or outdated service-specific provider intake or ISP.

d. Sessions that are conducted for family support, education, recreational, or custodial purposes, including respite or child care.

e. Services that are provided by a provider but are rendered primarily by a relative or guardian who is legally responsible for the individual's care.

f. Services that are provided in a clinic or provider's office without documented justification for the location in the ISP.

g. Services that are provided in the absence of the individual and a parent or other authorized caregiver identified in the ISP with the exception of treatment review processes described in 12VAC30-60-61 H 11 e, care coordination, and clinical supervision.

h. Services provided by a local education agency.

i. Provider travel time.

9. Behavioral therapy services shall not be reimbursed concurrently with community mental health services described in 12VAC30-50-130 B 5 or 12VAC30-50-226, or behavioral, psychological, or psychiatric therapeutic consultation described in 12VAC30-120-756, 12VAC30-120-1000, or 12VAC30-135-320.

10. If the individual is receiving targeted case management services under the Medicaid state plan (defined in 12VAC30-50-410 through 12VAC30-50-491, the provider shall notify the case manager of the provision of behavioral therapy services unless the parent or guardian requests that the information not be released. In addition, the provider shall send monthly updates to the case manager on the individual's status pursuant to a valid release of information. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date. A refusal of the parent or guardian to release information shall be documented in the medical record for the date the request was discussed.

11. Other standards to ensure quality of services:

a. Services shall be delivered only by an LBA, LABA, LMHP, LMHP-R, LMHP-RP, LMHP-S, or clinically supervised unlicensed staff consistent with the scope of practice as described by the applicable Virginia Department of Health Professions regulatory board.

b. Individual-specific services shall be directed toward the treatment of the eligible individual and delivered in the family's residence unless an alternative location is justified and documented in the ISP.

c. Individual-specific progress notes shall be created contemporaneously with the service activities and shall document the name and Medicaid number of each individual; the provider's name, signature, and date; and time of service. Documentation shall include activities provided, length of services provided, the individual's reaction to that day's activity, and documentation of the individual's and the parent or caregiver's progress toward achieving each behavioral objective through analysis and reporting of quantifiable behavioral data. Documentation shall be prepared to clearly demonstrate efficacy using baseline and service-related data that shows clinical progress and generalization for the child and family members toward the therapy goals as defined in the service plan.

d. Documentation of all billed services shall include the amount of time or billable units spent to deliver the

service and shall be signed and dated on the date of the service by the practitioner rendering the service.

e. Billable time is permitted for the LBA, LABA, LMHP, LMHP-R, LMHP-RP, or LMHP-S to better define behaviors and develop documentation strategies to measure treatment performance and the efficacy of the ISP objectives, provided that these activities are documented in a progress note as described in subdivision 11 c of this subsection.

12. Failure to comply with any of the requirements in 12VAC30-50-130 or in this section shall result in retraction.

12VAC30-80-97. Fee-for-service: behavioral therapy services under EPSDT.

A. Payment for behavioral therapy services for individuals younger than 21 years of age shall be the lower of the state agency fee schedule or actual charge (charge to the general public). All private and governmental fee-for-service providers shall be reimbursed according to the same methodology. The agency's rates were set as of October 1, 2011, and are effective for services on or after that date until rates are revised. Rates are published on the agency's website at www.dmas.virginia.gov.

B. Providers shall be required to refund payments made by Medicaid if they fail to maintain adequate documentation to support billed activities.

12VAC30-120-380. MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the hospital emergency departments.

2. Services that shall be provided outside the MCO network shall include~~, but are not limited to,~~ those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include (i) dental and orthodontic services for children up to age 21 years; (ii) for all others, dental services (as described in 12VAC30-50-190), (iii) school health services, (iv) community mental health services (12VAC30-50-130 and 12VAC30-50-226); (v) early intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 (as defined in 12VAC30-50-131 ~~and 12VAC30-50-415), and~~); (vi) long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services; and (vii) behavioral therapy services as defined in 12VAC30-50-130.

3. The MCOs shall pay for emergency services and family planning services and supplies whether such services are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO and defined by the contract between DMAS and the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for members, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding member rights and shall comply with any applicable federal and state laws that pertain to member rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to members in accordance with 42 CFR 438.100.

3. Providers shall be required to refund payments if they fail to maintain adequate documentation to support billed activities.

E. The MCO shall ensure that the health care provided to its members meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the Commonwealth and the MCO. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs shall meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the Commonwealth and the MCO.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the member's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization

decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on members except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of a member who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R13-3527; Filed June 30, 2017, 3:41 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Proposed Regulation

Title of Regulation: **16VAC25-50. Boiler and Pressure Vessel Regulations (amending 16VAC25-50-10, 16VAC25-50-20, 16VAC25-50-30, 16VAC25-50-260, 16VAC25-50-280, 16VAC25-50-300, 16VAC25-50-330, 16VAC25-50-360, 16VAC25-50-370, 16VAC25-50-380, 16VAC25-50-430, 16VAC25-50-460, 16VAC25-50-540).**

Statutory Authority: § 40.1-51.6 of the Code of Virginia.

Public Hearing Information:

July 27, 2017 - 10 a.m. - South Main Street Centre, 600 East Main Street, 12th Floor Conference Room, Richmond, VA 23219

Public Comment Deadline: September 22, 2017.

Agency Contact: Ed Hilton, Director, Boiler Safety Compliance, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3169, FAX (804) 371-2324, or email ed.hilton@doli.virginia.gov.

Basis: The Safety and Health Codes Board is authorized by § 40.1-51 of the Code of Virginia to formulate definitions, rules, regulations, and standards that are designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance, and repair of boilers and pressure vessels in the Commonwealth.

Purpose: The purpose of this proposed regulatory action is to provide increased protection of human life, both employee safety and public safety, and property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia by complying with the most recent editions of industry required guidance documents.

Substance: The proposed amendments update the regulations to the most recent editions of certain national standards and forms, as listed below:

Standards

Boiler and Pressure Vessel Code, ASME Code, 2015, American Society of Mechanical Engineers (ASME)

ANSI/NB 23, National Board Inspection Code, 2015, National Board of Boiler and Pressure Vessel Inspectors

ASME B31.1, ASME Code for Power Piping, 2014, American National Standards Institute

NFPA 85, Boiler and Combustion Systems Hazards, 2015, National Fire Protection Association (NFPA)

Part CG (General), Part CW (Steam and Waterside Control) and Part CF (Combustion Side Control) Flame Safeguard of ANSI/ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers, 2012, American Society of Mechanical Engineers

API 510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, Tenth Edition, May 2014, American Petroleum Institute

Forms

Form R-1, Report of Repair, National Board Inspection Code (NBIC) NB-66 (rev.13 6/25/15)

Form R-2, Report of Alteration, National Board Inspection Code NB-229 (rev.7 11/12/15)

Form R-3, Report of Parts Fabricated By Welding, National Board Inspection Code NB-230 (rev.3 9/24/15)

Form R-4, Report Supplementary Sheet, National Board Inspection Code NB-231 (9/23/15).

Issues: The primary advantages to the public are the use of the latest editions of publications required for use by the boiler and pressure vessel industry and consistency with national references. These changes are deemed necessary to update the proposed regulations to the current editions of ASME, NBIC, and NFPA safety and inspection codes that are incorporated by reference into the Commonwealth's Boiler and Pressure Vessel Rules and Regulations. The most current editions of required documents, which contain the latest technological information, will provide both increased protection of human life (both employee safety and public safety) as well as protecting property from unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia. Companies that utilize the ASME, NBIC, and NFPA safety and inspection codes for construction or repair are already required to have and work to the latest editions of these codes. The proposed regulation causes no known disadvantages to private citizens or businesses.

The primary advantage for the Commonwealth associated with this proposed regulatory action is the use of the latest editions of the aforementioned publications for consistency with the boiler and pressure vessel industry nationwide. Virginia companies that utilize the ASME, NBIC, and NFPA safety and inspection codes for construction or repair are already required to have and work to the latest editions of these codes. The proposed regulation causes no known disadvantages to the Commonwealth.

Small Business Impact Review Report of Findings: This proposed regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review,[1] the Safety and Health Codes Board (Board) proposes to adopt the most current versions of several documents incorporated by reference that set out boiler and pressure vessel standards, as well as several forms.

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

Estimated Economic Impact. The Board proposes to adopt the following most recent published editions of safety and inspection codes already incorporated by reference into the regulation:

• 2015 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical

Engineers;

• ANSI/NB 23, 2015 National Board Inspection Code, National Board of Boiler and

Pressure Vessel Inspectors;

• ASME B31.1, ASME Code for Power Piping, American National Standards Institute,

2014;

• NFPA 85 Boiler and Combustion Systems Hazards, 2015 Edition, National Fire

Protection Association;

• Part CG (General), Part CW (Steam and Waterside Control) and Part CF (Combustion

Side Control) Flame Safeguard of ANSI/ASME CSD-1, Controls and Safety Devices for

Automatically Fired Boilers, 2012, American Society of Mechanical Engineers; and

• API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and

Alteration, Tenth Edition, May 2014, American Petroleum Institute.

These documents have not been updated in the regulation since 2008. The Department of Labor and Industry (DOLI) reports that the difference between the current and updated standards reflect the most recent technology available and will provide increased protection to human life and property. For the most part the updated standards do not increase costs for affected firms. The new standards specifically would require that new businesses with carbon dioxide (CO_2) tanks for liquid beverage dispensers have signs and CO_2 meters/alarms.[2]

CO_2 storage safety meters/alarms protect customers, employees and emergency first-responders near stored carbon dioxide. A leak anywhere in a stored CO_2 delivery system can quickly fill an enclosed area with potentially dangerous CO_2 levels. Higher concentrations of CO_2 can affect respiratory function and cause excitation followed by depression of the central nervous system. A high concentration can displace oxygen in the air. If less oxygen is available to breathe, symptoms such as rapid breathing, rapid heart rate, clumsiness, emotional upsets and fatigue can result. As less oxygen becomes available, nausea and vomiting, collapse, convulsions, coma and death can occur. Lack of oxygen can cause permanent damage to organs including the brain and heart.[3]

CO_2 storage safety meters/alarms (and signage) that meet the proposed standards would cost approximately $500.[4] Given the potential health risks of undetected CO_2 as described above, the benefits of the proposed requiring of CO_2 storage safety meters/alarms and informative signage likely exceeds the cost.

Businesses and Entities Affected. The proposed amendments potentially affect businesses that manufacture, repair, own, or operate boilers or pressure vessels. DOLI estimates that there are approximately 25,000 small businesses among these types of firms. New businesses with CO_2 tanks for liquid beverage dispensers, such as restaurants, convenience stores, breweries, etc., would be particularly affected.

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

Projected Impact on Employment. The proposed amendments would likely increase the demand for CO_2 storage safety meters/alarms. The firms that manufacture and/or sell them may commensurately increase 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 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 require that new small businesses that have CO_2 tanks for liquid

beverage dispensers have signs and CO_2 meters/alarms. This would increase costs for such small firms (restaurants, convenience stores, breweries, etc.) by about $500 for each area that has CO_2 tanks for liquid beverage dispensers.[5]

Alternative Method that Minimizes Adverse Impact. There is no apparent alternative method that meets the intended safety goals at a lower cost.

Adverse Impacts:

Businesses. The proposed amendments require that new businesses that have CO_2 tanks for liquid beverage dispensers have signs and CO_2 meters/alarms. This would increase costs for such firms (restaurants, convenience stores, breweries, etc.) by about $500 for each area that has CO_2 tanks for liquid beverage dispensers.[6]

Localities. The proposed amendments do not adversely affect localities.

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

[1] http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1496

[2] Virginia companies that utilize ASME, NBIC, and NFPA standards are already required to comply with the proposed standards.

[3] Source: Canadian Centre for Occupational Health and Safety: https://www.ccohs.ca/oshanswers/chemicals/chem_profiles/carbon_dioxide.html

[4] https://www.co2meter.com/products/remote-co2-storage-safety-alarm-ip65 viewed on April 20, 2017.

[5] Ibid

[6] Ibid

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

Summary:

The proposed regulatory action incorporates the most recent editions of nationally recognized model codes and forms produced by the American Society of Mechanical Engineers, the National Board of Boiler and Pressure Vessel Inspectors, and other standard-writing groups into the safety and inspection regulations for boilers and pressure vessels.

Part I
Definitions

16VAC25-50-10. Definitions.

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

"Act" means the Boiler and Pressure Vessel Safety Act, Chapter 3.1 (§ 40.1-51.5 et seq.) of Title 40.1 of the Code of Virginia.

"Alteration" means any change in the item described on the original Manufacturers' Data Report which affects the pressure containing capability of the boiler or pressure vessel. Non-physical changes, such as an increase in the maximum allowable working pressure (internal or external) or design temperature of a boiler or pressure vessel, shall be considered an alteration. A reduction in minimum temperature such that additional mechanical tests are required shall also be considered an alteration.

"ANSI/ASME CSD-1" means ASME CSD-1-2012, Controls and Safety Devices for Automatically Fired Boilers, 2012 Edition, American Society of Mechanical Engineers.

"API-510" means API-510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Tenth Edition, May 2014, American Petroleum Institute.

"Approved" means acceptable to the board, commissioner or chief inspector as applicable.

"ASME B31" means ASME B31.1-2014, Power Piping, an International Piping Code, The American Society of Mechanical Engineers.

"ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers ~~approved and adopted by the governing council of such society and approved and adopted by the board~~.

"Authorized inspection agency" means one of the following:

a. A department or division established by a state, commonwealth or municipality of the United States, or a province of Canada, which has adopted one or more sections of the ~~Boiler and Pressure Vessel Code of the~~ ASME Code and whose inspectors hold valid commissions with the National Board of Boiler and Pressure Vessel Inspectors; or equivalent qualifications as defined and set forth in 16VAC25-50-50 and 16VAC25-50-70;

b. An inspection agency of an insurance company which is authorized (licensed) to write boiler and pressure vessel insurance in those jurisdictions which have examined the agency's inspectors to represent such jurisdictions as is evident by the issuance of a valid certificate of competency to the inspector;

c. An owner-user inspection agency as defined in this section; or

d. A contract fee inspector.

"Board" means the Virginia Safety and Health Codes Board.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination of them, under pressure or vacuum for use externally to itself by the direct application of heat. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

"Certificate of competency" means a certificate issued by the commissioner to a person who has passed the prescribed examination as provided in 16VAC25-50-50. See §§ 40.1-51.9 and ~~40.1-51:9:1~~ 40.1-51.9:1 of the Act.

"Certificate inspection" means an inspection, the report of which is used by the chief inspector to decide whether or not a certificate, as provided for in § 40.1-51.10 of the Act may be issued. This certificate inspection shall be an internal inspection when required; otherwise, it shall be as complete an inspection as possible.

"Chief inspector" means the chief boiler and pressure vessel inspector of the Commonwealth.

"Commission, National Board" means the commission issued by the National Board to a holder of a Certificate of Competency for the purpose of conducting inspections in the Commonwealth in accordance with ~~the National Board Bylaws and~~ this chapter. The employer must submit the inspector's application to the National Board for a commission.

"Commissioner" means the Commissioner of the Department of Labor and Industry.

"Commonwealth inspector" means any agent appointed by the commissioner under the provisions of § 40.1-51.9 of the Act.

"Condemned boiler or pressure vessel" means a boiler or pressure vessel that has been inspected and declared unsafe for use or disqualified by legal requirements and to which a stamping or marking designating its condemnation has been applied by the chief or commonwealth inspector.

"Current edition of the ASME Code" means the 2015 Edition of the ASME Code, which has been adopted by the Safety and Health Codes Board.

"Department" means the Department of Labor and Industry.

"Division" means the Boiler Safety Enforcement Division of the Department of Labor and Industry.

"Electric boiler" means a boiler in which the source of heat is electricity.

"Examining board" means persons appointed by the chief inspector to monitor examinations of inspectors.

"Existing installation" means and includes any boiler or pressure vessel constructed, installed, placed in operation or contracted for before July 1, 1974.

"External inspection" means an inspection of the exterior of the boiler or pressure vessel and its appliances when the item is in operation.

"Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 psig, or a hot water boiler operating at pressures not exceeding 160 psig or temperature not exceeding 250°F at or near the boiler outlet.

"High-pressure, high-temperature water boiler" means a water boiler operating at pressures exceeding 160 psig or temperatures exceeding 250°F at or near the boiler outlet.

"Hobby boiler" means a steam boiler which serves no commercial purpose and is used solely for hobby or display and operated solely for the enjoyment of the owner.

"Hot water supply boiler" means a boiler furnishing hot water to be used externally to itself at pressures not exceeding 160 psig or temperatures not exceeding 250°F at or near the boiler outlet, with the exception of boilers which are directly fired by oil, gas or electricity where none of the following limitations ~~are~~ is exceeded:

a. Heat input of 200,000 BTU per hour;

b. Water temperature of 210°F; or

c. Nominal water containing capacity of 120 gallons.

"Hot water supply storage tanks" means those heated by steam or any other indirect means where any one of the following limitations ~~are~~ is exceeded:

a. Heat input of 200,000 BTU per hour;

b. Water temperature of 210°F; or

c. Nominal water containing capacity of 120 gallons.

"Inspection certificate" means a certificate issued by the chief inspector for the operation of a boiler or pressure vessel.

"Inspector" means the chief inspector, commonwealth inspector or special inspector.

"Internal inspection" means a complete examination of the internal and external surfaces of a boiler or pressure vessel and its appliances while it is shut down and manhole plates, handhole plates or other inspection openings removed.

"Lap seam crack" means a failure in a lap joint extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

"Miniature boiler" means any boiler which does not exceed any one of the following limits:

a. 16 inches inside diameter of shell;

b. 20 square feet heating surface;

c. 5 cubic feet gross volume, exclusive of casing and insulation; or

d. 100 psig maximum allowable working pressure.

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the ASME Code.

"National Board Inspection Code" means ~~the manual for boiler and pressure vessel inspectors published by the National Board. Copies of this code may be obtained from the National Board~~ NB-23, the National Board Inspection Code, 2015 Edition, The National Board of Boiler Pressure Vessel Inspectors.

"National Fire Protection Association No. 85" means the NFPA® 85, Boiler and Combustion Systems Hazards Code, 2015 Edition, National Fire Protection Association.

"New boiler or pressure vessel installation" means all boilers or pressure vessels constructed, installed, placed in operation or contracted for after July 1, 1974.

"NFPA" means the National Fire Protection Association.

"Nonstandard boiler or pressure vessel" means a boiler or pressure vessel that does not bear the stamp of Commonwealth of Virginia, the ASME stamp or the National Board stamp when applicable.

"Owner or user" means any person, partnership, firm or corporation who is legally responsible for the safe operation of a boiler or pressure vessel within the Commonwealth.

"Owner-user inspection agency" means any person, partnership, firm or corporation registered with the chief inspector and approved by the board as being legally responsible for inspecting pressure vessels which they operate in this Commonwealth.

"Portable boiler" means an internally fired boiler which is primarily intended for temporary location and whose construction and usage permit it to be readily moved from one location to another.

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig.

"Pressure vessel" means a vessel in which the pressure is obtained from an external source, or by the application of heat from an indirect source, or from a direct source, other than those boilers defined in Part I (16VAC25-50-10 et seq.) of this chapter.

"PSIG" means pounds per square inch gauge.

"R Certificate of Authorization" means an authorization issued by the National Board for the repair and alteration of boilers and pressure vessels.

"Reinstalled boiler or pressure vessel" means a boiler or pressure vessel removed from its original setting and reinstalled at the same location or at a new location.

"Repair" means work necessary to return a boiler or pressure vessel to a safe and satisfactory operating condition, provided there is no deviation from the original design.

"Secondhand boiler or pressure vessel" means a boiler or pressure vessel which has changed both location and ownership since the last certificate inspection.

"Special inspector" means an inspector holding a Virginia Certificate of Competency, and who is regularly employed by an insurance company authorized (licensed) to write boiler and pressure vessel insurance in this Commonwealth, an inspector continuously employed by any company operating pressure vessels in this Commonwealth used or to be used by the company, or a contract fee inspector.

"Standard boiler or pressure vessel" means a boiler or pressure vessel which bears the stamp of the Commonwealth of Virginia, the ASME Code stamp and the National Board stamp when applicable.

"Underwriters' Laboratories" means Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062, which is a nonprofit, independent organization testing for public safety. It maintains and operates laboratories for the examination and testing of devices, systems, and materials to determine their relation to life, fire, casualty hazards and crime prevention.

"VR Certificate of Authorization" means an authorization issued by the National Board for the repair of pressure relief valves.

"Water heater" means a vessel used to supply: (i) potable hot water; or (ii) both space heat and potable water in combination which is directly heated by the combustion of fuels, electricity, or any other source and withdrawn for use external to the system at pressures not to exceed 160 psi or temperatures of 210°F. This term also includes fired storage water heaters defined by the Virginia Uniform Statewide Building Code as a "water heater."

Part II
Administration

16VAC25-50-20. Minimum construction standards for boilers and pressure vessels.

A. Boilers and pressure vessels to be installed for operation in this Commonwealth shall be designed, constructed, inspected, stamped and installed in accordance with the applicable ASME ~~Boiler and Pressure Vessel~~ Code including all addenda and applicable code ~~case(s)~~ cases, other international construction standards which are acceptable to the chief inspector, and this chapter.

B. Boilers and pressure vessels shall bear the National Board stamping, except cast iron boilers and UM vessels. A copy of the Manufacturers' Data Report, signed by the manufacturer's representative and the National Board commissioned inspector, shall be filed by the owner or user with the chief inspector prior to its operation in the Commonwealth.

C. Pressure piping -- (including welded piping) -- Piping external to power boilers extending from the boiler to the first stop valve of a single boiler, and to the second stop valve in a battery of two or more boilers is subject to the requirements of the current edition of the ASME ~~Power Boiler~~ Code, Section I and the design, fabrication, installation and testing of the valves and piping shall be in conformity with the applicable paragraphs of the current edition of the ASME Code, Section I. Applicable ASME data report forms for this piping shall be furnished by the owner to the chief inspector. Construction rules for materials, design, fabrication, installation and testing both for the boiler external piping and the power piping beyond the valve or valves required by the current edition of the ASME ~~Power Boiler~~ Code, Section I~~,~~ are referenced in ~~ANSI~~ ASME B31.1, Power piping, and the ~~code~~ ASME Code.

D. Boilers and pressure vessels brought into the Commonwealth and not meeting ~~code~~ ASME Code requirements shall not be operated unless the owner/user is granted a variance in accordance with § 40.1-51.19 of the Act.

The request for variance shall include all documentation related to the boiler or pressure vessel that will provide evidence of equivalent fabrication standards, i.e., design specification, calculations, material specifications, detailed construction drawings, fabrication and inspection procedures and qualification records, examination, inspection and test records, and any available manufacturers' data report.

In order to facilitate such a variance approval, the submission of documentation, in the English language and in current U.S. standard units of measure would be helpful. The following list of documents, while not all inclusive, would be useful in providing evidence of safety equivalent to ASME Code construction:

1. List of materials used for each pressure part;

2. The design calculations to determine the maximum allowable working pressure in accordance with the ASME ~~Boiler and Pressure Vessel~~ Code, applicable section, edition and addenda;

3. The design code used and the source of stress values for the materials used in the design calculations;

4. The welding procedures used and the qualification records for each procedure;

5. The material identification for each type of welding material used;

6. The performance qualification records for each welder or welding operator used in the construction of the boiler or pressure vessel;

7. The extent of any nondestructive examination (NDE) performed and the qualification records of NDE operators;

8. Record of final pressure test signed by a third party inspector;

9. Name and organization of the third party inspection agency;

10. A certification from a licensed professional engineer stating that the boiler or pressure vessel has been constructed to a standard providing equivalent safety to that of the ASME ~~Boiler and Pressure Vessel~~ Code. A signature, date and seal of the certifying engineer ~~is~~ are required;

11. Where applicable, a matrix of differences between the actual construction of the boiler or pressure vessel for which a variance is requested and a similar boiler or pressure vessel that is ~~code~~ ASME Code stamped; and

12. Where applicable, a letter from an insurance company stating that it will insure the boiler or pressure vessel.

After notification of a violation of ~~these rules and regulations~~ this chapter, an owner/user desiring a variance shall submit a request for variance within 30 days.

The chief inspector shall respond to any request for a variance within 30 days of receipt of all required documentation~~,~~ and shall submit a recommendation to the commissioner, who will make the decision on the variance.

E. Before secondhand equipment is installed, application for permission to install shall be filed by the owner or user with the chief inspector and approval obtained.

F. Electric boilers, subject to the requirements of the Act and this chapter, shall bear the Underwriters' Laboratories label on the completed unit or assembly by the manufacturer. This label shall be in addition to the code symbol stamping requirements of the ASME Code and the National Board.

16VAC25-50-30. Frequency of inspections of boilers and pressure vessels.

A. Power boilers and high-pressure, high-temperature water boilers shall receive an annual internal inspection for certification. Such boilers shall also receive, where possible, an annual external inspection, given while under representative operating conditions.

B. Heating boilers shall receive a certificate inspection biennially.

1. Steam boilers shall receive an internal inspection where construction permits.

2. Water boilers shall receive an external inspection with an internal inspection at the discretion of the inspector where construction permits.

C. Except as provided for in subsection E of this section, pressure vessels subject to internal corrosion shall receive a certificate inspection biennially. This inspection shall be an internal inspection conducted at the discretion of the inspector where construction permits.

D. Except as provided for in subsection E of this section, pressure vessels not subject to internal corrosion shall receive a certificate inspection biennially. This inspection shall be an external inspection, with an internal inspection conducted at the discretion of the inspector where construction permits.

E. Pressure vessels that are under the supervision of an authorized owner-user inspection agency shall be inspected at intervals in a manner as agreed upon between the Commissioner and that agency.

F. Boiler and pressure vessel components of nuclear power plants~~,~~ that are included in the Act~~,~~ shall be inspected as provided by ~~Section XI of~~ the ASME ~~Boiler and Pressure Vessel~~ Code, Section XI.

G. Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the Commissioner may permit variations in the inspection requirements as provided in the Act.

16VAC25-50-260. Removal of safety appliances.

A. No person shall attempt to remove or do any work on any safety appliance prescribed by this chapter while a boiler or pressure vessel is in operation, except as provided in applicable sections of the current edition of the ASME Code. Should any of these appliances be removed for repair during an outage of a boiler or pressure vessel, they must be

reinstalled and in proper working order before the object is again placed in service.

B. No person shall load the safety valve or valves in any manner to maintain a working pressure in excess of that stated on the inspection certificate.

16VAC25-50-280. Requirements for new installations.

A. No boiler or pressure vessel shall be installed in this Commonwealth unless it has been constructed, inspected and stamped as provided in Part II, 16VAC25-50-20 except:

1. Those exempt by the Act;

2. Those outlined in Part II, 16VAC25-50-20 D; and

3. Those existing boilers and pressure vessels ~~which~~ that are to be reinstalled.

B. All new boiler and pressure vessel installations, including reinstalled and secondhand boilers and pressure vessels, shall be installed in accordance with the requirements of the current edition of the ASME Code and this chapter.

C. A boiler or pressure vessel constructed equivalent to ASME Code standards, or having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of this Commonwealth, may be accepted by the chief inspector. The person desiring to install the boiler or pressure vessel shall make application for the installation prior to construction and shall file the Manufacturers' Data Report for the boiler or pressure vessel with the chief inspector following construction and prior to installation.

D. The stamping shall not be concealed by insulation or paint and shall be exposed at all times unless a suitable record is kept of the location of the stamping so that it may be readily uncovered at any time this may be desired.

16VAC25-50-300. Return loop connection.

The return water connections to all low-pressure, steam heating boilers supplying a gravity return heating system shall be arranged to form a loop so that the water cannot be forced out of the boiler below the safe water level. This connection, known as a "return pipe loop connection," is shown in ~~Section IV,~~ the current edition of the ASME ~~Heating Boiler~~ Code, Section IV.

16VAC25-50-330. Operation.

The current edition of the ASME Code, Section VII, Recommended Rules for Care of Power Boilers, ~~Section VII,~~ and the current edition of the ASME Code, Section VI, Recommended Rules for Care of Heating Boilers, ~~Section VI, of the ASME Code,~~ shall be used as a guide for proper and safe operating practices.

Part III
Existing Installations

16VAC25-50-360. Power and high-pressure, high-temperature water boilers.

A. Age limit of existing boilers.

1. The age limit of any boiler of nonstandard construction, installed before July 1, 1974, other than one having a riveted, longitudinal lap joint, shall be 30 years; however, any boiler passing a thorough internal and external inspection~~,~~ and not displaying any leakage or distress under a hydrostatic pressure test of 1-1/2 times the allowable working pressure held for at least 30 minutes~~,~~ may be continued in operation without reduction in working pressure. The age limit of any boiler having riveted, longitudinal~~,~~ lap joints and operating at a pressure in excess of 50 psig shall be 20 years. This type of boiler, when removed from an existing setting, shall not be reinstalled for a pressure in excess of 15 psig. A reasonable time for replacement, not to exceed one year, may be given at the discretion of the chief inspector.

2. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted joint for either butt or lap joints shall be permanently removed from service.

3. The age limit of boilers of standard construction, installed before July 1, 1974, shall be determined from the results of a thorough internal and external inspection by an authorized inspector and the application of an appropriate pressure test. Hydrostatic test pressure shall be 1-1/2 times the allowable working pressure and maintained for 30 minutes. The boiler may be continued in service at the same working pressure provided there is no evidence of leakage or distress under these test conditions.

4. The minimum temperature of the water used for the hydrostatic test of low-pressure boilers and pressure vessels shall be 60°F. The minimum temperature of the water used for the hydrostatic test of power boilers shall be 70°F or ambient whichever is greater.

B. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed and stamped.

C. 1. The maximum allowable working pressure on the shell of a nonstandard boiler shall be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this chapter.

$$\frac{TStE}{RFS} = \text{Maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plates, psi

t = minimum thickness of shell plate, in weakest course, inches

E = efficiency of longitudinal joint:

For tube ligaments, E shall be determined by the rules in the ASME Code, Section I ~~of the ASME Code for Power Boilers~~. For riveted joints, E shall be determined by the rules in the applicable edition of the ASME Code. For seamless construction, E shall be considered 100%.

R = inside radius of the weakest course of the shell, in inches

FS = factor of safety permitted.

2. Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi.

3. Crushing strength of mild steel. The resistance to crushing of mild steel shall be taken at 95,000 psi of cross-sectional area.

4. Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch, of the cross-sectional area of the rivet shank shall be used.

	PSI
Iron rivets in single shear	38,000
Iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.

TABLE 1
SIZES OF RIVETS BASED ON PLATE THICKNESS
(in inches)

Plate of Thickness	Rivet Diameter after Driving
1/4	11/16
9/32	11/16
5/16	3/4
11/32	3/4
3/8	13/16
13/32	13/16
7/16	15/16
15/32	15/16
1/2	15/16
9/16	1-1/16
5/8	1-1/16

5. Factors of safety. The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it:

a. The lowest factor of safety permissible on existing installations shall be 4.5 for vessels built prior to January 1, 1999. For vessels built on or after January 1, 1999, the factor of safety may be 4.0. Horizontal-return-tubular boilers having continuous longitudinal lap seams more than 12 feet in length~~,~~ shall have a factor of safety of eight. When this type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.

b. Reinstalled or secondhand boilers shall have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt-strap and double-strap construction.

D. Cast-iron headers and mud drums. The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable-iron headers, or which have cast iron mud drums, shall not exceed 160 psig.

E. Pressure on cast iron boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.

F. Safety valves.

1. The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, shall be prohibited. Valves of this type shall be replaced by direct, spring-loaded, pop-type valves that conform to the requirements of the current edition of the ASME Code, Section I.

2. Each boiler shall have at least one safety valve, and, if it has more than 500 square feet of water-heating surface or an electric power input of more than 500 kilowatts, it shall have two or more safety valves.

3. The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler without unnecessary intervening pipe or fittings. Where alteration is required to conform to this requirement, the chief inspector shall allow the owner or user reasonable time in which to complete the work.

4. No valves of any description shall be placed between the safety valve and the boiler nor on the escape pipe, if used, between the safety valve and the atmosphere, except as provided by applicable sections of the current edition of the ASME Code. When an escape pipe is used, it shall be at least full size of the safety-valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety-valve outlet or the escape pipe shall be anchored and supported securely. All safety valve

discharges shall be located or piped as not to endanger persons working in the area.

5. The safety-valve capacity of each boiler shall be so that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and in no case to more than 6.0% above the maximum allowable working pressure.

6. One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3.0% above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

7. When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

8. In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boiler.

9. The relieving capacity of the safety valves on any boiler shall be checked by one of the three following methods and, if found to be insufficient, additional valves shall be provided:

a. By making an accumulation test, which consists of shutting off all other steam-discharge outlets from the boiler and forcing the fires to the maximum. The safety-valve capacity shall be sufficient to prevent a rise of pressure in excess of 6.0% of the maximum allowable working pressure. This method shall not be used on a boiler with a superheater or reheater.

b. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam-generating capacity) upon the basis of the heating value of this fuel. These computations shall be made as outlined in the appendix of the current edition of the ASME Code, Section I.

c. By measuring the maximum amount of feedwater that can be evaporated.

When either of the methods (b or c) outlined in this subdivision is employed, the sum of the safety-valve capacities shall be equal to or greater than the maximum evaporative capacity (maximum steam-generating capacity) of the boiler.

10. The relieving capacity of safety valves for forced-flow steam generators shall be in accordance with the requirements of ~~Section I~~ the current edition of the ASME ~~Boiler~~ Code, Section I.

11. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, its authorized representative or the holder of a "VR" Stamp.

G. Boiler feeding.

1. Each boiler shall have a feed supply ~~which~~ that will permit it to be fed at any time while under pressure.

2. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump or injector. A source of feed directly from water mains at a pressure 6.0% greater than the set pressure of the safety valve with the highest setting may be considered one of the means. As provided in the current edition of the ASME ~~Power Boiler~~ Code, Section I, boilers fired by gaseous, liquid or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input if the water feed is interrupted.

3. The feedwater shall be introduced into the boiler in a manner so that it will not be discharged close to riveted joints of shell or furnace sheets, or directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

4. The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve.

5. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable. No stop valves shall be placed in the supply and return pipe connections of a single boiler installation.

6. Where deaerating heaters are not employed, the temperature of the feedwater shall not be less than 120°F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, the minimum feedwater temperature shall not be less than 215°F so that dissolved gases may be thoroughly released.

H. Water level indicators.

1. Each boiler shall have at least one water gauge glass installed and located so that the lowest visible part of the water glass shall be at least two inches above the lowest permissible water level, at which level there will be no danger of overheating any part of the boiler when in

operation at that level; except as provided by the current edition of the ASME Code.

2. No outlet connections (except for damper regulator, feedwater regulator, low-water fuel cutout, drain, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water from it) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least 3/4 inch pipe size; the drain is to be piped to a safe location.

3. When the direct reading of gauge glass water level is not readily visible to the operator in his working area dependable indirect indications shall be provided utilizing remote level indicators or equipment to transmit the gauge glass image. When remote level indication is provided for the operator instead of the gauge glass, the minimum level reference shall be clearly marked.

I. Steam gauges.

1. Each steam boiler shall have a steam gauge, with dial range not less than 1-1/2 times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and arranged so that the gauge cannot be shut off from the boiler except by a cock with a tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. When a steam gauge connection longer than eight feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside-screw-and-yoke type and is locked open. The line shall be of ample size with provision for free blowing.

3. Each boiler shall be provided with a test gauge connection and suitable valving for the exclusive purpose of attaching a test gauge so that the accuracy of the boiler steam gauge may be ascertained while the boiler is in operation.

J. Stop valves.

1. Except for a single-boiler, prime-mover installation, each steam outlet from a boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

2. In a single-boiler, prime-mover installation the steam stop valve may be omitted provided the prime-mover throttle valve is equipped with an indicator to show whether the valve is open or closed and is designed to withstand the required hydrostatic pressure test of the boiler.

3. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.

4. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample free-blow drain between them. The discharge of the drain shall be visible to the operator and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

K. Blowoff connection.

1. The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.

2. All blowoff piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material constructed so that the piping may be inspected.

3. Each boiler shall have a blowoff pipe, fitted with a valve or cock, in direct connection with the lowest water space. Cocks shall be of the gland or guard type and suitable for the pressure allowed. The use of globe valves shall not be permitted. Where the maximum allowable working pressure exceeds 100 psig, each blowoff pipe shall be provided with two valves or a valve and cock; however only one valve need be provided for forced-flow steam generators with no fixed steam and waterline~~;~~, high-temperature water boilers, and those used for traction or portable purposes with less than 100 gallons normal water content.

4. Blowoff piping shall comply with the requirements of the current edition of the ASME Code, Section I~~,~~ and ~~ANSI~~ ASME B31.1, from the boiler to the valve or valves, and shall be run full size without use of reducers or bushings. All piping shall be steel. Galvanized steel pipe and fittings shall not be used for blowoff piping.

5. All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with this chapter for new installations.

L. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, such repairs or replacements shall comply with the requirements for new installations.

M. Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control device that will shut off the fuel supply to each boiler or system of commonly connected boilers when the steam pressure reaches a preset maximum operating pressure. In addition, each individual automatically fired steam boiler shall have a high steam pressure limit

control that will prevent generation of steam pressure in excess of the maximum allowable working pressure.

N. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations pursuant to 16VAC25-50-280 or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-370. Heating boilers.

A. Standard boilers. The maximum allowable working pressure of standard boilers shall in no case exceed the pressure indicated by the manufacturer's identification stamped or cast on the boiler or on a plate secured to it.

B. Nonstandard riveted boilers. The maximum allowable working pressure on the shell of a nonstandard riveted heating boiler shall be determined in accordance with 16VAC25-50-360 C covering existing installations, power boilers, except that in no case shall the maximum allowable working pressure of a steam heating boiler exceed 15 psig, or a hot water boiler exceed 160 psig or 250°F temperature.

C. Nonstandard welded boilers. The maximum allowable working pressure of a nonstandard steel or wrought iron heating boiler of welded construction shall not exceed 15 psig for steam. For other than steam service, the maximum allowable working pressure shall be calculated in accordance with ~~Section IV of~~ the ASME Code, Section IV.

D. Nonstandard cast iron boilers.

1. The maximum allowable working pressure of a nonstandard boiler composed principally of cast iron shall not exceed 15 psig for steam service or 30 psig for hot water service.

2. The maximum allowable working pressure of a nonstandard boiler having cast iron shell or heads and steel or wrought iron tubes shall not exceed 15 psig for steam service or 30 psig for hot water service.

E. Safety valves.

1. Each steam boiler must have one or more officially rated (ASME Code stamped and National Board rated) safety valves of the spring pop type adjusted to discharge at a pressure not to exceed 15 psig. Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided by the manufacturer, and this drain shall not be plugged during or after field installation. For valves exceeding two inch pipe size, the drain hole or holes shall be tapped not less than 3/8 inch pipe size. For valves less than two inches, the drain hole shall not be less than ~~¼~~ 1/4 inch in diameter.

2. No safety valve for a steam boiler shall be smaller than 3/4 inch unless the boiler and radiating surfaces consist of a self-contained unit. No safety valve shall be larger than 4-1/2 inches. The inlet opening shall have an inside diameter equal to, or greater than, the seat diameter.

3. The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

4. The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum BTU output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000~~;~~ or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. When operating conditions require it a greater relieving capacity shall be provided. In every case, the requirements of subdivision 5 of this subsection shall be met.

TABLE 2
Minimum Pounds of Steam Per Hour Per Square Foot of Heating Surface

	Fire Tube Boilers	Water Tube Boilers
Boiler Heating Surface:		
Hand fired	5	6
Stoker fired	7	8
Oil, gas, or pulverized fuel fired	8	10
Waterwall Heating Surface:		
Hand fired	8	8
Stoker fired	10	12
Oil, gas, or pulverized fuel fired	14	16

NOTES: When a boiler is fired only by a gas giving a heat value of not in excess of 200 BTU per cubic foot, the minimum safety valve or safety relief valve relieving capacity may be based on the value given for handfired boilers ~~above~~ in Table 2.

The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3-1/2 pounds per hour per kilowatt input.

For heating surface determination, see the current edition of the ASME Code, Section IV.

5. The safety valve capacity for each steam boiler shall be such that with the fuel burning equipment operating at maximum capacity, the pressure cannot rise more than five psig above the maximum allowable working pressure.

6. When operating conditions are changed, or additional boiler surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and be

in accordance with subdivisions 4 and 5 of this subsection. When additional valves are required, they may be installed on the outlet piping provided there is no intervening valve.

7. If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run (see the current edition of the ASME Code, Section ~~VI, Care of Heating Boilers)~~ VI).

8. No valve of any description shall be placed between the safety valve and the boiler, nor on the discharge pipe between the safety valve and the atmosphere. The discharge pipe shall be at least full size and be fitted with an open drain to prevent water lodging in the upper part of the safety valve or in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the safety valve outlet, or the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be so located or piped as not to endanger persons working in the area.

F. Safety relief valve requirements for hot water boilers.

1. Each hot water boiler shall have one or more officially rated (ASME Code stamped and National Board rated) safety relief valves set to relieve at or below the maximum allowable working pressure of the boiler. Safety relief valves officially rated as to capacity shall have pop action when tested by steam. When more than one safety relief valve is used on hot water boilers, the additional valve or valves shall be officially rated and shall be set within a range not to exceed six psig above the maximum allowable working pressure of the boiler up to and including 60 psig and 5.0% for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves shall be spring loaded. Safety relief valves shall be so arranged that they cannot be reset at a higher pressure than the maximum permitted by this paragraph.

2. No materials liable to fail due to deterioration or vulcanization when subject to saturated steam temperature corresponding to capacity test pressure shall be used for any part.

3. No safety relief valve shall be smaller than 3/4 inch nor larger than 4-1/2 inches standard pipe size, except that boilers having a heat input not greater than 15,000 BTU per hour may be equipped with a safety relief valve of 1/2 inch standard pipe size. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/2 inch diameter or its equivalent area.

4. The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in BTU at the boiler outlet obtained by the firing of any fuel for which the unit is installed by 1,000, or on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. When necessary a greater relieving capacity of valves shall be provided. In every case, the requirements of ~~subsection~~ subdivision F 6 of this section shall be met.

5. When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and shall be in accordance with subdivision F 6 of this section. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.

6. Safety relief valve capacity for each boiler shall be so that, with the fuel burning equipment installed and operated at maximum capacity the pressure cannot rise more than ~~6~~ six psig above the maximum allowable working pressure for pressure up to and including 60 psig and 5.0% of maximum allowable working pressures over 60 psig.

7. If there is any doubt as to the capacity of the safety relief valve, an accumulation test shall be run (see the current edition of the ASME Code, Section ~~VI, Care of Heating Boilers)~~ VI).

8. No valve of any description shall be placed between the safety relief valve and the boiler, nor on the discharge pipe between the safety relief valve and the atmosphere. The discharge pipe shall be at least full size and fitted with an open drain to prevent water lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the safety relief valve outlet or the discharge pipe shall be securely anchored and supported. All safety relief valve discharges shall be so located or piped as not to endanger persons working in the area.

G. Valve replacement and repair. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, its authorized representative, or the holder of a "VR" Stamp.

H. Pressure relieving devices. Boilers and fired storage water heaters except those exempted by the Act shall be equipped with pressure relieving devices in accordance with the requirements of ~~Section IV~~ the current edition of the of the ASME ~~Boiler and Pressure Vessel~~ Code, Section IV.

I. Instruments, fittings and control requirements. Instruments, fittings and controls for each boiler installation shall comply with the requirements of the current edition of the ASME ~~Heating Boiler~~ Code, Section IV.

J. Low water fuel cutoff.

1. Each automatically fired hot water heating boiler with heat input greater than 400,000 ~~BTU's~~ BTUs per hour shall have an automatic low water fuel cutoff ~~which~~ that has been designed for hot water service, located so as to stop the fuel supply automatically when the surface of the water falls to the level established in subdivision 2 of this

subsection (also see ASME ~~Heating Boiler~~ Code, Section IV).

2. As there is no normal waterline to be maintained in a hot water heating boiler, any location of the low water fuel cutoff above the lowest safe permissible water level established by the boiler manufacturer is satisfactory.

3. A coil type boiler or a water tube boiler with heat input greater than 400,000 ~~BTU's~~ BTUs per hour requiring forced circulation, to prevent overheating of the coils or tubes, shall have a flow sensing device installed in the outlet piping, instead of the low water fuel cutoff required in subdivision 1 of this subsection to stop the fuel supply automatically when the circulating flow is interrupted.

K. Steam gauges.

1. Each steam boiler shall have a steam gauge connected to its steam space, its water column, or its steam connection, by means of a siphon or equivalent device exterior to the boiler. The siphon shall be of sufficient capacity to keep the gauge tube filled with water and arranged so that the gauge cannot be shut off from the boiler except by a cock.

2. The range of the scale on the dial of a steam boiler pressure gauge shall be not less than 30 psig nor more than 60 psig. The gauge shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point. The travel of the pointer from ~~0~~ zero to full scale 30 psig shall be at least three inches.

L. Pressure or altitude gauges.

1. Each hot water boiler shall have a pressure or altitude gauge connected to it or to its flow connection in a manner so that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. The range of the scale on the dial of the pressure or altitude gauge shall be not less than 1-1/2 times nor more than three times the maximum allowable working pressure. The gauge shall be provided with effective stops for the indicating pointer at the ~~0~~ zero point and at the maximum pressure point.

3. Piping or tubing for pressure or altitude gauge connections shall be of nonferrous metal when smaller than one inch pipe size.

M. Thermometers. Each hot water boiler shall have a thermometer located and connected so that it shall be easily readable when observing the water pressure or altitude gauge. The thermometer shall be located so that it will at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.

N. Water gauge glasses.

1. Each steam boiler shall have one or more water gauge glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall be provided with a drain valve of the straightaway type with opening not less than 1/4 inch diameter to facilitate cleaning. Gauge glass replacement shall be possible while the boiler is under pressure.

2. Transparent material, other than glass, may be used for the water gauge provided that the material has proved suitable for the pressure, temperature and corrosive conditions encountered in service.

O. Stop valves and check valves.

1. If a boiler can be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system.

2. If any part of a heating system can be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe from that part of the system.

P. Feedwater connections.

1. Feedwater, make-up water, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection ~~which~~ that does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, make-up water, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, surface blowoff, water column, water gauge glass, pressure gauge or temperature gauge.

2. Feedwater piping shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

Q. Return pump. Each boiler equipped with a condensate return pump, where practicable, shall be provided with a water level control arranged to maintain the water level in the boiler automatically within the range of the gauge glass.

R. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with the requirements for new installations.

S. Conditions not covered by this chapter. Any case not specifically covered by this chapter shall be treated as a new boiler or pressure vessel installation pursuant to 16VAC25-50-280 or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-380. Pressure vessels.

A. Maximum allowable working pressure for standard pressure vessels. The maximum allowable working pressure for standard pressure vessels shall be determined in accordance with the applicable provisions of the edition of the ASME Code or API-ASME code under which they were constructed and stamped. The maximum allowable working

pressure shall not be increased to a greater pressure than shown on the manufacturers nameplate stamping and data report.

B. Maximum allowable working pressure for nonstandard pressure vessels.

1. For internal pressure. The maximum allowable working pressure on the shell of a nonstandard pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the weakest course and the factor set by this chapter.

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plate, psi. When the tensile strength of the steel plate is not known, it shall be taken as 55,000 psi for temperatures not exceeding 700°F.

t = minimum thickness of shell plate of weakest course, inches,

E = efficiency of longitudinal joint depending upon construction. Use the following values:

For riveted joints -- calculated riveted efficiency;

For fusion-welded joints:

Single lap weld	40%
Double lap weld	50%
Single butt weld	60%
Double butt weld	70%
Forge weld	70%
Brazed steel	80%

R = inside radius of weakest course of shell, inches, provided the thickness does not exceed 10% of the radius. If the thickness is over 10% of the radius, the outer radius shall be used.

FS = factor of safety allowed by this chapter.

2. For external pressure. The maximum allowable working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules in the ASME Code, Section VIII, Division 1~~, of the ASME Code~~.

3. Factors of safety. The minimum factor of safety shall in no case be less than 3.5 for vessels built on or after January 1, 1999. For vessels built prior to January 1, 1999, the minimum factor of safety shall in no case be less than 4.0. The factor of safety may be increased when deemed necessary by the inspector to insure the operation of the vessel within safe limits. The condition of the vessel and the particular service of which it is subject will be the determining factors.

4. The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from the ASME Code, Section VIII, Division 1~~, ASME Code~~ and the tensile strength and factors of safety given in subdivisions 1 and 3 of this subsection.

C. Inspection of inaccessible parts. Where in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove the materials to permit proper inspection and to establish construction details. Metal thickness shall be determined utilizing appropriate equipment including drilling if necessary.

D. Pressure relief devices. Pressure relief devices for each pressure vessel installation, not exempt by the Act, shall comply with the requirements of the ASME ~~Pressure Vessel~~ Code, Section VIII.

E. Safety appliances.

1. Each pressure vessel shall be protected by safety and relief valves and indicating and controlling devices which will insure its safe operation. These valves and devices shall be constructed, located and installed so that they cannot readily be rendered inoperative. The relieving capacity of the safety valves shall prevent a rise of pressure in the vessel of more than 10% above the maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be located or piped so as not to endanger persons working in the area.

2. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repairs shall be performed by the original manufacturer, its authorized representative, or the holder of a "VR" stamp.

F. Repairs and renewals of fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with requirements for new installations.

G. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-430. Hydrostatic pressure tests.

A. A hydrostatic pressure test, when applied to boilers or pressure vessels, shall not exceed 1.25 times the maximum allowable working pressure, except as provided by the current edition of the ASME Code. The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2.0%.

B. See 16VAC25-50-360 A 4 for temperature limitations on particular power boiler installations.

C. When a hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. For all cases involving the question of tightness, the pressure shall be equal to the working pressure.

2. For all cases involving the question of safety, the test pressure shall not exceed 1.25 times the maximum allowable working pressure for temperature. During such test the safety valve or valves shall be removed or each valve disk shall be held to its seat by means of a testing clamp and not by screwing down the compression screw upon the spring.

16VAC25-50-460. Blowoff equipment.

A. The blowdown from a boiler or boilers that enters a sewer system or blowdown which is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature as required below.

B. The temperature of the water leaving the blowoff equipment shall not exceed 140°F.

C. The pressure of the blowdown leaving any type of blowoff equipment shall not exceed ~~5.0~~ five psig.

D. The blowoff piping and fittings between the boiler and the blowoff tank shall comply with ~~Section I of~~ the current edition of the ASME ~~code~~ Code, Section I and ~~ANSI~~ ASME B31.1.

E. All materials used in the fabrication of boiler blowoff equipment shall comply with ~~Section II of~~ the current edition of the ASME ~~code~~ Code, Section II.

F. All blowoff equipment shall be fitted with openings to facilitate cleaning and inspection.

G. Blowoff equipment which conforms to the provisions set forth in the National Board publication, "Boiler Blowoff Equipment", shall meet the requirements of this section.

16VAC25-50-540. Jacketed kettles and miniatures boilers.

Jacketed kettles and miniature boilers are acceptable for installation if constructed and stamped in accordance with Section I, IV, or VIII, Division 1, of the current edition of the ASME ~~code~~ Code and registered with the National Board.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (16VAC25-50)

R 1 Form, Report of Welded __ Repair or __ Alteration, CVR1 Rev 1.0.

~~Form R-1, Report of Repair, National Board Inspection Code, NB-66 (rev. 2012).~~

~~Form R-2, Report of Alteration, National Board Inspection Code (eff. 1/1/99).~~

~~Form R-3, Report of Parts Fabricated By Welding, National Board Inspection Code (eff. 1/1/99).~~

~~Form R-4, Report Supplementary Sheet, National Board Inspection Code (eff. 1/1/99).~~

Form R-1, Report of Repair, NB-66, Rev. 13 (rev. 6/25/2015)

Form R-2, Report of Alteration, NB-229, Rev. 7 (rev.11/12/2015)

Form R-3, Report of Parts Fabricated by Welding, NB-230, Rev. 3 (rev. 9/24/2015)

Form R-4, Report Supplement Sheet, NB-231, Rev. 2, (rev. 9/23/2015)

BPV-5, Boiler or Pressure Vessel Data Report- First Internal Inspection (eff. 1/1/99)~~.~~

BPV-6, Boiler - Fired Pressure Vessel - Report of Inspection (eff. 1/1/99)~~.~~

DOCUMENTS INCORPORATED BY REFERENCE (16VAC25-50)

~~2007 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical Engineers.~~

~~National Board Bylaws, National Board of Boiler and Pressure Vessel Inspectors, August 8, 1996.~~

~~ANSI/NB-23, 2007 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors.~~

~~ASME B31.1, ASME Code for Power Piping, American National Standards Institute, 2007.~~

~~NFPA 85 Boiler and Combustion Systems Hazards, 2001 Edition, National Fire Protection Association.~~

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NFPA 85 Boiler and Combustion Systems Hazards, 2015 Edition, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471; www.nfpa.org

ANSI/ASME CSD–1–2012, Controls and Safety Devices for Automatically Fired Boilers: Part CG (General), Part CW (Steam and Waterside Control), and Part CF (Combustion Side Control) Flame Safeguard, The American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990; www.asme.org

API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair and Alteration, Tenth Edition, May 2014, American Petroleum Institute, 1220 L Street, NW, Washington, D.C. 20005-4070; www.api.org

"Boiler Blowoff Equipment," National Board ~~of Boiler and Pressure Vessel Inspectors,~~ Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991, The National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183; www.nationalboard.org

~~API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, Ninth Edition, June 2006, American Petroleum Institute.~~

VA.R. Doc. No. R16-4679; Filed June 30, 2017, 2:48 p.m.

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-50).**

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

Public Hearing Information:

September 19, 2017 - 10 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: September 22, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Nursing the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

Among the powers and duties of the Board of Nursing in § 54.1-3005 of the Code of Virginia is a provision relating to name tags for nurses in certain employment settings.

Purpose: The purpose of the proposed action is to promulgate a regulation that adequately protects nurses but also offers sufficient information for patients who need to know what type of practitioner is providing care and how to identify the practitioner in case there is evidence of unprofessional conduct. The board had to balance nurses' privacy and personal security concerns with its responsibility to adopt regulations that protect the public health and safety.

Substance: The proposed amendment specifies that the policy of the employment setting for name identification of health care practitioners can determine how the nurse's name is displayed on a name badge.

Issues: The primary advantage of the proposed amendment is greater flexibility and potentially greater protection for nurses who are concerned about their security both within and outside their practice setting. There are no disadvantages to the public because the badge must still indicate the appropriate title, so a patient would know whether this person is an RN, LPN, "patient care technician," or some other title. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In response to a petition for rulemaking,[1] the Board of Nursing (Board) proposes to amend the requirements for nurses identification badges.

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

Estimated Economic Impact. The current regulation requires that registered nurses (RNs) and licensed practical nurses (LPNs) wear identification that indicates the person's first and last name. It also provides for exceptions by stating that "Any person practicing in hospital emergency departments, psychiatric and mental health units and programs, or in health care facilities units offering treatment for clients in custody of state or local law-enforcement agencies may use identification badges with first name and first letter only of last name and appropriate title."

The Board proposes to eliminate the requirement that the badge indicates the person's first and last name, and instead state that "Name identification on a badge for identification of health care practitioners shall follow the policy of the health care setting in which the nurse is employed."[2] In both the current and proposed regulations, the identification badge would be required to have the person's appropriate title for the license, registration, or student status under which she is practicing.

In a survey of 320 nurses in the Commonwealth conducted by the Virginia Nurses Association, 81% preferred that that the badge not include their full name.[3] Concerns with safety and an increase in stalking were cited. The proposal to allow employers flexibility concerning name identification on the badge would potentially be beneficial in that some or many employers may choose to not have the full name listed, which may reduce the occurrences of stalking and harassment of nurses.

The proposed regulation keeps the requirement that the badge have the person's appropriate title, but does not require a minimum for name identification. An employer could potentially choose to not have the name on the badge at all. It seems likely though, that most employers would prefer to have a form of name (first name and last initial for example) on the badge so that patients or family members could correctly identify a nurse being referenced. Overall, the proposed amendments likely produce a net benefit.

Businesses and Entities Affected. The proposed amendments affect the 29,831 LPNs and 104,956 RNs licensed in the Commonwealth and their employers.[4] Most nurses work for medical practices, long-term care facilities, or hospital systems.

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

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

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1] More information about the petition can be found on the Virginia Regulatory Town Hall at http://townhall.virginia.gov/l/viewpetition.cfm?petitionid=249.

[2] The petition for rulemaking requested that the requirement that nurses include first and last name on identification badges be replaced with a requirement for only first name and last initial.

[3] See http://townhall.virginia.gov/L/viewcomments.cfm?commentid=55675.

[4] Data source: Department of Health Professions

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

Summary:

The proposed amendment requires that a nurse's name badge must follow the policy of the employment setting for name identification of health care practitioners.

18VAC90-19-50. Identification; accuracy of records.

A. Any person regulated by this chapter who provides direct client care shall, while on duty, wear identification that is clearly visible and indicates the ~~person's first and last name and the~~ appropriate title for the license, registration, or student status under which he is practicing in that setting. Name identification on a badge for identification of health care practitioners shall follow the policy of the health care setting in which the nurse is employed. Any person practicing in hospital emergency departments, psychiatric and mental health units and programs, or in health care facilities units offering treatment for clients in custody of state or local law-enforcement agencies may use identification badges with first name and first letter only of last name and appropriate title.

B. A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

C. Each licensee shall maintain an address of record with the board. Any change in the address of record or in the public address, if different from the address of record, shall be submitted by a licensee electronically or in writing to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any licensee shall be validly given when mailed to the latest address of record on file with the board.

VA.R. Doc. No. R17-05; Filed July 1, 2017, 1:11 p.m.

Proposed Regulation

Title of Regulation: **18VAC90-27. Regulations for Nursing Education Programs (amending 18VAC90-27-10, 18VAC90-27-220, 18VAC90-27-230).**

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

Public Hearing Information:

September 19, 2017 - 10:15 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: September 22, 2017.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Nursing the authority to promulgate

regulations to administer the regulatory system. In addition, § 54.1-3005 of the Code of Virginia provides authority for the board to approve nursing education programs.

Purpose: The purpose of the proposed regulatory action is to use national accreditation as a standard for demonstrated quality in nursing education, create more opportunities for financial aid for students, enhance employment opportunities, and facilitate academic progression for graduates to baccalaureate or master degrees.

Quality may be demonstrated by a higher percentage of graduates passing the national examination (NCLEX) from accredited nursing education programs. In 2014, 86% of graduates from accredited programs passed NCLEX, and 76% of graduates from nonaccredited programs passed. The board requires a passage rate of 80% over a three-year period to maintain approval of a nursing education program.

94% of employers in Virginia (predominantly hospitals) reported that accredited nursing programs have a large to moderate impact on clinical outcomes for registered nurses. Accreditation standards result in a quality education demonstrated in a number of ways, but most importantly, in the clinical care nurses provide to patients. Therefore, it is essential to protect the health and safety of citizens for the Board of Nursing to move toward accreditation of all registered nursing education programs.

The goal of this action is to align educational programs with recommendations of the National Council of State Boards of Nursing and the Institute of Medicines Future of Nursing report, which recommends increasing the proportion of nurses with a baccalaureate degree to 80% by 2020. Nurses from practical, associate, and diploma programs who graduate from nonaccredited programs will find it difficult, if not impossible, to obtain a baccalaureate degree. Graduates of nonaccredited programs will also find it increasingly difficult to find employment as employers, especially many hospitals, are hiring only baccalaureate degree nurses.

Substance: The proposed amendments require all prelicensure registered nursing education programs in Virginia to have accreditation or candidacy status with a national accrediting agency recognized by the U.S. Department of Education by the year 2020. The accrediting bodies currently recognized are the Commission on Collegiate Nursing Education (CCNE), the Accreditation Commission for Education in Nursing (ACEN), and the Commission for Nursing Education Accreditation. There will be no change for prelicensure programs preparing students for licensed practice nursing.

Issues: The primary advantage of the proposed amendments is greater assurance of quality in the didactic and clinical education for registered nurses. For graduates of such programs, there are advantages in employment opportunities and availability of graduate level education to further their careers. There are no disadvantages for nurses or the public.

There is an advantage to the board because accredited programs only have to be reevaluated every 10 years, whereas nonaccredited programs have to be reevaluated every five years, a process that consumes resources and personnel. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to require that each registered nursing (RN) education program be accredited or be a candidate for accreditation in order to maintain Board-approved status. Additionally, the Board proposes to expand the number of approved accrediting organizations for nursing education programs.

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

Estimated Economic Impact. The Regulations Governing Nursing Education Programs set out the requirements for RN education programs and licensed practical nursing education programs in Virginia.

Required Accreditation for RN Programs: Under the current regulation RN education programs do not need to be accredited in order to maintain board-approved status. Nonaccredited RN education programs are reevaluated at least every five years by submission of a comprehensive self-evaluation report and a survey visit by representatives of the Board. Accredited RN education programs are reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the Board. As evidence of compliance with specific requirements of this chapter, the Board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. According to the Department of Health Professions, all 33 bachelors' degree RN education programs in the Commonwealth are accredited. Of the 45 associates' degree RN education programs in Virginia, 26 are currently accredited and 19 are currently unaccredited.

The Board proposes to require that all RN education programs be accredited or be in accreditation candidacy status in order to maintain board approval. For programs that are not currently accredited and did not plan to pursue accreditation without the Board's proposed requirement, this proposal will introduce several thousand dollars of fees in acquiring and maintaining accreditation. For information on those fees, please see the appendices at the end of this document for fee schedules from three Board-recognized accrediting organizations. For at least some of the currently nonaccredited programs, there would be further additional cost in changing the program to meet the accrediting organization's requirements.

On the other hand, there would be some savings to offset costs for accreditation in that an accredited program only has to be reevaluated by the board every 10 years by submission of a report, and an accredited program may use its reports from the accredited body as evidence of compliance with Board regulations. A nonaccredited program has to be

reevaluated every 5 years and requires submission of a full report and a survey visit from a Board representative. Both the Board and the accredited programs would realize some savings by the longer period between reevaluation for continued approval by the Board. The cost for a survey visit by the Board is $2,200; an accredited program would realize that savings every 5 years.

There is some evidence that RNs from accredited nursing education programs perform better than RNs from unaccredited programs. Members of the Virginia Hospital & Healthcare Association were surveyed concerning the accreditation of nursing education programs. When asked whether they saw a difference in clinical practice between RNs from accredited nursing programs and nonaccredited nursing programs, 86% chose "Yes, RNs from accredited nursing school programs demonstrate a stronger and more in depth clinical practice than nurses from nonaccredited nursing school programs, versus 14% who chose "No, we do not see a difference in clinical practice between RNs from accredited and nonaccredited nursing school programs." When asked to evaluate the effect of nursing program accreditation on delivering quality clinical outcomes to patients within their institution, a) 74% chose "Accredited nursing school program RNs have a large impact on clinical outcomes," b) 20% chose "Accredited nursing school program RNs have a moderate impact on clinical outcomes," and c) 6% chose "Accredited nursing school program RNs do not have an impact on clinical outcomes." This implies, but does not establish,[1] that the health care provided by graduates of accredited nursing programs is superior to that provided by graduates of nonaccredited nursing programs and makes a positive difference in patient health outcomes. To the extent that this is accurate, the benefits of the proposed amendments likely exceed the costs.

Additional Accrediting Organizations: Under the current regulation "Accreditation" is defined as "having been accredited by the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, or a national nursing accrediting organization recognized by the board." The Board proposes to amend the definition to "having been accredited by an agency recognized by the U.S. Department of Education to include the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, the Commission for Nursing Education Accreditation, or a national nursing accrediting organization recognized by the board." The proposed new language is underlined. Additional options for accreditation can be beneficial for nursing education programs in that they may find options that are either more affordable or available, or match their mission better.

Businesses and Entities Affected. The proposed amendments potentially affect the 78 prelicensure RN education programs in the Commonwealth, as well as nursing students, employers of nurses such as hospitals, and patients. The 19 currently unaccredited RN education programs would be particularly affected.[2]

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

Projected Impact on Employment. The proposal to require accreditation for RN education programs to maintain Board-approved status may lead to the closing of a few propriety programs. This would eliminate employment at those programs. Most of the students who would have enrolled in those programs would likely enroll in a different Virginia program instead. Given the increased demand, at least some of the potential reduction in employment at the closing programs may be counterbalanced by increased employment at the programs with the potential increased demand.

Effects on the Use and Value of Private Property. The proposal to require accreditation for RN education programs to maintain Board-approved status may lead to the closing of a few propriety programs. If this were to happen, the property currently used to house these closing RN education programs would likely be used for a different purpose going forward.

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. Most of the RN education programs are either part of universities, community colleges, or national propriety college chains. There may be a few smaller proprietary programs. For these programs, if they are not already accredited or in candidacy status, the proposal to require accreditation for RN education programs to maintain Board-approved status would increase costs through accreditation fees and potentially in changing the program to meet the accrediting organization's requirements.

Alternative Method that Minimizes Adverse Impact. There is no clear alternative method that reduces adverse impact while still meeting the policy goal of increased minimum skills training for Board-approved RN education programs.

Adverse Impacts:

Businesses. The proposal to require accreditation for RN education programs to maintain Board-approved status would increase costs for proprietary RN education programs that are not already accredited.

Localities. The proposed amendments do not adversely affect localities.

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

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[1] Research that includes data on patients and their health outcomes linked with their nurses and their educational background, controlling for factors unrelated to the nurses' educational background that could affect health outcomes, would be needed to more firmly establish the actual impact.

[2] Data source: Department of Health Professions

Appendix A

3343 Peachtree Road NE Suite 850 | Atlanta, GA 30326 | P 404.975.5000 | F 404.975.5020 | www.acenursing.org

2017 SCHEDULE OF ACCREDITATION FEES

Effective January 1, 2017 through December 31, 2017

ANNUAL ACCREDITATION FEES	
Fee for Each Nursing Program	$ 2,875.00
Fee for Each Additional Program (within the same nursing education unit)	1,200.00
CANDIDACY FEE	
Fee for Each Nursing Program	$ 2,500.00
ACCREDITATION REVIEW FEE	
Processing Fee for Initial or Continuing Accreditation (per program)	$ 1,000.00
*Site Visit Fee (per evaluator per day)	915.00
SERVICE FEES	
Focused Visit Fee (plus expenses related to visit)	$ 2,350.00
Follow-Up Visit Fee (per evaluator per day)	915.00
Reprocessing/Reschedule Site Visit Fee	1,250.00
Administrative Appeal Fee	2,500.00
Notice of Intent to Appeal Fee (per program)	5,000.00
Appeal Process Fee (per program)	10,000.00
****ADVISORY FEES**	
Advisory Review Fee (video/tele-conference)	$ 1,000.00
Fee for each additional program (within the same nursing education unit)	500.00
Advisory Review Fee (on-site)	3,000.00
Fee for each additional program (within the same nursing education unit)	500.00
SELF-STUDY FORUM	
*Registration Fee (per attendee)	
1 or 2 attendee(s)	$ 475.00
3 or more attendees from the same nursing program	425.00

Payment of fees to the ACEN is an obligation for recognition of accreditation status.

The ACEN invoices programs for all evaluation processes and an annual accreditation fee.

Per Policy #7 Voluntary Withdrawal from ACEN Accreditation, the ACEN will deem as a voluntary withdrawal from accreditation any refusal or failure of an accredited program to pay its fees and expenses when due.

***Effective May 1st, 2016 through December 31st, 2017**
****Effective January 1st, 2017 through December 31st, 2017**

Appendix B

CCNE Fee Structure
Nursing Education Programs

ANNUAL FEE
The annual fee applies to all nursing degree programs that hold accreditation by CCNE.

	FY* 2016	FY 2017	FY 2018
One degree program (e.g., baccalaureate) with or without a certificate program	$2,567	$2,618	$2,670
Two degree programs (e.g., baccalaureate & master's) with or without a certificate program	$3,096	$3,158	$3,221
Three degree programs (e.g., baccalaureate, master's & DNP) with or without a certificate program	$3,625	$3,698	$3,772

In general, CCNE invoices accredited programs for the annual fee in May and the deadline for payment is July. New applicant programs are assessed a prorated annual fee 2-3 months after accreditation is granted. The annual fee will increase by 2% in FY 2019. Failure to pay the annual fee by the given deadline may result in an adverse action.

EVALUATION FEE
Programs are assessed a flat fee for hosting the on-site evaluation. This fee is intended to cover the team travel, lodging, and other expenses associated with the accreditation review process. This fee is based on the size of the evaluation team, not on the length of the on-site evaluation. An evaluation team typically comprises 3-5 individuals, depending on the number of program levels and the complexity of the program(s) under review.

	FY 2016	FY 2017	FY 2018
Fee per team member	$1,750	$1,750	$1,750

CCNE invoices the program for the evaluation fee in advance of the on-site evaluation. Failure to pay the evaluation fee by the given deadline may result in cancellation of the on-site evaluation or an adverse action.

NEW APPLICANT FEE
The new applicant fee applies to any program requesting new applicant status. This one-time fee must be submitted with the application for initial accreditation.

	FY 2016	FY 2017	FY 2018
One degree program (e.g., baccalaureate) with or without a certificate program	$3,500	$3,500	$3,500
Two degree programs (e.g., baccalaureate & master's) with or without a certificate program	$5,500	$5,500	$5,500
Three degree programs (e.g., baccalaureate, master's & DNP) with or without a certificate program	$7,500	$7,500	$7,500

NEW PROGRAM FEE
The fee to schedule the evaluation of a new degree or certificate program for accreditation applies to any institution that already has a CCNE-accredited degree program. This one-time fee must be submitted with the letter of intent to request an accreditation review of the new program.

	FY 2016	FY 2017	FY 2018
Fee to add a new degree/certificate program	$2,000	$2,000	$2,000

Appendix C

National League for Nursing
Commission for Nursing Education Accreditation

ACCREDITATION FEES
2015 - 2017

PRE-ACCREDITATION CANDIDACY APPLICANT FEES

One applicant program*	**$3200**
Two applicant programs	**$4700**
Three applicant programs	**$6200**
Four applicant programs	**$7000**
Institutional systems (1-2 programs)**	**$7700**
(single state, multi-campus; multi-state; or multi-institutional consortia)	

ACCREDITATION FEES (FLAT FEE, INITIAL OR CONTINUING)

One - two programs	**$6500**
Three programs	**$7500**
Four programs	**$8000**
Institutional systems (1-2 programs)**	**$9000**

ANNUAL FEES

One accredited program	**$2600**
Two accredited programs	**$3100**
Three - four accredited programs	**$3600**
Institutional systems (1-2 programs)**	**$4100**

ADDITIONAL NEW PROGRAM FEES

Per program added	**$1500**
*(to an already **CNEA** accredited nursing academic unit)*	

APPEAL FEES

Fee for appealing adverse actions	**$12000**

Please contact **CNEA** staff for international program fees.
NLN CNEA annual fees are due by January 15th of the respective calendar year. In accordance with NLN CNEA policy, payment of the annual fees is a requirement for maintaining NLN CNEA accreditation. Failure of the nursing academic unit to pay annual fees may result in loss of NLN CNEA accreditation status.

**Program is defined as a postsecondary program which leads to an academic degree, diploma or certificate.*

***Please contact **CNEA** staff before filing application to verify fee structure for your institutional system nursing unit.*

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

Summary:

The proposed amendments require all prelicensure registered nursing education programs in Virginia to have accreditation or candidacy status with a national accrediting agency recognized by the U.S. Department of Education by the year 2020 and add the Commission for Nursing Education Accreditation as an approved accrediting organization.

Part I
General Provisions

18VAC90-27-10. Definitions.

In addition to words and terms defined in § 54.1-3000 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by an agency recognized by the U.S. Department of Education to include the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, the Commission for Nursing Education Accreditation, or a national nursing accrediting organization recognized by the board.

"Advisory committee" means a group of persons from a nursing education program and the health care community who meets regularly to advise the nursing education program on the quality of its graduates and the needs of the community.

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Baccalaureate degree nursing program" or "prelicensure graduate degree program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate or a graduate degree with a major in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Board" means the Board of Nursing.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status that results when an approved nursing education program has failed to maintain requirements as set forth in this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide clinical or observational experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"Initial approval" means the status granted to a nursing education program that allows the admission of students.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma, or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia Department of Education or by an accrediting agency recognized by the U.S. Department of Education.

"Preceptor" means a licensed nurse who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting, providing clinical supervision.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved or maintain approval.

"SCHEV" means the State Council of Higher Education for Virginia.

"Site visit" means a focused onsite review of the nursing program by board staff, usually completed within one day for the purpose of evaluating program components such as the physical location (skills lab, classrooms, learning resources) for obtaining initial program approval, in response to a complaint, compliance with NCLEX plan of correction, change of location, or verification of noncompliance with this chapter.

"Survey visit" means a comprehensive onsite review of the nursing program by board staff, usually completed within two days (depending on the number of programs or campuses being reviewed) for the purpose of obtaining and maintaining full program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit, as well as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with faculty, administration, students, and clinical facility staff will occur.

18VAC90-27-220. Maintaining an approved nursing education program.

A. The program director of each nursing education program shall submit an annual report to the board.

B. ~~Each~~ Prior to (insert three years from the effective date of this regulation), each registered nursing education program shall be reevaluated as follows:

1. Every registered nursing education program that has not achieved accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every five years by submission of a comprehensive self-evaluation report based on Parts II (18VAC90-27-30 et seq.) and III (18VAC90-27-150 et seq.) of this chapter and a survey visit by a representative or representatives of the board on dates mutually acceptable to the institution and the board.

2. A registered nursing education program that has maintained accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If accreditation has been withdrawn or a program has been placed on probation by the accrediting body, the board may require a survey visit. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

After (insert three years from the effective date of this regulation), each registered nursing education program shall have accreditation or candidacy status and shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If a program has been placed on probation by the accrediting body, the board may require a survey visit. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

C. Each practical nursing education program shall be reevaluated as follows:

1. Every practical nursing education program that has not achieved accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every five years by submission of a comprehensive self-evaluation report based on Parts II (18VAC90-27-30 et seq.) and III (18VAC90-27-150 et seq.) of this chapter and a survey visit by a representative or representatives of the board on dates mutually acceptable to the institution and the board.

2. A practical nursing education program that has maintained accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If accreditation has been withdrawn or a program has been placed on probation by the accrediting body, the board may require a survey visit. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

D. Interim site or survey visits shall be made to the institution by board representatives at any time within the initial approval period or full approval period as deemed necessary by the board. Prior to the conduct of such a visit, the program shall submit the fee for a survey visit as required by 18VAC90-27-20.

~~D.~~ E. Failure to submit the required fee for a survey or site visit may subject an education program to board action or withdrawal of board approval.

18VAC90-27-230. Continuing and withdrawal of full approval.

A. The board shall receive and review the self-evaluation and survey reports required in 18VAC90-27-220 B or C or complaints relating to program compliance. Following review, the board may continue the program on full approval so long as it remains in compliance with all requirements in Parts II (18VAC90-27-30 et seq.), III (18VAC90-27-150 et seq.), and IV (18VAC90-27-210 et seq.) of this chapter.

B. If the board determines that a program is not maintaining the requirements of Parts II, III, and IV of this chapter or for causes enumerated in 18VAC90-27-140, the board may:

1. Place the program on conditional approval with terms and conditions to be met within the timeframe specified by the board; or

2. Withdraw program approval.

C. If the board either places a program on conditional approval with terms and conditions to be met within a timeframe specified by the board or withdraws approval, the following shall apply:

1. No further action will be required of the board unless the program requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

2. If withdrawal or continued program approval with terms and conditions is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

3. If the recommendation of the informal conference committee is accepted by the board or a panel thereof, the decision shall be reflected in a board order and no further action by the board is required unless the program requests a formal hearing within 30 days from entry of the order in accordance with § 2.2-4020 of the Code of Virginia.

4. If the decision of the board or a panel thereof following a formal hearing is to withdraw approval or continue on conditional approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

D. If a program approval is withdrawn, no additional students may be admitted into the program effective upon the date of entry of the board's final order to withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program must comply with board requirements regarding closure of a program as stated in 18VAC90-27-240.

VA.R. Doc. No. R17-4925; Filed July 1, 2017, 1:12 p.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-310).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 23, 2017.

Effective Date: September 7, 2017.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system and under a specific mandate of Chapter 82 of the 2016 Acts of Assembly.

The statutory authority for the board to promulgate regulations to regulate the security and integrity of drugs and devices is found in § 54.1-3307 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to offer more flexibility in dispensing Schedule II drugs, so the drug is not dispensed in a quantity beyond what the patient or prescriber initially desires. The prescriber may write for a seven-day supply, or a 14-day supply for a post-surgical patient, but the patient may prefer to try the drug for a few days before filling the full prescription. For example, a patient may be prescribed an opioid for pain after a procedure in the doctor's office. To avoid having a quantity of drugs, which may or may not be needed, he may request a partial fill with the ability to have the remainder dispensed if necessary. The partial fill may provide a cost-savings advantage, especially for self-pay patients, but the primary advantage would be the potential of having fewer unused or unnecessary Schedule II drugs available for abuse or diversion. The goal is to meet a patient's need for medication but offer greater protection for public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The ability for a pharmacist to partially fill a Schedule II prescription at the request of a patient or a prescriber is consumer friendly, less restrictive, and not controversial. Therefore, the fast-track rulemaking process is appropriate.

Substance: Regulations for partial dispensing of a Schedule II controlled substance are amended to allow a partial fill if requested by the patient or the prescriber and if (i) the total quantity of all partial fillings does not exceed the total prescribed, (ii) the prescription is written and filled in accordance with state and federal law, and (iii) the remaining portions are filled not later than 30 days from the original date on the prescription.

Issues: The advantage to the public is an option for partial filling of a Schedule II prescription as requested. There are no disadvantages to the public. There are no advantages or disadvantages to this agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to allow a partial fill of a Schedule II prescription if requested by the patient or the prescriber under specified conditions. Schedule II

prescriptions include opiates such as morphine and oxycodone, as well as other drugs.[1]

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

Estimated Economic Impact. The current regulation permits partial filling of Schedule II prescriptions for patients in long-term care facilities and for patients with a medical diagnosis documenting a terminal illness under set circumstances and conditions. The current regulation also allows partial filling of a prescription for a drug listed in Schedule II if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription, and she makes a notation of the quantity supplied on the face of the written prescription. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing; however, if the remaining portion is not or cannot be dispensed within the 72-hour period, the pharmacist must notify the prescribing practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

The Board proposes to allow prescriptions for Schedule II drugs to be filled in partial quantities, even if a full quantity is available, if: 1) the total quantity of all partial fillings doesn't exceed the total prescribed, 2) the prescription is written and filled in accordance with state and federal law, and 3) the remaining portions are filled not later than 30 days from the original date on the prescription. The proposed amendments would be beneficial. For example, say a physician writes a 14-day prescription for post-surgical opioid pain medication, but the patient prefers to try the drug for a few days before filling the full prescription. To avoid having a quantity of drugs, which may or may not be needed, under the proposed regulation the patient may request a partial fill with the ability to have the remainder dispensed if necessary. This is potentially beneficial for two reasons. First, the partial fill may have a cost-savings advantage, especially for self-pay patients. Second, the partial fill would create the potential of having fewer unused or unnecessary Schedule II drugs available for abuse or diversion. The proposed regulation does not introduce cost. Thus, the proposed amendments would create a net benefit.

Businesses and Entities Affected. The proposed amendments potentially affect the 1,852 permitted pharmacies in the Commonwealth, their customers, pharmacists, and physicians.

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

Projected Impact on Employment. The proposed amendments would not significantly 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 would not significantly affect costs for small businesses.

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

Adverse Impacts:

Businesses. The proposed amendments would not adversely affect businesses.

Localities. The proposed amendments would not adversely affect localities.

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

[1] U.S. Drug Enforcement Administration's list of Schedule II controlled substances: https://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_12.htm

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

Summary:

The amendments permit a pharmacist to partially fill a Schedule II prescription at the request of a patient or a prescriber and establish requirements so the drug is not dispensed in a quantity beyond what the patient or prescriber initially desires.

18VAC110-20-310. Partial dispensing of Schedule II prescriptions.

A. The partial filling of a prescription for a drug listed in Schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription, and he makes a notation of the quantity supplied on the face of the written prescription. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing; however, if the remaining portion is not or cannot be dispensed within the 72-hour period, the pharmacist shall so notify the prescribing practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

B. Prescriptions for Schedule II drugs written for patients in long-term care facilities may be dispensed in partial quantities, to include individual dosage units. For each partial dispensing, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained and readily retrievable) the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of Schedule II

drugs in all partial dispensing shall not exceed the total quantity prescribed. Schedule II prescriptions shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

C. Information pertaining to current Schedule II prescriptions for patients in a long-term care facility may be maintained in a computerized system if this system has the capability to permit:

1. Output (display or printout) of the original prescription number, date of issue, identification of prescribing practitioner, identification of patient, identification of the long-term care facility, identification of drug authorized (to include dosage form, strength, and quantity), listing of partial dispensing under each prescription, and the information required in subsection B of this section.

2. Immediate (real time) updating of the prescription record each time a partial dispensing of the prescription is conducted.

D. A prescription for a Schedule II drug may be filled in partial quantities to include individual dosage units for a patient with a medical diagnosis documenting a terminal illness under the following conditions:

1. The practitioner shall classify the patient as terminally ill, and the pharmacist shall verify and record such notation on the prescription.

2. On each partial filling, the pharmacist shall record the date, quantity dispensed, remaining quantity authorized to be dispensed, and the identity of the dispensing pharmacist.

3. Prior to the subsequent partial filling, the pharmacist shall determine that it is necessary. The total quantity of Schedule II drugs dispensed in all partial fillings shall not exceed the total quantity prescribed.

4. Schedule II prescriptions for terminally ill patients may be partially filled for a period not to exceed 60 days from the issue date unless terminated sooner.

5. Information pertaining to partial filling may be maintained in a computerized system under the conditions set forth in subsection C of this section.

E. A prescription for a Schedule II drug may be filled in partial quantities if the partial fill is requested by the patient or by the practitioner who wrote the prescription provided:

1. The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;

2. The prescription is written and filled in accordance with state and federal law; and

3. The remaining portions are filled not later than 30 days after the date on which the prescription is written.

VA.R. Doc. No. R17-5051; Filed June 26, 2017, 10:26 a.m.

Fast-Track Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-590).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 23, 2017.

Effective Date: September 7, 2017.

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

Basis: Regulations are promulgated under (i) the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system and (ii) a specific mandate of Chapter 82 of the 2016 Acts of Assembly.

The statutory authority for the board to promulgate regulations to regulate the security and integrity of drugs and devices is found in § 54.1-3307 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to conform Virginia regulations to advice given the Department of Corrections about the disposition of unused or expired drugs. The federal Drug Enforcement Administration (DEA) does not allow controlled substances (Schedules II through V) that have already been dispensed to a patient to be returned to the pharmacy to be redispensed to another patient. Currently, regulations for drugs in correctional facilities do permit such returns, if the facilities comply with provisions of 19VAC110-20-400 regarding drug returns. The prohibition on returning controlled substances after they have been dispensed to a patient is intended to protect the health and safety of the public and the integrity of the drug chain, so patients are assured of the efficacy and safety of the drugs they receive.

Rationale for Using Fast-Track Rulemaking Process: The change in disposition of scheduled drugs within correctional facilities is necessary to conform to advice from the DEA and is not controversial. It does not affect the public or the pharmacy community in general.

Substance: In order to comply with the DEA, 18VAC110-20-590 regarding drugs in correctional facilities is amended to require unused or expired drugs in Schedules II through V to be destroyed at the facility rather than being returned to the provider pharmacy. To ensure the integrity of the destruction process, the regulations contain requirements for witnessing the destruction and for recordkeeping.

Issues: There are no advantages or disadvantages to the public or the agency. The Department of Corrections will have

clarity in the rules for disposition, so state regulations are consistent with DEA rules for correctional institutions.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As mandated by federal regulation,[1] the Board of Pharmacy (Board) proposes to amend its Regulations Governing the Practice of Pharmacy to require correctional facilities to destroy all Schedule II through V drugs onsite rather than allowing them to be returned to the dispensing pharmacy.

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

Estimated Economic Impact. Current Board regulation allows correctional facilities to return unused or discontinued prescription drugs to the dispensing pharmacy which then would destroy them. However, federal Drug Enforcement Administration (DEA) regulation does not allow such returns for Schedule II through V drugs. In order to conform this regulation to DEA rules, the Board now proposes to amend it so that it is clear that correctional facilities are required to destroy unused or discontinued Schedule II through V drugs onsite. Additionally, the Board proposes to specify the manner and timing of such drug destruction.[2] Further, the Board proposes to specify that drug destruction must be performed by a nurse, pharmacist, or physician and must be witnessed by a separate person who is a nurse supervisor, pharmacist or physician.

Correctional facilities will likely only be affected by these changes in Board regulation if they are currently non-compliant with DEA regulations. Affected facilities would likely incur some small time costs involved with destroying drugs onsite but those time costs are likely outweighed by the benefits, for both correctional facilities and their provider pharmacies, of being in compliance with DEA rules. For example, and in particular, such compliance will ensure that pharmacies do not run afoul of federal rules that could result in revocation of the DEA registration that allows them to dispense drugs.

Businesses and Entities Affected. These proposed regulatory changes apply to all correctional facilities in the Commonwealth as well as the provider pharmacies that serve them.

Localities Particularly Affected. No locality is likely to be particularly affected by these proposed regulatory changes.

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

Effects on the Use and Value of Private Property. These proposed 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. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Alternative Method that Minimizes Adverse Impact. No small businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Adverse Impacts:

Businesses. No businesses are likely to incur any additional costs on account of these proposed regulatory changes.

Localities. Jails that are run by localities, and are not already in compliance with DEA rules, may incur some small time costs for destroying prescription drugs onsite. These costs would likely be very minimal.

Other Entities. No other entities are likely to be adversely affected by these proposed changes.

[1] 21 CFR 1317.15(b) which can be found at https://www.deadiversion.usdoj.gov/21cfr/cfr/1317/subpart_a.htm#15

[2] Drugs must be destroyed in a manner that makes them unrecoverable and within 30 days of their discontinued use.

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

Summary:

The amendments require a correctional facility to destroy unused or expired drugs in Schedules II through V at the facility and establish requirements for witnessing the destruction and for recordkeeping.

18VAC110-20-590. Drugs in correctional facilities.

A. All prescription drugs at any correctional facility shall be subject to the following conditions:

1. Notwithstanding the allowances in subsections B, C, and D of this section, prescription drugs shall be obtained only on an individual prescription basis.

2. All prepared drugs shall be maintained in a suitable locked storage area with only the person responsible for administering the drugs having access.

3. Complete and accurate records shall be maintained of all drugs received, administered and discontinued. The administration record shall show the:

a. Patient name;

b. Drug name and strength;

c. Number of dosage units received;

d. Prescriber's name; and

e. Date, time and signature of the person administering the individual dose of drug.

4. All unused or discontinued drugs shall be sealed and the amount in the container at the time of the sealing shall be recorded on the drug administration record. ~~Such~~ Schedule VI drugs shall be returned to the provider pharmacy or to a secondary pharmacy along with the drug administration record, a copy of the drug administration record, or other form showing substantially the same information, within 30 days of discontinuance.

a. The provider or secondary pharmacy shall conduct random audits of returned drug administration records for accountability.

b. The drug administration records shall be filed in chronological order by the provider or secondary pharmacy and maintained for a period of one year or, at the option of the facility, the records may be returned by the pharmacy to the facility.

c. Drugs may be returned to pharmacy stock in compliance with the provisions of 18VAC110-20-400.

d. Other drugs shall be disposed of or destroyed by the provider pharmacy in accordance with local, state, and federal regulations.

5. ~~Alternatively, drugs for destruction may be forwarded by a pharmacist directly from the correctional facility to a returns company after~~ After performing the audit required by subdivision 4 a of this subsection and ensuring the proper maintenance of the administration records, drugs in Schedules II through V shall be destroyed at the site of the correctional facility using a method of destruction that renders the drug unrecoverable.

a. The destruction shall be performed by a nurse, pharmacist, or physician and witnessed by the nurse supervisor, a pharmacist, or a physician.

b. Destruction of drugs shall occur within 30 days of discontinuance.

c. A complete and accurate record of the drugs destroyed shall be made. The original of the record of destruction shall be signed and dated by the persons witnessing the destruction and maintained at the correctional facility for a period of two years. A copy of the destruction record shall be maintained at the provider pharmacy for a period of two years.

B. Emergency and stat-drug box. An emergency box and a stat-drug box may be prepared for a correctional facility served by the pharmacy pursuant to 18VAC110-20-540 and 18VAC110-20-550 provided that the facility employs one or more full-time physicians, registered nurses, licensed practical nurses, or physician assistants.

C. A correctional facility may maintain a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline to be accessed only by those persons licensed to administer drugs and shall be administered only by such persons pursuant to a valid prescription or lawful order of a prescriber. Such stock shall be limited to a listing to be determined by the provider pharmacist in consultation with the medical and nursing staff of the institution.

D. Except for drugs in an emergency box, stat-drug box, or a stock of intravenous fluids, irrigation fluids, sterile water, and sterile saline, prescription drugs, including ~~but not limited to~~ vaccines, may be floor-stocked only at a medical clinic or surgery center that is part of a correctional facility and that is staffed by one or more prescribers during the hours of operation, provided the clinic first obtains a controlled substances registration and complies with the requirements of 18VAC110-20-690, 18VAC110-20-700, 18VAC110-20-710, and 18VAC110-20-720.

VA.R. Doc. No. R17-5047; Filed June 26, 2017, 10:25 a.m.

BOARD OF SOCIAL WORK

Proposed Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-110).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 22, 2017.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Social Work with the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

Purpose: The purpose of adding "psychosocial intervention" is to broaden the definition of clinical social work to be more inclusive of those therapeutic modalities that expand beyond the strict definition of psychotherapy. The addition of the term is intended to update the current definition of clinical social work services to more accurately reflect the scope of practice for clinical social workers.

The addition of requirements for documentation of a licensure or certification in another jurisdiction and a report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB) will provide the board with important information about possible discipline in another state or malpractice action against an applicant for reinstatement whose license has been lapsed for more than one year.

The purpose of specifying an amount of supervision during the 360 hours of supervised practice is intended to ensure that a person who has not been practicing is now competent to resume active practice with clients. A supervisor would be

required to have specific oversight for the person seeking reinstatement or reactivation, so the board can have some assurance that a client's health, safety, and welfare is protected when in the care of a supervisee.

Specifying an amount of supervision for applicants for reinstatement or reactivation who have not been actively practicing is intended to clarify the intent in requiring supervised practice for at least 360 hours in the 12 months immediately preceding licensure in Virginia. Currently, regulations provide no definitive guidance on how much supervision is required during the 360 hours. In the proposed regulations, the board has specified a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision during the 360 hours. Since the proposed amendments only require active practice or supervised hours of practice for those who have been lapsed or inactive for 10 or more years, there is a heightened necessary for more specificity about the supervised practice to ensure safety and competency when a full license is granted.

Substance: The proposed changes (i) amend the definition of clinical social work services to include psychosocial interventions, (ii) require applicants for reinstatement to provide verification of licensure in another state, if applicable, and a report from NPDB, and (iii) amend 18VAC140-20-110 to specify an amount of supervision that is required for a person who has not actively practiced for 10 or more years and applies to reinstate or reactivate his license.

Issues: The primary advantage to the public is more explicit rule about supervision for applicants whose licenses have been lapsed or inactive. There are no disadvantages to the public. There are no advantages and disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Work (Board) proposes to amend its main regulation to: 1) update definitions, 2) require applicants for reinstatement of licensure to provide proof of licensure in another state, if they have been licensed in another state, and a report from the U.S. Department of Health and Human Services' National Practitioner Data Bank (NPDB) and 3) specify the nature of supervision that is required for individuals who are seeking reinstatement and whose licenses have lapsed for 10 or more years.

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

Estimated Economic Impact. Description: This chapter "establishes qualification for licensure, sets a schedule and fee for renewal and establishes the standard of practice for licensure of social workers."[1]

Current regulation defines "clinical social work services" as: "the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to, psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment." The Board now proposes to add "psychosocial interventions"[2] to the treatment services in this definition. Board staff reports that this change is being proposed to make this definition more reflective of the current scope of practice. No affected entity is likely to incur costs on account of this change. To the extent that it may clarify scope of practice, this change will benefit interested parties who read this regulation.

This regulation currently requires individuals who are applying for reinstatement of licensure more than one year after licensure expiration to provide documentation of having completed continuing education hours during the time their license had lapsed up to a maximum of four years. Such individuals are also required to provide proof of competency by documenting either: 1) active practice in another United States jurisdiction for at least 24 of the 60 months immediately preceding licensure application, 2) active practice in an exempt setting for at least 24 of the 60 months immediately preceding licensure application or 3) practice under supervision for at least 360 hours in the 12 months immediately preceding licensure application.

The Board now proposes to additionally require that individuals who are applying to reinstate their license provide documentation of any other license or certificate held in another political jurisdiction and a current NPDB report. The Board also proposes to limit the requirement that these individuals provide proof of continuing or supervised practice (as laid out above) to only those individuals whose Virginia licenses had been lapsed for 10 years or more.

Requiring documentation of licensure in other jurisdictions and a NPDB report will increase costs for applicants for reinstatement; Board staff reports that political jurisdictions (including Virginia) charge a fee, typically $25 or less, for licensure verification and that the cost of a NPDB report is $6. These costs are likely outweighed by the benefit that would likely accrue to the citizens of Virginia because these documents allow the Board to check for disciplinary actions or malpractice claims that applicants may have been subject to.

Board staff reports that the Board proposes to limit the requirement that individuals provide proof of continuing or supervised practice to only those individuals whose licenses have lapsed for 10 years or more in order to reduce the burden of reinstatement costs on individuals who likely have not been out of practice long enough to place doubt on their ability to practice competently. Social workers whose licenses have been lapsed for between one and nine years, and who do not meet the active practice criteria to show continued

competency, will likely save time costs, and may save the cost of paying for supervision, on account of this change.

Current regulation requires that individuals reinstating lapsed licenses, and who must undertake supervised practice, complete at least 360 hours of practice under supervision; current regulation does not, however, specify the parameters of that supervision. The Board now proposes to require that these supervised practice hours include at least 60 hours of face-to-face direct client contact and nine hours of face-to-face contact with the supervisor. Board staff reports that these face-to-face requirements are proportional to the requirements for initial licensure. Board staff further reports that the Board does not anticipate any supervisee incurring additional costs on account of these changes. These changes will provide the benefit of clarity for individuals who may have been confused about what is required under supervised practice.

Businesses and Entities Affected. These proposed regulatory changes will affect all clinical social workers as well as all individuals who apply for reinstatement of licensure. Board staff reports that the Board currently licenses 6,458 clinical social workers. Board staff does not have an estimate of the number of individuals who might be affected by the changes to rules for reinstatement.

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. Individuals seeking reinstatement of Virginia licensure, who plan to practice as individual proprietors or in a small practice setting, will likely incur some additional costs on account of being required to provide a current NPDB reports and proof of licensure or certification in other political jurisdictions.

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

Adverse Impacts:

Businesses. Individuals seeking reinstatement of Virginia licensure, who plan to practice as independently rather than seeking employment in another business, will likely incur some additional costs on account of being required to provide a current NPDB reports and proof of licensure or certification in other political jurisdictions.

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] The Chapter description, as well as more information on this Chapter, can be found at: http://townhall.virginia.gov/l/ViewChapter.cfm?ChapterID=1157.

[2] Medical-dictionary.com defines psychosocial intervention as a nonpharmacologic maneuver intended to alter a patient's environment or reaction to lessen the impact of a mental disorder.

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

Summary:

The proposed changes (i) amend the definition of clinical social work services to include psychosocial interventions, (ii) require applicants for reinstatement to provide verification of licensure in another state, if applicable, and a report from the U.S. Department of Health and Human Services National Practitioner Data Bank, and (iii) specify the amount of supervision required for a person who has not actively practiced for 10 or more years and who applies to reinstate or reactivate his license.

Part I
General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Board

Casework

Casework management and supportive services

Clinical social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology and diversity issues; research; clinical practice with individuals, families, and groups; and a clinical practicum that focuses on diagnostic, prevention and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services, and treatment services, including ~~but not limited to~~ psychosocial interventions, psychotherapy, and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or the use of technology that provides real-time, visual contact among the individuals involved.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

18VAC140-20-110. Late renewal; reinstatement; reactivation.

A. A social worker or clinical social worker whose license has expired may renew that license within one year after its expiration date by:

1. Providing evidence of having met all applicable continuing education requirements.

2. Paying the penalty for late renewal and the renewal fee as prescribed in 18VAC140-20-30.

B. A social worker or clinical social worker who fails to renew the license after one year and who wishes to resume practice shall apply for reinstatement and pay the reinstatement fee, which shall consist of the application processing fee and the penalty fee for late renewal, as set forth in 18VAC140-20-30. An applicant for reinstatement shall also provide ~~documentation~~:

1. Documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years;

2. Documentation of any other health or mental health licensure or certification held in another United States jurisdiction, if applicable; and

3. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.

~~An~~ C. In addition to requirements set forth in subsection B of this section, an applicant for reinstatement whose license has been lapsed for 10 or more years shall also provide evidence of competency to practice by documenting:

1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;

2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or

3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reinstatement of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.

~~C.~~ D. A social worker or clinical social worker wishing to reactivate an inactive license shall submit the difference between the renewal fee for active licensure ~~minus any fee already paid~~ and the fee for inactive licensure renewal and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. An applicant for reactivation who has been inactive for ~~four~~ 10 or more years shall also provide evidence of competency to practice by documenting:

1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;

2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or

3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reactivation of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.

VA.R. Doc. No. R17-4943; Filed July 1, 2017, 1:18 p.m.

BOARD OF VETERINARY MEDICINE

Proposed Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-100; adding 18VAC150-20-122, 18VAC150-20-123).**

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

Public Hearing Information:

August 24, 2017 - 9:05 a.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor Conference Room, Richmond, VA

Public Comment Deadline: September 22, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Veterinary Medicine to promulgate regulations to administer the regulatory system and to levy fees sufficient to cover expenses.

The specific authority of the board relating to establishment of faculty and resident licensure is found in subdivision 3 of § 54.1-3801 of the Code of Virginia and in the powers and duties of the board in § 54.1-3804 of the Code of Virginia.

Purpose: The proposed action is mandated by the third enactment of Chapter 306 of the 2016 Acts of Assembly, which provides that the Board of Veterinary Medicine shall adopt regulations for the licensure of veterinarians employed by the United States or the Commonwealth who are engaged in the practice of veterinary medicine, pursuant to § 54.1-3801 of the Code of Virginia, as part of a veterinary medical education program located in the Commonwealth and accredited by the American Veterinary Medical Association Council on Education by July 1, 2018.

The intent of the board is to establish licensure for persons who are engaged in the practice of veterinary medicine at an accredited veterinary college or any of its subsidiary clinics, so those individuals who provide clinical care to animals will be accountable to the board. The ability to discipline those practitioners if they are found in violation of law or regulation, will protect the health and safety of patients and the welfare of their owners.

Substance: In accordance with the provisions of Chapter 306 of the 2016 Acts of Assembly, the board is proposing to promulgate regulations for a faculty license and an intern/resident license for persons providing clinical care to animals at an accredited veterinary education program in Virginia. Proposed regulations set fees for application and renewal, establish the qualifications for a faculty or resident license, and set out the limitations on practice settings for such licenses.

Issues: The primary advantage of the amendments is accountability for the clinical care of animals provided by faculty, interns, and residents at the veterinary school. There are no disadvantages for the public, which will have some recourse if their animal is harmed by the negligence or unprofessional conduct by a veterinarian at a veterinary educational program. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 306 of the 2016 Acts of Assembly,[1] the Board of Veterinary Medicine (Board) proposes to establish a faculty license and an intern/resident license for persons providing clinical care to animals at an accredited veterinary education program in Virginia.

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

Estimated Economic Impact. Prior to 2016, veterinarians employed by the Commonwealth, including those at a state medical education program, were exempt from licensing requirements of the Board. Chapter 306 of the 2016 Acts of Assembly eliminated that exemption and authorized the Board to establish requirements for the licensure of such persons. Pursuant to the legislative change, the Board proposes to establish requirements for faculty and intern/resident licensure for practice of veterinary medicine at the educational programs.

The proposed regulation establishes a $100 fee for initial licensure of a faculty member, a $75 annual renewal fee, and a $25 late renewal fee. The proposed initial and annual renewal fees for intern/resident licenses are $25. More importantly, these individuals will be subject to all of the standards of the Board. If they fail to comply with standards designed to protect health, safety, and welfare of animals or their owners, the Board would be able to take corrective action. Therefore, the proposed regulation will provide incentives for best veterinary practices at educational programs and should produce net benefits.

Businesses and Entities Affected. Board staff expects to receive 75 applications for faculty licensure, 25 for resident licensure, and 5 for intern licensure.

Localities Particularly Affected. The proposed regulation would apply to faculty, residents, and interns at any veterinarian educational program. Currently, there is only one such program, Virginia-Maryland College of Veterinary Medicine which has campuses in Blacksburg and Leesburg.

Projected Impact on Employment. The proposed regulation is not anticipated to have a significant impact on employment.

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

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

Small Businesses:

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

Costs and Other Effects. The proposed regulation does not apply to small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not introduce an adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The affected faculty, interns, residents, or the educational program will have to pay for the initial and renewal licensure fees.

[1] http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0306

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

Summary:

In accordance with the provisions of Chapter 306 of the 2016 Acts of Assembly, the Board of Veterinary Medicine is proposing regulations for a faculty license and an intern/resident license for persons providing clinical care to animals at an accredited veterinary education program in Virginia.

18VAC150-20-100. Fees.

The following fees shall be in effect:

Veterinary application for licensure	$200
Veterinary application for faculty licensure	$100
Veterinary license renewal (active)	$175
Veterinary license renewal (inactive)	$85
Veterinary faculty license renewal	$75
Veterinary reinstatement of expired license	$255
Veterinary license late renewal	$60
Veterinary faculty license late renewal	$25
Veterinarian reinstatement after disciplinary action	$450
Veterinary intern/resident license -- initial or renewal	$25
Veterinary technician application for licensure	$65
Veterinary technician license renewal	$50
Veterinary technician license renewal (inactive)	$25
Veterinary technician license late renewal	$20
Veterinary technician reinstatement of expired license	$95
Veterinary technician reinstatement after disciplinary action	$125
Equine dental technician initial registration	$100
Equine dental technician registration renewal	$70
Equine dental technician late renewal	$25
Equine dental technician reinstatement	$120
Initial veterinary establishment permit registration	$300
Veterinary establishment renewal	$200
Veterinary establishment late renewal	$75
Veterinary establishment reinstatement	$75
Veterinary establishment reinspection	$300
Veterinary establishment -- change of location	$300
Veterinary establishment -- change of veterinarian-in-charge	$40
Duplicate license	$15
Duplicate wall certificate	$25
Returned check	$35
Licensure verification to another jurisdiction	$25

18VAC150-20-122. Requirements for faculty licensure.

A. Upon payment of the fee prescribed in 18VAC150-20-100 and provided that no grounds exist to deny licensure pursuant to § 54.1-3807 of the Code of Virginia, the board may grant a faculty license to engage in the practice of veterinary medicine as part of a veterinary medical education program accredited by the American Veterinary Medical Association Council on Education to an applicant who:

1. Is qualified for full licensure pursuant to 18VAC150-20-110 or 18VAC150-20-120;

2. Is a graduate of an accredited veterinary program and has an unrestricted current license or if lapsed, is eligible for reinstatement in another United States jurisdiction; or

3. Is a graduate of a veterinary program and has advanced training recognized by the American Board of Veterinary Specialties or a specialty training program acceptable to the veterinary medical education program in which he serves on the faculty.

B. The dean of a veterinary medical education program shall provide verification that the applicant is being or has been hired by the program and shall include an assessment of the applicant's clinical competency and clinical experience that qualifies the applicant for a faculty license.

C. The holder of a faculty license shall be entitled to perform all functions that a person licensed to practice veterinary medicine would be entitled to perform as part of his faculty duties, including patient care functions associated with teaching, research, and the delivery of patient care that takes place only within the veterinary establishment or diagnostic and clinical services operated by or affiliated with the veterinary program. A faculty license shall not authorize the holder to practice veterinary medicine in nonaffiliated veterinary establishments or in private practice settings.

D. A faculty license shall expire on December 31 of the second year after its issuance and may be renewed annually without a requirement for continuing education, as specified in 18VAC150-20-70, as long as the accredited program certifies to the licensee's continued employment. When such a license holder ceases serving on the faculty, the license shall be null and void upon termination of employment. The dean of the veterinary medical education program shall notify the board within 30 days of such termination of employment.

18VAC150-20-123. Requirements for an intern/resident license.

A. Upon payment of the fee prescribed in 18VAC150-20-100 and provided that no grounds exist to deny licensure pursuant to § 54.1-3807 of the Code of Virginia, the board may issue a temporary license to practice veterinary medicine to an intern or resident. Upon recommendation of the dean or director of graduate education of the veterinary medical education program, such a license may be issued to an applicant who is a graduate of an AVMA-accredited program or who meets requirements of the Educational Commission of Foreign Veterinary Graduates or the Program for the Assessment of Veterinary Education Equivalence of the American Association of Veterinary State Boards, as verified by the veterinary medical education program. The application shall include the beginning and ending dates of the internship or residency.

B. The intern or resident shall be supervised by a fully licensed veterinarian or a veterinarian who holds a faculty license issued by the board. The intern or resident shall only practice within the veterinary establishment or diagnostic and clinical services operated by or affiliated with the veterinary program. A temporary license shall not authorize the holder to practice veterinary medicine in nonaffiliated veterinary establishments or in private practice settings.

C. An intern or resident license shall expire on August 1 of the second year after its issuance and may be renewed upon recommendation by the dean or director of graduate education of the veterinary medical education program.

VA.R. Doc. No. R17-4926; Filed July 1, 2017, 1:15 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22VAC40-325. Fraud Reduction/Elimination Effort (amending 22VAC40-325-20).**

Statutory Authority: §§ 63.2-217 and 63.2-526 of the Code of Virginia.

Effective Date: August 24, 2017.

Agency Contact: Toni Blue Washington, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7662, FAX (804) 726-7669, or email toni.washington@dss.virginia.gov.

Summary:

The amendments update the regulation and incorporate the specific funding methodology used to allocate funds to local departments of social services for fraud prevention, detection, and investigation activities.

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

22VAC40-325-20. ~~The~~ Fraud Reduction/Elimination Effort.

A. In compliance with § 63.2-526 of the Code of Virginia, the department shall establish a statewide fraud prevention, detection, and investigation program to be named the Fraud Reduction/Elimination Effort (FREE).

1. The department shall develop and implement policies and procedures for the FREE program.

2. The department shall provide a detailed local reimbursement procedure, on an annual basis, to assist in the formulation of the local department's FREE program operation plan. The department's procedure shall project the available funding and the number of local fraud investigators for each local department that the FREE program will support. The number of investigators shall be based on an evaluation of the available funding and appropriate criteria from one or more of the following: a local department's average TANF and Food Stamp caseload size, average number of monthly applications for

food stamps and TANF, number of local department workers, geographic location, number of fraud investigations, program compliance, collections, and performance expectations.

3. The department shall develop, implement, and monitor local FREE units performance expectations.

B. Each local department shall aggressively pursue fraud prevention, detection, and investigations.

1. Each local department shall conduct fraud prevention, detection, and investigation activities consistent with the requirements of federal regulations, the Code of Virginia, ~~the regulations contained herein~~ this chapter, and the department's FREE program policy.

2. Each local department shall submit to the department~~,~~ for annual approval~~,~~ a program operation plan, formatted by the department, which shall include a description of the local department's prevention, detection, and investigative process~~,~~; an agreement with the Commonwealth's attorney~~,~~; identification of staff charged with oversight or supervisory responsibility of the FREE program~~,~~; a performance expectation monitoring process~~,~~; a signed commitment to adhere to specified responsibilities identified in the Statement of Assurance section of the program operation plan~~,~~; and, if requested, a proposed annual budget to include the identification of the FREE program investigators, their salary, fringe benefit amounts, supporting operating costs, hours worked per week, and time dedicated to the FREE program.

3. Upon request, each local department shall provide the department with an accounting of FREE program expenditures.

C. Funding for the FREE program shall be comprised of balances in the Fraud Recovery Special Fund, general funds appropriated for this activity, and any federal funds available for this purpose.

1. In order to receive reimbursement of direct costs and supporting costs of operation, a local department must:

a. Comply with all pertinent law, regulation, and policy;

b. In accordance with the law, each local department shall establish and maintain a FREE prevention, detection, and investigation unit; and

c. Recover fraud-related and nonfraud-related overpayments of designated federal assistance programs. ~~Reimbursement~~ An allocation to localities shall be made in accordance with the following methodology ~~for the allocation of funds to localities as developed by the work group convened by the commissioner, consisting of local department representatives and senior department managers~~: 40% based on each agency's Temporary Assistance for Needy Families, food stamp, energy assistance, and child care caseload; 20% based on the number of investigations completed; 20% based on the number of established claims; and 20% based on the actual collections from established claims. Each local ~~department's level of reimbursement of direct and support operation costs is paid from available federal funds, general funds and state retained portion of collections~~ department is reimbursed for fraud-related expenses through funds appropriated for local social services staff and operations.

2. Local departments may contract with other local departments to share a fraud prevention, detection, and investigation unit and may contract with private entities to perform fraud investigations. Any private entity performing fraud investigations shall comply with the requirements of § 30-138 of the Code of Virginia and the restrictions of § 63.2-526 of the Code of Virginia.

VA.R. Doc. No. R16-4195; Filed June 30, 2017, 2:28 p.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Title of Regulation: **23VAC10-500. Business, Professional and Occupational License Tax Regulations (amending 23VAC10-500-210).**

Statutory Authority: § 58.1-3701 of the Code of Virginia; Chapter 50 of the 2017 Acts of Assembly.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 22, 2017.

Effective Date: October 10, 2017.

Agency Contact: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides the Tax Commissioner with the power to issue regulations relating to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the Department of Taxation. The authority for the current regulatory action is discretionary.

Section 58.1-3701 of the Code of Virginia directs the department to issue business, professional, and occupational license (BPOL) tax guidelines. After July 1, 2001, the guidelines became subject to the Administrative Process Act and were given the weight of regulations. The BPOL guidelines were formally promulgated as regulations in Volume 24, Issue 23, of the Virginia Register of Regulations, effective October 6, 2008.

Chapter 50 of the 2017 Acts of Assembly (House Bill 1961) directs the department to "promulgate regulations that clarify its interpretation of subdivision B 2 of § 58.1-3732 of the

Code of Virginia regarding the methodology for determining deductible gross receipts attributable to business conducted in another state or a foreign country. The regulations shall be based on previous Rulings of the Tax Commissioner regarding subdivision B 2 of § 58.1-3732 and the decision of the Supreme Court of Virginia in The Nielsen Company, LLC v. County Board of Arlington County, 289 Va. 79 (2015)."

Purpose: The BPOL tax requires a multistate business to assign its gross receipts to each office or other definite place of business. The statute specifies the criteria to be used by various types of businesses (e.g., contractors, retailers, wholesalers, etc.), but some businesses do not keep records or operate in a manner that fits the statutory criteria. Therefore the statute allows such businesses to apportion their gross receipts using payroll in each office.

Multistate businesses are allowed a deduction from the gross receipts assigned to an office to the extent that gross receipts are attributable to a state in which the business is subject to income tax. However, when a business has used payroll apportionment to assign receipts to an office, it is usually impossible to identify which of those receipts are attributable to another state. Therefore the regulation is amended to address this situation and allow payroll apportionment to be used again in computing the deduction.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is intended for proposed regulations that are expected to be noncontroversial. As this regulatory action will incorporate policies recently upheld by the Virginia Supreme Court, this action is not expected to be controversial.

Substance: This regulatory action will amend the section of the Business, Professional, and Occupational License Tax Regulation entitled "Apportionment; in general." (23VAC10-500-210) to reflect the department's policy with respect to apportionment of gross receipts as applied in PD 12-146 and upheld by the Virginia Supreme Court in Nielsen Co. (US), LLC v. County Board of Arlington County, 289 Va. 79, 767 S.E.2d 1 (2015).

The issue is how a taxpayer can subdivide gross receipts that have been assigned to a definite place of business by means of payroll apportionment. Normally a taxpayer would have to identify specific gross receipts that qualify for any deduction or exemption. However, the use of payroll apportionment to assign gross receipts to a location compromises the ability of a taxpayer to identify specific characteristics of those receipts. Insisting on specific identification of receipts after apportionment would effectively deny any deduction or exemption for which some receipts may qualify.

Therefore, this regulatory action amends the section relating to apportionment to allow apportionment to be used a second time to calculate deductions and exemptions. An example illustrating this policy is also added.

Issues: This regulatory action ensures uniform application of the tax laws to taxpayers and may avoid the necessity for taxpayers to file appeals with the department or the courts. This regulatory action poses 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 Department of Taxation (Tax) proposes to amend its Business, Professional and Occupational License (BPOL) Tax Regulation to incorporate the Tax Commissioner's private letter ruling[1] related to the apportionment of deductions to gross receipts when taxable gross receipts are apportioned using the payroll apportionment formula. Tax initiated this action after the Tax Commissioner's private letter ruling was upheld by the Virginia Supreme Court in The Nielson Company (US), LLC v. County Board of Arlington County, 289 Va. 79 (2015).[2] After Tax initiated this action, the General Assembly passed legislation[3] requiring Tax to promulgate regulations to reflect "previous Rulings of the Tax Commissioner regarding subdivision B 2 of § 58.1-3732 and the decision of the Supreme Court of Virginia in The Nielsen Company, LLC v. County Board of Arlington County."

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

Estimated Economic Impact. Current Virginia law that allows the imposition of BPOL taxes requires that multi-state businesses assign gross receipts to an office or definite place of business whenever possible. Some businesses, however, do not have receipts that can be traced to just one definite place of business. In that case, the law allows them to apportion receipts according to the proportion of payroll employees in each of their definite places of business. Virginia law also sets out deductions that may be subtracted from gross receipts, or gross purchases, that would normally be taxable in Virginia. These deductions would also normally have to be traceable to a definite place of business. A dispute over such deductions led circuitously to this regulatory action. In 2012, the Tax Commissioner issued a private letter decision that allowed the apportionment of deductions using the payroll apportionment formula in instances where a business's taxable gross receipts had been apportioned using payroll apportionment. This private letter ruling was issued to address a tax dispute between the Nielson Company (US), LLC[4] and Arlington County, Virginia. Arlington County appealed this decision and that case (The Nielson Company (US), LLC v. County Board of Arlington County) eventually reached the Virginia Supreme Court which upheld the Tax Commissioner's decision on this matter. Tax now proposes to amend this regulation to reflect the Tax Commissioner's guidance on apportioning deductions to taxable gross receipts.

Because the Tax Commissioner's ruling as affirmed by the Virginia Supreme Court already has the force of law, no affected entity is likely to incur costs on account of these proposed regulatory changes. Both affected businesses and

Virginia localities are very likely to benefit from these proposed regulatory changes as they will likely eliminate confusion about how deductions may be apportioned.

Businesses and Entities Affected. These proposed regulatory changes will affect all businesses that have staff in Virginia and other political jurisdictions and that meet the criteria to apportion gross receipts using the payroll apportionment formula. Tax does not have an estimate for how many businesses would be affected.

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 adversely 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.

[1] Public Document (PD) 12-146 was issued August 31, 2012 and can be found at: https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/12-146

[2] http://www.courts.state.va.us/opinions/opnscvwp/1140422.pdf

[3] Chapter 50 of the 2017 Acts of the Assembly which can be found here: http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0050

[4] The Nielson Company, LLC promotes itself as a "global information and measurement company that provides clients with a comprehensive understanding of consumers and consumer behavior."

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

Pursuant to Chapter 50 of the 2017 Acts of Assembly, the amendments reflect the previous rulings of the Tax Commissioner regarding subdivision B 2 of § 58.1-3732 of the Code of Virginia and the Supreme Court of Virginia's decision in The Nielsen Company (US), LLC v. County Board of Arlington County, et al. The amendments allow apportionment of deductions using the payroll apportionment formula in instances where a business's taxable gross receipts had been apportioned using payroll apportionment.

23VAC10-500-210. Apportionment; in general.

A. If the taxpayer has more than one definite place of business and it is not possible or practical to determine at which definite place of business gross receipts should be taxed, gross receipts must be divided between the definite places of businesses by payroll. Some activity must occur or be controlled from a definite place of business for gross receipts to be taxed by the locality of the definite place of business. If an entity's definite place of business is in a locality that does not tax gross receipts, a different locality may not tax these gross receipts simply because the first locality does not have a license tax.

B. If apportionment has been used to divide the gross receipts of the business among its definite places of businesses, then the use of apportionment to assign gross receipts to a definite place of business is presumed to have compromised the ability of the taxpayer to determine the situs of the assigned gross receipts for any other purpose, such as the other-state deduction. For the purposes of this section, "other-state deducation" means a deduction for receipts attributable to business in another state in which it is subject to income tax as described in § 58.1-3732 B of the Code of Virginia. Generally, the same apportionment method used to assign gross receipts to a definite place of business must be used to subdivide those receipts unless the taxpayer has demonstrated that some other method is feasible and more accurate. This requires an analysis of the facts and circumstances applicable to each taxpayer and its definite places of business. Both of the following conditions must be satisfied before apportionment can be used to subdivide receipts assigned to a definite place of business by any method.

1. The business satisfies the conditions in subsection A of this section that make it necessary to subdivide the gross receipts assigned to a definite place of business. For example, in the case of the other-state deduction this would require determining if any employees at the Virginia definite place of business participated in interstate transactions by, for example, contacting or shipping goods to customers in other states, participating with employees

in other offices in transactions, etc. If there has been no participation in transactions that generate interstate receipts, then the business is not eligible for the deduction and it has no need to subdivide the receipts assigned to the definite place of business.

2. It must be impossible or impractical to use specific criteria to subdivide the receipts assigned to the definite place of business. This will normally be the case when gross receipts have been assigned to a definite place of business by apportionment because apportionment ignores anything related to a specific transaction other than the criteria used for apportionment, which usually is payroll.

C. Examples:

1. A large electronics retailer has its main sales office in City A and maintains a satellite office with its own management in the distant County B. Sales staff from City A make the initial sales contact in County B and process all sales related paperwork. Sales staff in County B make all personal and follow-up sales contacts in County B. The definite place of business is in both City A and County B since each sales office is equally responsible for sales solicitations. If it were not possible or practical to determine which definite place of business gross receipts should be attributed to, gross receipts must be apportioned between the definite places of business on the basis of the payroll of the sales staff at each respective place of business.

2. A group medical practice has offices in County A and City B. County A does not tax gross receipts. Patient visits and recordkeeping functions occur in County A, but physicians see patients in the City B offices on a regular basis. City B may tax the gross receipts generated from services performed at offices located within its boundaries. However, City B may not tax the practice's gross receipts generated from County A simply because the county does not have a license tax.

3. A service business has two divisions, one national and the other regional. Both divisions operate out of an office in County A. While the business can segregate its receipts by division, it cannot assign the receipts of its national division to each office, and it uses payroll apportionment to assign receipts to the office in County A. The receipts of the regional division are assigned to County A using the criteria in § 58.1-3703.1 A 3 a of the Code of Virginia. Assuming that the business meets the requirements to be eligible for the other-state deduction with respect to both divisions, the business may use the same payroll apportionment factor of the national division to subdivide the receipts of the national division assigned to County A. The business will be required to identify specific receipts of the regional division assigned to County A that are eligible for the other-state deduction unless the business can show that it is impractical or impossible to identify specific receipts for this purpose.

VA.R. Doc. No. R17-5002; Filed June 29, 2017, 10:13 a.m.

BOARD FOR THE BLIND AND VISION IMPAIRED

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 the Blind and Vision Impaired is conducting a periodic review and small business impact review of **22VAC45-12, 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 June 29, 2017, and ends July 31, 2017.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Susan Davis Payne, Policy and Training Coordinator, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3351, or email susan.payne@dbvi.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.

STATE CORPORATION COMMISSION

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 29, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2013-00045

Concerning the establishment of a renewable energy pilot program for third party power purchase agreements

ORDER UPDATING GUIDELINES

On March 14, 2013, the Virginia General Assembly enacted Chapter 382 of the 2013 Virginia Acts of Assembly ("2013 Legislation") requiring the State Corporation Commission ("Commission") to conduct a renewable energy pilot program for third party power purchase agreements within the service territory of Virginia Electric and Power Company and to establish certain guidelines regarding implementation of this pilot program. Pursuant to the 2013 Legislation, on November 14, 2013, the Commission established a pilot program and developed Guidelines Regarding Notice Information for a Third Party Renewable Power Purchase Agreement ("Guidelines").

On April 5, 2017, the Virginia General Assembly approved Chapter 803 of the 2017 Virginia Acts of Assembly ("2017 Amendments"), which, among other things, re-enacted the 2013 Legislation with amendments requiring that a pilot program now be conducted within the certificated service territory of each investor-owned electric utility in Virginia, excepting any utility described in § 56-580 G of the Code of Virginia. As a result, updates to the Applicability and Program Cap Management sections of the Guidelines are necessary.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Guidelines should be updated as set forth in Attachment A to this Order to reflect the 2017 Amendments.[1]

Accordingly, IT IS ORDERED THAT:

(1) The instant case is moved from "closed" to "active" status in the records maintained by the Clerk of the Commission and is restored to the Commission's docket for the purpose of updating the Commission's Guidelines.

(2) The Guidelines, which were established pursuant to Chapter 382 of the 2013 Virginia Acts of Assembly, are hereby updated as set forth in Attachment A to this Order to reflect the amendments enacted by Chapter 803 of the 2017 Virginia Acts of Assembly.

(3) Any renewable third party power purchase agreement established pursuant to the pilot program shall be established in accordance with these Guidelines and shall comply with the attendant statutory requirements,

(4) This case is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Senator John S. Edwards, P.O. Box 1179, Roanoke, Virginia 24006; Delegate David E. Yancey, P.O. Box 1163, Newport News, Virginia 23601; Terry G. Kilgore, P.O. Box 669, Gate City, Virginia 24251; David J. Toscano, 211 East High Street, Charlottesville, Virginia 22902; the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219; Horace P. Payne, Jr., Esquire,

Dominion Energy Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219; Eric W. Hurlocker, Esquire, GreeneHurlocker, PLC, 1807 Libbie Avenue, Suite 102, Richmond, Virginia 23226; Frank Rambo, Esquire, Southern Environmental Law Center, 103 East Water Street, Suite 201, Charlottesville, Virginia 22902; Kenneth G. Hutcheson, Esquire, Virginia Alternative and Renewable Energy Association, P.O. Box 1320, Richmond, Virginia 23218; Noelle J. Coates, Esquire, American Electric Power Service Corporation, 3 James Center, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219; Taylor Brown, SunTribe Solar, 108 2nd Street, SW, #10, Charlottesville, Virginia 22902; Ryann Coles, Altenergy Incorporated, 331 North Lewis Street, Staunton, Virginia 24401; and C. Meade Browder, Jr., Esquire, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor; Richmond, Virginia 23219. A copy also shall be delivered to the Commission's Office of General Counsel and Division of Public Utility Regulation.

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[1] A copy of the Guidelines that highlights the updates included in Attachment A also is attached to this Order as Attachment B. A copy of the Guidelines set forth in Attachment A and Attachment B also may be viewed at http://www.scc.virginia.gov/pur/pilot.aspx.

Attachment A

UPDATED GUIDELINES REGARDING NOTICE INFORMATION FOR A THIRD PARTY RENEWABLE POWER PURCHASE AGREEMENT

A. Purpose.

The Commission is establishing these guidelines pursuant to Chapter 382 of the 2013 Virginia Acts of Assembly ("Chapter 382") regarding a pilot program for third party power purchase agreements for renewable generation. Chapter 382 specifically provides that the State Corporation Commission ("Commission") must establish guidelines concerning (i) information to be provided in written notices and (ii) procedures for collecting and posting information derived from such notices on the Commission's website. In addition, the Commission may establish general guidelines for its administration of the pilot program.

B. Applicability.

These guidelines are applicable to any owner or operator of a solar-powered or windpowered electric generation facility (referred to herein as "owner-operator") located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, within the certificated service territory of an investor-owned electric utility ("Pilot Utility").[1] Such a facility shall have a generation capacity of 50 kW to 1 MW, except that if the eligible customer-generator served by the owner-operator is an entity with tax-exempt status in accordance with § 501(c)3 of the Internal Revenue Code of 1954, as amended, then such facility is not limited by the 50 kW minimum, and can qualify with a generation capacity range of 1 kW to 1 MW. An eligible facility shall provide electricity to only one customer.

The owner-operator shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement to provide such eligible customer-generator third party financing of the costs of such a renewable generation facility. The owner-operator also may be subject to any requirements of its local governing body and the Virginia Department of Environmental Quality.

The pilot program limitation of 50 MW for Dominion Energy Virginia includes participation among jurisdictional and non-jurisdictional customers, and the limitation of 7 MW for Appalachian Power Company targets participation among nonprofit, private institutions of higher education.

C. Filing of Notice.

Any party who intends to enter into a third-party power purchase agreement under the pilot program must provide written notice to the Commission and to the Pilot Utility of the party's intent to enter into such agreement not less than 30 calendar days before the effective date of such agreement.

D. Contents of Filing.

The owner-operator shall provide written notice to the Commission and the Pilot Utility not less than 30 calendar days before the effective date of such agreement and shall include the following information:

• Identity of the owner-operator of the renewable electric generation facility;

• The name, address, and under seal as "confidential" or "extraordinarily sensitive" information, the Pilot Utility electric account number of the eligible customer-generator;

• Location of the premise(s) upon which the renewable electric generation facility will be installed;

• Renewable source of the electric generation facility;

• Generation capacity of the renewable electric generation facility expressed in terms of kWs available for delivery to the end-user stated in alternating current (AC);

• Expected date that the electric generation facility will be placed in service. The term "placed in service" shall have the same meaning as used in 26 USC § 48 of the federal Business Energy Investment Tax Credit for certain renewable energy technologies;

• Duration of the third-party power purchase agreement;

• Proof of § 501(c)3 tax exempt status (when applicable); and

• Under seal as "confidential" or "extraordinarily sensitive" information, the projected installation cost of the renewable electric generation facility, in dollars per Watt (AC).

Subsequent to the placed in service date, such projected cost of installation shall be updated for the actual cost of installation.

E. Posting and Tracking.

Within three business days of receiving a written notice of intent, the Commission Staff shall post to its website the cumulative amount of solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity associated with the notice of intent, expressed in kW or MW (AC), and the remaining aggregate capacity available for future pilot projects.

Within three business days of the placed in service date of such facility, the owner operator shall provide written notification of such placed in service date to the Commission and the Pilot Utility. Within three business days of receiving such written notice of the placed in service date, the Commission Staff shall post to its website the cumulative amount of installed solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity, expressed in kW or MW (AC). Simultaneously, the capacity remaining available for future pilot projects also shall be posted. The owner-operator also shall provide written notice to the Commission and the Pilot Utility of any change to the generating capacity of the facility or of the parties to the third party power purchase agreement within three business days of any such change.

On an annual basis, the Pilot Utility shall submit to the Commission under seal as "confidential" or "extraordinarily sensitive" information, a report of the individual and aggregated amount of energy generated (kWhs) and peak capacity (kW) provided from all pilot renewable generation facilities combined, with separate totals for wind pilot projects and solar pilot projects. The Pilot Utility's report also shall identify and quantify any system benefits, such as but not limited to, transmission and distribution system benefits, line loss savings, generation capacity savings, wholesale energy purchase offsets, fuel cost savings, and any economic development and job creation benefits across the region or the Commonwealth.

Subsequent to the Pilot Utility's report, the Commission Staff shall aggregate and post to its website the following information obtained from such report and any information filed by owner-operators, with separate data for wind-powered and solar-powered projects:

• Average projected installation costs of projects in the pilot program, in dollars per Watt (AC);

• Average duration of the third party purchase agreements;

• Total number of customer-generators participating in the pilot program;

• Total number of owner-operators participating in the pilot program; and

• The city and/or county location of projects in the pilot program that have been placed in service.

F. Program Cap Management.

The owner-operator shall fulfill the following requirements and provide written confirmation to the Commission and the Pilot Utility that it has met each requirement:

• The owner-operator must provide a written notice of intent as described in Section C of these guidelines;

• The owner-operator must (i) confirm that it is a party to a fully executed third party power purchase agreement under the pilot program, and (ii) provide the effective date of such agreement, all within 3 business days of such agreement's execution;

• Within 90 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 5% of projected pilot costs have been incurred under a binding written contract as per the Section 461(h) economic performance definitions of the U.S. Treasury Safe Harbor Rules, or that all local permitting and zoning approvals have been secured;

• Within 180 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 25% of pilot projected pilot costs have been incurred under a binding written contract as per the Section 461(h) economic performance definitions of the U.S. Treasury Safe Harbor Rules; and

• Within 270 calendar days of filing the written notice of intent, the owner-operator must confirm that the project has been "placed in service," as that term is used in 26 USC § 48.

Upon receipt of the required confirmations, the Commission Staff shall post to its website the following for informational purposes:

• Date of notice of intent;

• Date of fully executed agreement;

• Effective date of agreement;

• Placed in service date of the renewable generation facility;

• Installed capacity of the renewable generation facility, with separate data for windpowered and solar-powered projects; and

• Available capacity remaining under the 50 MW limit for Dominion Energy Virginia and available capacity remaining under the 7 MW limit for Appalachian Power Company.

The Commission shall review the pilot program in 2015, and every two years thereafter during the existence of the program, to determine whether the statutory limitations on the capacity of generation facilities included in the program should be continued, expanded, or reduced. Before

recommending any changes to such statutory limitations, the Commission may solicit input from all interested parties.

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[1] As described in Chapter 382, the Pilot Utility is an investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002. The utility is Virginia Electric and Power Company d/b/a Dominion Energy Virginia. Pursuant to Chapter 803 of the 2017 Virginia Acts of Assembly, this pilot program is expanded to include an investor-owned electric utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, identified as Appalachian Power Company, and that such expansion expires on July 1, 2022.

Attachment B

UPDATED GUIDELINES REGARDING NOTICE INFORMATION FOR A THIRD PARTY RENEWABLE POWER PURCHASE AGREEMENT

A. Purpose.

The Commission is establishing these guidelines pursuant to Chapter 382 of the 2013 Virginia Acts of Assembly ("Chapter 382") regarding a pilot program for third party power purchase agreements for renewable generation. Chapter 382 specifically provides that the State Corporation Commission ("Commission") must establish guidelines concerning (i) information to be provided in written notices and (ii) procedures for collecting and posting information derived from such notices on the Commission's website. In addition, the Commission may establish general guidelines for its administration of the pilot program.

B. Applicability.

These guidelines are applicable to any owner or operator of a solar-powered or wind-powered electric generation facility (referred to herein as "owner-operator") located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, within the certificated service territory of an investor-owned electric utility ("Pilot Utility").[1] Such a facility shall have a generation capacity of 50 kW to 1 MW, except that if the eligible customer-generator served by the owner-operator is an entity with tax-exempt status in accordance with § 501(c)3 of the Internal Revenue Code of 1954, as amended, then such facility is not limited by the 50 kW minimum, and can qualify with a generation capacity range of 1 kW to 1 MW. An eligible facility shall provide electricity to only one customer.

The owner-operator shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement to provide such eligible customer-generator third party financing of the costs of such a renewable generation facility. The owner-operator also may be subject to any requirements of its local governing body and the Virginia Department of Environmental Quality.

The pilot program limitation of 50 MW for Dominion Energy Virginia includes participation among jurisdictional and non-jurisdictional customers, and the limitation of 7 MW for Appalachian Power Company targets participation among nonprofit, private institutions of higher education.

C. Filing of Notice.

Any party who intends to enter into a third-party power purchase agreement under the pilot program must provide written notice to the Commission and to the Pilot Utility of the party's intent to enter into such agreement not less than 30 calendar days before the effective date of such agreement.

D. Contents of Filing.

The owner-operator shall provide written notice to the Commission and the Pilot Utility not less than 30 calendar days before the effective date of such agreement and shall include the following information:

• Identity of the owner-operator of the renewable electric generation facility;

• The name, address, and under seal as "confidential" or "extraordinarily sensitive" information, the Pilot Utility electric account number of the eligible customer-generator;

• Location of the premise(s) upon which the renewable electric generation facility will be installed;

• Renewable source of the electric generation facility;

• Generation capacity of the renewable electric generation facility expressed in terms of kWs available for delivery to the end-user stated in alternating current (AC);

• Expected date that the electric generation facility will be placed in service. The term "placed in service" shall have the same meaning as used in 26 USC § 48 of the federal Business Energy Investment Tax Credit for certain renewable energy technologies;

• Duration of the third-party power purchase agreement;

• Proof of § 501(c)3 tax exempt status (when applicable); and

• Under seal as "confidential" or "extraordinarily sensitive" information, the projected installation cost of the renewable electric generation facility, in dollars per Watt (AC). Subsequent to the placed in service date, such projected cost of installation shall be updated for the actual cost of installation.

E. Posting and Tracking.

Within three business days of receiving a written notice of intent, the Commission Staff shall post to its website the cumulative amount of solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity associated with the notice of intent, expressed in kW or MW (AC), and the remaining aggregate capacity available for future pilot projects.

Within three business days of the placed in service date of such facility, the owner-operator shall provide written notification of such placed in service date to the Commission and the Pilot Utility. Within three business days of receiving such written notice of the placed in service date, the Commission Staff shall post to its website the cumulative amount of installed solar-powered generation capacity and, separately, the cumulative amount of wind-powered generation capacity, expressed in kW or MW (AC). Simultaneously, the capacity remaining available for future pilot projects also shall be posted. The owner-operator also shall provide written notice to the Commission and the Pilot Utility of any change to the generating capacity of the facility or of the parties to the third party power purchase agreement within three business days of any such change.

On an annual basis, the Pilot Utility shall submit to the Commission under seal as "confidential" or "extraordinarily sensitive" information, a report of the individual and aggregated amount of energy generated (kWhs) and peak capacity (kW) provided from all pilot renewable generation facilities combined, with separate totals for wind pilot projects and solar pilot projects. The Pilot Utility's report also shall identify and quantify any system benefits, such as but not limited to, transmission and distribution system benefits, line loss savings, generation capacity savings, wholesale energy purchase offsets, fuel cost savings, and any economic development and job creation benefits across the region or the Commonwealth.

Subsequent to the Pilot Utility's report, the Commission Staff shall aggregate and post to its website the following information obtained from such report and any information filed by owner-operators, with separate data for wind-powered and solar-powered projects:

• Average projected installation costs of projects in the pilot program, in dollars per Watt (AC);

• Average duration of the third party purchase agreements;

• Total number of customer-generators participating in the pilot program;

• Total number of owner-operators participating in the pilot program; and

• The city and/or county location of projects in the pilot program that have been placed in service.

F. Program Cap Management.

The owner-operator shall fulfill the following requirements and provide written confirmation to the Commission and the Pilot Utility that it has met each requirement:

• The owner-operator must provide a written notice of intent as described in Section C of these guidelines; • The owner-operator must (i) confirm that it is a party to a fully executed third party power purchase agreement under the pilot program, and (ii) provide the effective date of such agreement, all within 3 business days of such agreement's execution;

• Within 90 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 5% of projected pilot costs have been incurred under a binding written contract as per the Section 461(h) economic performance definitions of the U.S. Treasury Safe Harbor Rules, or that all local permitting and zoning approvals have been secured;

• Within 180 calendar days of filing the written notice of intent, the owner-operator must confirm that more than 25% of pilot projected pilot costs have been incurred under a binding written contract as per the Section 461(h) economic performance definitions of the U.S. Treasury Safe Harbor Rules; and

• Within 270 calendar days of filing the written notice of intent, the owner-operator must confirm that the project has been "placed in service," as that term is used in 26 USC § 48.

Upon receipt of the required confirmations, the Commission Staff shall post to its website the following for informational purposes:

• Date of notice of intent;

• Date of fully executed agreement;

• Effective date of agreement;

• Placed in service date of the renewable generation facility;

• Installed capacity of the renewable generation facility, with separate data for wind-powered and solar-powered projects; and

• Available capacity remaining under the 50 MW limit for Dominion Energy Virginia and available capacity remaining under the 7 MW limit for Appalachian Power Company.

The Commission shall review the pilot program in 2015, and every two years thereafter during the existence of the program, to determine whether the statutory limitations on the capacity of generation facilities included in the program should be continued, expanded, or reduced. Before recommending any changes to such statutory limitations, the Commission may solicit input from all interested parties.

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[1] As described in Chapter 382, the Pilot Utility is an investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002. The utility is Virginia Electric and Power Company d/b/a Dominion Energy Virginia~~-Power~~. Pursuant to Chapter 803 of the 2017 Virginia Acts of Assembly. This pilot program is expanded to include -an investor-owned electric utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, identified as Appalachian Power Company, and that such expansion expires on July I, 2022.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Meherrin Solar, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Brink, Greensville County

Meherrin Solar LLC, a wholly-owned subsidiary of Brookfield Renewable, has provided to the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Brink, Virginia. The project is located on the west side of Pine Log Road and south of Brink Road in Greensville County. The project will be sited on roughly 530 acres across multiple parcels. The solar array will connect up to 60 megawatts alternating current to Dominion Virginia Power's grid via a new 115-kilovolt substation built off of a nearby Dominion owned transmission line. The project will conceptually use 231,500 345-watt standard photovoltaic solar panels on a single axis tracker to follow the sun throughout the day. NOTE: This project was previously noticed for SolUnesco LLC, the previous owner, in the 32:2 VA.R. 290-291 September 21, 2015.

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.

Otter Creek Solar, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Chase City, Mecklenburg County

Otter Creek Solar, LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Chase City, Virginia. The project is located approximately three miles west of Chase City, on the north side and south side of Spanish Grove Road in Mecklenburg County. The project will be sited on roughly 690 acres across multiple parcels. The solar array will connect 60 megawatts alternating current to Dominion Virginia Power's grid via a new 115-kilovolt substation built off of a nearby Dominion owned transmission line. The project will conceptually use 231,500 345-watt standard photovoltaic solar panels on a single axis tracker to follow the sun throughout the day. NOTE: The project was previously noticed by SolUnesco, prior owner, in the 32:20 VA.R. 2514 May 30, 2016.

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

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on July 5, 2017. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred Six (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack Classic" Final Rules for Game Operation (effective July 9, 2017)

Director's Order Number One Hundred Seven (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Bulls Eye Bingo" Final Rules for Game Operation (effective July 9, 2017)

Director's Order Number One Hundred Eight (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Horoscope Crossword" Final Rules for Game Operation (effective July 9, 2017)

Director's Order Number One Hundred Nine (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Money Bag Crossword" Final Rules for Game Operation (effective July 9, 2017)

Director's Order Number One Hundred Ten (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Rockin' Bingo" Final Rules for Game Operation (effective July 9, 2017)

Director's Order Number One Hundred Eleven (17)

Virginia Lottery's "Publix Grand Opening Bogo" Retailer Incentive Promotion (this Director's Order becomes effective on July 15, 2017, and shall remain in full force and effect through the end date of the incentive promotion, unless otherwise extended by the Director)

Director's Order Number One Hundred Fourteen (17)

Virginia Lottery's Scratch Game 1804 "White Hot 5's" Final Rules for Game Operation (effective July 3, 2017)

Director's Order Number One Hundred Fifteen (17)

Virginia Lottery's Scratch Game 1830 "Loose Change" Final Rules for Game Operation (effective July 3, 2017)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Reimbursement Changes Affecting Supplemental Payments to Qualifying Private Hospitals

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)))

Public comment period: June 28, 2017, through July 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—Inpatient Hospital Services (12VAC30-70) and 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.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impacts of the proposed changes to institutional provider payment methodologies, particularly the potential impact on access to care. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review upon request. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum attached to this notice and this notice is available for public review on the General Notices page at https://townhall.virginia.gov/L/generalnotice.cfm.

Reimbursement Changes Affecting Supplemental Payments to Qualifying Private Hospitals

DMAS is removing language from the State Plan related to quarterly supplemental payments for qualifying private hospitals for inpatient and outpatient services rendered during the quarter. No payments have been made under the current State Plan provision because funding has not been authorized.

There will be no decrease in actual 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.

VIRGINIA WASTE MANAGEMENT BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated June 7, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The current regulation continues to be needed. The regulation explains how the public will be notified and how input will be sought, explains the use of advisory panels, and details the public participation process during regulatory actions. The regulation is explanatory in nature and does not place any additional regulatory burden on the regulated community including small businesses.

Contact Information: 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.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Northumberland County

An enforcement action has been proposed for Northumberland County for violations at the Callao wastewater treatment plant. The enforcement action requires the county to take corrective action to address exceedances of total recoverable zinc effluent limitations contained in the county's Virginia Pollutant Discharge Elimination System permit. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kathleen O'Connell will accept comments by email at kathleen.oconnell@deq.virginia.gov, by FAX at (804) 698-4277, or by postal mail at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23223, from July 24, 2017, through August 23, 2017.

Proposed Enforcement Action for Traveler's Inn

An enforcement action has been proposed for Dinesh Patel for violations at the Traveler's Inn wastewater treatment plant located in Petersburg, Virginia. The enforcement action requires Mr. Patel to take corrective action to address violations of the effluent limitations and other conditions of his Virginia Pollutant Discharge Elimination System permit. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kathleen O'Connell will accept comments by email at kathleen.oconnell@deq.virginia.gov, by FAX at (804) 698-

4277, or by postal mail at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23223, from July 24, 2017, through August 23, 2017

Proposed Enforcement Action for Scrap 58, Inc.

An enforcement action has been proposed for Scrap 58, Inc. for violations of the State Water Control Law in Chesapeake, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from July 24, 2017, to August 23, 2017.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at 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.

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

ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-40. Eligibility Conditions and Requirements.**

Publication: 33:23 VA.R. 2536 July 10, 2017.

Correction to Notice of Withdrawal:

Page 2536, line four of announcement, after "as published in"

replace "34:21" with "33:21"

VA.R. Doc. No. R17-4396; Filed July 6, 2017.