



VIRGINIA

REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Gregory D. Habeeb**, Vice Chair; **James A. "Jay" Leftwich**; **Ryan T. McDougle**; **Rita Davis**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Charles S. Sharp**; **Samuel T. Towell**; **Mark J. Vucci**.

Staff of the Virginia Register: **Karen Perrine**, Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Alexandra Stewart-Jonte**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

September 2018 through August 2019

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
35:2	August 29, 2018	September 17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 (Monday)	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 (Friday)	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February 18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

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 Agriculture and Consumer Services intends to consider amending **2VAC5-317, Regulations for the Enforcement of the Noxious Weeds Law**. The purpose of the proposed action is to consider amending the current list of noxious weeds and making any additional amendments the board deems necessary as a result of revising the list of noxious weeds.

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

Statutory Authority: § 3.2-802 of the Code of Virginia.

Public Comment Deadline: September 19, 2018.

Agency Contact: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email debra.martin@vdacs.virginia.gov.

VA.R. Doc. No. R18-5605; Filed July 24, 2018, 3:11 p.m.

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 Agriculture and Consumer Services intends to consider amending **2VAC5-320, Regulations for the Enforcement of the Endangered Plant and Insect Species Act**. The purpose of the proposed action is to amend the lists of endangered and threatened plant and insect species by (i) removing from the regulation a plant species that is no longer globally rare and (ii) adding to the endangered and threatened lists certain plant and insect species that are considered in danger of extinction or that are likely to become endangered in the foreseeable future throughout all or a significant portion of their native range. This action seeks to protect endangered and threatened plant and insect species from take and destruction. The proposed amendments will also stimulate conservation programs to preserve and protect the affected species. This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Statutory Authority: §§ 3.2-1002 and 3.2-1005 of the Code of Virginia.

Public Comment Deadline: September 19, 2018.

Agency Contact: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TTY (800) 828-1120, or email debra.martin@vdacs.virginia.gov.

VA.R. Doc. No. R18-5606; Filed July 24, 2018, 3:14 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Authority intends to consider amending **3VAC5-70, Other Provisions**. The purpose of the proposed action is to change the civil penalties for first-time offense violations by increasing the amounts to reflect a statutory increase in current maximum penalties. Any licensee charged with one of the offenses listed in 3VAC5-70-210, provided that the licensee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may enter a written waiver of hearing and accept a period of suspension or pay a civil charge in lieu of a suspension. The increased penalties would continue to be lower than the maximum allowed in § 4.1-227 of the Code of Virginia.

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

Statutory Authority: §§ 4.1-111 and 4.1-227 of the Code of Virginia.

Public Comment Deadline: September 19, 2018.

Agency Contact: LaTonya D. Hucks, Legal Liaison, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

VA.R. Doc. No. R18-5365; Filed August 1, 2018, 12:32 p.m.

REGULATIONS

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

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1240. Fisherman Identification Program (amending 4VAC20-1240-30).**

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

Effective Date: July 26, 2018.

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.

Summary:

The amendment removes the toll free 1-800 number for requesting a fisherman identification program number because the number no longer exists.

4VAC20-1240-30. Registration requirement; exception; procedures; confidentiality.

A. It shall be unlawful for any resident or nonresident, 16 years of age or older, to take or catch or attempt to take or catch any marine or anadromous fish species recreationally in any tidal waters of the Commonwealth without first obtaining, annually, a Fisherman Identification Program (FIP) number, except as provided in subsection B of this section.

B. Any person who purchases a Virginia saltwater recreational fishing license under Article 1.1 (§ 28.2-302.1 et seq.) of Chapter 3 of Title 28.2 of the Code of Virginia, or a saltwater recreational fishing license issued by the Potomac River Fisheries Commission, is not required to obtain a FIP number for the term of that license. Any person fishing aboard a charter boat or head boat that is licensed by the Virginia Marine Resources Commission or the Potomac River Fisheries Commission is not required to obtain a FIP number.

C. The FIP number may be obtained by the fisherman at no cost by ~~calling a toll free number and providing the required~~

~~FIP information over the telephone or by~~ entering the required FIP information online via an Internet access portal designated by the Marine Resources Commission for that purpose. The required FIP information shall include name, date of birth, address, and telephone number. No person shall be considered as registered under the FIP unless all of that person's FIP-required information is a part of the commission's telephone or Internet database.

D. Any person registered in the Fisherman Identification Program must be able to produce his FIP number upon request by any police officer. Failure to provide a valid FIP number for the current year shall constitute a violation of this regulation.

VA.R. Doc. No. R18-5612; Filed July 26, 2018, 8:21 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

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

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-190).**

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

Effective Date: September 19, 2018.

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.

Summary:

The amendment permits residents of nursing facilities to deduct the costs of limited specific dental procedures from their contributions toward the costs of their nursing facility care. Specifically, nursing facility residents are limited to deducting the following dental procedures: (i) routine exams and x-rays and dental cleaning twice yearly; (ii) full mouth x-rays once every three years; and (iii) extractions and fillings shall be permitted only if medically necessary as determined by the department.

12VAC30-50-190. Dental services.

A. Dental services shall be covered for individuals younger than 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with ~~the State Dental Practice Act Chapter 27~~ (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

1. The ~~state agency~~ Department of Medical Assistance Services (DMAS) will provide any medically necessary dental service to individuals younger than 21 years of age.

2. Certain dental services, as described in the ~~agency's~~ DMAS Office Reference Manual (Smiles for Children, March 13, 2014), prepared by ~~DMAS'~~ DMAS's dental benefits administrator, require preauthorization or prepayment review by ~~the state agency~~ DMAS or its designee.

3. Dental services for individuals younger than the age of 21 years that do not require preauthorization or prepayment review are initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; routine amalgam and composite restorations; stainless steel crowns, prefabricated steel post and temporary (polycarbonate ~~crowns~~) crowns, and stainless steel bands; crown recementation; pulp tomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure.

B. Dental services determined by the dental provider to be medically appropriate for an adult woman during the term of her pregnancy and through the end of the month following the 60th day postpartum shall be provided to a Medicaid-enrolled pregnant woman. The dental services that shall be covered are (i) diagnostic x-rays and exams; (ii) preventive cleanings; (iii) restorative fillings; (iv) endodontics (root canals); (v)

periodontics (gum-related treatments); (vi) prosthodontics, both removable and fixed (crowns, bridges, partial plates, and dentures); (vii) oral surgery (tooth extractions and other oral surgeries); and (viii) adjunctive general services (all covered services that do not fall into specific professional categories). These services require prepayment review by ~~the state agency~~ DMAS or its designee.

C. For the dental services covered for Medicaid-enrolled adult pregnant women, ~~the state agency~~ DMAS may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once/five years); extractions, tooth guidance appliances, permanent crowns and bridges, endodontics, patient education and sealants (once).

D. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and require preauthorization or prepayment review by ~~the state agency~~ DMAS or its designee as described in the agency's Office Reference Manual located on the DMAS website at: ~~http://www.dmas.virginia.gov/Content_atehs/dnt/VA_SFC ORM_140313.pdf~~ <http://www.dmas.virginia.gov/#/dentalresources>.

E. Residents of nursing facilities shall be permitted to deduct the costs of limited specific dental procedures from their payments toward the costs of their nursing facility care. Nursing facility residents shall be limited to deducting the following dental procedures: (i) routine exams and x-rays and dental cleaning twice yearly; (ii) full mouth x-rays once every three years; and (iii) extractions and fillings shall be permitted only if medically necessary as determined by DMAS.

VA.R. Doc. No. R18-5435; Filed July 30, 2018, 10:12 a.m.

◆ ————— ◆

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from Article 2 of the Administrative Process Act pursuant to § 2.2-4006 A 12 of the Code of Virginia; however, the regulations are subject to the provisions of § 2.2-4007.06 of the Code of Virginia concerning public petitions. The regulations were (i) published as final regulations in [34:18 VA.R. 1744-1961 April 30, 2018](#); (ii) suspended pursuant to § 2.2-4007.06 in [34:22 VA.R. 2140-2141 June 25, 2018](#); and (iii) readopted as final regulations with the changes shown in brackets below.

Regulations

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-470, 13VAC5-63-485).**

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

Effective Date: September 4, 2018.

Agency Contact: Kyle Flanders, Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Summary:

The Virginia Uniform Statewide Building Code (USBC) governs the construction, maintenance, and rehabilitation of new and existing building and structures. The USBC uses nationally recognized model building codes and standards produced by the International Code Council and other standard-writing groups as the basis for the technical provisions of the regulation. Every three years, new editions of the model codes become available. At that time, the Board of Housing and Community Development initiates a regulatory action to incorporate the newest editions of the model codes into the regulation.

Final regulations for the USBC, including 13VAC5-63-470 E and 13VAC5-63-485, were published in Volume 34, Issue 18 of the Virginia Register of Regulations on April 30, 2018 (34:18 VA.R. 1744-1961 April 30, 2018), initiating a 30-day final adoption period. During that period, a number of petitions were received concerning substantive changes made between the proposed and final regulations. The board suspended the regulatory process for 13VAC5-63-470 E and 13VAC5-63-485 (refer to 34:22 VA.R. 2140-2141 June 25, 2018) and established an additional 30-day comment period for these provisions.

On July 30, 2018, the Board of Housing and Community Development considered the public comment on 13VAC5-63-470 E and 13VAC5-63-485. The board readopted 13VAC5-63-470 E as the final regulations were published and readopted 13VAC5-63-485 with the changes from the final regulations shown in brackets below.

13VAC5-63-485 as readopted allows the code official to request legal proceedings when a property owner is served with three or more separate notices of violation for the same property within any five consecutive years for specific types of violations.

13VAC5-63-470 E (Section 103.2.3 Responsibility).

~~E. 103.2.3 Responsibility. The owner of a structure shall provide and maintain all buildings, structures, systems, facilities and associated equipment in compliance with this~~

code unless it is specifically expressed or implied that it is the responsibility of the tenant or occupant.

13VAC5-63-485. Section 105 Violations.

105.1 Violation a misdemeanor; civil penalty. In accordance with § 36-106 of the Code of Virginia, it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions. Any locality may adopt an ordinance that establishes a uniform schedule of civil penalties for violations of specified provisions of the code that are not abated or remedied promptly after receipt of a notice of violation from the local enforcement officer.

Note: See the full text of § 36-106 of the Code of Virginia for additional requirements and criteria pertaining to legal action relative to violations of the code.

105.2 Notices, reports and orders. Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Work done to correct violations of this code subject to the permit, inspection and approval provisions of the VCC shall not be construed as authorization to extend the time limits established for compliance with this code.

105.3 Correction notice. The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation within a reasonable time unless an emergency condition exists as provided under the unsafe building provisions of Section 106. Upon request, the correction notice shall reference the code section that serves as the basis for the defects and shall state that such defects shall be corrected and reinspected in a reasonable time designated by the code official.

105.4 Notice of violation. If the code official determines there are violations of this code a written notice of violation may be issued to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 105.3. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 105.3. The code official shall provide the section numbers to the owner for any code provisions cited in the notice of violation. The notice shall require correction of the violation within a reasonable time. The owner or person to whom the notice of violation has been issued shall be responsible for contacting the code official within the timeframe established for any reinspections to assure the violations have been corrected. The code official will be responsible for making such inspection and verifying the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.

Exceptions:

1. Notices issued and legal proceedings or emergency actions taken under Section 106 for unsafe structures, unsafe equipment, or structures unfit for human occupancy.

2. Notices issued for failing to maintain buildings and structures as required by Section 103.2, as evidenced by multiple or repeated violations on the same property are not required to include a compliance deadline for correcting defects.

105.5 Coordination of inspections. The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13VAC5-51) for maintenance of fire protection devices, equipment, and assemblies so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

105.6 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the code official may request the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality or legal counsel so authorizes, the code official may issue or obtain a summons or warrant. [~~Compliance with a notice of violation notwithstanding, the code official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation for the same property.~~]

105.6.1 Further action for corrected violations: Compliance with a notice of violation notwithstanding, the code official may request legal proceedings be instituted for prosecution when a responsible party is served with three or more separate notices of violation for the same property within any five consecutive years. Legal proceedings shall not be instituted under this section for violation notices issued pursuant to the initial inspection of the property. Legal proceedings for violations that have been abated in residential rental dwelling units within a multifamily apartment development may only be instituted for such violations that affect safe, decent or sanitary living conditions.

Exception: Legal proceedings shall not be instituted for violations that have been abated on owner-occupied single family dwellings.]

105.7 Penalties and abatement. Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the

code shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

VA.R. Doc. No. R16-4664; Filed August 1, 2018, 10:36 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE APPRAISER BOARD

Final Regulation

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

Title of Regulation: 18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10).

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Effective Date: October 1, 2018.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

Section 1110 of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC § 3339) requires that real estate appraisals be performed in accordance with and reviewed for compliance with generally accepted standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation, which are known as the Uniform Standards of Professional Appraisal Practice (USPAP). The ASB updates USPAP every two years and has issued the 2018-2019 edition, which is effective from January 1, 2018, through December 31, 2019. The amendments update the edition in the definition of "USPAP" and as incorporated by reference.

Regulations

Part I General

18VAC130-20-10. Definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the State Council of Higher Education for Virginia or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing, and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC § 3301 et seq.), as amended.

"Appraiser" means an individual who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

"Appraiser classification" means any category of appraiser, which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing, and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities, and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties ~~which~~ that the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association, or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise or provide a review appraisal of nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to \$250,000, whichever is the lesser.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, online learning, correspondence courses, etc.).

"Experience" as used in this chapter includes ~~but is not limited to~~ experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility ~~analysis/study~~ analysis or study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. ~~"Fee/staff~~ "Fee and staff appraiser experience" means experience acquired as ~~either~~ a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for ~~fee/staff~~ fee and staff appraiser experience, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 1 and 2.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by ~~fee/staff~~ fee and staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 6.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by ~~fee/staff~~ fee and staff appraisers, and by the use of reason and exercise of judgment forms objective conclusions as to the validity of ~~fee/staff~~ fee and staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed, and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports after January 30, 1989, recommending the acceptance, revision, or rejection of the

~~fee/staff~~ fee and staff appraiser's opinions that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 3.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the cosigner subcategory of ~~fee/staff~~ fee and staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes, ~~but is not necessarily limited to,~~ the following:

- Absorption Study
- Ad Valorem Tax Study
- Annexation Study
- Assemblage Study
- Assessment Study
- Condominium Conversion Study
- Cost-Benefit Study
- Cross Impact Study
- Depreciation/Cost Study
- Distressed Property Study
- Economic Base Analysis
- Economic Impact Study
- Economic Structure Analysis
- Eminent Domain Study
- Feasibility Study
- Highest and Best Use Study
- Impact Zone Study
- Investment Analysis Study
- Investment Strategy Study
- Land Development Study
- Land Suitability Study
- Land Use Study
- Location Analysis Study
- Market Analysis Study
- Market Strategy Study
- Market Turning Point Analysis
- Marketability Study
- Portfolio Study
- Rehabilitation Study
- Remodeling Study
- Rental Market Study
- Right of Way Study
- Site Analysis Study
- Utilization Study
- Urban Renewal Study
- Zoning Study

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To qualify for real estate consulting experience, an individual must have prepared written reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 4 and 5. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements specified in this chapter. Inactive licenses do not meet the requirements set forth in § 54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice is less than \$1 million. Licensed residential real estate appraisers may also appraise or provide a review appraisal of noncomplex, nonresidential properties with a transaction value or market value as defined by the Uniform Standards of Professional Appraisal Practice up to \$250,000, whichever is the lesser.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in § 54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association, or other business entity ~~which that~~ provides appraisal services and ~~which that~~ is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

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

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

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

"Substantially equivalent" means any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser or certified residential real estate appraiser who supervises any unlicensed individual acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction which may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means the ~~2016-2017~~ 2018-2019 edition of those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate or opinion of the

value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

DOCUMENTS INCORPORATED BY REFERENCE (18VAC130-20)

~~Uniform Standards of Professional Appraisal Practice, 2016-2017 Edition, Appraisal Standards Board, Appraisal Foundation~~

[Uniform Standards of Professional Appraisal Practice, 2018-2019 Edition, Appraisal Standards Board, The Appraisal Foundation](#)

V.A.R. Doc. No. R18-5618; Filed August 1, 2018, 10:06 a.m.

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

Final Regulation

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

Title of Regulation: 18VAC160-40. Onsite Sewage System Professionals Licensing Regulations (amending 18VAC160-40-10).

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Effective Date: September 19, 2018.

Agency Contact: Trisha Henshaw, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email waterwasteoper@dpor.virginia.gov.

Summary:

Pursuant to Chapter 830 of the 2018 Acts of Assembly, the amendments conform the definition of "maintenance" in regulation to statute to (i) include in-kind replacement of sewer lines, conveyance lines, distribution boxes, and header lines that do not require a construction permit for adjustment and replacement, unless local ordinance provides otherwise; and (ii) clarify that, notwithstanding any local ordinance, onsite system maintenance does not

include replacement of tanks, drainfield piping, subsurface drainfields, or work requiring a construction permit or installer licensure and that, unless prohibited by local ordinance, a licensed conventional or alternative installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.

Part I
Definitions

18VAC160-40-10. Definitions.

A. Section 54.1-2300 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

- "Board"
- "Onsite sewage system"
- "Operator"
- "Wastewater works"

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

"Alternative onsite sewage system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Alternative onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional and alternative onsite sewage systems.

"Alternative onsite sewage system operator" means an individual licensed by the board to operate and maintain conventional and alternative onsite sewage systems.

"Alternative onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effect of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional and alternative onsite sewage systems suitable for the soils.

"Applicant" means an individual who submits an application with the appropriate fee and other required documentation.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Authorized onsite soil evaluator" means an individual holding an authorized onsite soil evaluator certification issued by the Virginia Department of Health that was valid on June 30, 2009.

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"Category" means journeyman or master as applicable to the professionals under the board's purview.

"Class" means conventional or alternative as applicable to the professionals under the board's purview.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Conventional onsite sewage system installer" means an individual licensed by the board to construct, install, and repair conventional onsite sewage systems.

"Conventional onsite sewage system operator" means an individual licensed by the board to operate and maintain conventional onsite sewage systems.

"Conventional onsite soil evaluator" means an individual licensed by the board to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for conventional and alternative onsite sewage systems, to certify in accordance with applicable state regulations and local ordinances that sites are suitable for conventional and alternative onsite sewage systems, and to design conventional onsite sewage systems suitable for the soils.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervision" means being immediately available and fully responsible for the provision of onsite sewage system services regulated pursuant to Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 and this chapter.

"Interim license" refers to the initial issuance of professional licenses during the implementation of the onsite sewage system professionals licensure program. Such licenses were limited to four years and not renewable.

"Journeyman" means an individual who possesses the minimum skills and competency to install or maintain onsite sewage systems or assist in the evaluation of soil sites as suitable for conventional and alternative onsite sewage systems and to design onsite sewage systems under the direct supervision of a master licensee.

"Licensee" means an individual holding a valid license issued by the board.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without such license.

"Maintenance" or "maintain" means, unless otherwise provided in local ordinance, (i) performing adjustments to equipment and controls and or (ii) in-kind replacement of normal wear and tear parts that do not require a construction permit for adjustment or replacement of the component, such as light bulbs, fuses, filters, pumps, motors, sewer lines, conveyance lines, distribution boxes, header lines, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall Notwithstanding any local ordinance, "maintenance" does not include replacement of tanks, drainfield piping, or distribution boxes subsurface drainfields, or work requiring a construction permit and a licensed onsite sewage system installer. Unless otherwise prohibited by local ordinance, a conventional onsite sewage system installer or an alternative onsite sewage system installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.

"Master" means an individual who ~~possess~~ possesses the minimum skills and competency to install or maintain onsite sewage systems or evaluate soil sites as suitable for conventional and alternative onsite sewage systems and to design conventional and alternative onsite sewage systems.

"Operate" means the act of (i) placing into or taking out of service a unit process ~~or unit processes~~ or (ii) making or causing adjustments in the operation of a unit process at a treatment works.

"Profession" means the practice of onsite soil evaluation, onsite sewage system installation, and onsite sewage system operation.

"Professional" means an onsite sewage system installer, onsite sewage system operator, or onsite soil evaluator who is licensed pursuant to the provisions of this chapter and is in good standing with the board to practice his profession in this Commonwealth.

"Renewal" means the process and requirements for periodically approving the continuance of a license.

"Sewage" means water-carried and nonwater-carried human excrement or kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm, or other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Training credit" means a unit of board-approved training or formal education completed by an individual that may be used to substitute for experience when applying for a license.

"Treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes including pumping power and other equipment and appurtenances,

septic tanks and any works, including land, that are or will be (i) an integral part of the treatment processes or (ii) used for ultimate disposal of residues or effluent resulting from such treatment.

"VDH" means the Virginia Department of Health.

V.A.R. Doc. No. R18-5567; Filed August 1, 2018, 10:02 a.m.

TITLE 23. TAXATION

DEPARTMENT OF TAXATION

Fast-Track Regulation

Titles of Regulations: **23VAC10-110. Individual Income Tax (adding 23VAC10-110-145).**

23VAC10-120. Corporation Income Tax (adding 23VAC10-120-103).

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 19, 2018.

Effective Date: November 3, 2018.

Agency Contact: Matthew Huntley, Lead Tax Policy Analyst, Department of Taxation, 600 East Main Street, 15th Floor, Richmond, VA 23219, telephone (804) 786-2010, or email matthew.huntley@tax.virginia.gov.

Basis: Chapter 762 of the 2017 Acts of Assembly requires the Department of Taxation to promulgate regulations regarding the newly established individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account prior to December 31, 2017. To the extent that this regulatory action sets forth the process that an investment fund will use to apply for certification as a Virginia venture capital account, the authority for this regulatory action is mandatory.

Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." To the extent that this regulatory action will define terms that were left undefined by the legislation, the authority for this regulatory action is discretionary.

Purpose: Chapter 762 of the 2017 Acts of Assembly establishes an individual and corporate income tax subtraction for income attributable to an investment in an investment fund that has been certified by the department as a Virginia venture capital account. This subtraction was codified in § 58.1-322.02 of the Code of Virginia for individual income

tax purposes and in § 58.1-402 of the Code of Virginia for corporate income tax purposes.

To be certified as a Virginia venture capital account for purposes of this subtraction, an investment fund must first register with the department prior to December 31, 2023. As part of such registration, the investment fund must (i) indicate that it intends to invest at least 50% of the capital committed to its fund in qualified portfolio companies and (ii) provide documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience.

Once the investment fund actually invests at least 50% of the capital committed to its fund in qualified portfolio companies, it must notify the department. The department is then required to certify such investment fund as a Virginia venture capital account.

The second enactment clause of Chapter 762 requires the department to promulgate regulations prior to December 31, 2017, establishing procedures regarding (i) registration of an investment fund as a Virginia venture capital account; (ii) provision of documentation regarding an investor's training, education, or experience; and (iii) certification of an investment fund as a Virginia venture capital account by the department.

This regulatory action establishes such procedures regarding the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account, and, based on §§ 58.1-322.02 and 58.1-402 of the Code of Virginia, provides definitions essential to those procedures. Government must have predictable and adequate revenue to provide for the health, safety, and welfare of citizens. Tax regulations enhance customer service and voluntary compliance. The interpretations, examples, and other guidance in tax regulations ensure uniform application of the tax laws to taxpayers. Business taxpayers in particular find regulations essential in predicting the tax consequences of transactions and avoiding unanticipated tax assessments as the result of audits. Tax regulations also ensure that audits and other compliance activity result in the assessment and collection of the correct amount of tax.

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 establishes the process that an investment fund will be required to utilize to apply for certification as a Virginia venture capital account and defines certain terms for purposes of providing guidance to taxpayers regarding the subtraction, this action is not expected to be controversial.

Substance: This regulatory action requires that every investment fund desiring to be certified by the department as a Virginia venture capital account for purposes of the subtraction first register with the department by submitting an

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application indicating that it intends to invest at least 50% of the capital committed to its fund in qualified portfolio companies and employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience.

This regulatory action (i), for purposes of the experienced investor requirement, requires an investment fund to include with its registration application documentation of the investor's work experience, training, and education demonstrating that such individual meets the experienced investor requirement; (ii) requires the department to, upon approval of an investment fund's registration application, provide certification to the investment fund stating that such application has been approved, and such certification will only be valid for the calendar year for which it is issued; (iii) provides that, once an investment fund has met the experienced investor requirement actually invests at least 50% of the capital committed to its fund in qualified portfolio companies, it may apply to the department for certification as a Virginia venture capital account; (iv) requires the investment fund to provide documentation demonstrating that it has met the investment requirement; (v) may require the investment fund to provide certain information regarding its investors as determined by the department; (vi) requires the department to, upon approval of an investment fund's application for certification as a Virginia venture capital account, provide certification to the investment fund stating that it is a Virginia venture capital account for purposes of the subtraction, and such certification will only be valid for the calendar year for which it is issued; (vii) requires an investment fund to submit both applications to the department and all necessary attachments no later than January 31 of the calendar year following the calendar year for which the investment fund is applying for certification as a Virginia venture capital account; and (viii) defines terms essential to the clarity of the provisions, some of which are based on definitions in §§ 58.1-322.02 and 58.1-402 of the Code of Virginia.

Issues: This regulatory action establishes procedures regarding the individual and corporate income tax subtraction for income attributable to an investment in a Virginia venture capital account and defines certain terms for purposes of providing guidance to taxpayers regarding the subtraction. Therefore, it will provide advantages to investment funds desiring certification as a Virginia venture capital account and to individual and corporate taxpayers eligible to claim the subtraction. Establishing such procedures will enhance the efficiency of the application process and of the overall administration of the subtraction. This regulatory action will result in no apparent disadvantages to the public or to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As required by Chapter 762 of the 2017 Acts of Assembly,¹ the Department of Taxation (Department) proposes to establish procedures regarding how an investment fund may apply for certification as a Virginia venture capital account.

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

Estimated Economic Impact. In 2017, Chapter 762, which allows a subtraction from individual or corporate taxable income for qualifying investments in certified Virginia venture capital accounts, became law. Chapter 762 specifies that investment funds must meet certain criteria in order to qualify for certification as a Virginia venture capital account and further specifies that only investments made in Virginia venture capital accounts that were certified between January 1, 2018, and December 31, 2023, will qualify for the allowed taxable income subtraction.²

The Department now proposes this regulatory action to implement the certification program for Virginia venture capital accounts. The proposed regulatory requirements are substantially identical to those in the authorizing legislation but for two areas. The Department added several definitions that will tend to clarify these requirements and, as the legislation was silent on the mechanics of certification, the Department added a requirement that "every investment fund desiring to be certified...must first register with the Department."³

This proposed regulation, and its underlying statute, allow but do not require certification of certain investments. Because of this, no investment fund is likely to pursue certification unless they judge that the extra benefit that may accrue to their fund on account of the allowable subtraction those investments will generate will outweigh any costs that they may incur to become certified. Those costs would likely include time and other costs associated with the application process as well as time spent keeping required records.

Businesses and Entities Affected. This regulatory action will affect all investment funds who apply for certification as a Virginia venture capital account, individuals and businesses who administer such accounts and individual and corporate taxpayers who invest in qualified accounts.

Localities Particularly Affected. No locality will be particularly affected by this regulatory action.

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.

¹<http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0762>.

²Individuals and corporate entities that make qualifying investments will be able to take advantage of the income subtractions allowed for as many years as they hold the qualifying investment so qualifying taxable income subtractions will likely continue past 2023.

³The Department will be using the same certification process that it currently uses for qualified equity tax credits.

Agency's Response to Economic Impact Analysis: The Department of Taxation agrees with the Department of Planning and Budget's economic impact analysis regarding this action.

Summary:

Pursuant to Chapter 762 of the 2017 Acts of Assembly, which establishes individual and corporate income tax subtractions for income attributable to an investment in a Virginia venture capital account, the regulatory action establishes procedures regarding the process an investment fund must use to apply for certification as a Virginia venture capital account and provides definitions of terms essential to understanding the certification process.

23VAC10-110-145. Subtraction for income attributable to an investment in a Virginia venture capital account.

A. To the extent included in federal adjusted gross income, any income, including investment services partnership interest income, attributable to an investment made in a Virginia venture capital account on or after January 1, 2018, but before December 31, 2023, shall be subtracted from federal adjusted gross income in determining Virginia taxable income. If such income was partially excluded or deducted in determining federal adjusted gross income, it shall be subtracted from federal adjusted gross income only to the extent included therein. If such income has already been excluded from Virginia taxable income, it shall not be subtracted again pursuant to this section.

B. The following words and terms when used for purposes of this section shall have the following meanings, unless the context clearly indicates otherwise:

"Affiliated" means a direct or indirect ownership interest of at least 80% in an entity. An indirect ownership interest includes direct ownership interests held by a taxpayer's family members or an entity affiliated with such taxpayer or family members, or any combination of these.

"Department" means the Virginia Department of Taxation.

"Family member" means, when applied with respect to an individual taxpayer, (i) spouse, (ii) children, (iii) grandchildren, (iv) parents, (v) spouse's parents, and (vi) grandparents.

"Investment services partnership interest income" means income from an investment partnership treated as carried interest income for federal income tax purposes.

"Professional experience" means full-time employment involving venture capital investment.

"Qualified portfolio company" means the same as that term is defined in subdivision 27 of § 58.1-322.02 of the Code of Virginia.

"Substantially equivalent experience" means an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study or a combination of professional experience totaling less than four years, professional training, and undergraduate education from an accredited college or university in economics, finance, or a similar field of study demonstrating competency in venture capital investing.

"Virginia venture capital account" means the same as that term is defined in subdivision 27 of § 58.1-322.02 of the Code of Virginia.

C. The subtraction may not be claimed for an investment in a company that is owned or operated by a family member or an affiliate of the individual. The subtraction may not be claimed for an investment that was used to claim the

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subtraction for certain long-term capital gains allowed pursuant to subdivision 24 of § 58.1-322.02 of the Code of Virginia, or the qualified equity and subordinated debt investments tax credit allowed pursuant to § 58.1-339.4 of the Code of Virginia.

D. 1. Every investment fund desiring to be certified by the department as a Virginia venture capital account for purposes of this subtraction must first register with the department by submitting an application indicating that it intends to invest at least 50% of the capital committed to its fund in qualified portfolio companies and currently employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience.

2. Each investment fund must include with its registration application documentation of the investor's work experience, training, and education adequately demonstrating that such individual meets the professional experience or substantially equivalent experience requirement. Such documentation may include proof of employment, certifications, and transcripts.

3. The registration application required by this subsection must be submitted before or at the time the application required by subsection E of this section is submitted.

4. Once the department determines that an investment fund intends to invest at least 50% of the capital committed to its fund in qualified portfolio companies, has at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience, and has submitted the required attachments, it will provide certification to the investment fund stating that the registration application has been approved. Such certification shall be valid only for the calendar year for which it was issued. An investment fund may reapply for certification each calendar year.

E. 1. An investment fund that has invested at least 50% of the capital committed to its fund in qualified portfolio companies may then submit an application for certification as a Virginia venture capital account.

2. Each investment fund must include with its application documentation that it has invested at least 50% of the capital committed to its fund in qualified portfolio companies.

3. To receive certification for this subtraction, each investment fund may be required to submit certain information regarding its investors as required by the department.

4. Once the department determines that an investment fund has actually invested at least 50% of the capital committed to its fund in qualified portfolio companies and has submitted the required attachments, it will provide

certification to the investment fund stating that it is a Virginia venture capital account for purposes of this subtraction. Such certification shall be valid only for the calendar year for which it was issued.

F. The applications in subsections D and E of this section and any necessary attachments must be made on the form prescribed by the department, postmarked no later than January 31 of the calendar year following the calendar year in which the investment fund is applying for certification as a Virginia venture capital account.

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 (23VAC10-110)

Virginia Consumers Use Tax Return for Individuals, Form CU-7 (eff. 9/1993)-

Virginia Individual Resident Income Tax Return (Booklet - Instructions for Form 760 and 760S), Form 760 and 760S-

Underpayment of Estimated Tax by Individuals, Estates and Trusts, Form 760 C-

Virginia Tentative Tax Return an Application for Extension of Time to File Individual or Fiduciary Income Tax Return, Form 760E (eff. 8/1993)-

Virginia Estimated Individual Income Tax Declaration and Forms for Individuals, Estates and Trusts (Booklet - Instructions for Form 760ES), Form 760ES-

Underpayment of Estimated Tax by Farmers and Fishermen, Form 760F-

Virginia Part-Year Resident Individual Income Tax Return (Booklet - Instructions for Form 760PY), Form 760PY-

Short Individual Resident Income Tax Return (Booklet - Instructions for Form 760 and 760S), Form 760S-

Virginia Nonresident Individual Income Tax Return (Booklet - Instructions for Form 763), Form 763-

Virginia Special Nonresident Claim for Individual Income Tax Withheld, Form 763-S-

Credit Computation Schedule, Schedule CR, Form 760-

Schedule for Computing the Age Deduction for Taxpayers 62 and Over, Out-of-State Tax Credit or State of Residence and the Addition to Tax, Penalty and Interest, Schedule NPY, Forms 760PY and 763-

Enterprise Zone Credit, Form 301 (eff. 9/1992)-

Computation of ACRS Subtraction, Form 302 (eff. 8/1992)-

Application for Designation as a Qualified Business for the Qualified Equity and Subordinated Debt Investments Tax Credit, Form QBA, 2601695, with instructions (eff. 1/2001)-

Taxpayer Application for Qualified Equity and Subordinated Debt Investments Tax Credit, Form EDC, 2601154, with instructions (eff. 7/2000)-

[Instructions for Virginia Venture Capital Account Investment Fund Registration and Certification Forms \(rev. 2/2018\)](#)

[Venture Capital Account Investment Fund Registration Application, Form VEN-1 \(rev. 1/2018\)](#)

[Venture Capital Account Investment Fund Confirmation Application, Form VEN-2 \(rev. 1/2018\)](#)

[Venture Capital Account Investment Fund Investor Information Report, Form VEN-3 \(rev. 2/2018\)](#)

23VAC10-120-103. Subtraction for income attributable to an investment in a Virginia venture capital account.

A. To the extent included in federal taxable income, any income, including investment services partnership interest income, attributable to an investment made in a Virginia venture capital account on or after January 1, 2018, but before December 31, 2023, shall be subtracted from federal taxable income in determining Virginia taxable income. If such income was partially excluded or deducted in determining federal taxable income, it shall be subtracted from federal taxable income only to the extent included therein. If such income has already been excluded from Virginia taxable income, it shall not be subtracted again pursuant to this section.

B. The following words and terms when used for purposes of this section shall have the following meanings, unless the context clearly indicates otherwise:

"Affiliated" means a direct or indirect ownership interest of at least 80% in an entity. An indirect ownership interest includes direct ownership interests held by a taxpayer's family members or an entity affiliated with such taxpayer or family members, or any combination of these.

"Department" means the Virginia Department of Taxation.

"Investment services partnership interest income" means income from an investment partnership treated as carried interest income for federal income tax purposes.

"Professional experience" means full-time employment involving venture capital investment.

"Qualified portfolio company" means the same as that term is defined in subdivision C 25 of § 58.1-402 of the Code of Virginia.

"Substantially equivalent experience" means an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study or a combination of professional experience totaling less than four years, professional training, and undergraduate education from an accredited college or university in economics, finance, or a similar field of study demonstrating competency in venture capital investing.

"Virginia venture capital account" means the same as that term is defined in subdivision C 25 of § 58.1-402 of the Code of Virginia.

C. The subtraction may not be claimed for an investment in a company that is owned or operated by an affiliate of the corporation. The subtraction may not be claimed for an investment that was used to claim the subtraction for certain long-term capital gains allowed pursuant to subdivision C 24 of § 58.1-402 of the Code of Virginia.

D. 1. Every investment fund desiring to be certified by the department as a Virginia venture capital account for purposes of this subtraction must first register with the department by submitting an application indicating that it intends to invest at least 50% of the capital committed to its fund in qualified portfolio companies and currently employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience.

2. Each investment fund must include with its registration application documentation of the investor's work experience, training, and education adequately demonstrating that such individual meets the professional experience or substantially equivalent experience requirement. Such documentation may include proof of employment, certifications, and transcripts.

3. The registration application required by this subsection must be submitted before or at the time the application required by subsection E of this section is submitted.

4. Once the department determines that an investment fund intends to invest at least 50% of the capital committed to its fund in qualified portfolio companies, has at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience, and has submitted the required attachments, it will provide certification to the investment fund stating that the registration application has been approved. Such certification shall be valid only for the calendar year for which it was issued. An investment fund may reapply for certification each calendar year.

Regulations

E. 1. An investment fund that has invested at least 50% of the capital committed to its fund in qualified portfolio companies may then submit an application for certification as a Virginia venture capital account.

2. Each investment fund must include with its application documentation that it has invested at least 50% of the capital committed to its fund in qualified portfolio companies.

3. To receive certification for this subtraction, each investment fund may be required to submit certain information regarding its investors as required by the department.

4. Once the department determines that an investment fund has actually invested at least 50% of the capital committed to its fund in qualified portfolio companies and has submitted the required attachments, it will provide certification to the investment fund stating that it is a Virginia venture capital account for purposes of this subtraction. Such certification shall be valid only for the calendar year for which it was issued.

F. The applications in subsections D and E of this section and any necessary attachments must be made on the form prescribed by the department, postmarked no later than January 31 of the calendar year following the calendar year in which the investment fund is applying for certification as a Virginia venture capital account.

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 (23VAC10-120)

Virginia Corporation Income Tax Return (Booklet-Instructions for Form 500), Form 500 (eff. 9/1993)-

Schedule A-Multistate Corporation-Allocation and Apportionment of Income-

Underpayment of Virginia Estimated Tax by Corporations, Form 500C-

Application for Extension of Time, Form 500E (eff. 9/1993)-

Declaration of Estimated Income Tax for Corporations, Form 500V (eff. 9/1993)-

Virginia Corporation Income Tax Extension Payment Voucher, Form 500EV (eff. 9/1993)-

Corporation Application for Refund, Form 500-NOLD (eff. 9/1993)-

Virginia Small Business Corporation Return of Income, Form 500-S (eff. 9/1993)-

Telecommunications Companies Minimum Tax and Credit Schedule (Instructions for Form 500T), Form 500-T (eff. 2/1992)-

Corporation Income Tax Voucher-

Amended Virginia Corporation Income Tax Return, Form 500X (eff. 9/1993)-

Combined Registration Application, Form R-1 (eff. 10/1989)-

Instructions for Completing Combined Registration, Form R-4 (eff. 10/1989)-

[Instructions for Virginia Venture Capital Account Investment Fund Registration and Certification Forms \(rev. 2/2018\)](#)

[Venture Capital Account Investment Fund Registration Application, Form VEN-1 \(rev. 1/2018\)](#)

[Venture Capital Account Investment Fund Confirmation Application, Form VEN-2 \(rev. 1/2018\)](#)

[Venture Capital Account Investment Fund Investor Information Report, Form VEN-3 \(rev. 2/2018\)](#)

VA.R. Doc. No. R18-5338; Filed July 26, 2018, 11:20 a.m.

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-50, New and Modified Stationary Sources**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated July 19, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

These specific articles were last reviewed in 2011. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-70, Air Pollution Episode Prevention**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated July 19, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. The regulation's level of complexity is appropriate to ensure that

the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last reviewed in 2011. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

DEPARTMENT OF GENERAL SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of General Services conducted a small business impact review of **1VAC30-41, Regulation for the Certification of Laboratories Analyzing Drinking Water**, and determined that this regulation should be retained in its current form. The Department of General Services is publishing its report of findings dated July 3, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This is the first periodic review of 1VAC30-41. 1VAC30-41 became effective on May 1, 2014. The regulation continues to be needed to meet the requirements of federal and state law and regulations concerning the certification of laboratories analyzing drinking water samples. Drinking water laboratories that analyze drinking water samples for compliance purposes under federal and state law must be certified to do so under federal law. No complaints or comments have been received concerning the content of the regulation or its complexity. The regulation is written clearly and sets out the federal and state requirements for certifying laboratories analyzing drinking water. The regulation does not overlap, duplicate, or conflict with federal or state laws or regulations.

Contact Information: Rhonda Bishton, Director's Executive Administrative Assistant, Department of General Services,

General Notices/Errata

1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.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 August 1, 2018. 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 Fifteen (18)

Virginia Lottery's "Sheetz Free Gas For A Year" Final Rules for Operation (effective August 1, 2018)

Director's Order Number One Hundred Eighteen (18)

Virginia Lottery's "Subscriptions First-Time Deposit Bonus Promotion" Final Rules for Game Operation (effective August 1, 2018)

STATE WATER CONTROL BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board conducted a small business impact review of **9VAC25-71, Regulations Governing the Discharge of Sewage and Other Wastes from Boats**, and determined that this regulation should be retained in its current form. The State Water Control Board is publishing its report of findings dated July 19, 2018, 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 purpose of this regulatory action is to provide a state regulation to address discharges of sewage and other wastes from boats and to identify designated No Discharge Zones. This regulation is needed to prevent contamination of state waters from sewage discharges from boats in order to protect the health and safety of citizens of the Commonwealth.

No public comments were received during the public comment period.

The subject matter of the regulation is complex in nature, and the regulations detail the requirements of the program. The regulation designates No Discharge Zones in the Commonwealth and the prohibition of the discharge of sewage and other waste in these areas.

The regulation specifies requirements existing in the state code with respect to discharges from boats and provides a means of designating No Discharge Zones, but it is no more stringent than existing requirements under state or federal law. Federal Marine Sanitation Device Standards found in 40

CFR Part 140 are referenced in this regulation. The regulation was last amended in 2011 in response to changes in state law. Changes in technology and economic conditions since 2011 have not impacted the requirements of the regulation. The agency is recommending the regulation stay in effect without change. The regulation is beneficial to state waters and is no more stringent than existing requirements under state or federal law.

Contact Information: Kelly Meadows, Office of Watershed Programs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4032, or email kelly.meadows@deq.virginia.gov.

Public Meeting for Total Maximum Daily Load for Bullpasture River

Public meeting: September 13, 2018, at 6 p.m. at the Stonewall Ruritan Hall, 67 Bullpasture River Road, McDowell, VA 24458.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Tech's Biological Systems Engineering Department, will discuss the process that will be used to complete a water quality study known as a total maximum daily load (TMDL) for the Bullpasture River and its tributaries. The river is listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for recreational use. This is an opportunity for local residents to learn about the condition of the river, share information about the area, and become involved in the process of local water quality improvement. A public comment period will follow the meeting, September 14, 2018 through October 15, 2018.

Meeting description: A public informational meeting will be held to introduce the local community to the water quality improvement process in Virginia, known as the TMDL process, provide information on bacteria monitoring efforts and sources, invite participation and solicit input, review the next steps and accept volunteers to be part of a technical advisory committee. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. The meeting will be open to the public and all are welcome.

Description of study: The upper portion of the Bullpasture River, located in Highland County, Virginia is impaired for the "recreational use" water quality standard, meaning that there is too much E. coli bacteria present in river. The impaired segment begins at the headwaters of the river at the Virginia-West Virginia border and extends to just below the confluence with Davis Run south of McDowell. Excessive bacteria levels may pose a threat to human health; therefore, a bacteria standard was established to preserve recreational uses in Virginia's waterbodies. This water quality study will report

on the sources of bacteria and recommend reductions to meet a TMDL for the impaired segment of the river. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality in the upper Bullpasture River, bacteria levels will need to be reduced to the TMDL amount. Through this process, Virginia agencies will partner with a technical advisory committee made up of local stakeholders to identify sources of bacteria in the upper portion of the river and the reductions needed from these sources to meet the TMDL.

How to comment and participate: All meetings in support of TMDL development are open to the public and all interested parties are welcome. Written comments will be accepted through October 15, 2018, and should include the name, address, and telephone number of the person submitting the comments. For more information, or to submit written comments, please contact Nesha McRae, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, FAX (540) 574-7878, or email nesha.mcrae@deq.virginia.gov.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Conservation and Recreation on behalf of the State Soil and Water Conservation Board is conducting a periodic review and small business impact review of **4VAC50-20, Impounding Structure Regulations**. The review of this regulation will be guided by the principles in Executive Order 14 (2018).

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 regulations are available on the department website at <http://www.dcr.virginia.gov/dam-safety-and-floodplains/document/ds-va-code-4vac50-20-10.pdf>.

The comment period begins August 20, 2018, and ends October 8, 2018.

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 Christine Watlington, Department of Conservation and Recreation, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3319, FAX (804) 371-2630, or email christine.watlington@dcr.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.

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.

