



VIRGINIA

REGISTER OF REGULATIONS

VOL. 36 ISS. 24

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JULY 20, 2020

TABLE OF CONTENTS

Register Information Page	2519
Publication Schedule and Deadlines	2520
Petitions for Rulemaking	2521
Periodic Reviews and Small Business Impact Reviews	2522
Notices of Intended Regulatory Action	2527
Regulations	2528
1VAC20-70. Absentee Voting (Proposed)	2528
2VAC5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (Final)	2529
2VAC5-501. Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk (Fast-Track)	2530
8VAC20-750. Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia (Final)	2548
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Final)	2555
12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (Final)	2555
14VAC5-170. Rules Governing Minimum Standards for Medicare Supplement Policies (Proposed)	2558
14VAC5-235. Rules Governing Health Insurance Balance Billing (Withdrawal of Proposed Regulation)	2563
18VAC60-21. Regulations Governing the Practice of Dentistry (Final)	2564
18VAC60-25. Regulations Governing the Practice of Dental Hygiene (Final)	2564
18VAC60-30. Regulations Governing the Practice of Dental Assistants (Final)	2564
19VAC30-101. Regulations Governing Purchases of Handguns Within a 30-Day Period (Final)	2568
21VAC5-40. Exempt Securities and Transactions (Final)	2570
22VAC40-665. Child Care Program (Final)	2575
Governor	2580
Guidance Documents	2586
General Notices/Errata	2588

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

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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; **Jennifer L. McClellan**; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Marcus B. Simon**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

Staff of the Virginia Register: **Karen Perrine**, Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Nikki Clemons**, 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>).

August 2020 through August 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
36:26	July 29, 2020	August 17, 2020
37:1	August 12, 2020	August 31, 2020
37:2	August 26, 2020	September 14, 2020
37:3	September 9, 2020	September 28, 2020
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 (Monday)	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 (Monday)	January 4, 2021
37:11	December 28, 2020 (Monday)	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Decision

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

Name of Petitioner: Bioscript Infusion Services.

Nature of Petitioner's Request: To amend 18VAC110-20-276 to allow remote order processing by technicians outside the physical location of a licensed pharmacy. Currently, pharmacists are allowed to perform prescription processing functions from remote location. Petitioner's request is to allow pharmacy technicians to also process orders under the supervision of a pharmacist under certain conditions as specified in regulation.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on June 16, 2020, the board considered the petition and public comment it received. The board concluded it will not move forward with initiation of rulemaking at this time. However, the matter was referred to the Regulation Committee for further study and recommendation on amendments. The committee is scheduled to meet on November 12, 2020. It was also noted at the meeting on the 16th that a waiver put in place on March 24, 2020, as part of the board's response to the Governor's State of Emergency, allows a pharmacy technician or a pharmacist to access an employer pharmacy's database from a remote location for the purpose of performing certain prescription processing functions provided the pharmacy establishes controls to protect the privacy and security of confidential records.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R20-35 Filed June 17, 2020, 3:36 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC5-30, Ambient Air Quality Standards**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 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.

Public comment period begins July 6, 2020, and ends August 10, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103, FAX (804) 698-4178, or email gary.graham@deq.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and small business impact review of **9VAC5-160, Regulation for General Conformity**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 1, 2020, to support this decision.

This regulation enhances the department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements under the state code by ensuring that nontransportation federal projects conform to the State Implementation Plan and state regulations. The regulation has been effective in achieving its specific and measurable goals, which are as follows:

1. To protect public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. To ensure that federal actions conform with Virginia's air quality plans and programs.

3. To prohibit emissions from nonconforming federal projects that would contribute to nonattainment of the national air quality standards or interference with maintenance of the standards.

The regulation has been effective in protecting public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in nontechnical language.

This regulation satisfies the provisions of the law and legally binding state and federal requirements and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

This regulation continues to be needed. It provides the necessary requirements for conformity to ensure that federal projects have the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

No comments were received that indicate a need to repeal or revise the regulation.

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 chapter was last amended in 2020.

This chapter was also amended in 2011, 2016, and 2017.

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 E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **18VAC125-15, Regulations Governing Delegation to an Agency Subordinate**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 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.

Public comment period begins July 20, 2020, and ends August 10, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services conducted a periodic review and small business impact review of **22VAC40-41, Neighborhood Assistance Tax Credit Program**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated June 17, 2020, to support this decision.

The purpose of Neighborhood Assistance Tax Credit Program (NAP) is to encourage businesses, trusts, and individuals to make donations to approved 501(c)(3) organizations for the benefit of low-income persons. In return for their contributions, donors may receive tax credits equal to 65% of the donation that may be applied against their state income tax liability. The benefits provided to low-income persons are necessary to protect health and welfare. The existing regulation meets the criteria set out in Executive Order 14 (as amended July 16, 2018), remains clearly and concisely written and easily understandable.

The State Board of Social Services recommends that the regulation stay in effect without change.

The regulation is necessary to ensure effective operation of NAP, as authorized by the Code of Virginia. It does not overlap or conflict with federal or state law or regulation. The use of NAP is voluntary for the neighborhood organization and business and does not have a negative impact on small business. A business can receive a state tax credit for donating to approved NAP projects.

Contact Information: Wanda Stevenson, Program Technician, Neighborhood Assistance Tax Credit Program, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7924, FAX (804) 726-7088, or email wanda.stevenson@dss.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services conducted a periodic review and small business impact review of **22VAC40-293, Locality Groupings**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated April 15, 2020, to support this decision.

This regulation is clearly written and easily understandable. The Temporary Assistance for Needy Families (TANF) Program and regulation are essential to protecting the welfare of vulnerable citizens by assisting families with children in meeting basic needs. The regulation is necessary as it provides a mechanism for a locality to switch grouping when there is evidence to support that need. This regulation will

Periodic Reviews and Small Business Impact Reviews

protect families by allowing them access to greater resources in certain situations. This regulation establishes criteria using data that is easily obtainable and readily available. This results in a system that is more equitable to families across the Commonwealth.

The agency recommends retaining the regulation without change. Without it there would be no means of reviewing or changing the TANF payment level for a specific locality. Since this regulation has been in effect, 12 localities have switched to higher paying locality groupings, directly benefitting the citizens of those areas.

The regulation needs to be retained because it provides a mechanism for a locality to switch grouping when there is evidence to support that need. No comments have been received in the past concerning this regulation. This regulation is clearly written and easily understandable. This regulation does not overlap, duplicate, or conflict with any federal or state law or regulation. While economic conditions as well as local cost of living standards continue to change, this regulation provides a means for a locality to change locality groupings as a result of such changes. This regulation was last reviewed in 2016. It has no impact on small businesses.

Contact Information: Mark Golden, Program Manager, Temporary Assistance for Needy Families, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone, (804) 726-7385, FAX (804) 726-7357, or email mark.golden@dss.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services conducted a periodic review and small business impact review of **22VAC40-685, Virginia Energy Assistance Program - Home Energy Assistance Program**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated April 17, 2020, to support this decision.

The existing regulation meets the criteria set forth in Executive Order 14. It is necessary for the protection of public health, safety, and welfare for the citizens of the Commonwealth. Home Energy Assistance Program (HEAP) provides funding to augment the Low-Income Home Energy Assistance Program, which provides critical heating, cooling, and crisis assistance that ensures the safety, health, and welfare of Virginia's low-income citizens. The regulation is clear and concise and written in a manner easily understood.

The agency recommends that the regulation be retained without change to ensure the agency remains in compliance with § 63.2-805 of the Code of Virginia and that the public is aware of the procedures regarding program administration and fund disbursement for the HEAP.

The regulation grants authority to DSS to receive and disburse HEAP funds. These funds are used to supplement the Low-Income Home Energy Assistance Program (LIHEAP) federal funding, which is used to offer and administer the Energy Assistance Program (EAP). In addition, HEAP funds may be used to leverage additional federal funds. The department did not receive any complaints or comments on the regulation.

Because this regulation makes revenue available to over 500 vendors, the impact of the regulation on small business is positive. The regulation provides eligible EAP vendors, which includes vendors from the small business community, access to revenue made available through the federally funded LIHEAP. The regulation is not complex and does not overlap, duplicate, or conflict with other federal or state laws or regulations. The last evaluation of this regulation occurred in 2015. Business entities that provide EAP goods and services are eligible to participate as vendors in the EAP. Payments to vendors are determined by their respective products, self-designated service areas and by customer selection. There is no need to amend or repeal the regulation to minimize the economic impact on small businesses.

Contact Information: Denise Surber, Interim Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone, (804) 726-7386, FAX (804) 726-7358, or email denise.t.surber@dss.virginia.gov.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Department of Transportation (VDOT) conducted a periodic review and small business impact review of **24VAC30-73, Access Management Regulations**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated April 21, 2020, to support this decision.

Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing

highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways. The regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable.

For the reasons stated, VDOT recommends retaining the regulation as is.

There is a continued need for this regulation, and it is essential for ensuring the safety of the traveling public. The regulation is not complex and does not overlap, duplicate, or conflict with other federal or state law or regulation. This regulation was first adopted in 2009, and has been amended several times, most recently in 2013.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Department of Transportation (VDOT) conducted a periodic review and small business impact review of **24VAC30-121, Comprehensive Roadside Management Program**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated April 22, 2020, to support this decision.

The regulation is necessary to allow private businesses, civic organizations, communities, individuals, and local governments an opportunity to improve the appearance and safety of the state maintained right-of-way or real property, herein referred to as right-of-way, by participating in the project development, establishment, and maintenance of landscaping activities within the state-maintained right-of-way. Acknowledgment signs must comply with clear zone safety requirements and the criteria for placement for specific highway systems and access type. The regulation is clearly written and easily understandable.

The decision is to retain this regulation without making changes. There is a continued need for this regulation. There have been several participants throughout the Commonwealth since the beginning of the Comprehensive Roadside Management Program (CRMP). Currently, there are additional projects in the early planning stages of development within the Commonwealth.

There is a continued need for this regulation because it enables private businesses, civic organizations, communities,

individuals, and local governments to have an opportunity to improve the appearance and safety of the state maintained right-of-way. The program allows participants the flexibility of providing monetary or noncash contributions in addition to selecting the highway system that they would like to participate based on their contribution. To date, comments on the existing projects have been positive. Guidance documents developed by VDOT assist participants with the implementation of the program, however the regulation is not overly complex. There is no overlap, duplication, or conflict with federal or state law or regulation. The regulation was adopted in 2006 and was last amended in 2011.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Commonwealth Transportation Board (CTB) conducted a periodic review and small business impact review of **24VAC30-151, Land Use Permit Regulations**, and determined that this regulation should be retained in its current form. The board is publishing its report of findings dated April 21, 2020, to support this decision.

All occupation of state highway rights-of-way, including occupation by utilities and other proprietary functions of localities, is to be under the authority granted by a land use permit issued in accordance with the Virginia Department of Transportation's Land Use Permit Manual. The Land Use Permit Regulations set out the requirements that must be met in order to occupy state highway rights-of-way. The permits address safety issues, such as proper procedures for temporarily closing travel lanes, standards for entrances and access points onto highways, affixing signs and other objects to structures in the right-of-way, and location and protection of utility lines. The regulation is necessary for the protection of the public health, safety, and welfare of the public traveling on or near public highways and is clearly written and easily understandable.

The Commonwealth Transportation Board is recommending retaining the regulation as is. In the interests of ensuring the safety of the traveling public, the CTB concurs that there are no viable alternatives to this regulation and that the current regulation is the least burdensome approach for achieving the purposes set forth by the regulation.

Retention of the Land Use Permit Regulations is necessary for the health, safety, and welfare of the traveling public. No comments were received concerning the regulation. The

Periodic Reviews and Small Business Impact Reviews

regulation is not complex and does not overlap, duplicate, or conflict with any other laws or regulations. The regulation was adopted in 2010 to replace the Highway Access Management Regulations for Principal Arterials, 24VAC30-150. The regulation has been amended several times for various reasons since then, including in 2011, 2014, 2015, and 2018.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Commonwealth Transportation Board, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Transportation intends to consider amending **24VAC30-620, Rules, Regulations, and Rates Concerning Toll and Bridge Facilities**. The purpose of the proposed action is to amend the chapter to include in the regulation Virginia Department of Transportation owned and operated toll facilities that have opened since the regulation became effective, or are likely to open in the near future. Section 33.2-613 of the Code of Virginia has been amended in recent years to change the Commissioner of Highways authority in the suspension of tolls on toll facilities in the Commonwealth. The proposed amendments will address the additional toll facilities covered by the chapter and add the change in procedures and criteria to be considered for the suspension of tolls. The proposed amendments are not anticipated to affect existing toll rates specified in the regulation.

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

Statutory Authority: § 33.2-210 of the Code of Virginia.

Public Comment Deadline: August 20, 2020.

Agency Contact: Jo Anne Maxwell, Government and Legislative Affairs Division Administrator, Department of Transportation, 1401 East Broad Street, Richmond, VA 23235, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

VA.R. Doc. No. R20-6422; Filed June 22, 2020, 3:52 p.m.

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to consider promulgating **24VAC35-70, Remote Alcohol Monitoring Devices**. The purpose of the proposed chapter is to establish provisions regarding the installation, maintenance, and certification of remote alcohol monitoring devices required by court order for certain convicted offenders. The action complies with Chapter 1007 of the 2020 Acts of Assembly.

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

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Public Comment Deadline: August 19, 2020.

Agency Contact: Richard L. Foy, Technical Instructor, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email rfoy.vasap@state.va.us.

VA.R. Doc. No. R20-6356; Filed June 25, 2020, 12:28 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 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: 1VAC20-70. Absentee Voting (adding 1VAC20-70-60).

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 17, 2020.

Agency Contact: David Nichols, Director of Election Services, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email david.nichols@elections.virginia.gov.

Summary:

The proposed regulation establishes requirements for satellite offices to be "adequate facilities" as provided in § 24.2-701.2 of the Code of Virginia, including which physical protections and cyber security protections are necessary to make voting systems safe and secure at satellite offices. The proposed regulation also requires that each locality (i) submit a list of all expected satellite office locations and a readiness checklist for each location and (ii) conduct an internet connectivity validation test for each location and submit confirmation of connectivity.

1VAC20-70-60. Security requirements for absentee satellite offices.

A. To guarantee that their facilities are adequate for the protection of all election materials and voting systems, each locality that operates a satellite office pursuant to § 24.2-701.2 of the Code of Virginia must comply with the following:

1. Each satellite office must maintain an adequate number of ballots of each ballot style from all precincts within its locality.

2. Each satellite office must balance its voter credit records nightly by reconciling the public count with the electronic pollbook count at the end of each day.

3. Each satellite office must have reliable internet connectivity for the entire in-person absentee voting period. Here, "reliable" means that the connection meets the National Institute of Standards and Technology standards and that the likelihood of connectivity interruptions is low.

4. Computer systems at the satellite office locations will be directly connected to the Virginia Electronic Registration Information System (VERIS). Electronic pollbooks connected to the cloud or to a virtual private network (VPN) will be linked to each other across various satellite office locations as well as the General Registrar's office. Voter credit will be uploaded into VERIS at the end of each day, and updated files will be uploaded at the beginning of each day to the electronic pollbooks.

5. Each satellite office must be equipped such that it can (i) confirm that any attempted voter is eligible to vote in that election; (ii) confirm that any attempted voter has not previously voted in the election; and (iii) record each voter's participation in the election in real time.

B. To comply with these requirements, localities must submit a list of all expected satellite office locations no more than 90 days before and no less than 60 days before election day. Additionally, each locality must complete a readiness checklist for each satellite office location and submit the completed readiness checklist to the Department of Elections. The readiness checklist will be promulgated by the Department of Elections. The Department of Elections may deny a satellite office's ability to connect to VERIS or an electronic pollbook if a locality fails to timely complete the readiness checklist.

C. No later than 60 days before election day, each locality will provide the final address of each of its satellite offices to the Department of Elections. Eight days before absentee voting begins at a satellite location, the locality will conduct a test to validate internet connectivity for that location and submit confirmation of connectivity to the Department of Elections. Continued failure means that the Department of Elections will not grant the satellite office access to VERIS or authorize the use of a connected electronic pollbook. A satellite office that cannot meet these internet connectivity standards before absentee voting begins at that office may apply for an emergency location change under subsection F of § 24.2-701.2 of the Code of Virginia.

VA.R. Doc. No. R20-6377; Filed June 29, 2020, 10:24 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

Title of Regulation: 2VAC5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2VAC5-320-10).

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

Effective Date: August 20, 2020.

Agency Contact: David Gianino, 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 david.gianino@vdacs.virginia.gov.

Summary:

The amendments (i) remove one plant species from the list of threatened species that is no longer believed to occur in Virginia, (ii) add two insect and three plant species that are in danger of extinction to the list of endangered species, and (iii) add five plant species to the list of threatened species that are likely to become endangered species within the foreseeable future throughout all or a significant portion of their native ranges.

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

2VAC5-320-10. Listing of endangered and threatened plant and insect species.

A. The Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act (§ 3.2-1000 et seq. of the Code of Virginia).

B. The following plant and insect species are hereby declared an endangered species:

1. Boltonia montana, valley doll's-daisy.
2. Bombus affinis, rusty patch bumble bee.
3. Cardamine micranthera, small-anthered bittercress.
- ~~3.~~ 4. Carex juniperorum, juniper sedge.
4. 5. Clematis addisonii, Addison's leatherflower.
6. Corallorhiza bentleyi, Bentley's coralroot.
- ~~5.~~ 7. Fimbristylis perpusilla, Harper's fimbristylis.
- ~~6.~~ 8. Helenium virginicum, Virginia sneezeweed.

~~7.~~ 9. Helonias bullata, swamp-pink.

~~8.~~ 10. Ilex collina, long-stalked holly.

9. ~~11.~~ Iliamna corei, Peter's Mountain mallow.

~~10.~~ 12. Isoetes virginica, Virginia quillwort.

~~11.~~ 13. Isotria medeoloides, small whorled pogonia.

~~12.~~ 14. Ludwigia ravenii, Raven's seedbox.

15. Neonympha mitchellii, Mitchell's satyr butterfly.

~~13.~~ 16. Phemeranthus piedmontanus, Piedmont fameflower.

17. Pseudanophthalmus holsingeri, Holsinger's cave beetle.

18. Pseudanophthalmus parvicollis, Hupp's Hill cave beetle.

~~14.~~ 19. Pseudanophthalmus thomasi, Thomas' cave beetle.

~~15.~~ 20. Ptilimnium nodosum, harperella.

~~16.~~ 21. Puto kosztarabi, Buffalo Mountain mealybug.

~~17.~~ 22. Scirpus ancistrochaetus, Northeastern bulrush.

~~18.~~ 23. Sigara depressa, Virginia Piedmont water boatman.

~~19.~~ 24. Spiraea virginiana, Virginia spiraea.

~~20.~~ 25. Trifolium calcaricum, running glade clover.

C. The following plant and insect species are hereby declared a threatened species:

1. Aeschynomene virginica, sensitive-joint vetch.

2. Amaranthus pumilus, seabeach amaranth.

3. Arabis serotina, shale barren rockcress.

4. Cicindela dorsalis dorsalis, Northeastern beach tiger beetle.

5. Clematis viticaulis, Millboro leatherflower.

6. Echinacea laevigata, smooth coneflower.

7. Houstonia purpurea var. montana, Roan Mountain bluet.

8. Juncus caesariensis, New Jersey rush.

~~8.~~ Lycopodiella margueritiae, Northern prostrate clubmoss.

9. Nuphar sagittifolia, narrow-leaved spatterdock.

10. Paxistima canbyi, Canby's mountain-lover.

11. Phlox buckleyi, sword-leaf phlox.

12. Platanthera leucophaea, Eastern prairie fringed orchid.

~~11.~~ 13. Pycnanthemum torreyi, Torrey's mountain-mint.

14. Pyrgus wyandot, Appalachian grizzled skipper.

~~12.~~ 15. Rhus michauxii, Michaux's sumac.

Regulations

~~13-~~ 16. Rudbeckia heliopsidis, sun-facing coneflower.

17. Scirpus flaccidifolius, reclining bulrush.

VA.R. Doc. No. R18-5606; Filed June 26, 2020, 10:07 a.m.

Fast-Track Regulation

Title of Regulation: **2VAC5-501. Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk (amending 2VAC5-501-10, 2VAC5-501-30 through 2VAC5-501-80; adding 2VAC5-501-5; repealing 2VAC5-501-20, 2VAC5-501-90).**

Statutory Authority: §§ 3.2-5206, 3.2-5223, and 3.2-5224 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 19, 2020.

Effective Date: September 4, 2020.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899, FAX (804) 371-7792, TTY (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Basis: The Board of Agriculture and Consumer Services serves as the promulgating entity for this regulation. Section 3.2-109 of the Code of Virginia establishes the board as a policy board and authorizes the board to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5206 of the Code of Virginia authorizes the board to establish definitions and standards of quality and to identify, adopt, and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products, and those products manufactured or sold in semblance to or as substitutes for milk, milk products, market milk, or market milk products.

This section also authorizes the board to adopt (i) any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application and (ii) any model ordinance or regulation issued under federal law, including the Pasteurized Milk Ordinance (PMO) and the U.S. Department of Agriculture's Milk for Manufacturing Purposes.

Purpose: The proposed amendments will bring the regulation in line with current federal standards as established by the 2017 revision of the PMO. In addition to providing for consistency with current federal standards and existing Virginia regulations, these amendments will also ensure that Virginia maintains its own authority to oversee its state-level regulatory program. This will allow the regulatory program to

continue to provide sufficient flexibility for the Virginia dairy industry while protecting the public's health, safety, and welfare by ensuring the safety and wholesomeness of all milk shipped from Virginia dairy farms.

Surrounding states have already updated their regulations to be consistent with the requirements governing the storage and transportation of milk established in the 2017 PMO. The proposed changes will facilitate interstate sales by Virginia milk producers by providing a level playing field with surrounding states with regard to the storage and transportation of milk.

Rationale for Using Fast-Track Process: Periodically, the U.S. Food and Drug Administration (FDA) updates the PMO to ensure uniformity, the continued economic viability of the milk industry, and efficient and effective interstate milk transport. Virginia's milk-related regulations must reflect the requirements of the most recent edition of the PMO in order for Virginia dairies to ship milk interstate. The FDA audits states on a regular basis regarding the effectiveness of their enforcement and established policies and procedures. The FDA uses the PMO as a standard during its evaluation. If a state has not adopted the PMO or regulations similar to the PMO, it will not be able to achieve conformance with the audit. Failure to pass the audit could have serious consequences for both the regulatory program and the Virginia dairy industry.

The agency expects the proposed changes to be noncontroversial because they will bring the regulation in line with current federal standards, which were reviewed and commented on by industry at the time they were last updated, and with regulations adopted by surrounding states.

The proposed changes include the formal adoption by reference of the 2017 PMO, the repeal of sections that are duplicative of the PMO, and amendments to certain requirements to ensure consistency with the PMO. The proposed changes also include the addition of a requirement that each bulk milk sampler contact the agency if the bulk milk sampler has not been evaluated within the last 18 months.

Substance: The substantive changes are as follows:

1. The adoption by reference of the 2017 PMO as regulations applicable in the enforcement of the milk sanitation program of the U.S. Public Health Service, administered by the Virginia Department of Agriculture and Consumer Services Dairy Program.

The primary amendments made to the 2013 PMO, on which 2VAC5-501 is currently based, that are included in the 2017 PMO are as follows:

- Extension of the time that tankers must be evaluated from 24 months to 24 months plus the remaining days in the

month in which the inspection is due (revision made in 2015 PMO and retained in 2017 PMO).

- Clarification provided regarding electronic record keeping on farm bulk tanks (revision made in 2015 PMO and retained in 2017 PMO).

- Establishment of a definition for "universal" sample (i.e., any sample taken by any permitted sampler or regulatory personnel) and provisions regarding the evaluation of the collection of a universal sample (revision made in 2017 PMO).

- Clarification provided regarding the term "first use" and how long a tanker can remain washed and empty before being filled with milk again (revision made in 2017 PMO).

2. The repeal of provisions of the regulation that are duplicative of the requirements set forth in the 2017 PMO.

3. All instances of the phrase "state regulatory authority" were changed to "state regulatory agency."

4. The addition of a requirement that each bulk milk sampler contact the state regulatory agency if the bulk milk sampler has not been evaluated by the state regulatory agency within the last 18 months.

5. Revises the wording in 2VAC5-501-40 to align the regulations with the PMO and reflect current industry standards with regard to adequate lighting fixtures and the maintenance of weighing and sampling records.

6. Updates references to the "3-A Sanitary Standards for Farm Milk Storage Tanks, Document No. 30-01 (Sept. 1984)" with "3-A Sanitary Standards for Farm Milk Storage Tanks, Document No. 30-02 (July 2018)."

7. The addition of the requirement that each farm bulk cooling or holding tank shall be capable of registering the temperature of the milk in the tank before it reaches 20% of the tank's volume. The current regulation requires that such tanks be capable of registering the temperature of milk in the tank before it reaches 10% of the tank's volume. This change will align the regulation with the current minimum requirement in the 2017 PMO.

8. The addition of the requirement that each person who operates a dairy farm and installs a recording thermometer on the farm bulk cooling or holding tank shall maintain a minimum of a 30-day supply of unused recorder charts designed for the specific recording thermometer installed and shall maintain a minimum of the past six months of used charts for purposes of inspection. The current regulation requires that such charts be maintained for 60 days. This change will align the regulation with the current minimum requirement in the 2017 PMO.

9. Removes the requirement that milk must be delivered to a milk plant, transfer station, or receiving station within 24 hours of last pickup.

Issues:

1. The primary advantage to the public is that the proposed regulatory change will allow for the safe storage and cooling of milk produced on dairy farms in Virginia and sold in intrastate and interstate commerce and will eliminate the confusion that could result from inconsistencies between state and federal standards. This ensures that the public is afforded the opportunity to consume a safe product and further ensures that the dairy industry is afforded additional flexibility regarding the storage of milk.

2. The primary advantage to the agency and Commonwealth is that the proposed regulatory change will ensure that the Commonwealth can adequately protect the public from milk cooled, stored, or transported in an unsafe manner. The amendments that will bring Virginia's regulation in line with the PMO will support the continued intrastate and interstate sales of milk on a more competitive basis, which will ultimately benefit Virginia's economy.

This proposed regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes amendments to the Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk to conform the regulation to the 2017 revision of the U.S. Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO), which is the most recent revision, and to better satisfy FDA audit requirements.

Background. The Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk establish storage and cooling standards for Grade A dairy farms and for milk transported from dairy farms. The standards address requirements relating to: milk cooling, milk storage tanks, pay purpose laboratories, dairy farms and plants, permits, milk house and associated facilities, milk facility construction, and milk cooling and storage tanks; cooling and storage requirements for milk in transport; and the sampling and measuring of milk produced and sold from dairy farms and facilities. The current and proposed regulations state that it is unlawful for any person who does not possess a permit from VDACS to: (i) operate a bulk milk pickup tanker; (ii) sample, measure, and collect milk from farm bulk milk cooling or holding tanks; (iii) sample, measure, or receive milk in cans or containers into any milk plant, receiving station, or transfer station; (iv) possess or transport official milk samples; (v) collect official milk samples from bulk milk pickup tankers or milk transport tanks; or (vi) collect

Regulations

official milk samples of pasteurized milk or pasteurized milk products from a milk plant.

The FDA's PMO is the basic standard used in the voluntary Cooperative State-United States Public Health Service/FDA Program for the Certification of Interstate Milk Shippers, a program participated in by all fifty states, the District of Columbia and U.S. Trust Territories. In practice, dairy farms and milk haulers must follow the rules within the PMO in order for Virginia milk to be accepted in other states and jurisdictions.

Periodically, the FDA updates the PMO to ensure uniformity, the continued economic viability of the milk industry, and efficient and effective interstate milk transport. Virginia's milk-related regulations must reflect the requirements of the most recent revision of the PMO in order for Virginia dairies to ship milk interstate. The FDA audits states on a regular basis regarding the effectiveness of their enforcement and established policies and procedures. The FDA uses the PMO as a standard during its evaluation. If a state has not adopted the PMO or regulations similar to the PMO, it will not be able to achieve conformance with the audit. Failure to pass the audit could negatively affect the Virginia dairy industry's ability to ship and sell milk out of state.

In certain instances, the regulation provides additional guidance or establishes requirements that are not included in the PMO. The proposed changes include the formal adoption by reference of the 2017 PMO, the repeal of sections that are duplicative of the PMO, and amendments to certain requirements to ensure consistency with the PMO. The proposed changes also include the addition of a requirement that each bulk milk sampler contact the agency if he or she has not been evaluated within the last 18 months.

Estimated Benefits and Costs. The current regulation requires that each bulk milk sampler be evaluated by VDACS at least once during the first year after his permit is issued and a minimum of once every two years thereafter as a condition of permit renewal. Bulk milk sampler is defined as any person who holds a permit issued by VDACS to collect, store, or transport official milk samples. According to VDACS, with the current 24 month interval for inspecting samplers, the agency has found it difficult to satisfy FDA audits. Consequently, the Board proposes to decrease the interval between evaluations from the current two years to 18 months. Additionally, the Board proposes to require that the permittee contact VDACS if he has not been evaluated within the 18 months following the last evaluation.

VDACS believes that the 18 month requirement would help the agency better meet FDA requirements concerning the effectiveness of the agency's enforcement and established policies and procedures. According to the agency, the evaluator only observes the permittee working and does not stop them, ask any questions, or ask them to go anywhere that they were not already going to. Thus the proposed more

frequent evaluations do not appear to produce cost for the permittees. The proposed requirement that the permittee contact the agency if he has not been evaluated within the last 18 months is a small additional burden. Overall, these proposed changes are slightly more stringent than is specified in the 2017 PMO,¹ but VDACS believes it is necessary to practically satisfy the FDA and not put approval of the Commonwealth's milk program at risk.

Proposed Amendments to Conform to 2017 PMO. As stated above, this regulation must reflect the most recent version of the PMO in order to ensure that Virginia's regulations are consistent with those adopted by surrounding states so that Virginia milk producers maintain the ability to compete with surrounding states with regard to interstate milk shipments. Thus, any small increases in costs due to proposed changes to conform the regulation to the PMO very likely are outweighed by the benefit of the continued ability to ship milk out of state by abiding by the most recent version of the PMO.

Other than the changes to the bulk milk sampler evaluations, all other proposed amendments strictly conform the regulation to the 2017 PMO. According to VDACS, all regulated entities (milk haulers and dairy farmers) are already complying with the 2017 PMO. Although some proposed amendments are technical changes such as lighting and thermometer placement that are not likely to have substantive impact in practice, the following changes to the PMO and regulation may have had or could have some impact.

The current regulation states that each person who holds a permit to produce milk shall store a minimum of the past 30 days bulk milk pickup tickets in his milkroom for use by VDACS if he ships his milk by bulk shipment. The Board proposes to repeal this requirement. This could reduce recordkeeping costs for dairy farmers, but VDACS believes most would likely keep the tickets as a business practice.

The current regulation requires that dairy farmers store in their milkhouse or milkroom the weighing and sampling receipt from each milk pickup for a minimum of the past 60 days if his milk is picked up by a bulk milk hauler. The proposed regulation allows an option to use electronic records and specifies how VDACS would have access to the electronic records. Providing an electronic option could reduce costs for interested farmers and allow easier access to the information for VDACS staff.

Each person who operates a dairy farm and installs a recording thermometer on the farm bulk cooling or holding tank must under the current regulation maintain a minimum of a 30-day supply of unused recorder charts designed for the specific recording thermometer installed and must maintain a minimum of the past 60 days of used charts for purposes of inspection. The Board proposes to increase the timeframe for which a dairy farm operator with a recording thermometer

must maintain used recorder charts from 60 days to six months. This increases recordkeeping costs.

The existing regulation requires that milk be delivered to a milk plant, transfer station, or receiving station within 24 hours of last pickup. The Board proposes to eliminate this requirement. According to VDACS, this is no longer necessary with modern insulating technology. Additionally, it has not been practical to enforce. To the extent that haulers have followed this requirement, this proposed change would increase their flexibility and reduce costs.

The Board also proposes to adopt the 2017 PMO by reference. Beyond the changes addressed above, this extends the time that tankers must be evaluated from 24 months to 24 months plus the remaining days in the month in which the inspection is due; establishes a definition for "universal" sample (i.e., any sample taken by any permitted sampler or regulatory personnel) and provisions regarding the evaluation of the collection of a universal sample; and provides clarifications.

Businesses and Other Entities Affected. The proposed amendments affect the ten permitted contract milk haulers and 469 dairy farms in the Commonwealth.² In practice, the proposed amendments do not appear to substantively increase costs for these entities because VDACS reports that all regulated entities are already complying with the 2017 PMO.

Localities³ Affected.⁴ The proposed amendments would affect localities that have dairy farms. The proposed amendments do not introduce costs for local governments.

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

Effects on the Use and Value of Private Property. By maintaining compliance with the latest version of the PMO and helping attain approval in FDA audits, the proposed amendments help ensure that milk produced in Virginia can be transported and sold beyond the Commonwealth's borders. This helps maintain the value of Virginia's dairy farms.

Small Businesses⁵ Affected: VDACS estimates that all of the ten permitted contract milk haulers and all 469 dairy farms are small businesses. However, the proposed amendments do not appear in net to adversely affect small businesses because VDACS reports that all regulated entities are already complying with the 2017 PMO.

¹More stringent does not violate the requirements of the PMO.

²Data source: VDACS

³"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

⁵Pursuant 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."

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

Summary:

The amendments (i) incorporate the U.S. Food and Drug Administration 2017 Pasteurized Milk Ordinance (PMO) by reference into the regulation; (ii) repeal text that is duplicative of the language in the PMO; (iii) adjust state-specific regulatory requirements for consistency with the PMO and add a requirement that each bulk milk sampler contact the agency if the bulk milk sampler has not been evaluated within the last 18 months; and (iv) update forms and documents incorporated by reference.

The primary changes resulting from the revised 2017 PMO include:

- *Extension of the time that tankers must be evaluated from 24 months to 24 months plus the remaining days in the month in which the inspection is due.*
- *Clarification of electronic recordkeeping on farm bulk tanks.*
- *Establishment of a definition for "universal" sample (i.e., any sample taken by any permitted sampler or regulatory personnel) and provisions regarding the evaluation of the collection of a universal sample.*
- *Clarification of the term "first use" and how long a tanker can remain washed and empty before being filled with milk again.*
- *Alignment of the regulations regarding current industry standards for adequate lighting fixtures and the maintenance of weighing and sampling records.*
- *Addition of the requirement that each farm bulk cooling or holding tank shall be capable of registering the temperature of the milk in the tank before it reaches 20% of the tank's volume.*
- *Addition of the requirement that each person who operates a dairy farm and installs a recording thermometer on the farm bulk cooling or holding tank shall maintain a minimum of a 30-day supply of unused recorder charts designed for the specific recording thermometer installed and shall maintain a minimum of the past six months of used charts for purposes of inspection.*
- *Removal of the requirement that milk must be delivered to a milk plant, transfer station, or receiving station within 24 hours of last pickup.*

Regulations

2VAC5-501-5. Grade "A" Pasteurized Milk Ordinance.

A. Any person permitted in accordance with Chapter 52 (§ 3.2-5200 et seq.) of Title 3.2 of the Code of Virginia regarding milk, milk products, and dairies shall comply with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision."

B. Section One of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" regarding definitions shall be used to determine the meanings of the words or terms used this chapter or in the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" unless the context clearly indicates otherwise. If any definition in Section One of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" conflicts with a definition in 2VAC5-501-10, 2VAC5-510-10 shall control to the extent of the conflict.

C. If any provision of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" conflicts with a provision in 2VAC5-501-10 through 2VAC5-501-100, the provision in 2VAC5-510-10 through 2VAC5-501-100 shall control to the extent of the conflict.

2VAC5-501-10. Definitions.

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

~~"Bulk milk hauler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect official milk samples and transport (i) raw milk from a dairy farm to a milk plant, receiving station, or transfer station; or (ii) raw milk products from one milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.~~

~~"Bulk milk pickup tanker" means a vehicle, including the truck, tank, and those appurtenances necessary for its use, used by a bulk milk hauler or bulk milk sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station.~~

~~"Bulk milk pickup tanker commingled milk" means the commingled raw milk from two or more dairy farms that has not been removed from the bulk milk pickup tanker.~~

~~"Bulk milk sampler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect, store, or transport official milk samples.~~

~~"Cancel" means to permanently nullify, void, or delete a permit issued by the Virginia Department of Agriculture and Consumer Services.~~

~~"Contract hauler" or "subcontract hauler" means any person who contracts (i) to transport raw milk from a dairy farm to a milk plant, receiving station, or transfer station or (ii) to transport raw milk or milk products between a milk plant,~~

~~receiving station, or transfer station and another milk plant, receiving station, or transfer station.~~

~~"Dairy farm" means any place or premises (i) where any cow, goat, sheep, water buffalo, or other mammal (except humans) is kept or (ii) from which any cow, goat, sheep, water buffalo, or other mammal (except humans) milk, dairy product, or milk product is sold or offered for sale for human consumption.~~

~~"Dairy plant sampler" means any employee of (i) a milk plant who is responsible for collecting official milk samples in the Commonwealth of Virginia, (ii) the Virginia Department of Agriculture and Consumer Services who is responsible for collecting raw milk or pasteurized milk product samples at a milk plant, or (iii) the Virginia Department of Health who is responsible for collecting raw milk or pasteurized milk product samples at a milk plant and who holds a permit issued by the Virginia Department of Agriculture and Consumer Services for the collection of official milk samples for regulatory purposes.~~

~~"Dairy product" means butter, natural or processed cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated whole or skim milk, condensed whole milk, and condensed plain or sweetened skim milk.~~

~~"Deny" means the Virginia Department of Agriculture and Consumer Services will not issue a permit to the applicant.~~

~~"Farm bulk cooling or holding tank" means any tank installed on a dairy farm for the purpose of cooling or storing raw milk.~~

~~"Milk" means the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption excluding that obtained before and after birthing for such a period as may be necessary to render the milk practically colostrum free.~~

~~"Milk plant" means any place, premises, or establishment where milk, milk products, or dairy products are collected, handled, processed, stored, pasteurized, aseptically processed, bottled, packaged, or prepared for distribution.~~

~~"Milk producer" means any person who operates a dairy farm and provides, sells, or offers any milk for human consumption.~~

~~"Milk product" means (i) acidified lowfat milk, acidified milk, acidified milk product, acidified skim milk, acidified sour cream, acidified sour half and half, aseptically processed milk, aseptically processed milk product, buttermilk, coffee cream, concentrated milk, concentrated milk product, cottage cheese, cottage cheese dry curd, cream, cultured half and half, cultured milk, cultured lowfat milk, cultured skim milk, cultured sour cream, dry curd cottage cheese, eggnog, eggnog flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate,~~

goat milk, half and half, heavy cream, lactose reduced lowfat milk, lactose reduced milk, lactose reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat milk, lowfat yogurt, low sodium lowfat milk, low sodium milk, low sodium skim milk, milk, nonfat milk, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, sheep milk, skim milk, sour cream, sour half and half, table cream, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, or yogurt; (ii) any of the following foods: milk, lowfat milk, or skim milk with added safe and suitable microbial organisms; or (iii) any food made with a food specified in clause (i) of this definition by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk products also include those dairy foods made by modifying the federally standardized products listed in this definition in accordance with 21 CFR 130.10.

"Milk tank truck" means the term used to describe both a bulk milk pickup tanker and a milk transport tank.

"Milk tank truck cleaning facility" means any place, premise, or establishment, separate from a milk plant, receiving station, or transfer station where a bulk milk pickup tanker or milk transport tank is cleaned and sanitized.

"Milk transport tank" means a vehicle, including the truck and tank, used by a bulk milk hauler to transport bulk shipments of milk, milk product, or dairy product from a milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.

"Official laboratory" means a facility where biological, chemical, or physical testing is performed that is operated or approved by the state regulatory authority.

"Official milk sample" means each sample of milk, milk product, or dairy product that is collected for compliance with requirements of this chapter by a person who holds a permit to collect milk, milk product, or dairy product samples issued by the state regulatory authority agency.

"Other mammals" means any mammal except humans, cows, goats, sheep, or water buffalo.

"Pay purpose laboratory" means a laboratory that conducts tests for the purpose of determining the composition of milk, milk product, cream, or dairy product as a basis for payment in buying or selling any milk, milk product, cream, or dairy product.

"Permit" means the written document issued by the Virginia Department of Agriculture and Consumer Services to a person qualified to (i) be a bulk milk hauler, bulk milk sampler, contract hauler, subcontract hauler, dairy plant sampler, or pay purpose tester or (ii) operate a pay purpose laboratory, bulk milk pickup tanker, or milk transport tank.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, institution, or association.

"Raw" means unpasteurized.

"Receiving station" means any place, premises, or establishment where any milk, milk product, or dairy product is received, collected, handled, stored or cooled, and prepared for further transporting.

"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate the opportunity for any person or persons to hold a permit issued by the Virginia Department of Agriculture and Consumer Services.

"State regulatory authority" agency means the Virginia Department of Agriculture and Consumer Services, the agency having jurisdiction and control over the matters embraced within this chapter.

"Summarily suspend" means the immediate suspension of a permit issued by the state regulatory authority agency without the permit holder being granted the opportunity to contest the action prior to the effective date and time of the suspension.

"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a permit issued by the Virginia Department of Agriculture and Consumer Services.

"Transfer station" means any place, premises, or establishment where milk, dairy products, or milk products are transferred directly from one milk transport tank to another, or from one or more bulk milk pickup tankers to one or more milk transport tanks.

"Transport commingled milk" means any raw milk, milk product, or dairy product that has been removed from one or more bulk milk pickup tankers or any silo, vat, or container in a milk plant and loaded into a milk transport tank.

"Transport tank operator" means any person who hauls transport commingled milk.

"3-A Sanitary Standards" means the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association for Food Protection, the U.S. Public Health Service, and the Dairy Industry Committee and published by the International Association for Food Protection.

2VAC5-501-20. Intent, scope, and interpretation. (Repealed.)

A. The Virginia Board of Agriculture and Consumer Services hereby finds that a uniform regulation is needed to govern the cooling or storage of milk on Virginia dairy farms; the sampling of milk in storage and the handling of milk samples from the dairy farm to the laboratory; the hauling, transferring, storage, handling, and delivery of milk from the farm to the processing plant; the hauling, transferring,

Regulations

~~handling, and delivery of milk, milk products, and dairy products between one milk plant and another; and the handling and testing of milk, milk product, and dairy product samples in laboratories if the test results will be used as a basis for payment. This chapter shall be applicable throughout the Commonwealth, shall be enforced on a statewide basis, and shall regulate all milk, milk products, and dairy products produced on Virginia dairy farms or moved between milk plants.~~

~~B. Unless otherwise provided by state law or regulations of the Virginia Board of Agriculture and Consumer Services, this chapter shall be interpreted and enforced by the Department of Agriculture and Consumer Services. In the interest of the consumer and to facilitate the orderly marketing of milk, the Commissioner of Agriculture and Consumer Services may establish, publish, and enforce interpretations of this chapter.~~

~~C. This chapter defines milk cooling or storage tanks, pay purpose laboratories, dairy farms, plants, etc.; sets forth permit requirements, milkhouse and associated facilities required; construction, location and operation of milk cooling or storage tanks; establishes minimum cooling and storage requirements for milk on the farm and in transport; sampling and measuring of milk produced and sold from dairy farms; and facilities and operations required in hauling milk from the farm to the processing plant.~~

2VAC5-501-30. Permits.

A. It shall be unlawful for any person who does not possess a permit from the state regulatory ~~authority of the Commonwealth of Virginia~~ agency to: (i) operate a bulk milk pickup tanker; (ii) sample, measure, and collect milk from farm bulk milk cooling or holding tanks; (iii) sample, measure, or receive milk in cans or containers into any milk plant, receiving station, or transfer station; (iv) possess or transport official milk samples; (v) collect official milk samples from bulk milk pickup tankers or milk transport tanks; or (vi) collect official milk samples of pasteurized milk or pasteurized milk products from a milk plant. Each person shall pass a test as prescribed by the state regulatory ~~authority~~ agency. Qualifications of such persons shall be those set forth by laws, regulations, and procedures prescribed by the state regulatory ~~authority~~ agency. All such permits shall expire on December 31 next following the date of issuance. All such permits shall be renewed without further examination if the permit holder renews his permit within one year after the permit's expiration date. No permit to operate a bulk milk pickup tanker to sample, measure, and collect milk from farm bulk milk cooling or holding tanks shall be renewed without the applicant satisfactorily passing a test as prescribed by the state regulatory ~~authority~~ agency if the applicant did not renew his permit within one year after it expired. Each bulk milk sampler shall be evaluated by the state regulatory ~~authority~~ agency at least once during the first year after his

~~the bulk milk sampler's permit is issued and a minimum of once every two years~~ 18 months thereafter as a condition of permit renewal. It shall be the responsibility of each bulk milk sampler to ensure ~~he~~ the bulk milk sampler is available to be evaluated by the state regulatory ~~authority~~ agency and to ~~contact the state regulatory agency if the bulk milk sampler has not been evaluated within the 18 months following the last evaluation.~~

B. It shall be unlawful for any person who does not possess a permit from the state regulatory ~~authority of the Commonwealth of Virginia~~ agency to operate a milk tank truck cleaning facility. Each milk tank truck cleaning facility shall be inspected and determined to be in compliance with all requirements of this chapter by the state regulatory ~~authority~~ agency prior to permit issuance. All such permits shall expire on December 31 next following the date of issuance.

C. Each contract hauler and subcontract hauler shall obtain a permit from the state regulatory ~~authority~~ agency in order to contract for the hauling of milk from a dairy farm to a milk plant or transfer station. Each contract hauler and subcontract hauler shall also obtain a permit from the state regulatory ~~authority~~ agency for each bulk milk pickup tanker and each milk transport tank they operate. Each bulk milk pickup tanker and each transport tank shall be identified by a five-digit number preceded by the letters "VA". The first two digits of the five-digit number shall identify the contract hauler or subcontract hauler as assigned by the state regulatory ~~authority~~ agency and the last three digits of the five-digit number shall identify the specific bulk milk pickup tanker or transport tank as assigned by the state regulatory ~~authority~~ agency. Each contract hauler and subcontract hauler shall identify each bulk milk pickup tanker and transport tank on the left hand side of the rear bulkhead of each tank with permanent, water resistant letters and numbers. Each contract hauler and subcontract hauler shall use only letters and numbers to identify a bulk milk pickup tanker or milk transport tank that are at least three inches tall and one-and-one-half inches wide. Each contract hauler and subcontract hauler shall provide the state regulatory ~~authority~~ agency with the name of the manufacturer, year made, model number, capacity, serial number, number of compartments, whether the tanker is a bulk milk pickup tanker or milk transport tank, delivery address, mailing address, telephone, and contact information for each bulk milk pickup tanker and milk transport tank for permitting purposes. Permits for contract haulers, subcontract haulers, bulk milk pickup tankers, and milk transport tanks shall expire on December 31 next following the date of issuance and shall be renewed annually.

D. It shall be unlawful for any person who does not possess a permit from the state regulatory ~~authority of the Commonwealth of Virginia~~ agency to operate a pay purpose laboratory or to test milk for pay purposes. Each person employed by a pay purpose laboratory who is involved in

testing milk for pay purposes shall pass a test as prescribed by the state regulatory authority agency. Qualifications of such persons shall be those set forth by laws, regulations, and procedures prescribed by the state regulatory authority agency. All such permits shall expire on December 31 next following the date of issuance and shall be renewed annually. All such permits shall be renewed without further examination if the permit holder renews within one year after the permit's expiration date.

E. Only a person who complies with this chapter shall be entitled to receive and retain such a permit. Permits or identification numbers shall not be transferable with respect to persons, equipment, or locations.

F. The state regulatory authority agency may cancel, suspend, or revoke the permit of any person, or may deny to any person a permit if:

1. It has reason to believe that a public health hazard exists;
2. The permit holder fails to engage daily in the business for which the permit was issued;
3. The permit holder was not evaluated by the state regulatory authority agency if required for permit renewal;
4. The permit holder fails to comply with any requirement of this chapter, or of §§ 3.2-5200 through 3.2-5210 or 3.2-5218 through 3.2-5233 of the Code of Virginia;
5. The permit holder has interfered with the state regulatory authority agency in the performance of its duties;
6. The person supplies false or misleading information to the state regulatory authority agency: (i) in the person's application for a permit; (ii) concerning the identity of the person who will control the business or equipment that is the subject of the permit; (iii) concerning the amount of milk, milk product, or dairy product that the person weighs, samples, tests, or transports; (iv) concerning the distribution of the person's milk, milk product, or dairy product; (v) concerning any investigation conducted by the state regulatory authority agency; or (vi) concerning the location of any part of the person's operation or equipment that is subject to a permit;
7. The permit holder engages in fraudulent activity regarding: (i) the amount of milk, milk product, or dairy product the person weighs, samples, tests, or transports; (ii) the collection of samples used to determine compliance with any provision of 2VAC5-490, 2VAC5-530, or this chapter; or (iii) the collection or testing of samples used for pay purposes;
8. The permit holder fails to correct any deficiency that the state regulatory authority agency has cited in a written notice of intent to suspend the person's permit, as a violation of this chapter; or

9. The authority agency in another state responsible for issuing permits to contract haulers, subcontract haulers, bulk milk haulers, bulk milk samplers, dairy plant samplers, transporters of official samples, pay purpose laboratories, or testers of milk samples for pay purposes has suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth.

G. The state regulatory authority agency may summarily suspend the permit of any person for violation of subdivisions subdivision F 1 or F 8 of this section.

H. Each bulk milk sampler and bulk milk hauler shall ensure that one complete set of milk samples representing each of the milk pickups on each load of farm pickup milk in his possession shall accompany the load to its destination. No person may remove the last complete set of milk samples from a bulk milk pickup tanker prior to its delivery to a milk plant, receiving station, or transfer station.

~~I. Each person who holds a permit to produce milk shall store a minimum of the past 30 days bulk milk pickup tickets in his milkroom for use by the state regulatory authority if he ships his milk by bulk shipment.~~

J. Each person who operates a dairy farm shall abstain from selling any milk from his dairy farm after his milk tests positive for excessive drug residues until notified by the state regulatory authority agency that a followup official milk sample taken from his milk supply tested negative for excessive drug residues.

~~K. J.~~ To provide for permitting reciprocity between states, the state regulatory authority agency may issue a Virginia permit to any bulk milk hauler or bulk milk sampler who holds a valid permit issued by the regulatory authority agency in another state without that person having to take or pass a test in Virginia if the person will be picking up or sampling milk in Virginia.

~~L. K.~~ Each person who operates a dairy farm shall use only a farm bulk milk pickup tanker or milk transport tanker for direct loading and storage of milk on his dairy farm if: (i) the milk tank truck is equipped with a means to collect representative milk samples approved by the state regulatory authority agency at his dairy farm; (ii) the milk tank truck is always delivered to the same milk plant in Virginia where a representative milk sample may be obtained by the state regulatory authority agency or (iii) the operator of the dairy farm arranges for official milk samples to be collected and delivered to a laboratory operated by the state regulatory authority agency.

~~M. L.~~ Each bulk milk hauler, bulk milk sampler, contract hauler, and subcontract hauler who transports any pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix shall use only a milk tank truck that is dedicated solely to transport or hold pasteurized

Regulations

milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix if the pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix will not be repasteurized in the milk plant receiving the pasteurized milk, pasteurized milk product, pasteurized dairy product, or pasteurized frozen dessert mix prior to being packaged for sale.

2VAC5-501-40. Milkhouse or milkroom; construction and facilities.

Each person who operates a dairy farm shall:

1. Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted;
2. Provide ~~(i) incandescent lighting fixtures of 100 watts or more capacity; or (ii) fluorescence lighting fixtures of 40 watts or more capacity in his milkhouse or milkroom; and (iii) adequate~~ lighting fixtures that produce at least 20 foot-candles of light and are located near, but not directly above, any farm bulk milk tank if one is installed;
3. Provide sufficient light in the milkhouse or milkroom to illuminate the interior of each farm bulk milk tank installed on the dairy farm for inspection purposes. The person's lighting fixture for illuminating the interior of each farm bulk milk tank shall be either permanently installed or portable and battery operated;
4. Provide ventilation in his milkhouse or milkroom sufficient to prevent condensation from forming on the milkhouse ceiling or walls. No person who operates a dairy farm shall install vents in a milkhouse ceiling if the vents are located directly above any part of a farm bulk milk tank, wash vat, hand basin, equipment storage rack or floor drain. Each person who operates a dairy farm shall install only vents in a milkhouse ceiling that comply with the following:
 - a. Each vent shall be constructed to form a solid chimney between the milkhouse ceiling and the roof of the building so that there are no openings for dust, insects, birds, or other debris to enter the chimney and fall into the milkhouse or milkroom;
 - b. Each vent shall be screened at the top of the chimney after it exits the roof to prevent the entrance of insects and birds; and
 - c. Each vent shall be capped with a rainproof covering to prevent water and snow from falling down into the milkhouse or milkroom;
5. Not install a forced air heating or cooling vent directly over any farm bulk milk tank, wash vat, equipment storage rack, or hand basin;

6. Provide in his milkhouse or milkroom a water hose that complies with the following requirements:

- a. The water hose shall be of sufficient length to reach all parts of the milkhouse;
- b. The water hose shall be connected to a permanently mounted water valve; and
- c. The water hose shall be equipped with facilities for storing the water hose above the floor;

7. Provide in his milkhouse or milkroom a separate, permanently installed hand-washing facility with hot and cold running water under pressure supplied through a mix valve, soap, and single service paper towels;

8. Provide only potable water under pressure in his milkhouse from a public or private supply properly developed, constructed, and maintained;

9. ~~Store in his milk house or milk room the weighing and sampling receipt from each milk pickup for a minimum of the past 60 days if his milk is picked up by a bulk milk hauler; and~~ Maintain all records in compliance with Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision"; and

10. Sell his milk production only to a person ~~who holds a milk plant permit issued~~ permitted to process or manufacture milk or milk products by the state regulatory authority of ~~Virginia~~ agency or a regulatory agency of another state.

2VAC5-501-50. Cooling temperature and storage standards for milk stored on a dairy farm.

A. Each person that operates a dairy farm shall cool raw milk to 40°F or cooler, but not frozen, within two hours after milking and the temperature at any time thereafter shall not be warmer than 50°F. Raw milk that is warmer than a temperature of 50°F two hours after the first milking or at any time thereafter shall be deemed a public health hazard and shall not be utilized in any milk, milk product, or dairy product, offered for sale, or sold.

~~B. No person that operates a dairy farm and holds a grade "A" dairy farm permit shall sell or offer to sell any milk as grade "A" milk if the age of the milk is older than 72 hours after the completion of the first milking.~~

~~C. B.~~ No person that operates a dairy farm and holds a permit to produce milk for manufacturing purposes shall sell, offer to sell, or process any milk for manufacturing purposes if the age of the milk is older than 76 hours after the completion of the first milking. Raw milk for manufacturing purposes older than 76 hours shall be deemed to be a public health hazard.

2VAC5-501-60. Construction and operation of farm bulk milk cooling or holding tanks, recording thermometers, interval timing devices, and other required milkhouse or milkroom facilities.

A. Each person that operates a dairy farm and installs one or more farm bulk cooling or holding tanks in the milkhouse shall provide the following facilities:

1. A milk hose port opening no larger than eight inches in diameter through a wall in the milkhouse closest to the area the bulk milk pickup tanker will be parked to receive the milk from each farm bulk cooling or holding tank. The hose port shall be:
 - a. Provided with a self-closing door that shall open to the outside; and
 - b. Of sufficient height above the milkhouse floor and the outside apron to prevent flooding or draining of the milkhouse;
2. An outside apron constructed of concrete or other equally impervious material shall be provided on the outside of the milkhouse directly beneath the hose port to protect the milk-conducting equipment from contamination; and:
 - a. If constructed of concrete, each outside apron shall be a minimum of four inches thick and measure a minimum of two feet by two feet horizontally; or
 - b. If constructed of a material other than concrete, each outside apron shall measure a minimum of two feet by two feet horizontally;
3. A 220-volt grounded weatherproof electrical outlet installed on the outside of the milkroom or milkhouse near the hoseport for the bulk milk hauler's use to power the milk pump on the bulk milk pickup tanker; and
4. A switch to control the electrical power to the 220-volt grounded weatherproof electrical outlet located on the inside of the milkroom or milkhouse near the outlet to the farm bulk cooling or holding tank.

B. Each person that operates a dairy farm and installs one or more farm bulk cooling or holding tanks in the milkhouse or milkroom shall comply with the following requirements:

1. Each farm bulk cooling or holding tank shall comply with all the requirements contained in:
 - a. 3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks, Document No. 13-11 (July 2012); or
 - b. 3-A Sanitary Standards for Farm Milk Storage Tanks, Document No. ~~30-01 (Sept. 1984)~~; 30-02 (July 2018);
2. Each farm bulk cooling or holding tank shall be equipped with an indicating thermometer accurate to plus or minus 2.0°F and capable of registering the temperature

of the milk in the tank before it reaches ~~40%~~ 20% of the tank's volume;

3. Each farm bulk cooling or holding tank shall be installed to comply with the following minimum clearance distances around, above, and below each farm bulk cooling or holding tank:
 - a. Three feet measured horizontally between a wash vat and the outermost portion of any farm bulk cooling or holding tank;
 - b. Three feet measured horizontally in a 180-degree arch from the front of the tank where the outlet valve is located;
 - c. Two feet measured horizontally from the sides and rear of any farm bulk cooling or holding tank to any wall, shelves, water heater, hand-basin, or other object;
 - d. Eighteen inches measured horizontally from the outermost portion of any farm bulk cooling or holding tank to any floor drain and the floor drain shall not be located underneath the tank;
 - e. Three feet measured vertically from the top of the manhole cover of any farm bulk cooling or holding tank to the ceiling;
 - f. Eight inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures greater than 72 inches in diameter;
 - g. Four inches measured vertically from the floor underneath the bottom of any round farm bulk cooling or holding tank that measures equal to or less than 72 inches in diameter; and
 - h. Six inches measured vertically from the floor underneath the bottom of any flat bottom farm bulk cooling or holding tank;
4. Farm bulk cooling or holding tanks installed through a milkroom wall shall meet the following minimum requirements:
 - a. The area between the farm bulk cooling or holding tank and the wall shall be tightly sealed;
 - b. All vents and openings on the farm bulk cooling or holding tank located outside the milkroom shall be protected from dust, insects, moisture, and other debris which might enter the tank; and
 - c. All agitators located outside the milkroom shall be equipped with a tightly fitting seal between the bottom of the agitator motor and the top of the farm bulk cooling or holding tank;
5. Each person that operates a dairy farm shall ensure that each farm bulk cooling or holding tank is installed with a

Regulations

foundation of sufficient strength to support the tank when it is full;

6. Each person that operates a dairy farm shall obtain prior approval from the state regulatory ~~authority~~ agency for each farm bulk cooling or holding tank and its installation before it is installed on the person's dairy farm; and

7. Each person that operates a dairy farm shall ensure each farm bulk cooling or holding tank on the farm is installed, gauged, and a volume chart prepared in compliance with regulations adopted pursuant to § 3.2-5206 of the Code of Virginia. Each farm bulk cooling or holding tank and any gauge rod, surface gauge, gauge, or gauge tube and calibration chart associated with it shall be identified by serial number in a prominent manner.

C. Each person that holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall comply with the following:

1. Each farm bulk cooling or holding tank shall be equipped with a recording thermometer;

2. Each recording thermometer shall be installed to comply with the following:

a. Each recording thermometer shall be installed in the milkhouse;

b. No recording thermometer may be installed on or attached to a farm bulk cooling or holding tank;

c. Each recording thermometer shall be installed (i) on an inside wall of the milkhouse, (ii) on an outside wall of the milkhouse or milkroom if installed with one inch of rigid insulation between the back of the recording thermometer and the surface of the outside wall, or (iii) on metal brackets from the ceiling or floor; and

d. Each recording thermometer sensor shall be installed on the farm bulk cooling or holding tank to record the temperature of the milk in the tank before the milk reaches ~~40%~~ 20% of the tank's volume;

3. Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum requirements:

a. The case for each recording thermometer shall be moisture proof under milkhouse conditions;

b. The case for each recording thermometer shall be UL rated NEMA 4X enclosure or equivalent as provided in ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum) dated December 29, 2014;

c. The case for each recording thermometer shall be equipped with a corrosion-resistant latching mechanism that keeps the recording thermometer tightly closed;

d. The recorder chart for each recording thermometer shall not exceed a maximum chart rotation time of 168 hours (seven days). Recorder charts for farm bulk cooling or holding tanks that are picked up every other day shall have a chart rotation time of 48 hours. Recorder charts for farm bulk cooling or holding tanks that are picked up every day may have a chart rotation time of 24 or 48 hours;

e. The recorder chart for each recording thermometer shall be marked with water resistant ink;

f. The scale on the recording chart shall cover a minimum of 30°F to 180°F, with the scale reversed to show cold temperatures at the outside of the chart for best resolution;

g. Each division on the recording chart shall represent a maximum of 1.0°F between 30°F and 60°F, with two degree divisions between 60°F and 180°F;

h. Spacing of divisions on the recorder chart shall be a minimum of 0.040 inches per 2.0°F, with the ink line easily distinguishable from the printed line;

i. The recording thermometer speed of response or sensing of temperature shall be a maximum of 20 seconds;

j. The recording thermometer shall be accurate to plus or minus 2.0°F;

k. The sensor for each recording thermometer shall be (i) a resistance temperature detector (RTD) type sensor, (ii) constructed of stainless steel type 304 or type 316 on all exterior surfaces, (iii) hermetically sealed, (iv) accurate to 0.3°C, and (v) continuous run wire;

l. Each recording thermometer and sensor shall be calibrated and supplied as a package;

m. No capillary system containing any toxic gas or liquid shall be allowed to come into direct contact with any milk or milk product;

n. Other recording devices may be accepted by the state regulatory ~~authority~~ agency if they comply with the requirements of subdivisions 3 a through m of this subsection;

o. If a strip chart style recorder is used, it shall move not less than one inch per hour and may be continuous for a maximum of 30 days; and

p. Recording thermometers may be manually wound or electrically operated;

4. Each recording thermometer installed on a farm bulk cooling or holding tank shall comply with the following minimum operating requirements:

a. Each recording thermometer shall be provided with a means to seal the calibration and zeroing mechanism to provide evidence of unauthorized adjustment or tampering;

b. Each recording thermometer shall be provided with a pin in the hub to prevent the recording chart from being rotated; and

c. Each recording thermometer shall be properly grounded and short circuit protected;

5. Each person that operates a dairy farm and installs a recording thermometer on the farm bulk cooling or holding tank shall maintain a minimum of a 30-day supply of unused recorder charts designed for the specific recording thermometer installed and shall maintain a minimum of the past ~~60 days~~ six months of used charts for purposes of inspection; and

6. Each person that operates a dairy farm and installs a recording thermometer on the farm bulk cooling or holding tank shall provide a moisture proof storage container in the milkhouse or milkroom for purpose of storing a supply of new charts and a minimum of the past 60 days of used charts.

D. No person may remove from the dairy farm any recorder chart that has been used once and removed from the recorder within the past 60 days unless he has obtained permission from the state regulatory authority agency. All recorder charts removed from any dairy farm by any person other than a representative of the state regulatory authority agency shall be returned to the dairy farm within 10 days. All recorder charts shall be available to the state regulatory authority agency.

E. Each bulk milk hauler shall comply with the following requirements when picking up milk from a dairy farm if the farm bulk cooling or holding tank is equipped with a recording thermometer:

1. Each milk hauler, in making a milk pickup, shall properly agitate the milk and remove the chart from the recorder;

2. Each milk hauler shall record the following information on each chart removed from the recorder:

a. The date and time of pickup; and

b. The signature of the milk hauler;

3. Each milk hauler shall store the used chart in the storage container supplied by the dairy farmer;

4. Each milk hauler shall obtain a new chart from the supply provided by the dairy farmer and record the following information in the chart:

a. The date; and

b. The patron number of the dairy farmer;

5. If a recorder chart is used for more than one pickup, each milk hauler shall identify each lot of milk on the chart with the date, time of pickup, and his signature; and

6. Before removing any milk from the farm tank, each milk hauler shall check the recorder chart. If the recorder chart indicates that the milk temperature has varied in a manner that would preclude acceptance, he shall immediately notify his superior and the dairy farmer. If the milk is rejected, each milk hauler shall record this information on the chart. If the milk is picked up, each milk hauler shall sign the chart and record the date and time of pickup.

F. Each person that operates a dairy farm and holds a grade "A" dairy farm permit shall be responsible for maintaining each of the recording thermometers in good repair and adjustment to include calibrating the recording thermometer to read accurately within plus or minus 2.0°F of the actual milk temperature in the farm bulk cooling or holding tank.

G. Each recording thermometer installed on a farm bulk cooling or holding tank shall be inspected and may be sealed by the state regulatory authority agency after it has been shown to be properly installed and calibrated.

H. Each person that holds a grade "A" dairy farm permit and installs a farm bulk cooling or holding tank shall:

1. Install on each farm bulk cooling or holding tank an interval timing device that automatically agitates the milk in the farm bulk tank for not less than five minutes every hour during the entire time milk is being cooled or stored in the tank;

2. Not install a manual switch capable of turning off the interval timing device on any farm bulk milk cooling or holding tank while any milk is being cooled or stored; and

3. Maintain in good repair and operating condition each interval timing device installed on the farm bulk cooling or holding tank.

2VAC5-501-70. Measuring, sampling, and testing.

A. Each person who determines the quantity of milk in any lot of milk being picked up on any dairy farm in Virginia shall comply with one of the following:

1. If the milk is being picked up from a farm bulk cooling or holding tank, the person shall use only a measuring rod, gauge, or gauge tube accurately calibrated to the individual farm bulk cooling or holding tank and the accompanying calibration chart with a serial number that matches the serial number for the specific farm bulk cooling or holding tank for which it was prepared;

2. If the milk being picked up is not stored in a farm bulk cooling or holding tank, the person shall determine the quantity of milk at the point of delivery to the milk plant processing the milk by commingling all of the milk in a vessel equipped with a gauge rod, surface gauge, gauge, or

Regulations

gauge tube and a volume chart that has been prepared in compliance with § 3.2-5620 of the Code of Virginia;

3. If the milk being picked up is not stored in a farm bulk cooling or holding tank and the basis for payment for the milk will be based solely on the volume of milk in gallons, the person shall determine the quantity of milk by adding the volume in gallons of each separate full container and the volume in gallons of any milk in containers that are not full; or

4. If the milk being picked up is not stored in a farm bulk cooling or holding tank and the basis for payment for the milk will be based solely on the pounds of milk delivered, the person shall determine the quantity of milk in pounds by weighing each of the containers of milk on a commercial scale before and after they have been emptied and subtracting the weight of the empty containers from the total weight of the containers and the milk, the difference being the weight in pounds of milk.

B. Each person who desires to convert a volumetric measurement of milk to weight in pounds of milk shall multiply the volume of milk in gallons by 8.60.

C. Each person that operates a dairy farm and transports any milk in cans or other containers from the dairy farm to a milk plant and intends to determine the basis for payment of the milk based solely on its volume in gallons or solely on its weight in pounds, shall ensure the cans or other containers comply with the following:

1. Each container shall be provided with a visual means to measure the volume of milk in the container in divisions of one or more whole gallons up to the total capacity of the container;

2. Each container shall be equipped with a tightly fitting lid that prevents any milk from leaking out around the closure;

3. Each container shall be manufactured from stainless steel, food grade plastic, or tinned metal;

4. No container shall be manufactured from glass or other easily breakable material;

5. Each container shall be smooth and easily cleanable; and

6. Each container shall be equipped with an opening large enough to allow the container to be washed by hand if it is intended to be washed by hand or washed by mechanical means if it is intended to be washed by mechanical means.

D. Each person that operates a pay purpose laboratory shall:

1. Provide a separate room of sufficient size in which pay purpose testing shall be conducted;

2. Provide lighting of at least 20 foot-candles when measured at work bench levels and at all other work areas used to conduct testing;

3. Provide adequate ventilation sufficient to prevent condensation from forming and to prevent noxious or hazardous chemical fumes from collecting in the laboratory;

4. Provide heating and cooling equipment sufficient to maintain a constant room temperature of 70°F plus or minus 2.0°F in his laboratory at all times;

5. Provide a separate permanently installed hand-washing facility with hot and cold running water under pressure supplied through a mix valve, soap, and single service paper towels;

6. Provide only potable water under pressure in the laboratory;

7. Provide walls that are constructed of impervious material with a light-colored material and that are easily cleanable;

8. Provide floors made of concrete or other equally impervious material that are easily cleanable;

9. Provide toilet facilities for employees;

10. Use only methods and equipment approved by the state regulatory authority agency to test milk for protein, solids, solids not fat, and fat;

11. Construct the facility to ensure that the laboratory environment has a stable electrical supply, stable water supply, stable heating and cooling, and stable ventilation to allow a constantly controllable environment for pay purpose testing procedures and pay purpose equipment; and

12. Dispose of all liquid, solid, and gaseous wastes in a manner that complies with state and federal requirements for waste disposal.

E. Each bulk milk hauler shall:

1. Collect at least two representative samples from each bulk milk cooling or holding tank each time that milk is picked up from the dairy farm for use as official milk samples;

2. Collect a minimum of four ounces of milk for each official milk sample collected;

3. Maintain custody of all official milk samples collected or transfer custody of all official milk samples collected to another permitted bulk milk hauler, bulk milk sampler, or at the discretion of the state regulatory agency, lock all official milk samples in a suitable container in which they may be transported or stored;

4. Pick up all of the milk in each farm bulk cooling or holding tank each time that milk is picked up from the farm bulk cooling or holding tank; and

5. Pick up only milk that is 45°F or cooler, but not frozen.

F. Each person who desires to determine the butterfat content of milk as a basis for payment shall either select from each dairy farm supplying them with milk a minimum of four milk samples taken at irregular intervals each month and utilize only laboratory butterfat test results from milk samples that have been tested within 48 hours of collection for pay purposes or:

1. Collect a representative sample from each shipment of each producer supplying them with milk for a maximum of 16 days, if composite milk samples are used to determine butterfat content;
2. Store composite milk samples only in an approved milk laboratory that will perform the butterfat test;
3. Preserve all composite milk samples with an appropriate preservative designed to prevent the spoilage of milk and that will not affect the butterfat test; and
4. Test each composite milk sample within three days following the end of the number of days used to create the composite milk sample.

2VAC5-501-80. Farm bulk milk pickup tanker and milk transport tank requirements.

A. Each contract hauler or subcontract hauler shall:

1. Use only a farm bulk milk pickup tanker or a milk transport tank that complies with all the requirements contained in 3 A Sanitary Standards for Stainless Steel Automotive Transportation Tanks for Bulk Delivery and Farm Pick Up Service, Number 05 15 (effective November 24, 2002), (3 A Sanitary Standards, Incorporated) and that are maintained in good repair;
2. Ensure that all appurtenances of each farm bulk milk pickup tanker or each milk transport tank including any hoses, pumps, and fittings comply with all the requirements contained in 3 A Sanitary Standards for Stainless Steel Automotive Transportation Tanks for Bulk Delivery and Farm Pick Up Service, Number 05 15 (effective as of November 24, 2002), (3 A Sanitary Standards, Incorporated) for construction and are maintained in good repair;
3. Provide sample racks for holding all milk samples collected in the sample cooler;
4. Provide a sample dipper or other sampling device of sanitary design that is maintained clean and in good repair;
5. Provide milk sample storage coolers that have sufficient insulation to maintain proper milk temperatures under all conditions throughout the year;
6. Provide only sterile sample bags, tubes, or bottles, properly stored to prevent contamination;
7. Provide a calibrated pocket thermometer certified as accurate within plus or minus 2.0°F to each bulk milk

hauler in his employ and ensure the pocket thermometer is recertified a minimum of each six months thereafter;

8. Provide a U.S. Environmental Protection Agency approved and registered sanitizer for the sample dipper container;

9. Provide a suitable sanitizer test kit to each bulk milk hauler in his employ for use in checking the strength of sanitizing solutions;

10. Ensure that each appurtenance requiring flexibility for the milk transfer system to operate properly is free draining, supported to maintain a uniform slope and alignment, and easily disassembled and accessible for inspection without the use of tools;

11. Ensure that each farm bulk milk pickup tanker or a milk transport tank and their appurtenances are cleaned and sanitized prior to being used the first time, after each use thereafter, and each time 72 hours has elapsed since the last cleaning and sanitizing treatment;

12. Ensure that multiple milk pickups from dairy farms occur during a 24 hour period without washing and sanitizing the farm bulk milk pickup tanker only if a maximum of two hours elapses between the time of the last delivery and start of the next milk pickup;

13. Pick up any milk in a farm bulk milk pickup tanker or milk transport tank only if there exists a wash and sanitize record for the farm bulk milk pickup tanker or milk transport tank documenting that the tank has been washed and sanitized within the past 72 hours;

14. Install and use clamps on each milk pickup hose that are easily dismantled by hand without the use of tools;

15. Identify and maintain each farm bulk milk pickup tanker or milk transport tank with the identification numbers and letters assigned to each farm bulk milk pickup tanker or milk transport tank by the state regulatory agency. The identification shall be affixed to the left rear bulkhead of the tanker;

16. Provide a suitable enclosure in the rear milk hose or sample compartment of each farm bulk milk pickup tanker for storing inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and so they will be available to any state or federal regulatory agent wherever the farm bulk milk pickup tanker might deliver;

17. Provide a suitable enclosure located within three feet of the tank outlet valve or located on top of one of the rear wheel fenders for each milk transport tank for storing inspection sheets capable of protecting the inspection sheets from excessive moisture, dust, soil, or light that might damage or render the inspection sheets illegible and

Regulations

~~so they will be available to any state or federal regulatory agent wherever the milk transport tank might deliver;~~

~~18. Completely empty the farm bulk cooling or holding tank each time that milk is picked up;~~

~~19. Store the three most recent inspection reports for each farm bulk milk pickup tanker or transport tank in the protected enclosure provided on each farm bulk milk pickup tanker or transport tank at all times; and~~

~~20. Provide a means to lock or seal each opening into a bulk milk pickup tanker or milk transport tank for security purposes.~~

B. A. When picking up and transporting any milk in a bulk milk pickup tanker, each bulk milk hauler shall:

1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in any milkhouse;

2. Conduct all pickup and handling practices to prevent contamination of any milk contact surface;

3. Pass the milk transfer hose through the hose port and remove the cap from the transfer milk hose and set it where it will not become contaminated and then attach the transfer milk hose to the tank outlet valve;

4. Wash his hands thoroughly and dry his hands with a clean single-service towel or electric forced air hand dryer immediately prior to measuring or sampling the milk in the tank;

5. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would render the milk unacceptable and reject the milk if necessary;

6. Record the milk producer's name, milk producer's identification number, the date and time of pickup, the temperature of the milk, the measuring rod reading, the poundage, the name of the purchasing organization, and the signature of the bulk milk hauler on the producer's weight ticket;

7. Check the temperature of the milk in each farm bulk cooling or holding tank at least once a month with an accurately calibrated pocket thermometer after it has been properly sanitized;

8. Turn off the milk tank agitator if it is running when he arrives at the milkhouse or milkroom and allow the surface of the milk to become quiescent;

9. Carefully insert the measuring rod, after it has been wiped dry with a single-service towel, into the tank and then read the measurement. Each bulk milk hauler shall repeat this procedure until two identical measurements are obtained and then shall record the measurement on the weight ticket;

10. Agitate the milk in each tank holding 2,000 gallons or less of milk a minimum of five minutes before collecting any milk sample;

11. Agitate the milk in each tank holding more than 2,000 gallons of milk a minimum of 10 minutes before collecting any milk sample;

12. While the tank is being agitated, bring the sample container, dipper, dipper container, and sanitizing agent, or single service sampling tubes into the milkhouse aseptically;

13. While the tank is being agitated, remove the cap from the tank outlet valve and examine for milk deposits or foreign matter and then sanitize if necessary;

14. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;

15. Collect two representative samples from each tank after the milk has been properly agitated, transferring the milk from the sample dipper to the sample container away from the tank opening to avoid spilling any milk back into the tank, and filling the sample containers only 3/4 full;

16. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container;

17. Close the cover or lid of the bulk tank;

18. Identify each milk sample with the producer's patron or member number and the date of collection;

19. Collect at the first pickup for each load of milk two temperature samples and identify the temperature samples with the date, time, temperature of the milk, producer number, and name of the bulk milk hauler;

20. Place each milk sample collected immediately on ice in the sample storage cooler;

21. After collection of milk samples, open the outlet valve and start the pump to transfer the milk from the farm tank to the bulk milk pickup tanker;

22. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;

23. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;

24. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the weight ticket;

25. Rinse the entire inside of the tank with warm water while the tank outlet valve is open;

26. Use only sample containers and single-service sampling tubes that comply with all the requirements

contained in Standard Methods for the Examination of Dairy Products, 17th Edition, 2004;

27. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;

28. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;

29. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, and air elimination equipment or metering systems;

30. Protect samples from contamination and not bury the tops of sample containers in ice or bury sample containers above the milk level in the sample containers; and

31. Keep all producer milk samples that represent the commingled milk on the load with the load of milk until the load of milk has been received by a milk plant, receiving station, or transfer station or if rejected by a milk plant, receiving station, or transfer station until the milk samples are collected for official laboratory testing to determine the disposition of the load of milk; ~~and 32. Deliver each bulk milk pickup tanker of commingled milk to a milk plant, receiving station, or transfer station within 24 hours after the last milk pickup on the route for the bulk milk pickup tanker.~~

~~C.~~ B. When sampling any milk from a bulk milk pickup tanker or transport tanker, the dairy plant sampler shall:

1. Practice good hygiene, maintain a neat and clean appearance, and abstain from using tobacco products in the receiving area;

2. Conduct all sampling and handling practices to prevent contamination of any milk contact surface;

3. Wash his hands thoroughly and dry his hands with a clean single-service towel or acceptable air dryer immediately prior to sampling the milk in the tank;

4. Examine the milk in the tank by sight and smell for any off odor or any other abnormalities that would classify the milk as unacceptable and reject the milk if necessary;

5. Agitate for a period of time needed to blend the milk in each compartment to a homogenous state using odor-free, pressurized, filtered air, or electrically driven stirring or recirculating equipment that has been properly sanitized before sampling or receiving;

6. Check the temperature of the milk in each compartment with a properly sanitized thermometer that has been checked against a standardized thermometer at least once every six months and certified accurate;

7. Reject any milk that has a temperature above 45°F;

8. Bring the sample container, properly constructed sample dipper, and sanitizing solution to the tanker aseptically after the milk is properly agitated;

9. Remove the sample dipper or sampling device from the sanitizing solution and rinse it in the milk from the tank at least twice before collecting any official milk sample;

10. Collect at least one representative sample from each compartment of the tanker, transferring the milk from the sample dipper to the sample container away from the tank opening to avoid spilling any milk back into the tank, and filling the sample container only three quarters full;

11. Rinse the sample dipper with water until it is free of visible milk and replace it in its carrying container or storage container;

12. Close the cover or lid for each compartment of the bulk milk tanker;

13. Identify each milk sample with the tanker number, compartment if the tanker is equipped with more than one compartment, and the date of collection;

14. Place each milk sample collected immediately on ice in a sample storage cooler or deliver it to the laboratory for immediate analysis;

15. Attach the milk transfer hose to the outlet valve of the milk tank truck and open the outlet valve of the milk tank truck before starting the pump to transfer the milk from the bulk milk pickup tanker to the milk plant storage facility or silo only after the collection of official milk samples;

16. Turn off the agitator once the level of milk in the tank has reached the level where over-agitation will occur;

17. Disconnect and cap the transfer hose after removing it from the outlet valve of the tank;

18. Observe the walls and bottom of the tank for foreign matter and extraneous material and record any objectionable observations on the plant receiving log;

19. Rinse the entire inside of the tanker with warm water after the tanker has been emptied and the external transfer system has been disconnected while the tanker outlet valve is open;

20. Use only sample containers and single-service sampling tubes that comply with all the requirements contained in Standard Methods for the Examination of Dairy Products, 17th Edition, 2004;

21. Cool and store all official milk samples to a temperature of 40°F or cooler, but not frozen;

22. Provide sufficient ice and water or other coolant in the sample storage cooler to maintain all milk samples at proper temperature;

Regulations

23. Protect samples from contamination and not bury tops of sample containers in ice or bury samples above the milk level in the sample containers;

24. Promptly deliver samples and sample data to the laboratory; and

25. Discard any milk that remains in the external transfer system that exceeds 45°F including any milk in pumps, hoses, air elimination equipment, or metering systems.

~~D.~~ C. Each bulk milk hauler shall:

1. Ensure each bulk milk pickup tanker or milk transport tank is properly cleaned and sanitized after unloading;

2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when the bulk milk pickup tanker or milk transport tank is next washed, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank was washed; and

4. Ensure the following information is recorded on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

a. Identification number of the bulk milk pickup tanker or milk transport tank;

b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;

c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and

d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

~~E.~~ D. Each person that operates a milk plant, receiving station, or transfer station and each dairy plant sampler responsible for sampling and receiving milk into a milk plant, receiving station, or transfer station shall:

1. Ensure each bulk milk pickup tanker and milk transport tank is properly cleaned and sanitized after unloading;

2. Ensure a cleaning and sanitizing tag is affixed to the outlet valve of the bulk milk pickup tanker or milk transport tank after it is washed;

3. Ensure when washing a bulk milk pickup tanker or milk transport tank, the previous cleaning and sanitizing tag is removed and stored at the location where the bulk milk pickup tanker or milk transport tank is washed; and

4. Record the following information on the wash and sanitize tag before it is attached to the outlet valve of the bulk milk pickup tanker or milk transport tank:

a. Identification number of the bulk milk pickup tanker or milk transport tank;

b. Date and time of day the bulk milk pickup tanker or milk transport tank was cleaned and sanitized;

c. Location where the bulk milk pickup tanker or milk transport tank was cleaned and sanitized; and

d. The signature of the person who cleaned and sanitized the bulk milk pickup tanker or milk transport tank.

~~F.~~ E. Each bulk milk hauler shall ensure that each shipping document or load manifest contains the following information for each bulk milk pickup tanker or milk transport tank:

1. The shipper's name, address, and permit number;

2. The Interstate Milk Shipper Bulk Tank Unit identification number for each Bulk Tank Unit on the load of milk or the Interstate Milk Shipper listed Plant Number;

3. The milk hauler permit number if the milk hauler is not an employee of the shipper;

4. The point of origin of the shipment;

5. The bulk milk pickup tanker or milk transport tank identification number;

6. The name of the product;

7. The weight of the product;

8. The temperature of the product when loaded;

9. The date of shipment;

10. The name of the supervising regulatory agency at the point of origin of shipment;

11. A statement as to whether the contents of the load are raw, pasteurized, or in the case of cream, lowfat, or skim milk whether it has been heat-treated;

12. The seal number on inlet, outlet, wash connections and vents, if applicable; and

13. The grade of the product.

~~G.~~ F. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall:

1. Ensure the proper protection of all milk and milk samples in his custody. Each contract hauler, subcontract hauler, bulk milk hauler, and operator of a bulk milk pickup tanker or milk transport tank shall seal or lock each opening into a bulk milk pickup tanker or milk transport tank including each manhole lid, vent, wash port, and door to the pump housing and sample storage box prior to leaving the bulk milk pickup tanker or milk transport tank unattended;

2. Inspect the condition of the seals and locks placed on each opening into the bulk milk pickup tanker or milk transport tank upon his return after an absence to determine if the seals or locks have been tampered with;
3. Report immediately to the state regulatory authority agency instances of tampering with the seals or locks; and
4. Hold a valid permit issued by the state regulatory authority agency for the collection of milk samples prior to collecting or transporting any milk or milk samples.

~~H. Notwithstanding the provisions of subdivisions A 4 and A 8 of this section, the G. The sample dipper, sample dipper container, and approved sanitizer may be provided and stored in the milkroom accessible to the contract hauler or subcontract hauler by the person operating the dairy farm where the contract hauler or subcontract hauler is picking up the milk.~~

2VAC5-501-90. Sanitation requirements for a milk tank truck cleaning facility. (Repealed.)

Each person that operates a milk tank truck cleaning facility shall:

- ~~1. Provide floors constructed of concrete or equally impervious material that are easily cleanable, smooth, properly sloped, and provided with trapped floor drains and kept in good repair;~~
- ~~2. Provide walls and ceilings with a smooth, washable, light colored surface and kept in good repair;~~
- ~~3. Provide effective means to prevent the access of flies and rodents;~~
- ~~4. Provide solid doors or glazed windows for each opening to the outside and keep the doors and windows closed during dusty weather;~~
- ~~5. Provide lighting of at least 20 foot candles measured in all work areas;~~
- ~~6. Provide ventilation sufficient to prevent condensation and odors;~~
- ~~7. Provide a toilet room fitted with tightly fitting self-closing doors, kept clean and in good repair, well-ventilated and lighted and that does not open directly into any room in which milk or milk products are processed or milk product contact surfaces, utensils and equipment are washed;~~
- ~~8. Dispose of all sewage and other wastes in a sanitary manner;~~
- ~~9. Provide hot and cold running water from a supply that is properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe and sanitary quality;~~

- ~~10. Provide hand washing facilities with hot and cold running water, soap, and individual sanitary towels or other approved hand drying devices and keep the hand washing facilities clean and in good repair;~~
- ~~11. Provide and maintain an effective insect and rodent control program and shall keep the milk tank truck cleaning facility neat and clean;~~
- ~~12. Provide only sanitary piping, fittings, and connections that are constructed to be smooth, impervious, corrosion-resistant, nontoxic, easily cleanable, and manufactured from material that is approved for food contact surfaces;~~
- ~~13. Provide and use only stainless steel piping complying with the Iron and Steel Society's Steel Products Manual: Stainless Steels, dated March 1999;~~
- ~~14. Provide only sanitary piping, fittings, and connections that are in good repair and constructed for ease of cleaning;~~
- ~~15. Provide and use only plastic, rubber, or rubber like materials made from approved food contact grade materials that are relatively inert and resistant to scratching, scoring, and damage from cleaning compounds;~~
- ~~16. Clean and sanitize before each use the product contact surfaces of utensils and equipment used in the transportation of any milk or food;~~
- ~~17. Attach a wash tag to the outlet valve of the tanker showing the date, time, place, and signature of the employee who washed the bulk milk pickup tanker or milk transport tank after the milk tank truck has been cleaned and sanitized;~~
- ~~18. Store and transport all clean and sanitized utensils and equipment to assure complete draining and protection from contamination before use;~~
- ~~19. Store all single service containers, utensils, and materials in a sanitary manner in a clean dry place until used;~~
- ~~20. Store, handle, and use poisonous or toxic materials to preclude the contamination of any milk product contact surfaces of equipment and utensils;~~
- ~~21. Ensure that employees wash their hands thoroughly before commencing cleaning functions and as may be required to remove soil and contamination;~~
- ~~22. Allow an employee to resume work after visiting the toilet room only after that employee has thoroughly washed his hands;~~
- ~~23. Ensure that each employee engaged in the handling of milk product contact surfaces, equipment, and utensils wears clean outer garments, adequate hair covering, and refrains from using any tobacco products; and~~

Regulations

24. Keep the surroundings of the milk tank truck cleaning facility neat, clean, and free from conditions that may attract flies, insects, or rodents.

NOTICE: Forms used in administering the regulation have been 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 (2VAC5-501)

~~Application for a Dairy Farm Permit, ODF-DS-100 (rev. 6/2012)~~

~~Dairy Farm Inspection Report, ODF-DS-102 (rev. 2/2006)~~

~~Guide for the Submission of Plans for Milking Operations, ODF-DS-104 (rev. 2/2015)~~

[Application for a Dairy Farm Permit, ODF-DS-100 \(rev. 4/2018\)](#)

[Dairy Farm Inspection Report, ODF-DS-102 \(rev. 2/2018\)](#)

[Guide for the Submission of Plans for Milking Operations, ODF-DS-104 \(rev. 2/2018\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-501)

~~3-A Sanitary Standards for Stainless Steel Automotive Transportation Tanks for Bulk Delivery and Farm Pick Up Service, Number 05-15, eff. November 24, 2002, 3-A Sanitary Standards, Incorporated, 6888 Elm Street, Suite 2D, McLean, Virginia 22101, www.3-a.org~~

[3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks, Number 13-11, eff. July 23, 2012, 3-A Sanitary Standards, Incorporated, 6888 Elm Street, Suite 2D, McLean, Virginia 22101, <http://www.3-a.org/>](#)

~~3-A Sanitary Standards for Farm Milk Storage Tanks, Number 30-01, eff. September 9, 1984, 3-A Sanitary Standards, Incorporated, 6888 Elm Street, Suite 2D, McLean, Virginia 22101, www.3-a.org~~

[3-A Sanitary Standards for Farm Milk Storage Tanks, Number 30-02, eff. July 2018, 3-A Sanitary Standards, Incorporated, 6888 Elm Street, Suite 2D, McLean, Virginia 22101, <http://www.3-a.org/>](#)

[Grade "A" Pasteurized Milk Ordinance, 2017 Revision, published by the Food and Drug Administration, Milk Safety Branch \(HFS-626\), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835](#)

[UL Rated NEMA 4x Enclosure Definition as published in ANSI/NEMA 250, Enclosures for Electrical Equipment](#)

(1000 Volts Maximum), ANSI Approval Date December 29, 2014, American Society of Mechanical Engineers

[Standard Methods for the Examination of Dairy Products, 17th Edition, 2004, American Public Health Association](#)

~~Steel Products Manual: Stainless Steels, March 1999, Iron and Steel Society, 186 Thorn Hill Road, Warrendale, Pennsylvania 15086 www.iron-steel-society.com~~

VA.R. Doc. No. R20-5956; Filed July 1, 2020, 9:48 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

Title of Regulation: **8VAC20-750. Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia (adding 8VAC20-750-5 through 8VAC20-750-110).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Dr. Samantha Hollins, Assistant Superintendent for Special Education and Student Services, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-8079, or email samantha.hollins@doe.virginia.gov.

Summary:

Chapter 142 of the 2015 Acts of Assembly enacted § 22.1-279.1:1 of the Code of Virginia, which requires that the State Board of Education adopt regulations on the use of seclusion and restraint in Virginia primary and secondary schools. The resulting regulation (i) defines what constitutes seclusion and physical restraint, as well as mechanical restraints, pharmacological restraints, and aversive stimuli; (ii) bans the use of mechanical restraints, pharmacological restraints, and aversive stimuli; (iii) describes the conditions under which it is permissible for a student to be restrained or secluded; (iv) provides for notification and reporting to parents, for debriefing with staff and the student following incidents, and for follow-up when a student has been restrained or secluded more than twice during the course of a school year; (v) provides for reporting to the Virginia Department of Education; (vi) requires local school divisions to adopt policies and procedures regarding the use of seclusion and restraint; and (vii) requires that all school personnel be trained in techniques for avoiding the use of seclusion and restraint and that school personnel who work with students who are likely to be restrained or secluded must receive additional

training on safe methods for restraining or secluding a student.

Changes to the proposed regulation (i) exclude students receiving instruction in secure facilities and detention homes and in facilities operated by the Department of Behavioral Health and Developmental Services and (ii) prohibit the use of prone restraints.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

CHAPTER 750

REGULATIONS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS IN VIRGINIA

8VAC20-750-5. Application.

A. This chapter is applicable to all students and school personnel in the public elementary and secondary schools of the Commonwealth of Virginia, as defined in 8VAC20-750-20. This chapter governs the use of seclusion and restraint for the purpose of behavioral intervention. [This chapter does not apply to any secure facility or detention home as defined in § 16.1-228 of the Code of Virginia, or to any facility operated by the Virginia Department of Behavioral Health and Developmental Services.]

B. To comply with this chapter, school personnel must first determine whether the action constitutes restraint or seclusion, as defined in 8VAC20-750-10. If the action does not meet the definition, or if the action falls under any of the "does not include" portions of the definitions in 8VAC20-750-10, then school personnel may act within their reasonable discretion. If the action falls within the definition of restraint or seclusion, it may be used, but only under the circumstances described in 8VAC20-750-40 and 8VAC20-750-50, and is subject to the other requirements of this chapter.

C. 8VAC20-750-30 identifies certain practices that constitute restraint or seclusion that may be detrimental to the health, safety, or dignity of the student and that may never be used by school personnel.

8VAC20-750-10. Definitions related to permitted and prohibited actions.

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

"Aversive stimuli" means interventions that are intended to induce pain or discomfort to a student for the purposes of punishing the student or eliminating or reducing maladaptive behaviors, such as:

1. Noxious odors and tastes;

2. Water and other mists or sprays;

3. Blasts of air;

4. Corporal punishment as defined in § 22.1-279.1 of the Code of Virginia;

5. Verbal and mental abuse;

6. Forced exercise when:
 - a. The student's behavior is related to the student's disability;
 - b. The exercise would have a harmful effect on the student's health; or
 - c. The student's disability prevents participation in such activities.

7. Deprivation of necessities, including:
 - a. Food and liquid at a time it is customarily served;
 - b. Medication; or
 - c. Use of the restroom.

7. Deprivation of necessities, including:
 - a. Food and liquid at a time it is customarily served;
 - b. Medication; or
 - c. Use of the restroom.

"Corporal punishment" means the infliction of, or causing the infliction of, physical pain on a student as a means of discipline.

"Mechanical restraint" means the use of any material, device, or equipment to restrict a student's freedom of movement. The term "mechanical restraint" does not include the devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related service professional and are used with parental consent and for the specific and approved purposes for which such devices were designed, such as:

1. Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports;
2. Vehicle restraints, including seat belts, when used as intended during the transport of a student in a moving vehicle;
3. Restraints for medical immobilization;
4. Orthopedically prescribed devices that permit a student to participate in activities without risk of harm; or
5. High chairs and feeding stations used for age or developmentally appropriate students.

"Pharmacological restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is not (i) prescribed by a licensed physician or other qualified health professional under the scope of the professional's authority for the standard treatment of a student's medical or psychiatric condition and (ii) administered as prescribed by a licensed physician or other

Regulations

qualified health professional acting under the scope of the professional's authority.

"Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move freely. The term "physical restraint" does not include (i) briefly holding a student to calm or comfort the student; (ii) holding a student's hand or arm to escort the student safely from one area to another; or (iii) the use of incidental, minor, or reasonable physical contact or other actions designed to maintain order and control.

"Restraint" means mechanical restraint, physical restraint, or pharmacological restraint.

"Seclusion" means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Provided that no such room or space is locked, the term "seclusion" does not include (i) time-out, as defined in this chapter; (ii) in-school suspension; (iii) detention; (iv) student-requested breaks in a different location in the room or in a separate room; (v) removal of a student for a short period of time from the room or a separate area of the room to provide the student with an opportunity to regain self-control, so long as the student is in a setting from which the student is not physically prevented from leaving; (vi) removal of a student for disruptive behavior from a classroom by the teacher as provided in § 22.1-276.2 of the Code of Virginia; or (vii) confinement of a student alone in a room or area from which the student is physically prevented from leaving during the investigation and questioning of the student by school personnel regarding the student's knowledge of or participation in events constituting a violation of the code of student conduct, such as a physical altercation, or an incident involving drugs or weapons.

"Time-out" means a behavioral intervention in which the student is temporarily removed from the learning activity but in which the student is not confined.

8VAC20-750-20. General definitions.

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

"Behavioral intervention plan" or "BIP" means a plan that utilizes positive behavioral interventions and supports to address (i) behaviors that interfere with a student's learning or that of others or (ii) behaviors that require disciplinary action.

"Board" means the Virginia Board of Education.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).

"Chapter" means these regulations, that is, Regulations Governing the Use of Seclusion and Restraint in Public

Elementary and Secondary Schools in Virginia, 8VAC20-750.

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter expires on a Saturday, Sunday, federal holiday, or state holiday, the period of time for taking such action shall be extended to the next day that is not a Saturday, Sunday, federal holiday, or state holiday.

"Child with a disability" or "student with a disability" means a public elementary or secondary school student evaluated in accordance with the provisions of 8VAC20-81 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in 8VAC20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, requires special education and related services. This also includes developmental delay if the school division recognizes this category as a disability under 8VAC20-81-80 M 3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs related services and not special education, the child is not a child with a disability under 8VAC20-81. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. As used in this chapter, the disability categories set forth in this definition and the terms "special education" and "related services" shall have the meanings set forth in 8VAC20-81-10.

"Day" means calendar day unless otherwise designated as business day or school day.

"Department" means the Virginia Department of Education.

"Evaluation" means procedures used in accordance with 8VAC20-81 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

"Functional behavioral assessment" or "FBA" means a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student or the learning of the student's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined as set forth in 8VAC20-750-70.

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised at least annually in a team meeting in accordance with the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81). The IEP specifies the individual educational needs of the child and what special education and

related services are necessary to meet the child's educational needs.

"Individualized education program team" or "IEP team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

"School day" means any day, including a partial day, that students are in attendance at school for instructional purposes. The term has the same meaning for all students in school, including students with and without disabilities.

"School personnel" means individuals employed by the school division on a full-time or part-time basis or as independent contractors or subcontractors as instructional, administrative, and support personnel and include individuals serving as a student teacher or intern under the supervision of appropriate school personnel.

"Section 504 plan" means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1973 (29 USC § 794).

"Student" means any student, with or without a disability, enrolled in a public elementary or secondary school as defined in § 22.1-1 of the Code of Virginia.

1. For purposes of this chapter, the term "student" shall also include those students (i) attending a public school on a less-than-full-time basis, such as those students identified in § 22.1-253.13:2 N of the Code of Virginia; (ii) receiving homebound instruction pursuant to 8VAC20-131-180 and as defined in 8VAC20-81-10, without regard to special education status; (iii) receiving home-based instruction pursuant to 8VAC20-81-10; and (iv) who are preschool students enrolled in a program operated by a school division or receiving services from school personnel.

2. As used in this chapter, "student" shall not include children meeting compulsory attendance requirements of § 22.1-254 of the Code of Virginia by (i) enrollment in private, denominational, or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the relevant division superintendent; ~~or~~ (iii) receipt of home instruction pursuant to § 22.1-254 of the Code of Virginia [or (iv) receipt of instruction in a secure facility or detention home as defined in § 16.1-228 of the Code of Virginia or in a facility operated by the Virginia Department of Behavioral Health and Developmental Services]. With regard to restraint and seclusion, students placed through public or private means in a private day or residential school for students with -disabilities shall be afforded the protections set forth in 8VAC20-671.

8VAC20-750-30. Prohibited actions.

A. The following actions are prohibited in the public elementary and secondary schools in the Commonwealth of Virginia:

1. Use of mechanical restraints.
2. Use of pharmacological restraints.
3. Use of aversive stimuli.
4. Use of [~~restraint~~ prone restraints (i.e. lying face down)] or [~~seclusion in any manner~~ any other restraints] that [~~restricts~~ restrict] a student's breathing or [~~harms~~ harm] the student.
- [5. Use of seclusion that restricts a student's breathing or harms the student.]
- [~~5. 6.~~] Use of physical restraint or seclusion as (i) punishment or discipline; (ii) a means of coercion or retaliation; (iii) a convenience; (iv) to prevent property damage, or in any manner other than as provided in 8VAC20-750-40 and 8VAC20-750-50.

- [~~6. 7.~~] Use of corporal punishment.
- [~~7. 8.~~] Use of seclusion rooms or freestanding units not meeting the standards set forth in this chapter.
- [~~8. 9.~~] Use of restraint or seclusion when medically or psychologically contraindicated as stated in documentation by the IEP team, the student's Section 504 team, school professionals, or by a licensed physician, psychologist, or other qualified health professional under the scope of the professional's authority.

B. Nothing in this section shall be construed to prohibit physical restraint or seclusion under the conditions outlined in 8VAC20-750-40 and 8VAC20-750-50.

8VAC20-750-40. Use of physical restraint and seclusion.

A. Nothing in this chapter shall be construed to require a school division to employ physical restraint or seclusion in its schools. School divisions electing to use physical restraint and seclusion shall comply with the requirements of this chapter.

B. School personnel may implement physical restraint or seclusion only when other interventions are or would be, in the reasonable judgment of the particular school personnel implementing physical restraint or seclusion in an emergency situation, ineffective and only to:

1. Prevent a student from inflicting serious physical harm or injury to self or others;
2. Quell a disturbance or remove a student from the scene of a disturbance in which such student's behavior or damage to property threatens serious physical harm or injury to persons;

Regulations

3. Defend self or others from serious physical harm or injury;

4. Obtain possession of controlled substances or paraphernalia that are upon the person of the student or within the student's control; or

5. Obtain possession of weapons or other dangerous objects that are upon the person of the student or within the student's control.

C. Physical restraint and seclusion shall be discontinued as soon as the imminent risk of serious physical harm or injury to self or others presented by the emergency situation has dissipated.

D. Nothing in this section shall be construed to require school personnel to attempt to implement a less restrictive intervention prior to using physical restraint or seclusion when, in the reasonable judgment of the school personnel in an emergency situation, a less restrictive intervention would be ineffective.

E. Unless a student's damage to property creates an imminent risk of serious physical harm or injury to the student or others, the damage of property does not itself indicate an imminent risk of serious physical harm or injury and shall not be the justification for the restraint or seclusion of a student.

F. Any incident involving physical restraint or seclusion in any of the circumstances described in this section shall be subject to the requirements of 8VAC20-750-50 through 8VAC20-750-100.

8VAC20-750-50. Seclusion; standards for use.

A. School divisions electing to use seclusion as permitted by this chapter shall meet the following structural and physical standards for rooms designated by the school to be used for seclusion:

1. Any seclusion room or area shall be free of any objects or physical features that may cause injury to the student.

2. Any seclusion room or area shall be of sufficient dimensions and shall have sufficient lighting, heating, cooling, and ventilation to comport with the dignity and safety of the student.

3. Windows in the seclusion room shall be constructed to minimize breakage and otherwise prevent the occupant from harming himself.

4. All space in the seclusion room shall be visible through the door, either directly or by mirrors.

B. School divisions electing to use seclusion as authorized by this chapter shall provide for the continuous visual monitoring of any seclusion, either by the presence of school personnel in the seclusion room or area or observation by

school personnel through a window, viewing panel, or half-door.

C. School divisions electing to use seclusion as authorized by this chapter shall include within their local policies and procedures provisions that address the appropriate use and duration of seclusion based upon the age and development of the student.

8VAC20-750-60. Notification and reporting.

A. When any student has been physically restrained or secluded:

1. The school personnel involved shall report the incident and the use of any related first aid to the school principal or the principal's designee as soon as possible by the end of the school day in which the incident occurred; and

2. The school principal or the principal's designee, or other school personnel shall make a reasonable effort to ensure that direct contact is made with the student's parent, either in person or through telephone conversation, or other means of communication authorized by the parent, such as email, to notify the parent of the incident and any related first aid on the day the incident occurred.

B. When any student has been physically restrained or secluded after the regular school day, the notifications required by subsection A of this section shall be made as soon as practicable in compliance with the school division's school crisis, emergency management, and medical emergency response plan required by § 22.1-279.8 of the Code of Virginia.

C. As soon as practicable, but no later than two school days after an incident in which physical restraint or seclusion has been implemented, the school personnel involved in the incident or other school personnel, as may be designated by the principal, shall complete and provide to the principal or the principal's designee a written incident report. The school division shall provide the parent with a copy of the incident report within seven calendar days of the incident.

The written incident report shall contain information sufficient to inform the parent about the incident. Such information would typically include the following:

1. Student name, age, gender, grade, and ethnicity;

2. Location of the incident;

3. Date, time, and total duration of incident, including documentation of the beginning and ending time of each application of physical restraint or seclusion;

4. Date of report;

5. Name of person completing the report;

6. School personnel involved in the incident, their roles in the use of physical restraint or seclusion, and

documentation of their completion of the division's training program;

7. Description of the incident, including the resolution and process of return of the student to the student's educational setting, if appropriate;

8. Detailed description of the physical restraint or seclusion method used;

9. Student behavior that justified the use of physical restraint or seclusion;

10. Description of prior events and circumstances prompting the student's behavior, to the extent known;

11. Less restrictive interventions attempted prior to the use of physical restraint or seclusion, and an explanation if no such interventions were employed;

12. Whether the student has an IEP, a Section 504 plan, a BIP, or other plan;

13. If a student, school personnel, or any other individual sustained bodily injury, the date and time of nurse or emergency response personnel notification and the treatment administered, if any;

14. Date, time, and method of parental notification of the incident, as required by this section; and

15. Date, time, and method of school personnel debriefing.

D. Following an incident of physical restraint or seclusion, the school division shall ensure that, within two school days, the principal or the principal's designee reviews the incident with all school personnel who implemented the use of physical restraint or seclusion to discuss:

1. Whether the use of restraint or seclusion was implemented in compliance with this chapter and local policies; and

2. How to prevent or reduce the future need for physical restraint or seclusion.

E. As appropriate, depending on the student's age and developmental level, following each incident of physical restraint or seclusion the school division shall ensure that, as soon as practicable, but no later than two school days or upon the student's return to school, the principal or the principal's designee shall review the incident with the student involved to discuss:

1. Details of the incident in an effort to assist the student and school personnel in identifying patterns of behaviors, triggers, or antecedents; and

2. Alternative positive behaviors or coping skills the student may utilize to prevent or reduce behaviors that may result in the application of physical restraint or seclusion.

F. The principal or the principal's designee shall regularly review the use of physical restraint or seclusion to ensure compliance with school division policy and procedures. When there are multiple incidents within the same classroom or by the same individual, the principal or the principal's designee shall take appropriate steps to address the frequency of use.

8VAC20-750-70. School division policies and procedures.

A. Each school division that elects to use physical restraint or seclusion shall develop and implement written policies and procedures that meet or exceed the requirements of this chapter and that include, at a minimum, the following:

1. A statement of intention that the school division will encourage the use of positive behavioral interventions and supports to reduce and prevent the need for the use of physical restraint and seclusion.

2. Examples of the positive behavioral interventions and support strategies consistent with the student's rights to be treated with dignity and to be free from abuse that the school division uses to address student behavior, including the appropriate use of effective alternatives to physical restraint and seclusion.

3. A description of initial and advanced training for school personnel that addresses (i) appropriate use of effective alternatives to physical restraint and seclusion and (ii) the proper use of restraint and seclusion.

4. A statement of the circumstances in which physical restraint and seclusion may be employed, which shall be no less restrictive than that set forth in 8VAC20-750-40 and 8VAC20-750-50.

5. Provisions addressing the:

a. Notification of parents regarding incidents of physical restraint or seclusion, including the manner of such notification;

b. Documentation of the use of physical restraint and seclusion;

c. Continuous visual monitoring of the use of any physical restraint or seclusion to ensure the appropriateness of such use and the safety of the student being physically restrained or secluded, other students, school personnel, and others. These provisions shall include exceptions for emergency situations in which securing visual monitoring before implementing the physical restraint or seclusion would, in the reasonable judgment of the school personnel implementing the physical restraint or seclusion, result in serious physical harm or injury to persons; and

d. Securing of any room in which a student is placed in seclusion. These provisions shall ensure that any seclusion room or area meet specifications for size and

Regulations

viewing panels that ensure the student's safety at all times, including during a fire or other emergency, as required by this chapter.

B. School divisions utilizing school resource officers shall enter into a memorandum of understanding with local law enforcement addressing the use of seclusion and restraint by law enforcement personnel in school settings.

C. Each school division shall review its policies and procedures regarding physical restraint and seclusion at least annually and shall update these policies and procedures as appropriate. In developing, reviewing, and revising its policies, school divisions shall consider the distinctions in emotional and physical development between elementary and secondary students and between students with and without disabilities.

D. Consistent with § 22.1-253.13:7 D of the Code of Virginia, a current copy of a school division's policies and procedures regarding restraint and seclusion shall be posted on the school division's website and shall be available to school personnel and to the public. School boards shall ensure that printed copies of such policies and procedures are available as needed to citizens who do not have online access.

E. In developing their policies and procedures, school divisions shall give due consideration to practices that encourage parent involvement and collaboration with regard to these matters.

8VAC20-750-80. Prevention; multiple uses of restraint or seclusion.

A. In the initial development and subsequent review and revision of a student's IEP or Section 504 plan, the student's IEP or Section 504 team shall consider whether the student displays behaviors that are likely to result in the use of physical restraint or seclusion. If the IEP or Section 504 team determines that future use is likely, the team shall consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

Within 10 school days following the second school day in a single school year on which an incident of physical restraint or seclusion has occurred, the student's IEP or Section 504 team shall meet to discuss the incident and to consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; (iii) any new or revised behavioral goals; and (iv) any additional evaluations or reevaluations.

B. For students other than those described in subsection A of this section, within 10 school days of the second school day in a single school year on which an incident of physical restraint or seclusion has occurred, a team consisting of the parent, the principal or the principal's designee, a teacher of the student, school personnel involved in the incident (if not the teacher or administrator already invited), and other appropriate school personnel, such as a school psychologist, school counselor, or school resource officer, as determined by the school division, shall meet to discuss the incident and to consider, among other things, the need for (i) an FBA; (ii) a new or revised BIP that addresses the underlying causes or purposes of the behaviors as well as de-escalation strategies, conflict prevention, and positive behavioral interventions; and (iii) a referral for evaluation.

C. Nothing in this section shall be construed to (i) excuse the team convened under subsection B of this section or its individual members from the obligation to refer the student for evaluation if the team or members have reason to suspect that the student may be a student with a disability; or (ii) prohibit the completion of an FBA or BIP for any student, with or without a disability, who might benefit from these measures but whose behavior has resulted in fewer than two incidents of physical restraint or seclusion in a single school year.

8VAC20-750-90. Annual reporting.

The principal or the principal's designee shall submit to the division superintendent a report on the use of physical restraint and seclusion in the school based on the individual incident reports completed and submitted to the principal or the principal's designee by school personnel pursuant to 8VAC20-750-60 C. The division superintendent shall annually report the frequency of such incidents to the Superintendent of Public Instruction on forms that shall be provided by the Department of Education and shall make such information available to the public.

8VAC20-750-100. Training.

School divisions that employ physical restraint or seclusion shall:

1. Ensure that all school personnel receive [~~initial~~] training that focuses on skills related to positive behavior support, conflict prevention, de-escalation, and crisis response [, including follow-up support and social-emotional strategy support for students, staff, and families];
2. Ensure that all school personnel receive initial training regarding the regulations, policies, and procedures governing the use of physical restraint and seclusion;
3. Provide advanced training in the use of physical restraint and seclusion for at least one administrator in every school building and for school personnel assigned to work with

any student whose IEP or Section 504 team determines the student is likely to be physically restrained or secluded; and

4. Ensure that any initial or advanced training is evidence-based.

8VAC20-750-110. Construction and interpretation.

Nothing in this chapter shall be construed to modify or restrict:

1. The initial authority of teachers to remove students from a classroom pursuant to § 22.1-276.2 of the Code of Virginia;

2. The authority and duties of school resource officers and school security officers, as defined in § 9.1-101 of the Code of Virginia, except to the extent governed by a memorandum of understanding between the local law enforcement agency and the school division;

3. The authority of the Virginia Department of Juvenile Justice with regard to students in its custody at any of its sites or in any of its programs; or

4. The civil immunity afforded teachers employed by local school boards for any acts or omissions resulting from the supervision, care, or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care, or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct, as provided in § 8.01-220.1:2 of the Code of Virginia.

VA.R. Doc. No. R15-4323; Filed June 26, 2020, 10:48 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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 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.

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-160).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-70).

Statutory Authority: § 32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC § 1396 et seq.).

Effective Date: August 19, 2020.

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 amendments allow certain practitioners other than physicians to order and certify home health services in compliance with updates to 42 CFR 440.70 in May of 2020.

12VAC30-50-160. Home health services.

A. Service must be ordered or prescribed ~~and~~ by a physician, nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA). Services shall be directed or performed within the scope of a license of a practitioner of the healing arts. Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to five visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. "Annually" shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by ~~the physician~~ a practitioner, as defined in subsection A of this section, to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a registered nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.80.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. "Annually" shall be defined as July 1 through June 30 for each recipient.

Regulations

D. Physical therapy, occupational therapy, or speech pathology services and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a ~~physician's~~ plan of care developed by a practitioner, as defined in subsection A of this section.

2. Patients may receive up to five visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. "Annually" shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the ~~physician practitioner, as defined in subsection A of this section,~~ to be required, then the provider shall request prior authorization from DMAS for additional services.

E. The following services are not covered under the home health services program:

1. Medical social services;
2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;
3. Community food service delivery arrangements;
4. Domestic or housekeeping services ~~which that~~ are unrelated to patient care and ~~which that~~ materially increase the time spent on a visit;
5. Custodial care, which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and
6. Services related to cosmetic surgery.

12VAC30-60-70. Utilization control: home health services.

A. Home health services that meet the standards prescribed for participation under Title XVIII, will be supplied.

B. Home health services shall be provided by a home health agency that is (i) licensed by the Virginia Department of Health, (ii) certified by the Virginia Department of Health under provisions of Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act, or (iii) accredited by any organization recognized by the Centers for Medicare and Medicaid Services (CMS) for purposes of Medicare certification. Services shall be provided on a part-time or intermittent basis to a recipient in any setting in which normal life activities take place. Home health services shall not be furnished to individuals residing in a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board. Home health services must be

ordered or prescribed by a physician, nurse practitioner (NP), clinical nurse specialist (CNS), or physician assistant (PA) and must be part of a written plan of care that the ~~physician practitioner~~ shall review at least every 60 days.

C. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

1. Nursing services;
2. Home health aide services;
3. Physical therapy services;
4. Occupational therapy services; or
5. Speech-language pathology services.

D. General conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.

1. The patient must be under the care of a physician, NP, CNS, or PA who is legally authorized to practice and who is acting within the scope of ~~his~~ the practitioner's license. ~~The physician practitioner may be the patient's private physician or a physician serve the patient in an independent office,~~ be on the staff of the home health agency, or be a physician practitioner working under an arrangement with the institution which that is the patient's residence or, if the agency is hospital-based, be a physician practitioner on the hospital or agency staff.

2. No payment shall be made for home health services unless a face-to-face encounter has been performed by an approved practitioner, as outlined in this subsection, with the Medicaid individual within the 90 days before the start of the services or within the 30 days after the start of the services. The face-to-face encounter shall be related to the primary reason the Medicaid individual requires home health services.

a. The face-to-face encounter shall be conducted by one of the following ~~approved practitioners~~:

- (1) A physician licensed to practice medicine;
- (2) A nurse practitioner or clinical nurse specialist within the scope of ~~his~~ practice under state law and working in collaboration with the physician who orders the Medicaid individual's services;
- (3) A certified nurse midwife within the scope of ~~his~~ practice under state law;
- (4) A physician assistant within the scope of ~~his~~ practice under state law and working under the supervision of the physician who orders the Medicaid individual's services; or

- (5) For Medicaid individuals admitted to home health immediately after an acute or post-acute stay, the attending acute or post-acute physician.
- b. The practitioner performing the face-to-face encounter shall document the clinical findings of the encounter in the Medicaid individual's record and communicate the clinical findings of the encounter to the ordering physician.
- c. Face-to-face encounters may occur through telehealth, which shall not include by phone or email.
3. When a patient is admitted to home health services a start-of-care comprehensive assessment must be completed no later than five calendar days after the start of care date.
4. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician, NP, CNS, or PA. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The initial plan of care (certification) must be reviewed by ~~the attending physician, or physician designee~~ a physician, NP, CNS, or PA. The ~~physician practitioner~~ must sign the initial certification before the home health agency may bill DMAS.
5. A physician, NP, CNS, or PA shall review and recertify the plan of care every 60 days. A ~~physician~~ recertification shall be performed within the last five days of each current 60-day certification period, (i.e., between and including days ~~56-60~~ 56 through 60). The ~~physician~~ recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. The physician, NP, CNS, or PA must sign the recertification before the home health agency may bill DMAS.
6. The ~~physician orders~~ physician, NP, CNS, or PA orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.
7. A written ~~physician's statement by a physician, NP, CNS, or PA~~ located in the medical record must certify that:
- The patient needs licensed nursing care, home health aide services, physical or occupational therapy, or speech-language pathology services;
 - A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician, NP, CNS, or PA; and
 - These services were furnished while the individual was under the care of a physician, NP, CNS, or PA.
8. The plan of care shall contain at least the following information:
- Diagnosis and prognosis;
 - Functional limitations;
 - Orders for nursing or other therapeutic services;
 - Orders for home health aide services, when applicable;
 - Orders for medications and treatments, when applicable;
 - Orders for special dietary or nutritional needs, when applicable; and
 - Orders for medical tests, when applicable, including laboratory tests and x-rays.
- E. Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Such post payment review audits may be unannounced. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.
- F. All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:
- Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.
 - Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.80. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.
 - Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by ~~physicians~~ a physician, NP, CNS, or PA of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time or shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

Regulations

a. Physical therapy services shall be directly and specifically related to an active written plan of care approved by a physician, NP, CNS, or PA after any needed consultation with a physical therapist licensed by the Board of Physical Therapy. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Physical Therapy, or a physical therapy assistant who is licensed by the Board of Physical Therapy and is under the direct supervision of a physical therapist licensed by the Board of Physical Therapy. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

b. Occupational therapy services shall be directly and specifically related to an active written plan of care approved by a physician, NP, CNS, or PA after any needed consultation with an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and licensed by the National Board for Certification in Occupational Therapy and licensed by the Virginia Board of Medicine, or an occupational therapy assistant who is certified by the National Board for Certification in Occupational Therapy under the direct supervision of an occupational therapist as defined in this subdivision. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist, as defined in this subdivision, who makes an onsite supervisory visit at least once every 30 days. This supervisory visit shall not be reimbursable.

c. Speech-language pathology services shall be directly and specifically related to an active written plan of care approved by a physician, NP, CNS, or PA after any needed consultation with a speech-language pathologist licensed by the Virginia Department of Health Professions, Virginia Board of Audiology and Speech-Language Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Virginia Board of Audiology and Speech-Language Pathology.

4. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a

client to provide services prescribed by a physician, NP, CNS, or PA and that are covered home health services. Visits shall not be defined in measurements or increments of time.

V.A.R. Doc. No. R20-6289; Filed June 29, 2020, 8:30 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

<p>REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
--

Title of Regulation: **14VAC5-170. Rules Governing Minimum Standards for Medicare Supplement Policies (amending 14VAC5-170-160; adding 14VAC5-170-95).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: August 17, 2020.

Agency Contact: Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, FAX (804) 371-9944, or email jackie.myers@scc.virginia.gov.

Summary:

Pursuant to Chapter 1161 of the 2020 Acts of Assembly, the proposed amendments require insurers, health services plans, and health maintenance organizations issuing Medicare supplement policies or certificates in Virginia to offer to persons younger than 65 years of age who reside in Virginia, are eligible for Medicare by reason of disability, and are enrolled in Medicare Part A and Part B an opportunity to purchase at least one of the Medicare Supplement policies or certificates it issues.

AT RICHMOND, JUNE 22, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00128

Ex Parte: In the matter of Amending
Rules Governing Minimum Standards
for Medicare Supplement Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

As a result of action by the 2020 General Assembly, specifically Acts of Assembly Chapter 1161 (SB 250), the Bureau of Insurance ("Bureau") has undertaken a review of Chapter 170 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Minimum Standards for Medicare Supplement Policies," for compliance with this new legislation.

The new legislation requires insurers, health services plans and health maintenance organizations issuing Medicare supplement policies or certificates in Virginia to offer to persons under age 65 who reside in the Commonwealth, are eligible for Medicare by reason of disability and are enrolled in Medicare Part A and Part B, an opportunity to purchase at least one of the Medicare Supplement policies or certificates it issues. The Bureau has created a new section in Chapter 170 at 14 VAC 5-170-95 to address this new requirement, and amended the application found at 14 VAC 5-170-160. This new section and amendment to the application are necessary to define these new requirements for both health carriers and consumers.

NOW THE COMMISSION is of the opinion that the proposal to amend the Rules at Chapter 170 of Title 14 of the Virginia Administrative Code as submitted by the Bureau should be considered for adoption with a proposed effective date on or before January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to amend Chapter 170 of Title 14 of the Virginia Administrative Code, by adding a new section at

14 VAC 5-170-95 and amending 14 VAC 5-170-160, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amendments to Chapter 170 shall file such comments or hearing request on or before August 17, 2020, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2020-00128. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <https://scc.virginia.gov/pages/Case-Information>. All comments shall refer to Case No. INS-2020-00128.

(3) If no written request for a hearing on the proposal to amend rules as outlined in this Order is received on or before August 17, 2020, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the new section and amendments in Chapter 170 of Title 14 of the Virginia Administrative Code as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia to write accident and sickness insurance and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(7) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424, mbrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

14VAC5-170-95. Persons eligible by reason of disability.

A. On or after January 1, 2021, an issuer that offers Medicare supplement policies or certificates shall offer at least one of its Medicare supplement plans that it actively markets to any individual who resides in this Commonwealth, is younger than 65 years of age, is eligible for Medicare by

Regulations

reason of disability as defined by 42 USC § 426(b), and is enrolled in Medicare Part A and B, or will be so enrolled by the effective date of coverage in accordance with the provisions of § 38.2-3610 of the Code of Virginia. The Medicare supplement policy or certificate offered shall be guaranteed renewable. Such Medicare supplement policy or certificate shall be offered and issued during the following enrollment periods:

1. Upon the request of the individual during the six-month period beginning with the first month in which the individual is eligible for Medicare by reason of a disability. For those persons who are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision; or

2. Upon the request of the individual during the 63-day period following voluntary or involuntary termination of coverage under a group health plan.

B. An individual who met the eligibility requirements outlined in subsection A of this section prior to January 1, 2021, shall begin a six-month period to enroll in a Medicare supplement policy or certificate on January 1, 2021.

C. A Medicare supplement policy or certificate issued to an individual under subsection A of this section shall not exclude benefits based on a preexisting condition if the individual has a continuous period of creditable coverage of at least six months as of the effective date of coverage.

D. An issuer may develop premium rates specific to the class of individuals described in subsection A of this section.

14VAC5-170-160. Requirements for application forms and replacement coverage.

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

~~{Statements}~~ Statements:

1. You do not need more than one Medicare supplement policy.
2. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

3. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

4. If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

5. If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

6. Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

~~{Questions}~~ Questions:

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS. (Please mark yes or no below with an "X".)

To the best of your knowledge,

1. a. Did you turn age 65 in the last 6 months?

Yes___ No___

b. Did you enroll in Medicare Part B in the last 6 months?

Yes___ No___

c. If yes, what is the effective date?_____

2. a. Are you younger than age 65 and eligible for Medicare by reason of disability as defined by federal law?

Yes___ No___

b. Are you enrolled in Medicare Part A and Part B?

Yes___ No___

c. If yes, what is the effective date of Part A _____; Part B _____?

~~2.~~ 3. Are you covered for medical assistance through the state Medicaid program?

(NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.)

Yes___ No___

If yes,

a. Will Medicaid pay your premiums for this Medicare supplement policy?

Yes___ No___

b. Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes___ No___

~~3.~~ 4. a. If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START ___/___/___ END ___/___/___

b. If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes___ No___

c. Was this your first time in this type of Medicare plan?

Yes___ No___

d. Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes___ No___

~~4.~~ 5. a. Do you have another Medicare supplement policy in force?

Yes___ No___

b. If so, with what company, and what plan do you have (optional for Direct Mailers)? _____

c. If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes___ No___

Regulations

5-6. Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes ___ No ___

a. If so, with what company and what kind of policy?

b. What are your dates of coverage under the other policy?

START ___/___/___ END ___/___/___

(If you are still covered under the other policy, leave "END" blank.)

B. Agents shall list any other health insurance policies they have sold to the applicant.

1. List policies sold which are still in force.
2. List policies sold in the past five years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant, and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by subsection D ~~above~~ of this section for an issuer shall be provided in substantially the following form in no less than 12 point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE OR
MEDICARE ADVANTAGE

~~{Insurance company's name and address}~~ (Insurance
company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU
IN THE FUTURE.

According to ~~{your application}~~ ~~{information you have
furnished}~~ (your application) (information you have
furnished), you intend to terminate existing Medicare
supplement insurance or Medicare Advantage and replace it

with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT ~~OR
OTHER REPRESENTATIVE}~~ (OR OTHER REPRESENTATIVE):

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

- Additional benefits.
- No change in benefits, but lower premiums.
- Fewer benefits and lower premiums.
- My plan has outpatient prescription drug coverage and I am enrolling in Part D.
- Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. (optional for Direct Mailers)
- Other. (please specify)

1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing preexisting condition limitations, please skip to statement 2 below. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. ~~If the policy or certificate is guaranteed issue, this paragraph need not appear.~~ (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

 (Signature of Agent, or Other Representative)*
~~{Typed Name and Address of Issuer, or Agent}~~ {Typed Name and Address of Issuer, or Agent}

 (Applicant's Signature)

 (Date)

*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve the application of a new preexisting conditions limitation.

VA.R. Doc. No. R20-6332; Filed June 23, 2020, 11:07 a.m.

Withdrawal of Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14VAC5-235. Rules Governing Health Insurance Balance Billing (adding 14VAC5-235-10, 14VAC5-235-20, 14VAC5-235-30).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Notice is hereby given that the State Corporation Commission, Bureau of Insurance has WITHDRAWN the revised proposed regulatory action for 14VAC5-235, Rules Governing Health Insurance Balance Billing, that was published in [36:12 VA.R. 1750-1753 February 3, 2020](#). The original proposed regulatory action was published in [35:23 VA.R. 2692-2694 July 8, 2019](#). On June 11, 2020, the commission dismissed the action and withdrew the revised proposed regulation as described in Order of Dismissal of Case INS-2019-00081.

AT RICHMOND, JUNE 11, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00081

Ex Parte: In the matter of Adopting New Rules Governing Health Insurance Balance Billing

ORDER OF DISMISSAL

On June 6, 2019, the State Corporation Commission ("Commission") commenced this proceeding by issuance of an Order To Take Notice as to new rules proposed by the Bureau of Insurance ("Bureau") to be set out under Chapter 235 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Health Insurance Balance Billing" ("Rules"), at 14 VAC 5-235-10 through 14 VAC 5-235-30.

On January 14, 2020, after receiving public comments, oral argument and legal briefs from interested persons on the Bureau's proposed Rules, the Commission issued an Order To Take Notice of Revised Proposed Rules ("January Order"). The January Order gave notice of the Bureau's revisions to the proposed Rules and directed interested persons to submit any comments or requests for a hearing on the revised proposed Rules by March 20, 2020.

On February 26, 2020, the Virginia Hospital and Healthcare Association ("VHHA") and Medical Society of Virginia ("MSV") jointly filed a Motion for Extension of Time To Submit Comments on Revised Proposed Rules ("Motion"),

Regulations

requesting that the Commission amend the January Order "to give all interested parties until April 20, 2020, to file comments and request a hearing regarding the Revised Proposed Rules." The VHHA and MSV cited, as the basis for their Motion, "legislation now pending before the General Assembly" that relates to health insurance balance billing and the revised proposed Rules. On March 3, 2020, the Commission granted the Motion and extended the period for commenting or requesting a hearing on the revised proposed Rules to April 24, 2020.

During the 2020 legislative session and in view of the Bureau's pending proposed Rules, the General Assembly enacted new legislation addressing health insurance balance billing: House Bill 1251 ("HB 1251"), Chapter 1080 of the 2020 Virginia Acts of Assembly; and Senate Bill 172 ("SB 172"), Chapter 1081 of the 2020 Virginia Acts of Assembly. On April 10, 2020, the Governor of Virginia signed both bills into law. The new legislation includes similar provisions as those within the Bureau's proposed rules, as well as additional protections for consumers along with responsibilities for insurance carriers, healthcare facilities, and healthcare providers.

Upon the enactment of HB 1251 and SB 172, the Commission received public comments from the Virginia Association of Health Plans, the VHHA, the MSV, the Office of the Attorney General's Division of Consumer Counsel, and the Virginia Poverty Law Center, requesting that the Bureau's revised proposed Rules be withdrawn and that this proceeding be dismissed in light of the new legislation on health insurance balance billing. The Bureau has not objected to these requests.

NOW THE COMMISSION, in its discretion and having considered the newly-enacted legislation on health insurance balance billing, which largely embodies the goals of the revised proposed Rules, the public comments, and the lack of objection from the Bureau, is of the opinion that the Bureau's revised proposed Rules should be withdrawn and this proceeding should be dismissed.

Accordingly, IT IS ORDERED THAT:

(1) The revised proposed Rules entitled "Rules Governing Health Insurance Balance Billing," recommended to be set out at 14 VAC 5-235-10 through 14 VAC 5-235-30, are withdrawn.

(2) The case is dismissed, and the papers herein shall be placed in the file for ended causes.

A COPY of this Order shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, and Katherine C. Creef, Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau

of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

Agency Contact: James Young, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9612, FAX (804) 371-9944, or email james.young@scc.virginia.gov.

VA.R. Doc. No. R19-6030; Filed June 17, 2020, 7:11 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Final Regulation

Titles of Regulations: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-40, 18VAC60-21-240).**

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-30, 18VAC60-25-180).

18VAC60-30. Regulations Governing the Practice of Dental Assistants (amending 18VAC60-30-30, 18VAC60-30-150).

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

Effective Date: August 19, 2020.

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

Summary:

The amendments change the license renewal schedule for a dentist or dental hygienist or registration renewal for a dental assistant II from a set date of March 31 to renewal in the birth month of the dentist, dental hygienist, or dental assistant II.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC60-21-40. Required fees.

A. Application/registration fees.

- | | |
|---------------------------------------|-------|
| 1. Dental license by examination | \$400 |
| 2. Dental license by credentials | \$500 |
| 3. Dental restricted teaching license | \$285 |

4. Dental faculty license	\$400
5. Dental temporary resident's license	\$60
6. Restricted volunteer license	\$25
7. Volunteer exemption registration	\$10
8. Oral maxillofacial surgeon registration	\$175
9. Cosmetic procedures certification	\$225
10. Mobile clinic/portable operation	\$250
11. Moderate sedation permit	\$100
12. Deep sedation/general anesthesia permit	\$100
B. Renewal fees.	
1. Dental license - active	\$285
2. Dental license - inactive	\$145
3. Dental temporary resident's license	\$35
4. Restricted volunteer license	\$15
5. Oral maxillofacial surgeon registration	\$175
6. Cosmetic procedures certification	\$100
7. Moderate sedation permit	\$100
8. Deep sedation/general anesthesia permit	\$100
C. Late fees.	
1. Dental license - active	\$100
2. Dental license - inactive	\$50
3. Dental temporary resident's license	\$15
4. Oral maxillofacial surgeon registration	\$55
5. Cosmetic procedures certification	\$35
6. Moderate sedation permit	\$35
7. Deep sedation/general anesthesia permit	\$35
D. Reinstatement fees.	
1. Dental license - expired	\$500
2. Dental license - suspended	\$750
3. Dental license - revoked	\$1000
4. Oral maxillofacial surgeon registration	\$350
5. Cosmetic procedures certification	\$225
E. Document fees.	
1. Duplicate wall certificate	\$60
2. Duplicate license	\$20
3. License certification	\$35

F. Other fees.	
1. Returned check fee	\$35
2. Practice inspection fee	\$350
G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.	
H. For the renewal of licenses, registrations, certifications, and permits an active dental license in 2018 [2020 2021], the following fees shall be in effect fees shall be prorated according to a licensee's birth month as follows:	
1. Dentist - active	\$142
2. Dentist - inactive	\$72
3. Dental full-time faculty	\$142
4. Temporary resident	\$17
5. Dental restricted volunteer	\$7
6. Oral/maxillofacial surgeon registration	\$87
7. Cosmetic procedure certification	\$50
8. Moderate sedation certification	\$50
9. Deep sedation/general anesthesia	\$50
10. Mobile clinic/portable operation	\$75
<u>January birth month</u>	<u>\$150</u>
<u>February birth month</u>	<u>\$165</u>
<u>March birth month</u>	<u>\$180</u>
<u>April birth month</u>	<u>\$195</u>
<u>May birth month</u>	<u>\$210</u>
<u>June birth month</u>	<u>\$225</u>
<u>July birth month</u>	<u>\$240</u>
<u>August birth month</u>	<u>\$255</u>
<u>September birth month</u>	<u>\$270</u>
<u>October birth month</u>	<u>\$285</u>
<u>November birth month</u>	<u>\$300</u>
<u>December birth month</u>	<u>\$315</u>

Part V
Licensure Renewal

18VAC60-21-240. License renewal and reinstatement.

A. The license or permit of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid, and his practice of dentistry shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2712.1 of the Code practicing in Virginia with an expired

Regulations

license or permit may subject the licensee to disciplinary action by the board.

~~B.~~ B. ~~Every~~ Prior to [2021 2022], every person holding an active or inactive license and those holding a permit to administer moderate sedation, deep sedation, or general anesthesia shall annually, on or before March 31, renew his license or permit. Beginning in January [2021 2022], every person holding an active or inactive license and those holding a permit to administer moderate sedation, deep sedation, or general anesthesia shall annually renew his license or permit in his birth month in accordance with fees set forth 18VAC60-21-40.

C. Every person holding a faculty license, temporary resident's license, a restricted volunteer license, or a temporary permit shall, on or before June 30, request renewal of his license.

~~C.~~ D. Any person who does not return the completed form and fee by the deadline required in subsection B of this section shall be required to pay an additional late fee.

~~D.~~ E. The board shall renew a license or permit if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection B of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

~~E.~~ F. Reinstatement procedures.

1. Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.

2. To evaluate continuing competence, the board shall consider (i) hours of continuing education that meet the requirements of subsection H of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

3. The executive director may reinstate such expired license or permit provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

18VAC60-25-30. Required fees.

A. Application fees.

1. License by examination	\$175
2. License by credentials	\$275
3. License to teach dental hygiene pursuant to § 54.1-2725 of the Code	\$175
4. Temporary permit pursuant to § 54.1-2726 of the Code	\$175
5. Restricted volunteer license	\$25
6. Volunteer exemption registration	\$10

B. Renewal fees.

1. Active license	\$75
2. Inactive license	\$40
3. License to teach dental hygiene pursuant to § 54.1-2725	\$75
4. Temporary permit pursuant to § 54.1-2726	\$75

C. Late fees.

1. Active license	\$25
2. Inactive license	\$15
3. License to teach dental hygiene pursuant to § 54.1-2725	\$25
4. Temporary permit pursuant to § 54.1-2726	\$25

D. Reinstatement fees.

1. Expired license	\$200
2. Suspended license	\$400
3. Revoked license	\$500

E. Administrative fees.

1. Duplicate wall certificate	\$60
2. Duplicate license	\$20
3. Certification of licensure	\$35
4. Returned check	\$35

F. No fee shall be refunded or applied for any purpose other than the purpose for which the fee was submitted.

G. For the renewal of ~~licenses~~ an active dental hygienist license in 2018 [2020 2021], the following fees shall be in effect fees shall be prorated according to a licensee's birth month as follows:

1. Dental hygienist — active	\$37
2. Dental hygienist — inactive	\$20
3. Dental hygienist restricted volunteer	\$7

<u>January birth month</u>	<u>\$40</u>
<u>February birth month</u>	<u>\$44</u>
<u>March birth month</u>	<u>\$48</u>
<u>April birth month</u>	<u>\$52</u>
<u>May birth month</u>	<u>\$56</u>
<u>June birth month</u>	<u>\$60</u>
<u>July birth month</u>	<u>\$64</u>
<u>August birth month</u>	<u>\$68</u>
<u>September birth month</u>	<u>\$72</u>
<u>October birth month</u>	<u>\$76</u>
<u>November birth month</u>	<u>\$80</u>
<u>December birth month</u>	<u>\$84</u>

Part V
Licensure Renewal and Reinstatement

18VAC60-25-180. Requirements for licensure renewal.

A. ~~At~~ Prior to [2021 2022], an active or inactive dental hygiene license shall be renewed on or before March 31 each year. Beginning in January [2021 2022], an active or inactive dental hygiene license shall be renewed in the licensee's birth month each year.

B. A faculty license, a restricted volunteer license, or a temporary permit shall be renewed on or before June 30 each year.

~~B. C.~~ C. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dental hygiene shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2726.1 of the Code, practicing in Virginia with an expired license may subject the licensee to disciplinary action by the board.

~~C. D.~~ D. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee. The board may renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

18VAC60-30-30. Required fees.

A. Initial registration fee.	\$100
B. Renewal fees.	
1. Dental assistant II registration - active	\$50
2. Dental assistant II registration - inactive	\$25

C. Late fees.	
1. Dental assistant II registration - active	\$20
2. Dental assistant II registration - inactive	\$10
D. Reinstatement fees.	
1. Expired registration	\$125
2. Suspended registration	\$250
3. Revoked registration	\$300
E. Administrative fees.	
1. Duplicate wall certificate	\$60
2. Duplicate registration	\$20
3. Registration verification	\$35
4. Returned check fee	\$35

F. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

G. For the renewal of an active dental assistant II registration in 2018 [~~2020~~ 2021], the fee shall be \$25. ~~For the renewal of an inactive dental assistant II registration in 2018, the fee shall be \$13.~~ fees for renewal of an active dental assistant II registration shall be prorated according to the registrant's birth month as follows:

<u>January birth month</u>	<u>\$30</u>
<u>February birth month</u>	<u>\$33</u>
<u>March birth month</u>	<u>\$36</u>
<u>April birth month</u>	<u>\$39</u>
<u>May birth month</u>	<u>\$42</u>
<u>June birth month</u>	<u>\$45</u>
<u>July birth month</u>	<u>\$48</u>
<u>August birth month</u>	<u>\$51</u>
<u>September birth month</u>	<u>\$54</u>
<u>October birth month</u>	<u>\$57</u>
<u>November birth month</u>	<u>\$60</u>
<u>December birth month</u>	<u>\$63</u>

Part V
Requirements for Renewal and Reinstatement

18VAC60-30-150. Registration renewal requirements.

A. ~~Every~~ Prior to [2021 2022], every person holding an active or inactive registration shall annually, on or before March 31, renew his registration. Beginning in January of [2021 2022], every person holding an active or inactive registration shall annually renew his registration in his birth month. Any person who does not return the completed form

Regulations

and fee by the deadline shall be required to pay an additional late fee.

B. The registration of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid and his practice as a dental assistant II shall be illegal. Practicing in Virginia with an expired registration may subject the registrant to disciplinary action by the board.

C. In order to renew registration, a dental assistant II shall be required to maintain and attest to current certification from the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association.

D. A dental assistant II shall also be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

E. Following the renewal period, the board may conduct an audit of registrants to verify compliance. Registrants selected for audit shall provide original documents certifying current certification.

VA.R. Doc. No. R18-5382; Filed June 24, 2020, 6:19 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: 19VAC30-101. Regulations Governing Purchases of Handguns Within a 30-Day Period (adding 19VAC30-101-10 through 19VAC30-101-120).

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

Effective Date: August 20, 2020.

Agency Contact: Lieutenant Becky Cranis-Curl, Assistant Criminal Justice Information Services Officer, Department of State Police, 7700 Midlothian Turnpike, North Chesterfield, VA 23235, telephone (804) 674-2643, FAX (804) 674-8531, or email becky.cranis-curl@vsp.virginia.gov.

Summary:

The regulatory action creates a new chapter, 19VAC30-101, Purchases of Handguns Within a 30-Day Period, governing the requirements, procedures, application process, and appeal process regarding purchases of

multiple handguns within a 30-day period. This chapter complies with subsection R of § 18.2-308.2:2 of the Code of Virginia, enacted by Chapter 991 of the 2020 Acts of Assembly.

CHAPTER 101 REGULATIONS GOVERNING PURCHASES OF HANDGUNS WITHIN A 30-DAY PERIOD

19VAC30-101-10. Definitions. (Reserved.)

Part I Reports by Dealers

19VAC30-101-20. Notification of sale or transfer.

A. Any dealer in firearms who completes a sale or transfer of a handgun without having been advised by the Department of State Police if the dealer's records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, because the dealer was not so advised by the end of the dealer's third business day, or was told by the State Police that a response would not be available by the end of the dealer's third business day, shall notify the Department of State Police of the sale or transfer by telephone as soon as possible, but in no event later than the end of the dealer's next business day.

B. Any dealer in firearms who requests and receives criminal history record information in connection with an intended sale or transfer of a handgun that indicates the prospective purchaser or transferee is not prohibited from possessing or transporting a firearm by state or federal law shall notify the Department of State Police by telephone as soon as possible, but in no event later than the end of the dealer's next business day, whenever the dealer determines that the sale or transfer will not be completed.

Part II Applications

19VAC30-101-30. Application for multiple handgun purchase.

Any person desiring to purchase in excess of one handgun within any 30-day period shall make application under oath on Form SP-207, Multiple Handgun Purchase Application. The applicant shall deliver such application in person to (i) State Police Administrative Headquarters, 7700 Midlothian Turnpike, Richmond, Virginia; (ii) a division headquarters or area office of the Department of State Police; or (iii) any local law-enforcement agency certified by the Department of State Police as its agent to receive such applications.

19VAC30-101-40. Identification requirements.

At the time of delivery of the application form required by 19VAC30-101-30, the applicant shall present one form of identification. The form of identification shall consist of a photo-identification form issued by a governmental agency of

the Commonwealth or by the U.S. Department of Defense that was issued at least 30 days prior to presentation.

19VAC30-101-50. Transfer to someone other than applicant.

If the application indicates that the purchase is for the purpose of further transfer of a handgun to someone other than the applicant, the applicant shall also provide the name, social security number, sex, height, weight, race, all residence addresses within the past five years, date of birth, place of birth, and citizenship of the person to whom the further transfer is to be made.

19VAC30-101-60. Evaluation of application.

The application must demonstrate that the purpose of the purchase of more than one handgun within any 30-day period is not prohibited or illegal under any federal, state, or local law.

Part III
Enhanced Background Check

19VAC30-101-70. Enhanced background check.

A. Upon receipt of a completed application form, a division headquarters or area office of the Department of State Police or a local law-enforcement agency certified by the Department of State Police as its agent to receive such application shall transmit the application, in accordance with policies and procedures prescribed by the Department of State Police, to State Police Administrative Headquarters. Upon receipt at administrative headquarters, the Department of State Police will conduct an enhanced background check of the applicant and any person to whom any handgun to be purchased is to be transferred. This check will include a search of all available criminal history record information, including national, state, and local indices. The Department of State Police will make inquiry of the local law-enforcement agency having jurisdiction in the applicant's and any transferee's place of residence within the past five years as to any factors that would make the proposed purchase illegal under federal, state, or local law prior to approval of any transaction.

B. The enhanced background check shall be conducted without delay and shall be completed as soon as possible after receipt of the application at administrative headquarters. However, in case of electronic failure or other circumstances beyond the control of the State Police, the State Police shall complete the enhanced background check as soon as possible after the circumstances causing the delay have been corrected or overcome.

C. Before granting a multiple purchase certificate, the Department of State Police or its agents may make such inquiry of the applicant and others as the Department of State Police may deem necessary to determine that the application is bona fide and that the information contained in the

application is true and accurate. The Department of State Police shall not issue a multiple purchase certificate until satisfied that the requirements of § 18.2-308.2:2 of the Code of Virginia and this chapter have been met.

Part IV
Certificate

19VAC30-101-80. Issuance of certificate.

Upon being satisfied that the proposed purchase meets the requirements of § 18.2-308.2:2 of the Code of Virginia and this chapter, the Department of State Police shall issue or authorize its agent to issue to the applicant a nontransferable certificate authorizing the purchase of a specified number and type of handguns. The nontransferable certificate shall be valid for seven days from the date of issue. The Department of State Police or its agent shall make one attempt to contact the applicant to notify the applicant of the issuance or denial of the certificate at a telephone number provided by the applicant at the time of delivery of the application.

19VAC30-101-90. Retention of certificate.

Upon delivery of the certificate issued pursuant to 19VAC30-101-80, a prospective transferor may proceed to transfer the number and type of handguns specified in the certificate provided the transferor has complied with the provisions of § 18.2-308.2:2 B of the Code of Virginia. If the transferor is a dealer in firearms as defined in § 54.1-4200 of the Code of Virginia, the certificate shall be surrendered to the transferor by the applicant prior to the consummation of such sale and shall be kept on file at the transferor's place of business for a period of not less than two years. If the transferor is not a dealer in firearms, the transferor shall attest in writing on the reverse of the certificate, indicating the date the transfer was completed, and the transferee shall return the certificate to the office that issued the certificate. The returned certificate shall then be forwarded to State Police Administrative Headquarters.

Part V
Appeals

19VAC30-101-100. Appealing the denial of a certificate.

Any person denied a certificate for the purchase of more than one handgun within any 30-day period may appeal such denial to the Superintendent of State Police. Such appeal shall be in writing, setting forth any grounds the applicant wishes to be considered. The Superintendent of State Police shall consider each such appeal and notify the applicant in writing of his decision within five business days after the day on which the appeal is received.

Regulations

Part VI Agents

19VAC30-101-110. Agents certified to receive applications and issue certificates.

A. Any local law-enforcement agency may request that it be certified as an agent for the Department of State Police to receive applications and issue certificates pursuant to this chapter. Any such request shall be in writing, directed to the Superintendent of State Police, and designate the particular individuals within the local agency who will perform these duties. Only such designated individuals shall accept applications or issue certificates. Prior to certification of a local law-enforcement agency as an agent, each of its designated individuals must successfully complete a four-hour training course provided by the Department of State Police. Upon receipt of a request from a local law-enforcement agency and the successful completion of the prescribed training course by its designated individuals, the Superintendent of State Police shall certify such agency as an agent for the Department of State Police to receive applications and issue certificates pursuant to these regulations.

B. Any agent certified as provided in subsection A of this section shall have the authority to receive applications and issue certificates pursuant to this chapter in accordance with policies and procedures prescribed by the Department of State Police.

Part VII Replacement of Lost or Stolen Handgun

19VAC30-101-120. Replacement of handgun.

A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately may purchase a single handgun without obtaining the certificate required by this chapter, even if the person has previously purchased a handgun within a 30-day period, provided the person provides the transferor with a copy of the official report or a summary of the official police report from the law-enforcement agency that took the report of the lost or stolen handgun.

NOTICE: Forms used in administering the regulation have been 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 (19VAC30-101)

[Virginia Firearms Transaction Record, SP-65 \(rev. 7-1-2020\)](#)

[Multiple Handgun Purchase Application, SP-207 \(rev. 7-1-2020\)](#)

VA.R. Doc. No. R20-6385; Filed June 25, 2020, 9:45 a.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **21VAC5-40. Exempt Securities and Transactions (amending 21VAC5-40-190; adding 21VAC5-40-200).**

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: July 1, 2020.

Agency Contact: Jude Richnafsky, Principle Examiner, Securities and Retail Franchising, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9883, FAX (804) 371-9911, or email jude.richnafsky@scc.virginia.gov.

Summary:

The amendments include (i) allowing entities that are based in Virginia but organized outside of Virginia to claim the intrastate crowdfunding exemption in accordance with Chapters 279 and 331 of the 2020 Acts of Assembly by adding federal Securities and Exchange Commission Rule 147A issuers, (ii) eliminating the prohibition on debt securities for intrastate crowdfunding offerings, (iii) adding an exemption for nonissuer distribution securities transactions in accordance with Chapter 256 of the 2020 Acts of Assembly, and (iv) restricting such nonissuer distribution transactions to the OTCQX Tier of the OTC Market.

Changes to the proposed regulation (i) delete the words "broker-dealer" and "agent" in 21VAC5-40-200 to conform to subdivision B 23 of § 13.1-514 of the Code of Virginia enacted by Chapter 256 of the 2020 Acts of Assembly and (ii) add language to the legend requirement contained in subdivision A 8 of 21VAC5-40-190 that references federal Security and Exchange Commission's Rule 147A to conform with the amendment to subdivision B 21 of § 13.1-514 of the Code of Virginia in Chapters 331 and 279 of the 2020 Acts of Assembly.

AT RICHMOND, JUNE 25, 2020
COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. SEC-2020-00022

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on April 29, 2020,¹ all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of revisions to Chapter 40 of Title 21 of the Virginia Administrative Code. On May 4, 2020,² the Division of Securities and Retail Franchising ("Division") mailed and emailed the Order of the proposed rules to all interested persons pursuant to the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code of Virginia. The Order described the proposed revisions and afforded interested persons an opportunity to file comments and request a hearing on or before June 8, 2020, with the Clerk of the Commission. The Order provided that requests for a hearing shall state why a hearing is necessary and why the issues cannot be addressed adequately in written comments.

The Commission received one comment in support of the proposed revisions from OTC Markets Group, Inc. The Commission received no other comments to the proposed revisions, and no person requested a hearing.

The Order proposed revisions to Chapter 40 (Exempt Securities and Transactions), 21VAC5-40-10 et seq., following legislative changes to the Act by the 2020 General Assembly. These revisions sought to: (a) amend 21VAC5-40-190 concerning the Intrastate Crowdfunding Exemptions; and (b) create a new rule (designated as 21VAC5-40-200) allowing an exemption for non-issuer distribution.

Following entry of the Order, the Division proposes two conforming changes to proposed rule 21VAC5-40-200 which deletes the words "broker-dealer" and "agent," as well as the associated punctuation and conjunction, to conform the final proposed rule with new subsection 23 to § 13.1-514 B of the Act passed by the 2020 General Assembly. Regarding the second conforming change, the Division has added language to the legend requirement contained in subsection A 8 of Rule 21 VAC5-40-190 that reads "SEC RULE 147A" and "SUBSECTIONS (e) AND (f) OF SEC RULE 147A" to conform with the amendment to subsection 21 of § 13.1-514 B of the Act passed by the 2020 General Assembly. The attached documents indicate the conformed changes in brackets.

NOW THE COMMISSION, upon consideration of the proposed rules and the conforming changes to those rules, the

recommendations of the Division, and the record in this case, finds that the proposed amendments should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The revised proposed rules are attached hereto, made a part of hereof, and hereby are ADOPTED effective July 1, 2020.
- (2) A COPY hereof, together with a copy of the adopted rules, shall be sent by the Clerk of the Commission in care of Ronald W. Thomas, Director of the Division, who forthwith shall give further notice of the adopted rules by mailing or emailing a copy of this Order to all interested persons.
- (3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the adopted rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.
- (4) This case is dismissed from the Commission's docket, and the papers herein shall be placed in the filed for ended causes.

¹Doc. Con. Cen. No 200430130.

²The notice was published by the Virginia Registrar of Regulations in the May 25, 2020 issue. Doc. Con. Cen. No. 200630012.

21VAC5-40-190. Intrastate crowdfunding exemption.

A. In accordance with § 13.1-514 B 21 of the Act, an offer or sale of a security by an issuer is exempt from the securities, broker-dealer and agent registration requirements of the Act if the offer or sale meets all of the following requirements:

1. The issuer of the security is a business entity:
 - a. Formed under the laws of the Commonwealth; however, if conducting an offering in accordance with SEC Rule 147A, the issuer may be formed and organized outside the Commonwealth provided the issuer meets one of the requirements as stated in subdivision 3 of this subsection;
 - b. Authorized to do business in the Commonwealth; and
 - c. That has its principal place of business in the Commonwealth.
2. The offering is sold only to residents of the Commonwealth in compliance with the requirements for the federal exemption for intrastate offerings under § 3(a)(11) of the Securities Act of 1933, 15 USC 77c(a)(11), and SEC Rule 147, 17 CFR 230.147 or SEC Rule 147A. If an offering is conducted by an issuer using SEC Rule 147A the offering may be made available to residents outside the Commonwealth as long as the sale of the security is made to residents of the Commonwealth.
3. ~~The securities offered and sold pursuant to this exemption are equity securities of the issuer. This exemption is not available to debt offerings. Issuers~~

Regulations

utilizing SEC Rule 147A that are not formed under the laws of the Commonwealth must meet one of the following requirements of conducting business in the Commonwealth:

a. The issuer derived at least 80% of its consolidated gross revenues from the operation of a business or of real property located in the Commonwealth or from the rendering of services in the Commonwealth.

b. The issuer had at least 80% of its consolidated assets located in the Commonwealth.

c. The issuer intends to use and uses at least 80% of the net proceeds from the offering toward the operation of a business or of real property in the Commonwealth, the purchase of real property located in the Commonwealth, or the rendering of services in the Commonwealth.

d. A majority of the issuer's employees are based in the Commonwealth.

4. The sum of all cash and other consideration to be received for all sales of the securities in reliance on this exemption does not exceed \$2 million, less the aggregate amount received for all sales of securities by the issuer within 12 months before the first offer or sale made in reliance upon this exemption, and if the offering is:

a. \$500,000 or less, if the issuer has financial statements prepared the previous year that have been certified by the principal executive officer of the issuer to be true and complete in all material respects;

b. More than \$500,000 but less than \$1 million, if the issuer has undergone a financial review of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles; or

c. \$1 million or more, if the issuer has undergone an audit of the financial statements of its most recently completed fiscal year, conducted by an independent certified public accountant in accordance with generally accepted accounting principles.

5. The issuer has not accepted more than \$10,000 from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of SEC Regulation D, 17 CFR 230.501.

6. At least 20 days before an offer of securities is made in reliance on this exemption or the use of any publicly available Internet website in connection with an offering of securities in reliance on this exemption, the issuer files with the commission in writing or in electronic form, all of the following:

a. A notice of claim of exemption from registration on Form ICE specifying that the issuer intends to conduct an

offering in reliance on this exemption, accompanied by a nonrefundable filing fee of \$250 payable to the Treasurer of Virginia.

b. A copy of the disclosure statement or Form ICE to be provided to prospective investors in connection with the offering. The disclosure statement or Form ICE shall contain all of the following:

(1) A description of the issuer, including type of entity, the address and telephone number of its principal office, its formation history, and its business plan;

(2) A description of the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(3) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer and the amount of said securities held by such person;

(4) The identity of the executive officers, directors, or managing members of the issuer and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior business experience;

(5) The terms and conditions of the securities being offered including:

(a) The type and amounts of any outstanding securities of the issuer;

(b) The minimum and maximum amount of securities being offered, if any;

(c) Either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities;

(d) The price per share, unit, or interest of the securities being offered;

(e) Any restrictions on transfer of the securities being offered; and

(f) A disclosure of any anticipated future issuance of securities that might dilute the value of the securities being offered;

(6) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offer and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(7) For each person identified as required in subdivision 6 b (6) of this subsection, a description of the consideration being paid to the person for such assistance;

(8) A description of any litigation or legal proceedings involving the issuer or any executive officer, director, or managing member or other person occupying a similar status or performing similar functions on behalf of the issuer;

(9) The issuer's financial statements for the three most recent fiscal years or for as much time as the issuer has been in existence, if less than three years;

(10) The name and address, including the uniform resource locator, of each Internet website that will be used by the issuer to offer or sell securities under an exemption under this section; and

(11) Any additional information material to the offering, including, if appropriate, a discussion of significant risk factors that make the offering speculative or risky. This discussion shall be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering.

c. An escrow agreement with a bank or other depository institution located in this Commonwealth, in which the purchaser funds will be deposited. At a minimum the escrow agreement shall provide that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached; however such fees shall not be deducted from purchaser funds if the target offering amount is not raised by the time stated in the disclosure statement. The issuer shall disclose in its disclosure statement or Form ICE whether any interest earned on escrowed purchaser funds will be paid to purchasers on a pro rata basis if the minimum target amount, as described above, is not raised.

7. The issuer is not, either before or as a result of the offering:

a. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, including an investment company as defined by 15 USC § 80a-3, or a hedge fund, commodity pool, or similar investment vehicle;

b. Subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC 78m and 78o(d);

c. A company that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or that plans to engage in a merger with or acquisition of an unspecified business entity or entities, or without an allocation of proceeds to sufficiently identifiable properties or objectives; or

d. A company that is engaged in or proposes to engage in petroleum exploration or production, mining, or other extractive industries.

8. The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

THESE SECURITIES ARE BEING SOLD IN RELIANCE ON AN EXEMPTION TO THE FEDERAL SECURITIES REGISTRATION REQUIREMENTS UNDER SECTION 3(a)(11) OF THE SECURITIES ACT OF 1933 [OR SEC RULE 147A] AND UNDER SECTION 13.1-514 OF THE VIRGINIA SECURITIES ACT. THESE SECURITIES CAN ONLY BE SOLD TO RESIDENTS OF VIRGINIA AND ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AS CONTAINED IN SUBSECTIONS (e) AND (f) OF SEC RULE 147, 17 CFR 230.147 [AND SUBSECTIONS (e) AND (f) OF SEC RULE 147A]. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND THAT THEY MAY LOSE ALL OF THE INVESTMENT AND CAN AFFORD THE LOSS OF THE INVESTMENT.

IN MAKING AN INVESTMENT DECISION, INVESTORS SHOULD RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS REVEALED IN THESE OFFERING DOCUMENTS, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE AUTHORITY OR REGULATORY COMMISSION NOR HAVE THESE ENTITIES CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

9. If the offer and sale of securities under this section is made through the Internet, all of the following requirements are met:

Regulations

a. Any person acting as the Internet website operator shall be an issuer, a registered broker-dealer, or a funding portal that is in compliance with all commission, SEC, and FINRA requirements, including, if it is a funding portal, making any required notice filings with the commission;

b. Internet website operators shall comply with all commission, SEC, and FINRA requirements applicable to intrastate offerings through the Internet;

c. Internet website operators shall maintain records of all offers and sales of securities effected through its Internet website for five years from the close of the offering; and

d. The issuer and the Internet website operator shall keep and maintain records of the offers and sales of securities made through the Internet website for five years from the close of the offering. The issuer and the Internet website operator shall promptly provide ready access to the records to the commission on request. The commission may access, inspect, and review any Internet website described in this subdivision 9 and its records.

10. All payments for the purchase of securities are directed to and held by the depository institution subject to the provisions of subdivision 6 c of this subsection.

11. The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he is registered as a broker-dealer agent under the Act. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the agent registration requirements of the Act if he does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

12. The issuer provides a copy of Form ICE or the disclosure statement provided to the commission under subdivision 6 b of this subsection to each prospective purchaser at the time the offer of securities is made to the prospective purchaser.

13. The term of the offering does not exceed 12 months after the date of the first offer.

B. The issuer shall provide an annual report to the issuer's purchasers for each of the issuer's next three fiscal years, the first of which being that fiscal year that ends following the commencement of the offering. All of the following apply to the annual report described in this subsection:

1. The issuer shall provide the report free of charge to the purchasers;

2. An issuer may satisfy the report requirement under this subsection by making the information available on an Internet website if the information is made available within 45 days after the end of each fiscal year and remains available until the next annual report is issued;

3. The issuer shall file each report with the commission and shall provide a written copy of the report to any purchaser on request; and

4. The report shall include all of the following:

a. The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

b. An analysis by management of the issuer's business operations and financial condition.

C. The exemption provided in this section shall not be used in conjunction with any other exemption under the Act, except offers and sales to control persons shall not count toward the limitation in subdivision A 4 of this section.

D. The exemption described in this section shall not be available to the issuer if the issuer, any of the issuer's predecessors, any affiliate of the issuer, or any control person of the issuer:

1. Within the past 10 years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

2. Within the past 10 years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

3. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past 10 years, finding fraud or deceit in connection with the purchase or sale of any security; or

4. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past 10 years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

E. Subsection D of this section shall not apply if:

1. The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

2. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

3. The issuer establishes it did not know and exercising reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

F. An Internet website through which an offer or sale of securities under this section is made is not subject to the broker-dealer or agent registration requirements of the Act if the Internet website meets all of the following conditions:

1. It does not offer investment advice or recommendations;
2. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;
3. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website; and
4. It does not hold, manage, possess, or otherwise handle purchaser funds or securities.

G. As used in this section, "financial review" means a limited inquiry and analytical procedure of much narrower scope than an audit, undertaken by a certified public accountant for the purpose of expressing limited assurance that financial statements are presented in accordance with generally accepted accounting principles.

H. As used in this section, "control person" means (i) an officer, director, partner, managing member, trustee, or other person having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; or (ii) a person that owns 10% or more of any class of the outstanding securities of the issuer.

I. As used in this section, "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to § 4(6) of the Securities Act of 1933 that does not:

1. Offer investment advice or recommendations;
2. Solicit purchases, sales, or offers to buy the securities offered or displayed on its Internet website or portal;
3. Compensate employees, agents, or other persons for such solicitation or based on the sales of securities displayed or referenced on its Internet website or portal;
4. Hold, manage, possess, or otherwise handle investor funds or securities; or
5. Engage in such other activities as the SEC, by rule, determines inappropriate.

J. The issuer or other designated person shall be notified by letter or electronic communication when the exemption filing

is effective. If, however, on or before the initial commencement date of the offering, and after timely filing the materials required by subdivision A 6 of this section with the commission, the issuer has not been notified that any one or more of the filed materials fails to conform to the requirements of this section, the proposed offering shall be deemed effective.

K. Upon completion of an offering made in reliance on this exemption, the issuer shall file a final sales report with the commission, by letter or electronic communication, no later than 30 days after the last sale in the offering that includes the following information:

1. The time period in which the offering was open;
2. The number of investors that purchased shares or units in the offering;
3. The dollar amount sold in the offering; and
4. The dollar amount, if any, returned to investors, purchasers, or subscribers.

21VAC5-40-200. Nonissuer distribution.

In accordance with § 13.1-514 B 23 of the Act, an offer or sale of a security by an issuer is exempt from the securities [~~broker-dealer, and agent~~] registration requirements of the Act if the offer or sale meets all of the following requirements:

1. Securities involved in these transactions are for nonissuer distribution only; and
2. Securities in these transactions are to be limited to the OTCQX Market Tier of the OTC Market.

VA.R. Doc. No. R20-6357; Filed June 26, 2020, 10:50 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

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

Title of Regulation: 22VAC40-665. Child Care Program (amending 22VAC40-665-230, 22VAC40-665-580).

Regulations

Statutory Authority: §§ 63.2-217, 63.2-319, and 63.2-611 of the Code of Virginia; 45 CFR 98.11.

Effective Date: August 19, 2020.

Agency Contact: Jennifer Gibbons, Senior Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-6749, or email jennifer.gibbons@dss.virginia.gov.

Summary:

The amendments bring state Child Care Subsidy Program requirements into compliance with 45 CFR 98.41(a)(1)(x) (First Aid and CPR) by requiring first aid training for participating child care providers be age appropriate for the children in care.

22VAC40-665-230. Caregiver training and development.

A. Prior to approval as a subsidy vendor, the perspective vendor shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, which shall include the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or service all caregivers shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social

Services, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

C. All caregivers hired prior to October 17, 2018, shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics described in subsection B of this section, within January 16, 2019. This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for caregivers shall be completed on the following specific topics prior to the caregiver working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;
2. Responsibilities for reporting suspected child abuse or neglect;
3. Confidentiality;
4. Supervision of children, including arrival and dismissal procedures;
5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;
6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 22VAC40-665-400 B;
8. Procedures for response to natural and man-made disasters;
9. Prevention of shaken baby syndrome or abusive head trauma including coping with crying babies and fussy or distraught children;
10. Prevention of sudden infant death syndrome and use of safe sleeping practices;
11. Caregivers who work with children who have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination and recognizing and responding to any allergic reactions; and
12. Transportation.

E. All caregivers shall have within 90 days of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age ages of children in care. The training shall include an in-person competency demonstration; and
2. Current certification in first aid appropriate to the ages of children in care. However, a caregiver who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

F. Caregivers employed prior to October 17, 2018, must complete CPR and first aid training as required by this section within January 16, 2019. During this 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

G. CPR and first aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of 22VAC40-665-180 is maintained.

H. Caregivers who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training, to include the department's health and safety update course. This training shall be related to child safety, child development, health and safety in the family day home environment, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed

medications, the (i) administration shall be performed by a caregiver who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist or (ii) administration shall be performed by a caregiver who is licensed by the Commonwealth of Virginia to administer medications.

The vendor may determine by policy what medications, if any, will be administered at its family day home, including prescription medications or over-the-counter or nonprescription medications.

J. Caregivers required to have the training required in subsection I of this section shall be retrained at three-year intervals.

22VAC40-665-580. Staff training and development.

A. Prior to approval as a subsidy vendor, the vendor or designee shall complete the Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or subsidy vendor approval all staff who work directly with children shall complete Virginia Preservice Training for Child Care Staff,

Regulations

which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

C. All staff who work directly with children and who are employed prior to October 17, 2018, shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics applicable to new staff, within January 16, 2019. This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for staff shall be completed on the following facility specific topics prior to the staff member working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;
2. Responsibilities for reporting suspected child abuse or neglect;
3. Confidentiality;
4. Supervision of children, including arrival and dismissal procedures;
5. Procedures for action in the case of lost or missing children, ill or injured children, and medical and general emergencies;

6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 22VAC40-665-770 B;

8. Prevention of shaken baby syndrome and abusive head trauma including coping with crying babies and fussy or distraught children;

9. Prevention of sudden infant death syndrome and use of safe sleeping practices;

10. Staff who work with children that have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination, and recognizing and responding to any allergic reactions; and

11. Transportation.

E. All staff who work directly with children shall have within 90 days of the date of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the ~~age~~ ages of children in care. The training shall include an in-person competency demonstration; and

2. Current certification in first aid appropriate to the ages of children in care. However, staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 90-day period, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

F. All staff who work directly with children and who are employed by an approved vendor prior to October 17, 2018, must complete CPR and first aid training as required by this section within January 16, 2019. During this 90 days, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

G. CPR and First Aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of 22VAC40-665-530 is maintained.

H. Staff who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training and staff development activities, to include the department's health and safety update course. Training shall be related to child safety, child development, the function of the center, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a

staff member who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or (ii) administration shall be performed by a staff member who is licensed by the Commonwealth of Virginia to administer medications.

The administration of medicines by a vendor may be limited by policy to:

1. Prescription medications;
2. Over-the-counter or nonprescription medications; or
3. No medications.

J. Staff required to have the training specified in subsection I of this section shall be retrained at three-year intervals.

K. There shall be at least one staff on duty who has obtained within the last three years instruction in performing a daily health observation of children. Daily health observation training shall include:

1. Components of daily health check for children;
2. Inclusion and exclusion of a child when the child is exhibiting symptoms that indicate possible illness;
3. Description of how diseases are spread and procedures and methods for reducing the spread of disease;
4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and
5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

V.A.R. Doc. No. R20-6300; Filed June 18, 2020, 1:56 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER SIXTY-SEVEN (2020) AND ORDER OF PUBLIC HEALTH EMERGENCY SEVEN

Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)

Importance of the Issue

On June 2, 2020, Executive Order 65 and Order of Public Health Emergency Six implemented Phase Two, continuing to ease business, gathering, and traveling restrictions originally imposed by Executive Order 53 and Executive Order 55 issued in March of 2020. During the weeks following, the public health metrics have continued to show positive trends. Our testing is increasing, our supply of personal protective equipment is steady, our hospital bed capacity remains steady, our hospitalizations statewide have a downward trend, and the percentage of positive tests continue to trend downward. Virginia continues to make significant progress.

As outlined below, we will move forward into Phase Three. In doing so, we must remember that the virus is still in our communities. We must remain cautious—continue teleworking whenever possible, wash our hands frequently, do not touch our faces, and wear face coverings. Through these efforts, we will continue to protect ourselves, our families, and our fellow Virginians as we respond to this emergency.

Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended Executive Order 51 (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered:

A. EASING OF BUSINESS RESTRICTIONS

1. All Businesses

Any businesses, not listed in this section, should adhere to the Guidelines for All Business Sectors expressly incorporated by reference herein as best practices. This guidance is located [here](#).

2. Restaurants, Dining Establishments, Food Courts, Breweries, Microbreweries, Distilleries, Wineries, and Tasting Rooms

Restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms may continue to operate delivery, take-out, and indoor and outdoor service, provided such businesses comply with the Guidelines for All Business Sectors, and sector-specific

guidance for restaurant and beverage services incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. All parties must be separated by at least six feet, including in the bar area. Tables at which dining parties are seated must be positioned six feet apart from other tables. If tables are not movable, parties must be seated at least six feet apart, including in the bar area.
- b. Customers may be provided with self-service options. Facilities must provide hand sanitizer at food lines and require the use of barriers (e.g., gloves or deli paper) when employees or patrons touch common utensils. Food lines must be monitored by trained staff at all times of operation, and serving utensils must be changed hourly.
- c. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes during operation. Tabletops, chairs, and credit card/bill folders must be cleaned in between patrons.
- e. Bar seats and congregating areas of restaurants must be closed to patrons except for through-traffic. Non-bar seating in the bar area (i.e., tables or counter seats that do not line up to a bar or food service area) may be used for customer seating as long as a minimum of six feet is provided between parties at tables.
- f. If any such business cannot adhere to these requirements, it must close.

3. Farmers Markets

Farmers markets may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for farmers markets incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members, as defined below, at all times. Configure operations to avoid congestion or congregation points.
- b. Employees and vendors in customer-facing areas must wear face coverings over their nose and mouth at all times.
- c. Vendors must supply hand sanitizer stations or hand washing stations for patrons and employees.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted.
- e. If any such business cannot adhere to these requirements, it must close.

4. Brick and Mortar Retail Businesses Not Listed in Section C, Paragraph 1 (Non-Essential Retail)

Any brick and mortar retail business not listed in section C, paragraph 1 below may continue to operate, provided such business complies with the Guidelines for All Business Sectors and the sector-specific guidance for brick and mortar retail expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members at all times.
- b. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- c. If any such business cannot adhere to these requirements, it must close.

5. Fitness and Exercise Facilities

Fitness centers, gymnasiums, recreation centers, sports facilities, and exercise facilities may continue to operate indoor and outdoor activities, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for fitness and exercise facilities expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Patrons, members, and guests who are not Family members must remain at least ten feet apart during all activities except where necessary for the physical safety of an individual.
- b. Instructors and all participants of group exercise and fitness classes who are not Family members must maintain at least ten feet of physical distancing between each other at all times, with the exception of swimming lessons, where parents or guardians may support a participant during class, and instructors may have contact with swimmers when necessary.
- c. Occupancy must be limited to no more than 75% of the lowest occupancy load on the certificate of occupancy.
- d. Hot tubs, spas, splash pads, spray pools, and interactive play features must be closed.
- e. Outdoor and indoor swimming pools may be open, provided occupancy is limited to no more than 75% of the lowest occupancy load on the certificate of occupancy and all swimmers maintain at least ten feet of physical distance from others who are not Family members.
- f. Employees working in customer-facing areas must wear face coverings over their nose and mouth at all times. Lifeguards responding to distressed swimmers are exempt from this requirement.
- g. Employers must ensure cleaning and disinfection of shared equipment after each use.

h. Facilities must prohibit the use of any equipment that cannot be thoroughly disinfected between uses (e.g., climbing rope, exercise bands, etc.).

- i. Businesses must supply hand sanitizer stations or hand washing stations for patrons, members, and guests.
- j. If any such business cannot adhere to these requirements, it must close.

6. Personal Care and Personal Grooming Services

Beauty salons, barbershops, spas, massage centers, tanning salons, tattoo shops, and any other location where personal care or personal grooming services are performed may continue to operate, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for personal care and personal grooming services expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Service providers must maintain at least six feet of physical distancing between work stations.
- b. Service providers and employees working in customer-facing areas must wear face coverings over their nose and mouth at all times.
- c. Provide face coverings for clients or ask that clients bring a face covering with them, which they must wear during the service. Limit services to only those that can be completed without clients removing their face covering.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted every 60 minutes of operation, while cleaning and disinfecting all personal care and personal grooming tools after each use. If that is not possible, such items must be discarded.
- e. If any such business cannot adhere to these requirements, it must close.

7. Campgrounds

Privately-owned campgrounds as defined in § 35.1-1 of the Code of Virginia may continue to operate, provided they comply with the Guidelines for All Business Sectors and the sector-specific guidelines for campgrounds, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. Employees working in public-facing areas must wear face coverings over their nose and mouth at all times.
- b. Businesses must supply hand sanitizer stations or hand washing stations for patrons, members, and guests.
- c. If any such business cannot adhere to these requirements, it must close.

8. Indoor Shooting Ranges

Indoor shooting ranges may continue to operate, provided they comply with the following requirements:

- a. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not Family members at all times.
- b. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth at all times.
- c. Perform thorough cleaning and disinfection of frequently-contacted surfaces every 60 minutes of operation, while disinfecting all equipment between each customer use and prohibiting the use of equipment that cannot be thoroughly disinfected.
- d. Either thoroughly clean shared or borrowed equipment between uses, or only allow the use of personal equipment at the range.
- e. If any such indoor shooting range cannot adhere to these requirements, it must close.

9. Public Beaches

All public beaches as defined in § 10.1-705 of the Code of Virginia may remain open to individual and family recreational activity. All such public beaches, must comply with the requirements below.

- a. Require beachgoers to practice physical distancing of at least six feet between each person unless they are with Family members.
- b. Prohibit gatherings of more than 250 people.
- c. Implement and adhere to a cleaning schedule for all high-touch surfaces made of plastic or metal such as benches and railings that includes cleaning at least every two hours between the hours of 9 a.m. and 6 p.m.
- d. Establish, train, and deploy a team to educate and promote compliance with beach rules and refer cases of noncompliance to public safety personnel, if appropriate.
- e. Establish procedures for temporary beach closure or access limitations in the event of overcrowding.
- f. Ensure adequate personal protective equipment for all lifeguards.
- g. Perform a disinfectant-level cleaning of all public restrooms every two hours with an EPA-approved disinfectant by staff or volunteers trained to follow Centers for Disease Control and Prevention (CDC) guidance on cleaning and disinfecting.
- h. For chair and umbrella rental companies, require vendors to set up chairs and umbrellas for customers, maintaining at least six feet of distance between groups, and to clean equipment between rentals following Environmental

Protection Agency and CDC guidelines on cleaning and disinfecting.

- i. Post signage at all public access points to the beaches and other "cluster prone" areas providing health reminders regarding physical distancing, gathering prohibitions, options for high risk individuals, and staying home if sick. Messaging must be specific to location.
- j. Locality shall provide daily metrics to its local health department to include beach closures, complaint incidents, police reports of violence related to enforcement, and number of reports of noncompliance to be submitted each Monday.
- k. All employees and contract workers must wear a cloth face covering when not able to practice physical distancing following CDC Use of Face Cloth Coverings guidance.

l. Employees and contract workers must have access to soap and water or hand sanitizer containing at least 60% alcohol, and locality should provide best hygiene practices to employees on a regular basis, including washing hands often with soap and water for at least 20 seconds and practicing respiratory etiquette protocols.

m. Locality shall require all employees and contract workers to take their temperature before reporting to work and direct such employees not to report to work if they have a fever of over 100.4 degrees, have experienced chills, or have been feverish in the last 72 hours.

n. Follow enhanced workplace safety best practices outlined in the Guidelines for All Business Sectors.

10. Racetracks and Speedways

Outdoor racetracks may remain open for racing events, provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines for racetracks expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. The event must be held at locations with the ability to restrict access (i.e. barriers and gating).
- b. All individuals must maintain at least six feet of physical distancing between themselves and other participants who are not Family members.
- c. Food services must adhere to the sector-specific guidance for restaurant and beverage services and camping areas must adhere to the sector-specific guidance for campgrounds.
- d. The total number of attendees (including both participants and spectators) cannot exceed the lesser of 50% of the lowest occupancy load on the certificate of occupancy, if applicable, or 1000 persons.

11. Entertainment and Amusement Businesses

Performing arts venues, concert venues, sports venues, movie theaters, museums, aquariums, zoos, fairs, carnivals, amusement parks, public and private social clubs, botanical gardens, entertainment centers, historic horse racing facilities, bowling alleys, skating rinks, arcades, trampoline parks, arts and craft facilities, escape rooms, and other places of indoor public amusement may open provided such businesses comply with the Guidelines for All Business Sectors and the sector-specific guidelines, which are expressly incorporated by reference herein. Such guidance includes, but is not limited to, the following requirements:

- a. The total number of attendees (including both participants and spectators) cannot exceed the lesser of 50% of the lowest occupancy load on the certificate of occupancy, if applicable, or 1,000 persons.
- b. All private bookings must comply with section B, paragraph 1.
- c. Install visible markers for queue lines that separate people by six feet of physical distance.
- d. Create a guest flow plan of modified queue lines into and within the facility. Determine areas likely to become bottlenecks or pinch points and adjust guest flow accordingly.
- e. Ten feet of physical distancing is required between parties at all establishments with physical activity, singing, or cheering; six feet of physical distancing is required in other venues.
- f. Perform thorough cleaning and disinfection of frequently-contacted surfaces including digital ordering devices, check presenters, self-service areas, tabletops, bathroom surfaces, games, shared equipment, and other common touch areas every 60 minutes during operation.
- g. Where possible, install plexiglass barriers in front of commonly used point-of-sale or guest service stations.
- h. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth at all times.
- i. Provide hand washing or sanitizing stations for attendees and employees.
- j. If any such business cannot adhere to these requirements, it must close.

12. Recreational Sports

Indoor and outdoor recreational sports activities are permitted, provided participants and organizers of recreational sports activities comply with the Guidelines for All Business Sectors and the sector-specific guidelines for recreational sports expressly incorporated by reference

herein. Such guidance includes, but is not limited to, the following requirements:

- a. Ten feet of physical distance should be maintained by all instructors, participants, and spectators, where practicable.
- b. The total number of attendees (including both participants and spectators) of recreational sports cannot exceed the lesser of 50% of the occupancy load of the certificate of occupancy for the venue, if applicable, or 250 persons. For sports played on a field, attendees are limited to 250 persons per field.

13. Enforcement

Guidelines for All Business Sectors and the sector-specific guidelines appear [here](#). The Virginia Department of Health shall have authority to enforce section A of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. In addition, any agency with regulatory authority over a business listed in section A may enforce this Order as to that business to the extent permitted by law.

B. CONTINUED RESTRICTIONS

1. All Public and Private In-Person Gatherings

All public and private in-person gatherings of more than 250 individuals are prohibited. The presence of more than 250 individuals performing functions of their employment is not a "gathering." A "gathering" includes, but is not limited to, parties, celebrations, or other social events, whether they occur indoors or outdoors.

Individuals may attend religious services subject to the following requirements:

- a. Individuals attending religious services must be at least six feet apart when seated and must practice proper physical distancing at all times. Family members, as defined below, may be seated together.
- b. Mark seating and common areas where attendees may congregate in six-foot increments to maintain physical distancing between persons who are not Family members.
- c. Any items used to distribute food or beverages must be disposable, used only once and discarded.
- d. A thorough cleaning and disinfection of frequently-contacted surfaces must be conducted prior to and following any religious service.
- e. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 is permitted to participate in the religious service.

f. Post signage to provide public health reminders regarding physical distancing, gatherings, options for high risk individuals, and staying home if sick.

g. If religious services cannot be conducted in compliance with the above requirements, they must not be held in-person.

Further, any social gathering held in connection with a religious service is subject to the public and private in-person gatherings restriction in section B, paragraph 1. Additional suggested guidance can be found [here](#).

2. Institutions of Higher Education

Institutions of higher education shall comply with all applicable requirements under the Phased Guidance of Virginia Forward and the "Guidelines for All Business Sectors." Any postsecondary provider offering vocational training in a profession regulated by a Virginia state agency/board must also comply with any sector-specific guidelines relevant to that profession to the extent possible under the regulatory training requirements. Such professions may include, but are not necessarily limited to: aesthetician, barber, cosmetologist, massage therapist, nail technician, and practical nurse.

3. Overnight Summer Camps

Overnight services of summer camps, as defined in § 35.1-1 of the Code of Virginia, must remain closed.

4. Enforcement

Violations of section B paragraphs 1, 2, and 3 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia.

C. CONTINUED GUIDANCE AND DIRECTION

1. Essential Retail Businesses

Essential retail businesses as set out below may continue to remain open during their normal business hours. They should comply with the Guidelines for All Business Sectors expressly incorporated by reference and linked [here](#), as best practices. Employers are required to provide face coverings to employees.

a. Grocery stores, pharmacies, and other retailers that sell food and beverage products or pharmacy products, including dollar stores, and department stores with grocery or pharmacy operations;

b. Medical, laboratory, and vision supply retailers;

c. Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;

d. Automotive parts, accessories, and tire retailers as well as automotive repair facilities;

e. Home improvement, hardware, building material, and building supply retailers;

f. Lawn and garden equipment retailers;

g. Beer, wine, and liquor stores;

h. Retail functions of gas stations and convenience stores;

i. Retail located within healthcare facilities;

j. Banks and other financial institutions with retail functions;

k. Pet and feed stores;

l. Printing and office supply stores; and

m. Laundromats and dry cleaners.

2. State Agencies

All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.

3. Face Coverings

The waiver of § 18.2-422 of the Code of Virginia is continued, so as to allow the wearing of a medical mask, respirator, or any other protective face covering for the purpose of facilitating the protection of one's personal health in response to the COVID-19 public health emergency declared by the State Health Commissioner on February 7, 2020, and reflected in Amended Executive Order 51 (2020) declaring a state of emergency in the Commonwealth. Amended Executive Order 51 (2020) remains so amended. This waiver is effective as of March 12, 2020 and will remain in effect until 11:59 p.m. on September 8, 2020 unless amended or rescinded by further executive order.

Further, where a mandatory business sector requirement in this Order conflicts with a requirement to wear a face covering in Executive Order 63 and Order of Public Health Emergency Five (2020), the business sector-specific requirement governs.

4. Family Members

"Family members" means blood relations, adopted, step, and foster relations, as well as all individuals residing in the same household. Family members are not required to maintain physical distancing while in their homes.

5. Exceptions

Nothing in the Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

6. Expiration of Order

Amended Executive Order 65 and Amended Order of Public Health Emergency Six shall expire on Tuesday, June 30, 2020, at 11:59 p.m..

Effective Date of the Executive Order

This Order shall be effective 12:00 a.m., Wednesday, July 1, 2020. This Executive Order shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia and the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia, this 30th day of June, 2020.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF ACCOUNTANCY

Titles of Documents:

[VBOA Policy #2: Continuing Professional Education Guidelines for Sponsors.](#)

[VBOA Policy #3: Substantially Equivalent Jurisdictions.](#)

[VBOA Policy #4: Continuing Professional Education Guidelines for CPAs.](#)

[VBOA Policy #8: Ethics Committee.](#)

Public Comment Deadline: August 19, 2020.

Effective Date: August 20, 2020.

Agency Contact: Elizabeth Marcello, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-2006, or email elizabeth.marcello@boa.virginia.gov.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Adult Protective Services Division Manual Chapters 1, 2, 3, 4, and 7.](#)

Public Comment Deadline: August 19, 2020.

Effective Date: August 20, 2020.

Agency Contact: Charlotte Arbogast, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: [Emergency Guidelines for Locally-Awarded Verified Credits.](#)

Public Comment Deadline: August 19, 2020.

Effective Date: June 18, 2020.

Agency Contact: Dr. Leslie Sale, Director of Policy, Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2092, or email leslie.sale@doe.virginia.gov.

BOARD OF HEALTH PROFESSIONS

Title of Document: [Virginia Board of Health Professions Bylaws.](#)

Public Comment Deadline: August 19, 2020.

Effective Date: August 20, 2020.

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents:

[Community Housing Guide: Housing Road Map.](#)

[Community Housing Guide: Tenant Screening.](#)

[Virginia Informed Choice.](#)

Public Comment Deadline: August 19, 2020.

Effective Date: August 20, 2020.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy and Research Division, Department of Medical Assistance Services, 600 East Broad, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, or email emily.mcclellan@dmas.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Titles of Documents:

[Child and Family Services Manual, Chapter C, Child Protective Services.](#)

[Child and Family Services Manual, Chapter E, Foster Care.](#)

[Child and Family Services Manual Chapter F-Adoption.](#)

[Child and Family Services Manual, Title IV-E Foster Care.](#)

Public Comment Deadline: August 19, 2020.

Effective Date: August 20, 2020.

Agency Contact: Nikki Clarke Callaghan, Legislation, Regulations and Guidance Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7943, or email nikki.clark@dss.virginia.gov.

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan Proposed Revisions - Air Quality Plans: Nonattainment New Source Review (Rev. B19) and Ozone Implementation (Rev. C19)

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for ozone. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the federal Clean Air Act.

Purpose of notice: DEQ is seeking comment on the issue of whether several regulation amendments should be submitted as a revision to the SIP.

Public comment period: July 20, 2020, to August 19, 2020.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations per § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting public comment only on the issue cited under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision consists of two separate regulation revisions related to the control of ozone. Revision B19 enables offset requirements for emissions of nitrogen oxides (NOX) and volatile organic compounds (VOC) to be met by offsetting reductions in actual emissions of either of those precursors as established by a case-specific permit ratio for ozone. Revision C19 adds a new section listing the localities that comprise the Northern Virginia Ozone nonattainment area, which is classified as marginal for the 2015 ozone National Ambient Air Quality Standard (NAAQS). Both of these revisions are necessary in

order to conform state regulations to federal regulations and thus meet the state's obligations under the Clean Air Act.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). Except as noted, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

Revision B19 contained, in addition to the offset provisions, a correction to the definition of "significant." This correction restores state language to correctly reflect federal requirements; thus, no SIP revision is needed, and this provision will not be submitted to EPA.

Revision C19 contained several provisions related to previous ozone implementation requirements that were subsequently vacated in federal court. The current revisions were made to restore state language to correctly reflect federal requirements; thus, no SIP revision is needed, and those provisions will not be submitted to EPA. Only the revisions to 9VAC5-20-204 and 9VAC5-30-55 D will be submitted as SIP revisions.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ on the last day of the comment period. All faxes must have a cover page that lists the intended recipient. All materials received are part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative listed. The public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA, telephone (804) 698-4249, and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178, or email karen.sabasteanski@deq.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 29, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00120

Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 E 5 of the Code of Virginia related to the deployment of energy storage

ORDER ESTABLISHING PROCEEDING

During its 2020 Session, the Virginia General Assembly enacted the Virginia Clean Economy Act ("VCEA").¹ Among other things, the VCEA, in § 56-585.5 E of the Code of Virginia, requires Appalachian Power Company ("APCo") and Virginia Electric and Power Company ("Dominion") to petition the Commission for approval to construct or acquire 400 megawatts ("MW") and 2,700 MW, respectively, of new utility-owned energy storage resources by 2035 (collectively "Energy Storage Targets"). Section 56-585.5 E 5 further provides in part that:

By January 1, 2021, the Commission shall adopt regulations to achieve the deployment of energy storage for the Commonwealth required in subdivisions 1 and 2, including regulations that set interim targets and update existing utility planning and procurement rules. The regulations shall include programs and mechanisms to deploy energy storage, including competitive solicitations, behind-the-meter incentives, non-wires alternatives programs, and peak demand reduction programs.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be established for the purpose of complying with this statutory requirement. We first seek comment on several questions raised by § 56-585.5 E 5 of the Code of Virginia. We will direct APCo and Dominion to submit comments, and permit any other interested person or entity to submit comments, regarding the issues identified below for comment. In addition to answering these specific questions, commenters also may propose specific regulations.

Issues Identified for Comment

1. What interim targets should be established for meeting the targets set forth in § 56-585.5 E 1 of the Code of Virginia for APCo?
2. What interim targets should be established for meeting the targets set forth in § 56-585.5 E 2 of the Code of Virginia for Dominion?

3. What updates to existing utility planning should be adopted to facilitate the achievement of the Energy Storage Targets?

4. What updates to existing utility procurement rules should be adopted to facilitate the achievement of the Energy Storage Targets?

5. What competitive solicitation-related programs and mechanisms to deploy energy storage should be included in the required regulations?

6. What behind-the-meter incentives to deploy energy storage should be included in the required regulations?

7. What non-wires alternatives programs to deploy energy storage should be included in the required regulations?

8. What peak demand reductions programs to deploy energy storage should be included in the required regulations?

9. Should the regulations mandate or limit the deployment of any particular type of energy storage resource or facility? If so, please explain.

10. Should the required regulations apply to non-utility energy storage? For example, should the regulations include a mechanism by which the Commission can issue permits for non-utility-owned storage?

11. Section 56-585.5 E of the Code of Virginia refers to "energy storage," "energy storage resources," "energy storage facilities," "energy storage project," and "energy storage capacity." The statute provides no definition of any of these terms.

(a) Should the regulations include a definition for each term? If so, please provide necessary definition(s).

(b) Does each included term require its own set of regulations? Why or why not?

12. Section 56-585.5 E of the Code of Virginia requires Dominion and APCo to "petition the Commission for necessary approvals to construct or acquire new, utility-owned energy storage resources" (emphasis added). Section 56-585.1 E 5 of the Code of Virginia provides in part that:

After July 1, 2020, at least 35 percent of the energy storage facilities placed into service shall be (i) purchased by the public utility from a party other than the public utility or (ii) owned by a party other than a public utility, with the capacity from such facilities sold to the public utility.

(a) Does the energy storage required by § 56-585.5 E of the Code of Virginia count toward the targets set forth in § 56-585.5 E 1 and E 2 of the Code of Virginia, or is it incremental thereto?

(b) Should this requirement be incorporated in some way into the interim targets to be adopted for Dominion and APCo?

(c) Should the regulation contain any limitation on the acquisition of energy storage facilities or purchases of capacity from utility-affiliated interests?

13. Section 56-585.5 F of the Code of Virginia permits recovery of costs of, inter alia, "energy storage facilities, that are constructed or acquired by a Phase I or Phase II Utility after July 1, 2020"² and costs of "energy storage facilities, purchased by the utility from persons other than the utility through agreements after July 1, 2020[.]" Is there a difference between energy storage facilities that are "acquired" by a utility and those that are "purchased" by a utility that should be addressed by the regulation? Why or why not?

14. What additional provisions should be included in the required regulations?

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUR-2020-00120 for the purposes of receiving comments directed herein.

(2) APCo and Dominion shall submit comments within thirty (30) days of the date of this Order.

(3) Any other interested person or entity may submit comments within thirty (30) days of the date of this Order.

(4) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to: individuals, organizations, and companies who have been identified by the Commission Staff as interested in the development of energy storage in the Commonwealth.

(5) This case is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

¹Senate Bill 851, 2020 Va. Acts ch. 1194, and identical House Bill 1526, 2020 Va. Acts ch. 1193 (effective July 1, 2020)

²APCo is a Phase I Utility, and Dominion is a Phase II Utility. See § 56-585.1 A 1 of the Code of Virginia.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Bookers Mill Solar LLC Center Notice of Intent for Small Renewable Energy Project (Solar) - Richmond County

Bookers Mill Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a small renewable energy project (solar) in Richmond County. The Bookers Mill Solar Project is located on 1,000 acres of property previously used as timberland with an address of Maon Road, Farnham, Virginia 22460. The rated capacity of the facility at the point of interconnection will be 127 megawatts alternating current, with approximately 332, 000 solar panels on single axis tracker technology.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

Watlington Solar LLC Center Notice of Intent for Small Renewable Energy Project (Solar) - Halifax County

Watlington Solar LLC has provided the Department of Environmental Quality with a notice of intent to submit the necessary documentation for a small renewable energy project (solar) permit by rule for the Watlington Solar Center. The project is a 20-megawatts (maximum alternating current capacity) solar energy facility located in Halifax County. The project site is located approximately two miles south of the Town of South Boston and encompasses approximately 140 of a 220-acre site. The project will be single-axis tracking, utilizing approximately 60,788 panels.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) by Updating the Dental Fee Schedule

Public comment: June 24, 2020, to July 24, 2020.

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act. A copy of this notice is available for public review from Emily McClellan, Policy and Research Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, or email at emily.mcclellan@dmas.virginia.gov.

This notice is available for public review on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov/L/generalnotice.cfm>.

Reimbursement Changes Affecting Other Types of Care (12VAC30-80)

The agency's dental fee schedule is being updated on July 26, 2020, to include updated dental procedure codes.

There is no expected increase or decrease in aggregate annual expenditures.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Gutterman Iron and Metal Corporation

An enforcement action has been proposed for Gutterman Iron and Metal Corporation for violations of the State Water Control Law in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from July 20, 2020, to August 20, 2020.

Proposed Enforcement Action for Navadurga LLC

An enforcement action has been proposed for Navadurga LLC for violations of the State Water Control Law in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from July 20, 2020, to August 20, 2020.

Proposed Enforcement Action for Richmond American Homes of Virginia Inc.

An enforcement action has been proposed for Richmond American Homes of Virginia Inc. for violations of the State Water Control Law at the Highpoint of Culpeper development site located in Culpeper County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at <http://www.deq.virginia.gov/Programs/Enforcement/PublicNotices>. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from July 21, 2020, through August 20, 2020.

Proposed Enforcement Action for Sant Corporation and Vishwash LLC

An enforcement action has been proposed for the Sant Corporation and Vishwash LLC for violations of the State Water Control Law in Hampton and Newport News, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from July 20, 2020, to August 20, 2020.

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.

