



VIRGINIA

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THE 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 <https://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: **Marcus B. Simon, Chair; Russet W. Perry, Vice Chair; Katrina E. Callsen; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Michael Mullin; Christopher R. Nolen; Steven Popp; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade.**

Staff of the Virginia Register: **Holly Trice, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Managing Editor; Erin Comerford, Regulations Analyst**

PUBLICATION SCHEDULE AND DEADLINES

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

January 2025 through February 2026

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
41:12	January 8, 2025	January 27, 2025
41:13	January 22, 2025	February 10, 2025
41:14	February 5, 2025	February 24, 2025
41:15	February 19, 2025	March 10, 2025
41:16	March 5, 2025	March 24, 2025
41:17	March 19, 2025	April 7, 2025
41:18	April 2, 2025	April 21, 2025
41:19	April 16, 2025	May 5, 2025
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
41:24	June 25, 2025	July 14, 2025
41:25	July 9, 2025	July 28, 2025
41:26	July 23, 2025	August 11, 2025
42:1	August 6, 2025	August 25, 2025
42:2	August 20, 2025	September 8, 2025
42:3	September 3, 2025	September 22, 2025
42:4	September 17, 2025	October 6, 2025
42:5	October 1, 2025	October 20, 2025
42:6	October 15, 2025	November 3, 2025
42:7	October 29, 2025	November 17, 2025
42:8	November 10, 2025 (Monday)	December 1, 2025
42:9	November 24, 2025 (Monday)	December 15, 2025
42:10	December 9, 2025 (Tuesday)	December 29, 2025
42:11	December 22, 2025 (Monday)	January 12, 2026
42:12	January 6, 2026 (Tuesday)	January 26, 2026
42:13	January 21, 2026	February 9, 2026

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Initial Agency Notice

Title of Regulation: **4VAC20-1270. Pertaining to Atlantic Menhaden.**

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

Name of Petitioner: Chesapeake Legal Alliance and Southern Maryland Recreational Fishing Organization.

Nature of Petitioner's Request: The petitioners request that the Marine Resources Commission (i) impose an immediate moratorium on reduction fishing for menhaden within the Chesapeake Bay or reduce all purse seine fishing within the Chesapeake Bay to 10% of the current total allowable landings, thereby preserving the bait-fishery, to remain in place until completion and peer review of the ongoing Atlantic States Marine Fisheries Commission single-species and ecological reference point benchmark stock assessments; (ii) limit purse seine fishing in state waters to no more than 25% of Virginia's current total allowable landings (approximately 39,000 metric tons of the 156,600 metric tons allotted to the reduction fishery), with the remaining harvest to be taken outside of Virginia waters (i.e., federal waters). This limit should remain in force until appropriate estimates of menhaden seasonal stocks within the Chesapeake Bay and a clear understanding of the effects of their removals are available; (iii) create a permanent one-nautical-mile purse seine exclusion zone along Virginia's entire shoreline to minimize localized depletion, user conflicts, habitat damage, and bycatch; (iv) formally request funds from the General Assembly to expand the Virginia Institute of Marine Science Research Planning proposal to study the impacts of reduction fishing on the Chesapeake Bay ecosystem, with at least 50% of costs to be covered by the industry; and (v) require comprehensive monitoring and public reporting of the reduction fishery, including electronic reporting and vessel monitoring.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on January 13, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens January 13, 2025, and closes February 3, 2025. Following receipt of comments on the petition, the Marine Resources Commission will review the petition.

Public Comment Deadline: February 3, 2025.

Agency Contact: Zachary Widgeon, Director of Communications, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 414-0713, or email zachary.widgeon@mrc.virginia.gov.

VA.R. Doc. No. PFR25-24; Filed December 20, 2024, 2:52 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Agency Decision

Title of Regulation: **18VAC60-30. Regulations Governing the Practice of Dental Assistants.**

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

Name of Petitioner: American Medical Technologists.

Nature of Petitioner's Request: The petitioner requests that the Board of Dentistry amend 18VAC60-30-80 to recognize the Dental Assisting Radiography Exam given by American Medical Technologists as a qualifying pathway for certification to place or expose dental x-ray film.

Agency Decision: Request denied.

Statement of Reason for Decision: At its December 13, 2024, meeting, the Board of Dentistry voted to take no action on the petition and refer the issue to the regulatory committee for further study and review.

Agency Contact: Jamie Sacksteder, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4581, or email jamie.sacksteder@dhp.virginia.gov.

VA.R. Doc. No. PFR25-07; Filed September 17, 2024, 1:09 p.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Initial Agency Notice

Title of Regulation: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators.**

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

Name of Petitioner: Ashley Pressman.

Nature of Petitioner's Request: The petitioner requests that the Board of Long-Term Care Administrators amend 18VAC95-20-380 to allow overseers of training facilities to serve as preceptors even if the potential preceptor has not served as the administrator of record for a minimum of two of the past three years prior to registration.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on January 13, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens January 13, 2025, and closes February 12, 2025. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment. Currently that meeting is scheduled for March 11,

Petitions for Rulemaking

2025. The petitioner will be notified of the board's decision after that meeting.

Public Comment Deadline: February 12, 2025.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, telephone (804) 367-4595, or email corie.wolf@dhp.virginia.gov.

VA.R. Doc. No. PFR25-22; Filed December 14, 2024, 3:40 p.m.

BOARD OF SOCIAL WORK

Agency Decision

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Alexander Lagos Choquecahua.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-50 A to permit a supervisee who has received approval to obtain supervision hours but has not begun supervision to pause the four-year timeframe to obtain supervision until the supervisee is ready to begin earning supervision hours.

Agency Decision: Request denied.

Statement of Reason for Decision: During its December 20, 2024, meeting, the Board of Social Work voted to deny the petition for rulemaking and send the issue to the regulatory committee for further study and review. The board is interested in this topic and wants to consider the scope of potential amendments broadly to allow for other changes to be made as necessary.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4441, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR25-14; Filed October 15, 2024, 3:22 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and small business impact review: **12VAC35-12, Public Participation Guidelines; 12VAC35-210, Regulations to Govern Temporary Leave from State Facilities; and 12VAC35-240, Eugenics Sterilization Compensation Program.** The review of these regulations will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether these regulations should be repealed, amended, or retained in their current forms. Public comment is sought on the review of any issue relating to these regulations, including whether each 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 January 13, 2025, and ends February 13, 2025.

Comments must include the commenter's name and address (physical or email) 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: Susan Puglisi, Regulatory Research Specialist, Office of Regulatory Affairs, Department of Behavioral Health And Developmental Services, 1220 Bank Street, Room 411, Richmond, VA 23219, telephone (804) 385-6549, FAX (804) 371-4609, TDD (804) 371-8977, or email susan.puglisi@dbhds.virginia.gov.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and small business impact review: **22VAC30-11,**

Public Participation Guidelines. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether the 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 January 13, 2025, and ends February 3, 2025.

Comments must include the commenter's name and address (physical or email) 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: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, FAX (804) 662-7663, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-100, Minimum Standards for Licensed Child Caring Institutions,** and determined that this regulation should be amended. The board is publishing its report of findings dated December 11, 2024, to support this decision.

The regulation provides the requirements for the protection of health, safety, and welfare of children and youth receiving services from child welfare agencies. The regulation is clearly written and easy to understand.

The department recommends amending the regulation for technical and clarification purposes and to reduce regulatory requirements pursuant to Executive Order 19 (2022). This regulation is necessary for the health, safety, and welfare of children placed in child caring institutions. Comments received reflect that this regulation should be retained. The regulation does not duplicate or conflict with federal or state law. The regulation was last reviewed in 2016, and there are no changes in technology, economic conditions, or other factors that affect the regulation. The amendments will have minimal to no impact on small businesses.

Contact Information: Alisa Foley, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7138, or email a.foley@dss.virginia.gov.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

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 Environmental Quality intends to consider amending **9VAC15-40, Small Renewable Energy Projects (Wind) Permit by Rule; 9VAC15-60, Small Renewable Energy Projects (Solar) Permit by Rule; 9VAC15-70, Small Renewable Energy Projects (Combustion) Permit by Rule; and 9VAC15-100, Small Energy Storage Facilities Permit by Rule.** The purpose of the proposed action is to amend the regulations to increase fees assessed for permits by rule. The fees assessed by these regulations for wind, solar, and combustion small renewable energy projects were last modified over 10 years ago, and the fees for small energy storage facilities were last modified in 2022.

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

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

Public Comment Deadline: February 12, 2025.

Agency Contact: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

VA.R. Doc. No. R25-8145; Filed December 16, 2024, 12:36 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 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Final Regulation

Title of Regulation: **3VAC5-30. Tied-House (amending 3VAC5-30-10 through 3VAC5-30-90; adding 3VAC5-30-100).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: February 12, 2025.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

The amendments (i) align the regulation with current industry practices, (ii) conform the regulation to the Code of Virginia, (iii) improve clarity, and (iv) remove redundant and obsolete language. Changes to the proposed regulation are nonsubstantive and include clarifications about product exchanges for quality control purposes and payments to the authority for any purchase or series of purchases at government stores by licensees.

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.

3VAC5-30-10. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts. Manufacturers, importers, bottlers, brokers, or wholesalers, or ~~their~~ representatives, may perform, ~~except on Sundays in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages,~~ the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack, and rearrange alcoholic beverages in a display (e.g., shelves, coolers, cold boxes, ~~and the like~~, and floor displays in a sales area);
2. Restock alcoholic beverages;

3. Rotate, repack, rearrange, and add to ~~his~~ the retailer's own stocks of alcoholic beverages in a storeroom space assigned to ~~him~~ the individual by the retailer;

4. Transfer alcoholic beverages between storerooms, between displays, and between storerooms and displays; and

5. Create or build original displays using alcoholic beverages only.

B. Prohibited acts. ~~A~~ No manufacturer, importer, bottler, broker, or wholesaler, or ~~its~~ representative, may ~~not~~:

1. Alter or disturb in any way the merchandise sold by another manufacturer, importer, bottler, broker, or wholesaler, whether in a display, sales area, or storeroom, except in the following cases:

a. When the products of one manufacturer, importer, bottler, broker, or wholesaler have been erroneously placed in the area previously assigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler; or

b. When a floor display area previously assigned by a retailer to one manufacturer, importer, bottler, broker, or wholesaler has been reassigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler;

2. Mark or affix retail prices to products other than those sold by the manufacturer, importer, bottler, broker, or wholesaler to the retailer; or

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth ~~below~~ in this subdivision:

a. Products defective at the time of delivery may be replaced;

b. Products erroneously delivered may be replaced or money refunded;

c. Products ~~of~~ for which a manufacturer or importer discontinues production or importation may be returned and money refunded if no lawful exchange under subdivision 3 g of this subsection is available and if prior written approval is provided by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority);

d. Resalable draft beer may be returned and money refunded;

e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender, or order of the ~~board~~ authority may be returned

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and money refunded upon ~~permit issued~~ written approval by the ~~board~~ authority;

f. Products ~~which that~~ have been ~~condemned and deemed~~ a threat to public safety or are not permitted to be sold in ~~this the~~ Commonwealth may be replaced or money refunded upon ~~permit issued~~ written approval by the ~~board~~ authority; or

g. Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued, the distributor may exchange the [discontinued] product for [quality control purposes with] a product from the same manufacturer on an identical quantity and comparable wholesale price basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.

3VAC5-30-20. Restrictions upon employment; exceptions.

No retail licensee shall employ in any capacity ~~in his at the~~ licensed business any person engaged or employed in the manufacturing, bottling, or wholesaling of alcoholic beverages; nor shall any licensed manufacturer, bottler, or wholesaler employ in any capacity ~~in his at the~~ licensed business any person engaged or employed in the retailing of alcoholic beverages.

This section shall not apply to banquet licensees, farm winery licensees, or ~~off-premises~~ winery licensees, nor shall this section apply in any situation in which the manufacturer, bottler, or wholesaler does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to the retailer.

3VAC5-30-30. Payment and recordkeeping requirements for certain transactions.

A. Sales of wine or beer between wholesale and retail licensees of the authority shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic ~~fund funds~~ transfer as provided in this section. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth, (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic ~~fund funds~~ transfer; initiated by a wholesaler pursuant to subsection D of this section; from a bank account in the name or trade name of the retail licensee making a purchase from a wholesaler or the authority.

C. If a check, money order, or electronic ~~fund funds~~ transfer is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders, or electronic ~~fund funds~~ transfers shall be no larger than the purchase price of the alcoholic beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, money order, or electronic ~~fund funds~~ transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. If a separate invoice is used for the nonalcoholic merchandise, a copy of it shall be attached to the copies of the alcoholic beverage invoices that are retained in the records of the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.

D. If an electronic ~~fund funds~~ transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the authority, the following provisions shall apply:

1. Prior to an electronic ~~fund funds~~ transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic ~~fund funds~~ transfer in payment for the delivery of wine or beer to that retail licensee. The electronic ~~fund funds~~ transfer shall be initiated by the wholesaler no later than one business day after delivery, and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic ~~fund funds~~ transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;

2. The wholesaler must generate an invoice covering the sale of wine or beer and shall specify that payment is to be made by electronic ~~fund funds~~ transfer. Each invoice must be signed by the purchaser at the time of delivery; and

3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic ~~fund funds~~ transfer.

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report, or any other incomplete electronic ~~fund funds~~ transfer reported by the retailer's bank in response to a ~~wholesaler-initiated~~ wholesaler-initiated electronic ~~fund funds~~ transfer from the retailer's bank account. Further, wholesalers shall report to the Virginia Alcoholic Beverage Control Authority (authority) any invalid checks or incomplete electronic ~~fund funds~~ transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic ~~fund funds~~ transfer is not satisfied by the

retailer within seven days after notice of the invalid check or a report of the incomplete electronic ~~fund~~ funds transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic ~~fund~~ funds transfer report from the bank of any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the authority and in accordance with the instructions set forth in such form.

F. Payments to the authority for the following items shall be for cash, as defined in subsection B of this section:

1. State license taxes and application fees;
2. Wine taxes and excise taxes on beer and wine coolers;
3. Solicitors' permit fees and temporary permit fees;
4. Registration and certification fees, and the markup or profit on cider, collected pursuant to ~~these~~ [authority regulations this chapter];
5. Civil penalties or charges and costs imposed on licensees and permittees by the ~~board~~ authority; and
6. Forms provided to licensees and permittees at cost by the ~~board~~ authority.

~~Provided however, payments~~ Payments to the authority may be made directly through the authority's licensing system software.

[G. With respect to payments to the authority for any purchase or series of purchases at government stores by licensees, such payments shall be for cash, as defined in subsection B of this section, credit card, or debit card and comply with the provisions in § 4.1-119 H of the Code of Virginia.]

3VAC5-30-40. Deposits on containers required; records; redemption of deposits; exceptions.

A. Wholesalers shall collect a deposit in cash; at or prior to the time of delivery of any beer sold to a retail licensee, ~~the following minimum deposit charges on containers: for bottles; cardboard, fiber, or composition cases; kegs; and tapping equipment, cooling tubs, and cold plates for use by consumers.~~

Bottles having a capacity of not more than 12 oz	\$.02
Bottles having a capacity of more than 12 oz. but not more than 32 oz	\$.04
Cardboard, fibre or composition cases other than for 1 1/8 or 2 1/4 gallon kegs	\$.02
Cardboard, fibre or composition cases for 1 1/8 or 2 1/4 gallon kegs	\$.50
Kegs, 1 1/8 gallon	\$1.75

Kegs, 2 1/4 gallon	\$3.50
Kegs, 1/4 barrel	\$4.00
Kegs, 1/2 barrel	\$6.00
Keg covers, 1/4 barrel	\$4.00
Keg covers, 1/2 barrel	\$6.00
Tapping equipment for use by consumers	\$10.00
Cooling tubs for use by consumers	\$5.00
Cold plates for use by consumers	\$15.00

[~~Wholesalers~~ A wholesaler] shall charge the same deposit fee for all of the wholesaler's retailers.

B. The sales ticket or invoice shall reflect the deposit charge and shall be preserved as a part of the licensee's records.

C. Deposits shall be refunded upon the return of containers in good condition.

D. Deposits shall not be required on containers sold as nonreturnable items.

3VAC5-30-50. Solicitation of licensees by wine and beer solicitor ~~salesmen~~ salespersons or representatives.

A. A permit is not required to solicit or promote wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor ~~salesman~~ salesperson who represents any winery, brewery, wholesaler, or importer licensed in ~~this~~ the Commonwealth engaged in the sale of wine and beer. Further, a permit is not required to sell (, which shall include the solicitation or receipt of orders), wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor ~~salesman~~ salesperson who represents any winery, brewery, or wholesaler licensed in ~~this~~ the Commonwealth engaged in the sale of wine and beer.

B. A permit is required to solicit or promote wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor ~~salesman~~ salesperson or representative of any out-of-state wholesaler engaged in the sale of wine or beer. A permit under this section shall not authorize the sale of wine by the permittee, the direct solicitation or receipt of orders for wine, or the negotiation of any contract or contract terms for the sale of wine unless such sale, receipt, or negotiations are conducted in the presence of a licensed Virginia wholesaler or importer or such Virginia wholesaler's or importer's solicitor ~~salesman~~ salesperson or representative. In order to obtain a permit, a person shall:

1. ~~Register~~ Shall register with the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) by filing an application on such forms as prescribed by the ~~board~~ authority; and

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2. ~~Be~~ Shall be 18 years ~~old~~ of age or older to solicit or promote the sale of wine or beer, ~~and~~; may not be employed at the same time by an out-of-state wholesaler engaged in the sale of wine or beer and by a licensee to solicit the sale of or sell wine or beer; ~~and shall not be in violation of 3VAC5-30-20.~~

C. Each permit shall expire yearly on June 30 unless sooner suspended or revoked by the ~~board~~ authority.

D. Solicitation and promotion under this ~~regulation~~ chapter may include educational programs regarding wine or beer for mixed beverage licensees; but shall not include the promotion of, or educational programs related to, spirits or the use ~~thereof~~ of spirits in mixed drinks unless a spirits solicitor's permit has been obtained in addition to a solicitor's permit.

E. For the purposes of this ~~regulation~~ chapter, the soliciting or promoting of wine or beer shall be distinguished from the sale of such products, the direct solicitation, or receipt of orders for alcoholic beverages or the negotiation of any contract or contract terms for the sale of alcoholic beverages. This ~~regulation~~ chapter shall not be deemed to regulate the representative of a manufacturer, importer, or wholesaler from merely calling on retail licensees to check on market conditions, the freshness of products on the shelf or in stock, the percentage or nature of display space, or the collection of similar information where solicitation or product promotion is not involved.

3VAC5-30-60. Inducements to retailers; ~~beer and wine alcohol~~ tapping equipment; bottle or can openers; spirits back-bar pedestals; ~~banquet licensees~~; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.

A. Any manufacturer, importer, bottler, broker, or wholesaler, of alcoholic beverages or ~~its~~ representative, [of such manufacturer, importer, bottler, broker, or wholesaler] may sell, rent, lend, buy for, or give to any retailer, without regard to the value thereof, the following:

1. ~~Draft beer or wine~~ Alcoholic beverage knobs, containing advertising ~~matter~~, which shall include the brand name and may further include only trademarks, housemarks, and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices ~~which that~~ are not essential in the dispensing of draft beer or wine; ~~and~~

2. Clip-ons and table tents; and

~~3.~~ Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the ~~carbon dioxide~~ gas pressure tank through the beer faucet, excluding the following:

a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;

b. Gas pressure gauges (, which may be sold at cost);

c. Draft arms or standards;

d. Draft boxes;

e. Refrigeration equipment or components thereof; and

f. Carbon dioxide filters, which may be provided and installed without cost.

Further, a manufacturer, bottler, or wholesaler may sell, rent, or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Any manufacturer, importer, bottler, broker, or wholesaler, ~~or their representatives,~~ representative [of such manufacturers, importers, bottlers, brokers, or wholesalers] may sell to ~~any~~ retailer and install in ~~the~~ any retailer's establishment dispensing accessories (, such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves), and carbon dioxide (and other gases used in dispensing equipment) at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale. Manufacturers, importers, bottlers, brokers, or wholesalers of alcoholic beverages or the representatives of such manufacturers, importers, bottlers, brokers, or wholesalers may clean and service, either for free or for compensation, coils and other similar equipment used in dispensing alcoholic beverages and may sell solutions or compounds for cleaning alcoholic beverage glasses, provided the reasonable open market price is charged.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Any manufacturer, bottler, or wholesaler of ~~wine or beer~~ alcoholic beverages may sell or give to any retailer, bottle or can openers upon which advertising ~~matter regarding alcoholic beverages may appear~~ is displayed, provided the wholesale value of any such openers given to a retailer ~~by any individual manufacturer, bottler or wholesaler~~ does not exceed \$20. Openers in excess of \$20 in wholesale value may be sold, provided the reasonable open market price is charged ~~therefor~~.

E. Any manufacturer of spirits may sell, lend, buy for, or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising ~~matter~~ regarding spirits may appear.

~~F. Manufacturers of alcoholic beverages and their authorized vendors or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees glasses or~~

paper or plastic cups upon which advertising matter regarding alcoholic beverages may appear.

~~G. Manufacturers, importers, bottlers, brokers, or wholesalers of alcoholic beverages, or their representatives, may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with 3VAC5-30-80. Manufacturers, importers, bottlers, brokers, and wholesalers, or their representatives, may provide advertising materials to any retail licensee that have been customized for that retail licensee (including the name, logo, address, and website of the retail licensee) provided that such advertising materials must:~~

- ~~1. Comply with all other applicable regulations of the board;~~
- ~~2. Be for interior use only;~~
- ~~3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and~~
- ~~4. Be made available to all retail licensees.~~

~~H. Any manufacturer, importer, bottler, broker, or wholesaler of wine, beer, or spirits, or its representatives, may sell, lend, buy for, or give to any retail licensee clip-ons and table tents.~~

~~I. Any manufacturer, importer, bottler, broker, or wholesaler of alcoholic beverages, or their representatives, may clean and service, either free or for compensation, coils and other like equipment used in dispensing alcoholic beverages, and may sell solutions or compounds for cleaning alcoholic beverage glasses, provided the reasonable open market price is charged.~~

~~J. F. Any manufacturer, importer, bottler, or wholesaler of alcoholic beverages licensed in this the Commonwealth may sell ice to retail licensees, provided the reasonable open market price is charged.~~

~~K. Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4.1-216 A of the Code of Virginia, wholesaler, or retailer who violates, attempts to violate, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4.1-328 of the Code of Virginia.~~

3VAC5-30-70. Routine business entertainment; definition; permitted activities; conditions.

A. Nothing in this chapter shall prohibit a wholesaler, manufacturer, importer, or broker of alcoholic beverages licensed in the Commonwealth from providing a retail licensee "routine business entertainment" ~~which is defined as those activities enumerated in subsection B of this section.~~

~~B. Permitted activities are:~~

- ~~1. Meals and beverages;~~
- ~~2. Concerts, theatre and arts entertainment;~~

~~3. Sports participation and entertainment;~~

~~4. Entertainment at charitable events;~~

~~5. Private parties; and~~

~~6. Local transportation in order to attend one or more of the activities permitted by this subsection.~~

~~C. B. The following conditions apply:~~

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer;

2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;

~~3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing~~ Nothing in this regulation chapter shall be construed to authorize the providing of property or any other thing of value to retail licensees;

4. No more than \$400 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, ~~or on any partner or employee thereof of the partnership,~~ or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock, or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership, or stockholder, and the like, shall not be included within the ~~foregoing~~ restrictions of this subdivision;

5. No person enumerated in subdivision 4 of this subsection may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;

6. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity, and the retail licensee entertained; and

7. This section shall not apply to personal friends of manufacturers, importers, bottlers, brokers, or wholesalers as provided for in 3VAC5-70-100.

3VAC5-30-80. Advertising materials that may be provided to retailers by manufacturers, importers, bottlers, or wholesalers.

A. There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer, or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation pursuant to § 4.1-216 of the Code of Virginia. The

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term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer, or wholesaler, whether licensed in ~~this~~ the Commonwealth or not, to a retailer for all or any portion of advertising done by the retailer.

B. Manufacturers or their authorized vendors as defined in § 4.1-216.1 of the Code of Virginia and wholesalers of alcoholic beverages may sell, lend, buy for, or give to retailers any nonilluminated advertising materials made of paper, cardboard, canvas, rubber, foam, or plastic, provided the advertising materials have a wholesale value of \$40 or less per item. Advertising material referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers; or their employees, unless [they hold ~~those wholesalers or their employees hold~~] a spirits solicitor's permit.

C. Manufacturers, bottlers, or wholesalers may supply to retailers napkins, placemats, and coasters that contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine; or (ii) a message relating solely to and promoting moderation and responsible drinking, which ~~message~~ may contain the name, logo, and address of the sponsoring manufacturer, bottler, or wholesaler, provided such recognition is subordinate to the message.

D. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not licensed in the Commonwealth, may sell service items bearing alcoholic brand references to on-premises retail licensees. Such retail licensee may display the service items on the premises of ~~his~~ the licensed establishment. Each such retail licensee purchasing such service items shall retain a copy of the evidence of ~~his~~ the payment to the manufacturer or authorized vendor for a period of not less than two years from the date of each sale of the service items. As used in this subdivision, "service items" means articles of tangible personal property normally used by the employees of on-premises licensees to serve alcoholic beverages to customers, including, ~~but not limited to~~, glasses, napkins, buckets, and coasters.

E. Alcoholic beverage "neckers," recipe booklets, brochures relating to the alcoholic beverage manufacturing process, vineyard, brewery, and distillery geography, ~~and~~ or history of an alcoholic beverage manufacturing area, and point-of-sale entry blanks relating to contests and sweepstakes may be provided by manufacturers, importers, bottlers, brokers, or wholesalers to retail licensees for use on retail premises; if such items are offered to all retail licensees equally; and the manufacturer, importer, bottler, broker, or wholesaler has obtained the consent, which may be a continuing consent, of each retailer or ~~his~~ the retailer's representative. Wholesale licensees in the Commonwealth may not put entry blanks on the package. Solicitors holding permits under the provisions of 3VAC5-60-80 may provide point-of-sale entry blanks relating

to contests and sweepstakes to mixed beverage licensees for use on the premises if such items are offered to all mixed beverage licensees equally; and the solicitor has obtained the consent, which may be a continuous consent, of each mixed beverage licensee or ~~his~~ the licensee's representative.

F. Manufacturers, importers, bottlers, brokers, or wholesalers, or ~~their~~ representatives, may supply refund coupons if ~~they~~ the coupons are supplied, displayed, and used in accordance with 3VAC5-20-90.

G. No manufacturer, bottler, wholesaler, or importer of alcoholic beverages, whether licensed in ~~this~~ the Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations, or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

H. Any advertising materials provided for ~~herein, which in~~ this section that may have been obtained by any retail licensee from any manufacturer, bottler, broker, importer, or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such industry member or ~~their~~ the industry member's representatives using any normal and customary installation materials. With the consent of the retail licensee, which ~~consent~~ may be a continuing consent, manufacturers, importers, bottlers, brokers, or wholesalers; or ~~their~~ representatives; may mark or affix retail prices on these materials.

I. Every retail licensee who obtains any point-of-sale advertising shall keep a complete, accurate, and separate record of all such material obtained. Such records shall show (i) the name and address of the person from whom the material was obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged ~~therefore~~. All such records, invoices, and accounts shall be kept by each such licensee at the place designated in the license for a period of two years and shall be available for inspection and copying by any member of the or ~~its~~ the board's special agents during reasonable hours.

J. No alcoholic beverage manufacturer, importer, or wholesale licensee may sell, rent, lend, buy for, or give to any retail licensee any outdoor alcoholic beverage advertising, any billboard placements for such advertising, or in any other way confer on any retail licensee anything of value that constitutes outdoor alcoholic beverage advertising.

K. No alcoholic beverage manufacturer, importer, or wholesale licensee may engage in cooperative advertising, as defined in this section, on behalf of any retail licensee.

L. Manufacturers of alcoholic beverages and [~~manufacturer-~~ authorized their authorized] vendors or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees [~~glasses or glass~~], paper [,] or plastic cups upon

which advertising matter regarding alcoholic beverages may appear.

M. No manufacturer, importer, bottler, broker, or wholesaler of alcoholic beverages or representative of such manufacturer, importer, bottler, broker, or wholesaler may provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees, except in accordance with this section. Manufacturers, importers, bottlers, brokers, and wholesalers or representatives of such manufacturers, importers, bottlers, brokers, or wholesalers may provide advertising materials to any retail licensee that have been customized for that retail licensee, including the name, logo, address, and website of the retail licensee, provided that such advertising materials must:

1. Comply with all other applicable regulations of the [board authority];
2. Be for interior use only;
3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and
4. Be made available to all retail licensees.

3VAC5-30-90. Price discrimination; inducements.

A. No wholesale wine or beer licensee shall discriminate in price of alcoholic beverages between different retail purchasers, except where the difference in price charged by such wholesale licensee is due to:

1. Acceptance or rejection by a retail purchaser of terms or conditions affecting a price offer, including a quantity discount, as long as such terms or conditions are offered on an equal basis to all retailers;
2. A bona fide difference in the cost of sale or delivery; or
3. The wholesale licensee charging a lower price in good faith to meet an equally low price charged by a competing wholesale licensee on a brand and package of like grade and quality.

Where such difference in price charged to any such retail purchaser does occur, the [board Virginia Alcoholic Beverage Control Authority (authority)] may ask for and the wholesale licensee shall furnish written substantiation for the price difference.

B. Notwithstanding subsection A of this section, wholesale wine licensees may differentiate in the pricing between retail purchasers with on-premises and off-premises privileges. However, there shall be no discrimination in pricing among retail licensee purchasers with on-premises privileges and no discrimination in pricing among retail licensee purchasers with off-premises privileges, unless the conditions in subsection A

of this section are present. Price differentiations shall be subject to the following provisions:

1. The wholesale price provided for differentiation to a retailer with on-premises and off-premises privileges shall be based on which privilege generates the majority of the business revenue.
2. Licensees with on-premises and off-premises privileges who choose to accept price differentiations from [their] wholesalers shall provide those wholesalers with a written statement declaring which privilege generates the majority of their business revenue.
3. Wholesalers will be responsible for maintaining those statements as well as indicating on [the] sales invoices which privilege the retailer has designated as their major revenue generator.
4. Upon request, wholesalers and retailers shall provide the [board authority] with written substantiation for any price differentiation.

C. No person holding a license authorizing the sale of alcoholic beverages at retail shall knowingly induce or receive a discrimination in price prohibited by this section.

3VAC5-30-100. Novelties and specialties.

Distribution of novelty and specialty items, including wearing apparel bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of \$10 in wholesale value may be given away. No manufacturer, importer, bottler, broker, wholesaler, or representative of such manufacturer, importer, bottler, broker, or wholesaler may give such items to patrons on the premises of retail licensees; however, a manufacturer or the manufacturer's authorized representative, other than wholesalers, conducting tastings pursuant to the provisions of § 4.1-201.1 of the Code of Virginia, may give no more than one such item to each consumer provided a sample of alcoholic beverages during the tasting event;
2. Items bearing moderation and responsible drinking messages may be displayed by the licensee and the licensee's employees on the licensed premises and given to patrons on such premises as long as any references to any alcoholic beverage manufacturer or the alcoholic beverage manufacturer's brands are subordinate in type size and quantity of text to such moderation message;
3. Items in excess of \$10 in wholesale value may be donated by distilleries, wineries, and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events subject to the limitations of 3VAC5-20-100, and for events of a charitable or cultural nature;

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4. Items may be sold by mail upon request or over the counter at retail establishments customarily engaged in the sale of novelties and specialties, provided the items are sold at the reasonable open market price in the localities where sold;

5. Wearing apparel shall be in adult sizes;

6. Point-of-sale order blanks relating to novelty and specialty items may be provided by beer and wine wholesalers to retail licensees for use on the retail licensee's premises if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or the retailer's representative. Wholesalers may not be involved in the redemption process; and

7. Novelty and specialty items bearing alcoholic beverage advertising may not be distributed to persons younger than the legal drinking age.

VA.R. Doc. No. R23-7509; Filed December 12, 2024, 10:14 a.m.

Final Regulation

Title of Regulation: **3VAC5-40. Requirements for Product Approval (amending 3VAC5-40-10, 3VAC5-40-20, 3VAC5-40-30).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: February 12, 2025.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

The amendments (i) add that the Virginia Alcoholic Beverage Control Authority (authority) may withhold approval of any wine or beer label that is an imitation of a spirits product or is a complete facsimile of a spirits product, excluding low-alcohol beverage coolers; (ii) add that the authority may withhold approval of any wine or beer label that is not clearly distinguishable from a nonalcoholic product or that minimizes, fails to identify, or disguises the product's alcoholic contents; (iii) remove current language that states that the authority may withhold approval of any wine or beer label that implies or indicates that the product is government endorsed; (iv) update "minor" to "underage person"; and (v) reflect current nomenclature, repeal text that is duplicative of the Code of Virginia, and add clarifying language. Changes to the proposed regulation include (a) providing for a rebuttal presumption of approval if the label has federal approval; (b) revising previously proposed language for labels that utilize imagery from a spirits product; (c) addressing labeling of alcoholic brands of nonalcoholic products; and (d) ensuring athletes in labels are at least 21 years of age.

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.

3VAC5-40-10. Spirits; labels, definitions and standards of identity.

Spirits sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency; relating to labels, definitions, standards of identity, and standards of fill. In addition, the prior approval of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) must be obtained as to the spirits, containers, and labels. The ~~board~~ authority may request a copy of the federal certificate of label approval before a product is approved for sale.

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the ~~board~~ authority and shall be packaged in approved types and sizes of containers.

3VAC5-40-20. Wine and beer; qualifying procedures; disqualifying factors; samples; exceptions.

A. Except as provided in subsection F of this section, all wine and beer sold in the Commonwealth shall be first approved by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) as to content, container, and label.

1. All wine and beer sold in ~~this the~~ the Commonwealth shall conform with regulations adopted by the appropriate federal agency; relating to labels, definitions, and standards of identity. An application acceptable to the ~~board~~ authority or on a form prescribed by the ~~board~~ authority describing the merchandise shall be submitted for each new brand and type of wine or beer offered for sale in the Commonwealth. Applicants shall submit a copy of the approval of the label by such federal agency. A registration fee in ~~such an~~ an amount ~~as may be~~ established by the ~~board~~ authority shall be included with each application.

2. A gift package containing wine or beer for which label approval has been granted may be sold without additional approval by the ~~board~~ authority.

~~B. While not limited thereto, the board shall withhold approval of any wine if the alcoholic content exceeds 21% by volume.~~

~~C. While not limited thereto, the board~~ B. [The There shall be a rebuttable presumption that any label that has obtained prior approval by the appropriate federal agency may be approved by the authority; however, the] authority may withhold approval of any label if it has reasonable cause to believe the container or label:

~~1. Which implies or indicates that the product contains spirits;~~

~~2. Which contains the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;~~

~~3. Which contains~~ 1. Contains any obscene subject matter or illustration;

~~4. Which contains subject matter designed~~ 2. Contains a design or statement that is likely to induce minors underage persons to drink; or is suggestive of the intoxicating effect of wine or beer; ~~5. Which contains~~ targets underage persons;

3. Suggests the intoxicating effect of wine or beer;

~~5. Which contains~~ 4. Contains any design or statement which that is likely to mislead the consumer;

5. [Is an imitation of a spirits product or is a complete facsimile of a spirits product, excluding products defined as "low alcohol beverage coolers" in § 4.1-100 of the Code of Virginia Except as provided in this subsection, containers of wine or beer, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other material accompanying such containers to the consumer, must contain no statement, design, device, or representation that tends to create a false or misleading impression that the wine or beer contains distilled spirits or is a distilled spirits product. This subdivision does not prohibit:

a. A truthful and accurate statement of alcohol content;

b. The use of a brand name or imagery of a distilled spirits product, provided that in the authority's determination the label in its totality does not create a misleading or confusing impression as to the identity and composition of the product;

c. The use of a cocktail name as a brand name, provided that the overall labeling does not present a misleading impression about the identity or composition of the product; or

d. The use of truthful and accurate statements about the production of the product as part of a statement of composition or otherwise, as long as such statements do not create a misleading impression as to the identity or composition of the product];

~~6. Which implies~~ [Implies or indicates that the product is government (federal, state, or local) endorsed];~~or~~

[7.] Is not clearly distinguishable from a nonalcoholic product or minimizes, fails to identify, or disguises the product's alcoholic contents. The authority shall take into account:

a. The number, location, size, and clarity of references to the alcohol content on the label;

b. Whether the labeling or container emphasizes features that are more commonly associated with nonalcoholic consumable products;

c. Any and all differences between the product's container or label and the nonalcoholic product, including color palette, font type, imagery, placement of words, images or descriptions, and backgrounds; and

d. Any other relevant factor, including whether the nonalcoholic product is clearly marketed as a nonalcoholic beverage alternative to an alcoholic beverage product; or

~~[7. 8.] Which implies~~ Implies that the product enhances athletic prowess or includes any reference to any athlete, former athlete, or athletic team except that references to athletes or athletic teams shall be allowed to the extent such references are permitted in point of sale advertising pursuant to 3VAC5-20-10 depicts any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity; [uses the name, image, or likeness of an athlete younger than 21 years of age;] or depicts an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery.

C. In analyzing products and labels for approval, the authority may consider the totality of the product label and packaging and consider any other relevant factors.

D. A person holding a license as a winery, farm winery, brewery, or a wine or beer wholesaler shall, upon request, furnish the board authority without compensation a reasonable quantity of such brand sold by him the person for chemical analysis.

E. Any wine or beer sold only by direct shipment to consumers by holders of wine or beer shippers' licenses shall be approved upon compliance with subdivision A 1 of this section.

F. If the board authority has not approved a wine or beer for sale within 30 days after receipt by the board authority of a complete application and registration fee, the wine or beer may be sold in the Commonwealth pending a decision from the board authority on the application. If the application for approval is rejected, the manufacturer or importer shall discontinue sales of the rejected product upon notice from the board authority. Any wholesale or retail licensee may continue sales until any inventory on hand at the time of notice from the board authority is depleted.

3VAC5-40-30. Wine and beer containers; sizes and types; on-premises and off-premises limitations; cooler-dispensers; novel containers; carafes and decanters.

A. Wine and beer may be sold at retail only in or from the original containers of the sizes that have been approved by the appropriate federal agency, except that farm winery licensees may conduct barrel tastings at the winery; at which samples of wine not yet bottled may be sold to visitors to the winery. Each

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farm winery conducting a barrel tasting shall measure the wine withdrawn for the tasting, maintain full and complete records, and remit the taxes imposed by § 4.1-234 of the Code of Virginia.

B. Wine sold for on-premises consumption shall not be removed from the licensed premises except in the original container with closure. Beer dispensed for on-premises consumption shall not be removed from authorized areas upon the premises. No wine or beer shall be sold for off-premises consumption in any container upon which the original closure has been broken, except for (i) a growler; or (ii) wine or beer sold for off-premises consumption by on-premises licensees that are not in the manufacturer's original sealed container, which shall (a) be enclosed in a container that has no straw holes or other openings and is sealed in a manner that allows a person to readily discern whether the container has been opened or tampered with subsequent to its original closure; (b) display the name of the licensee from which the wine or beer was purchased; (c) be clearly marked with the phrase "contains alcoholic beverages"; and (d) have a maximum volume of 16 ounces per beverage. A "growler" is defined as a resealable container made of glass, ceramic, metal, or other materials approved by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) as well as resealable containers approved by the ~~board~~ authority.

1. Beer and cider may be sold for off-premises consumption by persons licensed to sell beer and cider for off-premises consumption in growlers with a maximum capacity of 128 fluid ounces or, if in metric size containers, four liters.

2. Wine may be sold for off-premises consumption in growlers with a maximum capacity of 64 fluid ounces or, for metric size containers, two liters. Wine sold in growlers may only be sold by persons licensed to sell wine for both on-premises and off-premises consumption and by gourmet shop licensees. Wine sold by gourmet shop licensees shall be labeled with the (i) manufacturer's name or trade name, (ii) place of production, (iii) net contents in fluid ounces, and (iv) name and address of the retailer.

3. Retail licensees licensed to sell wine and beer for both on-premises and off-premises consumption and gourmet shop licensees licensed for off-premises consumption may sell wine and beer in sealed containers made of metal or other materials approved by the ~~board~~ authority with a maximum capacity of 32 fluid ounces or, if in metric size containers, one liter, provided that the alcoholic beverages are placed in the container following an order from the consumer.

C. Novel or unusual containers are prohibited except upon special permit issued by the ~~board~~ authority. In determining whether a container is novel or unusual, the ~~board~~ authority may consider, but is not limited to, the following factors: (i) nature and composition of the container; (ii) length of time it has been employed for the purpose; (iii) the extent to which it is designed or suitable for those uses; (iv) the extent to which

the container is a humorous representation; and (v) whether the container is dutiable for any other purpose under customs laws and regulations.

~~D. Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity. Beer may be served for on-premises consumption in pitchers not exceeding 80 fluid ounces in capacity.~~

VA.R. Doc. No. R23-7511; Filed December 12, 2024, 10:14 a.m.

Final Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-10 through 3VAC5-50-150, 3VAC5-50-170 through 3VAC5-50-220, 3VAC5-50-240, 3VAC5-50-250, 3VAC5-50-260).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: February 12, 2025.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

The amendments (i) allow licensees to serve an entire container of spirits if the container contains 12.6 ounces or less and the alcohol by value content is 15% or less; (ii) add the word "grain" before "alcohol" in reference to prohibited sales of mixed beverages; (iii) add limitations on mixed beverage licensees that serve flights of samples so that the licensees are limited to no more than five mixed beverages, and each shall contain no more than one ounce of distilled spirits; (iv) limit the number of times a nonmember may frequent a club, require nonmembers to be accompanied by club members, and make it a violation if the club occupancy consists of a number of nonmembers that exceeds the number of club members; (v) include a provision that a nonmember attending a member-sponsored private function is not to be counted as a guest with respect to the club guest restrictions; (vi) clarify language; and (vii) remove redundant or duplicative language.

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.

3VAC5-50-10. Restrictions upon sale and consumption of alcoholic beverages.

~~A. Except as may be otherwise permitted under subdivision 7 of § 4.1-200 of the Code of Virginia, no licensee shall sell to or allow the consumption of any alcoholic beverage to a on the licensed premises by any person whom he shall know, the licensee knows or have has reason at the time to believe; is:~~

1. ~~Under the age of~~ Younger than 21 years of age;
2. Intoxicated; or
3. An interdicted person.

~~B. No licensee shall allow the consumption of any alcoholic beverage upon his licensed premises by any person to whom such alcoholic beverage may not lawfully be sold under this section.~~

3VAC5-50-20. Determination of legal age of purchaser.

A. In determining whether a licensee, or ~~his~~ the licensee's employee or agent, has reason to believe that a purchaser is not of legal age, the ~~board~~ Virginia Alcoholic Beverage Control Authority will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior, and manner of the purchaser; and
2. Whether the seller demanded, was shown, and acted in good faith in reliance upon bona fide evidence of legal age, as defined ~~herein~~ in subsection B of this section, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification shall contain a photograph and signature of the subject, ~~with the subject's height and~~ the subject's date of birth.

C. It shall be incumbent upon the licensee, or ~~his~~ the licensee's employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification ~~which that~~ which that has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

3VAC5-50-30. Restricted hours; exceptions.

A. The hours during which licensees shall not sell or permit to be consumed upon their licensed premises any wine, beer, or mixed beverages shall be as follows:

1. In localities where the sale of mixed beverages has been authorized:
 - a. For on-premises sale and consumption: 2 a.m. to 6 a.m.
 - b. For off-premises sale: 12 a.m. to 6 a.m.
2. In all other localities: 12 a.m. to 6 a.m. for on-premises sales and consumption and off-premises sales, except that on

New Year's Eve the licensees shall have an additional hour in which to exercise the on-premises privileges of their licenses.

B. Exceptions to restricted hours are:

1. Club licensees: No restrictions at any time;
2. Individual licensees whose hours have been more stringently restricted by the ~~board~~ Virginia Alcoholic Beverage Control Authority shall comply with such requirements; and
3. ~~Licensees in the City of Danville are prohibited from selling wine and beer for off-premises consumption between the hours of 1 a.m. and 6 a.m. Mixed beverage casino licensees.~~

3VAC5-50-40. Designated managers of licensees; appointment generally; disapproval by ~~board~~ the authority; restrictions upon employment.

A. Each retail licensee, except a licensed individual who is on the premises, shall have a designated manager ~~able to understand and communicate in the English language in a reasonably satisfactory manner~~ present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The designated manager must be able to understand and communicate in the English language in a reasonably satisfactory manner. The name of the retail licensee's designated manager ~~of every retail licensee~~ shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time ~~he~~ the designated manager is in charge.

The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority).

B. The ~~board~~ authority reserves the right to disapprove any person as a designated manager if it shall have reasonable cause to believe that any ~~cause condition~~ cause condition exists ~~which that~~ which that would justify the ~~board~~ authority in refusing to issue such person a license; or ~~that~~ in suspending or revoking a license granted to such person ~~has committed any act that would justify the board in suspending or revoking a license.~~

Before disapproving a designated manager, the ~~board~~ authority shall accord ~~him~~ such designated manager the same notice; and opportunity to be heard; and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

C. No licensee of the ~~board~~ authority shall knowingly permit a person ~~under~~ younger than 21 years of age, nor one who has been disapproved by the ~~board~~ authority within the preceding

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12 months, to act as designated manager of ~~his~~ the licensee's business.

D. Notwithstanding the provisions of § 4.1-225 ~~(4) (i)~~ A 1 h of the Code of Virginia, the ~~board~~ authority will not take action to suspend or revoke a retail license if a licensee knowingly employs a person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, except in the following two categories:

1. The ~~board~~ authority may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee; in a position that is involved in the selling or serving of alcoholic beverages to customers, any person who has been convicted of a felony violation of the laws of the Commonwealth prohibiting the manufacture, sale, distribution, use, or possession of controlled substances, imitation controlled substances, counterfeit controlled substances, ~~marijuana~~ cannabis, or synthetic cannabinoids; driving under the influence of alcohol or other self-administered intoxicants; or a similar offense under the laws of any state, or the United States; or

2. The ~~board~~ authority may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee; in a position that is involved in the creation or maintenance of records required to be kept by the licensee under the provisions of Title 4.1 of the Code of Virginia or ~~board~~ authority regulations; or in the preparation or filing of any tax return or report required under Title 4.1 or Title 58.1 of the Code of Virginia or ~~board~~ authority regulations, any person who has been convicted of a felony violation of the laws of the Commonwealth prohibiting robbery, burglary, larceny, embezzlement, computer crimes, forgery, false pretenses, issuing bad checks, false representations to obtain property or credit, credit card forgery or fraud, or money laundering, or a similar offense under the laws of any state; or the United States.

E. If a retail licensee wishes to employ a person whose employment would be covered by subdivision D 1 or D 2 of this section, or who has violated the laws of the Commonwealth, of any other state, or of the United States; applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages, the licensee may (i) immediately employ the individual if the offenses occurred more than five years preceding the date of employment or (ii) apply to the board authority for approval of such employment if the offense occurred within five years preceding the date of employment. The ~~board~~ authority will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the ~~board~~ authority shall accord ~~him~~ the person the same notice, opportunity to be heard, and follow the same

administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

3VAC5-50-50. Restrictions upon employment of minors.

No person licensed to sell alcoholic beverages at retail shall permit any employee ~~under the age of~~ younger than 18 years ~~of age~~ to sell, serve, or dispense in any manner any alcoholic beverage in ~~his~~ the licensed establishment for on-premises consumption, nor shall such person permit any employee ~~under the age of~~ younger than 21 years ~~of age~~ to prepare or mix alcoholic beverages in the capacity of a bartender. "Bartender" is defined as a person who sells, serves, or dispenses alcoholic beverages for on-premises consumption at a counter, as defined in 3VAC5-50-110, and does not include a person employed to serve food and drink to patrons at tables as defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment ~~that sells beer only, or may sell or serve wine for on-premises consumption in an establishment that sells wine only.~~

3VAC5-50-60. Mixed beverage licensees generally; sales of spirits in closed containers; suspension of purchase privileges.

A. No mixed beverage restaurant or carrier licensee shall:

1. Serve as one drink the entire contents of a container of spirits in its original container for on-premises or off-premises consumption except (i) as provided by subsections C, D, and E of this section; or (ii) if the container of spirits contains [~~16~~ 12.6] ounces or less and the alcohol by volume content is 15% or less.

2. Sell any mixed beverage to which grain alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow ~~to be kept upon the licensed premises~~ any container of alcoholic beverages of a type authorized to be purchased under ~~his~~ the license that does not bear the required mixed beverage stamp imprinted with ~~his~~ the license number and purchase report number to be kept on the licensed premises.

2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) or a wholesale wine licensee.

3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Allow any patron to possess more than two drinks of mixed beverages at any one time, except that a mixed beverage licensee may sell to a patron who may lawfully purchase mixed beverages a flight of (i) distilled spirits products consisting of samples of not more than five different spirits products or (ii) no more than five mixed beverages. Each distilled spirits product shall contain no

more than one-half ounce of distilled spirits and each mixed beverage shall contain no more than one ounce of distilled spirits.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-206.3 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the ~~board, as well as~~ authority and other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the ~~board~~ authority;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made ~~in~~ to the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters; in their original containers; for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.
2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

F. A mixed beverage restaurant licensee may infuse, store, and sell flavored distilled spirits under the following circumstances:

1. If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle.

2. If infused in a container other than the original spirits container, the substitute container, which shall not exceed 20 liters in volume, will be labeled with the following information:

- a. Date of infusion;
- b. Brand of spirits; and
- c. Amount of spirits used.

3. Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.

4. Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.

G. Mixed beverage licensees may premix containers of sangria and other mixed beverages and serve such alcoholic beverages in pitchers subject to the following limitations:

1. Pitchers of mixed beverages may only be sold in containers with a maximum capacity of 32 fluid ounces or one liter if the container is in metric size containing a spirits product mixed with nonalcoholic beverages.
2. A pitcher of mixed beverages may only be served to two or more patrons. A licensee shall not allow any two patrons to possess more than one pitcher at any one time.
3. Containers of premixed sangria and other mixed beverages must be labeled as to the type of mixed beverage and the quantities of the products used to produce the mixed beverage.

4. Containers of premixed mixed beverages to be served by tapping equipment may not contain more than 20 liters in volume and must be labeled as to the type of mixed beverage and the brand and quantities of the spirits products used to produce the mixed beverage.

H. The ~~board~~ authority may suspend the privilege of a mixed beverage licensee to purchase spirits from the ~~board~~ authority upon such licensee's failure to submit any records or other documents necessary to verify the licensee's compliance with applicable minimum food sale requirements within 30 days of the date such records or documents are due.

3VAC5-50-70. Restrictions on construction, arrangement and lighting of licensed premises; inspections; obstruction; "reasonable hours".

A. The construction, arrangement, and illumination of the dining areas and designated areas and the seating arrangements ~~therein~~ of a licensed establishment shall be such as to permit ready access and reasonable observation by law-enforcement officers and by special agents of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority). The interior lighting shall be sufficient to permit ready discernment of the appearance and conduct of patrons in all portions of such areas.

B. The ~~board~~ authority and its special agents shall be allowed free access during reasonable hours to every place in the

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Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale, or sold; for the purpose of examining and inspecting such place.

C. In addition to special agents, other law-enforcement officers in the performance of their official duties shall be allowed free access to any retail licensed establishment for the purpose of observation of activities on those licensed premises during reasonable hours.

D. Any person who by use of threats, force, or intimidation or otherwise impedes or obstructs any special agent or other law-enforcement officer in the performance of his the agent's or officer's official duties from entering or remaining upon any licensed establishment shall be guilty of a violation of this [~~regulation~~ chapter] and shall be subject to the penalty prescribed by § 4.1-349 of the Code of Virginia.

E. For the purposes of this regulation, the term "reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

3VAC5-50-80. Entreating, urging, or enticing patrons to purchase overconsume prohibited.

No retail licensee shall entreat, urge, or entice any patron of his the establishment to purchase overconsume any alcoholic beverage, nor shall such licensee allow any other person to so entreat, urge, or entice a patron upon his the licensed premises. ~~Entreating, urging or enticing shall include, but not be limited to, placing alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales, except for farm winery licensees operating at a remote location in connection with a wine festival.~~ Knowledge by a manager or employee of the licensee of a violation of this section shall be imputed to the licensee.

This section shall not be construed to prohibit the taking of orders in the regular course of business, the purchase of a drink by one patron for another patron as a matter of normal social intercourse, nor advertising in accordance with regulations of the ~~board~~ Virginia Alcoholic Beverage Control Authority.

3VAC5-50-90. Storage of alcoholic beverages generally; permits for storage; exception.

A. Alcoholic beverages shall not be stored at any premises other than those described in the license, except upon a permit issued by the ~~board~~ Virginia Alcoholic Beverage Control Authority.

B. The licensee shall maintain at all times as a part of the records required by 3VAC5-70-90, an accurate inventory reflecting additions to and withdrawals of stock. Withdrawals shall specify:

1. The name of the person making the withdrawal who shall be the licensee or his the licensee's duly authorized agent or ~~servant~~;
2. The amount withdrawn; and
3. The place to which transferred.

C. Draft beer may be stored without permit by a wholesaler at a place licensed to do a warehousing business in the Commonwealth.

3VAC5-50-100. Definitions and qualifications for retail off-premises wine and beer licenses and ~~off-premises beer~~.

A. Retail off-premises wine and beer licenses as described in § 4.1-206.3 C 1 of the Code of Virginia, excluding gourmet shops, may be issued to persons operating ~~the following types of those establishments,~~ provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

~~1. "Delicatessen." An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:~~

Monthly sales..... \$2,000
Inventory (cost)..... \$2,000

~~2. "Drugstore." An establishment selling medicines prepared by a licensed pharmacist according to prescription and other medicines and articles of home and general use:~~

Monthly sales..... \$2,000
Inventory (cost)..... \$2,000

~~3. "Grocery store." An establishment that sells food and other items intended for human consumption, including a variety of ingredients commonly used in the preparation of meals:~~

Monthly sales..... \$2,000
Inventory (cost)..... \$2,000

~~4. "Convenience grocery store." An establishment that has an enclosed room in a permanent structure where stock is displayed and offered for sale, and maintains an inventory of edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores:~~

Monthly sales..... \$2,000
Inventory (cost)..... \$2,000

~~In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids.~~

~~5. B. "Gourmet shop." An establishment provided with adequate inventory, shelving, and storage facilities where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related~~

products, such as cheese and gourmet foods, are habitually furnished to persons:

- Monthly sales..... \$1,000
- Inventory (cost)..... \$1,000

~~B. C.~~ The board Virginia Alcoholic Beverage Control Authority (authority) may grant a license to an establishment not meeting the qualifying figures in subsections A and B of this section, provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.

~~C. The board in~~ D. When determining the eligibility of an establishment for a license, the authority shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged, or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

~~D. E.~~ Notwithstanding the above subsections A through D of this section, the board authority may issue a temporary license for any of [the] above retail operations licenses listed in § 4.1-206.3 C 1 of the Code of Virginia. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board authority shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. The following definitions shall apply to retail licensees with on-premises consumption privileges and mixed beverage licensees where appropriate:

1. "Bona fide, full-service restaurant" means an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for

cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.

2. "Counter" means a long, narrow surface with stools or chairs along one side for the patrons, behind which refreshments or meals are prepared and served.

3. "Designated area" means a room or an area in which a licensee may exercise the privilege of ~~his~~ the license, the location, equipment, and facilities of which room or area have been approved by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority). The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale ~~therein.~~

4. "Dining area" means a public room or area in which meals are regularly sold at substantially all hours that alcoholic beverages are offered for sale ~~therein.~~

5. "Meal" means a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.

6. "Table" means an article of furniture supported by one or more vertical legs or similar supports and having a flat horizontal surface suitable for the service of meals, not immediately adjacent to the area where refreshments or meals are prepared.

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments, provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat; or a special or charter party by boat has been issued by the State Corporation Commission, habitually serving food on the boat:

- Monthly sales.....\$2,000

2. "Restaurant." A bona fide dining establishment with special space and accommodation where, in consideration of payment, meals with entrees or other foods prepared on the premises are regularly sold:

- Monthly sales.....\$2,000

3. "Hotel." Any duly licensed establishment; provided with special space and accommodation; where, in consideration of payment, meals and other food prepared on the premises

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and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales.....\$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals.

4. "Gourmet Oyster House." Any duly licensed establishment, located on the premises of a commercial marina and permitted by the [Virginia] Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring oysters and other seafood products:

Monthly sales of oysters and other seafood.....~~\$1,000~~
\$2,000

C. Mixed beverage licenses. Mixed beverage restaurant licenses may be granted to persons operating bona fide, full-service restaurants.

1. Service of food in a bona fide, full-service restaurant shall consist of serving the food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware. The ~~board authority~~ may approve the issuance of a mixed beverage restaurant license to a buffet restaurant if (i) both alcoholic and nonalcoholic beverage service is provided at the table and (ii) actual sales show that the requirements of subdivision ~~D~~ 2 of this ~~section~~ subsection are met.

2. Monthly sales of food prepared on the premises of a mixed beverage restaurant licensee shall not be less than \$4,000, of which at least \$2,000 shall be in the form of meals.

3. A mixed beverage restaurant licensee must have at least as many seats at tables as at counters.

4. A mixed beverage restaurant licensee shall have food; cooked or prepared on the licensed premises; available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food shall be available in all areas of the licensed premises in which spirits are sold or served. This provision shall not apply to mixed beverage casino licensees.

D. The ~~board authority~~ may grant a license to an establishment not meeting the qualifying figures in this section, provided that the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

E. Notwithstanding subsections A through D of this section, the ~~board authority~~ may issue a temporary license for any of the retail operations in subsections A through D of this section. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and

in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the ~~board authority~~ shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

F. An outside terrace or patio, the location, equipment, and facilities of which have been approved by the ~~board authority~~, may be approved as a "dining area" or as a "designated area" in the discretion of the ~~board authority~~.

G. Limited mixed beverage licenses may be granted to persons operating restaurants as defined in § 4.1-100 of the Code of Virginia, provided that food is regularly sold at substantially all hours that alcoholic beverages are offered for sale; and the total monthly food sales of food cooked or prepared on the premises for consumption in dining areas and other designated areas on the premises are not less than \$2,000.

H. Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity. Beer may be served for on-premises consumption in pitchers not exceeding 80 fluid ounces in capacity.

3VAC5-50-130. Clubs; applications; qualifications; reciprocal arrangements; changes; financial statements.

A. Each applicant for a club license shall furnish the following information:

1. A certified copy of the charter, articles of association, or constitution;
2. A copy of the bylaws;
3. A list of the officers and directors showing names, addresses, ages, and business employment;
4. The average current number of members ~~for the preceding 12 months~~. Only natural persons may be members of clubs; and
5. A financial statement for the latest calendar or fiscal year of the club; and a brief summary of the financial condition as of the end of the month next preceding the date of application.

B. In determining whether an applicant qualifies under the statutory definition of a club, as well as whether a club license should be suspended or revoked, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) will consider, but is not limited to, the following factors:

1. The club's purposes and its compliance with the purposes;

2. The club's qualification for ~~tax exempt~~ tax-exempt status from federal and state income taxes; and

3. The club's permitted use of club premises by nonmembers, including reciprocal arrangements.

C. The club shall limit nonmember use of club premises according to this section and shall notify the board authority each time the club premises are used in accordance with subdivision 1 of this subsection. The notice shall be received by the board authority at least two business days in advance of any such event.

1. A licensed club may (i) hold public events at the licensed premises, ~~such events~~ allowing nonmembers to attend and participate in the event at the licensed premises; or (ii) allow its premises to be used by organizations or groups who obtain banquet or banquet special events licenses. The total number of such events in both categories may not exceed 24 per calendar year.

2. The number of times a nonmember may patronize a club as a guest of any member during any given period of time should be stipulated in the bylaws of the club. The licensee shall limit the number of times a nonmember may visit the club and require the nonmember to be accompanied by a club member. If at any time club occupancy consists of more nonmembers than club members, it shall be deemed a violation of this chapter unless it is a public event pursuant to this section. In the case of a homeowner's association, unlimited guest visitations may be allowed as long as the guest is accompanied by an association member.

3. A member of a licensed club may sponsor private functions on club premises for an organization or group of which ~~he~~ the club member is also a member, such attendees being guests of the sponsoring club member. A nonmember attending a member-sponsored private function shall not be counted as a guest with respect to the club's guest restrictions.

3. ~~Additionally, there~~ 4. There shall be no limitation on the numbers of times a licensed club may allow its premises to be used by organizations or groups if alcoholic beverages are not served at such functions.

D. Persons who are resident members of other clubs located at least 100 miles from the club licensed by the board authority (the "host club") and who are accorded privileges in the host club by reason of bona fide, prearranged reciprocal arrangements between the host club and such clubs shall be considered guests of the host club and deemed to have ~~members'~~ member privileges with respect to the use of its facilities. The reciprocal arrangements shall be set out in a written agreement and approved by the board authority prior to the exercise of the privileges ~~thereunder~~ of the agreement.

The mileage limitations of this subsection notwithstanding, members of private, nonprofit clubs or private clubs operated

for profit located in separate cities ~~which that~~ are licensed by the board authority to operate mixed beverage restaurants on their respective premises and ~~which that~~ have written agreements approved by the board authority for reciprocal dining privileges may be considered guests of the host club and deemed to have ~~members'~~ member privileges with respect to its dining facilities.

E. Any change in the officers and directors of a club shall be reported to the board authority within 30 days, and a certified copy of any change in the charter, articles of association, ~~or by-laws~~ bylaws shall be furnished to the board authority within 30 days thereafter.

F. Each club licensee shall prepare and sign an annual financial statement on forms prescribed by the board authority. The statement may be on a calendar year or fiscal year basis, but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by 3VAC5-70-90 D.

3VAC5-50-140. Prohibited conduct on licensed premises.

A. The following conduct upon any licensed premises is prohibited:

1. The real or simulated display of any portion of the genitals, pubic hair, or buttocks; or any portion of the breast below the top of the areola; by any employee; or ~~by~~ any other person; except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment, they shall be in conformity with subdivision 2 of this subsection;

2. The real or simulated display of any portion of the genitals, pubic hair, or anus by an entertainer; or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1 of this subsection;

3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation, or any other sexual act prohibited by law, by any person, whether an entertainer or not; or

4. The fondling or caressing by any person, whether an entertainer or not, of ~~his~~ the person's own or of another's breast, genitals, or buttocks.

As used in this section, the term "reasonably separated" shall mean that no portion of the body of an entertainer may come in contact with any portion of the body of a patron.

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B. No mixed beverage licensee shall permit any person connected with the licensed business in any capacity to enter or remain on the premises with less than a ~~fully opaque~~ fully opaque covering of the genitals, pubic hair, or buttocks; or any portion of the breast below the top of the areola. For the purposes of this subsection, "connected with the licensed business" shall mean: (i) any owner, partner, member, manager, agent, or employee of the licensed business; (ii) any entertainer or other contractor with the licensed business; or (iii) any participant in any contest, display, or other event conducted by or at the invitation of the licensed business.

C. The provisions of this section shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

3VAC5-50-150. Off-premises deliveries on licensed retail premises; "drive through" establishments.

No person holding a license ~~which that~~ authorizes the licensee to sell wine or beer at retail for consumption off the premises shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures, or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle. Notwithstanding any provision of law to the contrary, such deliveries may be made to (i) a person's vehicle if located in a designated parking area of the licensee's premises where such person has electronically ordered beer, wine, or farm wine in advance of the delivery; or (ii) such other locations as may be permitted by ~~board~~ Virginia Alcoholic Beverage Control Authority regulation.

3VAC5-50-170. Caterer's license; qualifications; privileges; restrictions and conditions.

A. Pursuant to § 4.1-206.3 A 2 of the Code of Virginia, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may grant a caterer's license to any person:

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at private gatherings, or at special events as defined in § 4.1-100 of the Code of Virginia or as provided in § 4.1-206.3 A 3 of the Code of Virginia, and
2. With an established place of business with catering gross sales ~~average of averaging~~ at least \$4,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction, or equipment and who has obtained all local permits or licenses ~~which that~~ may be required to conduct such a catering business.

B. The license authorizes the following privileges:

1. The purchase of spirits, vermouth, and wine produced by farm wineries from the ~~board~~ authority;
2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer from licensed wholesalers;
3. The retail sale of alcoholic beverages to persons who sponsor the private gatherings or special events described in subsection A of this section or directly to persons in attendance at such events. No banquet or mixed beverage special events license is required in either case; and
4. The storage of alcoholic beverages purchased by the caterer at the established and approved place of business.

C. In addition to other applicable statutes and regulations of the ~~board~~ authority, the following restrictions and conditions apply to persons licensed as caterers:

1. Alcoholic beverages may be sold only for on-premises consumption to persons in attendance at the gathering or event;
2. The records required to be kept by 3VAC5-70-90 shall be maintained by caterers. If the caterer also holds other alcoholic beverage licenses, ~~he the caterer~~ shall maintain the records relating to ~~his the~~ caterer's business separately from the records relating to any other license. Additionally, the records shall include the date, time, and place of the event and the name and address of the sponsoring person or group of each event catered;
3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this ~~regulation~~ chapter, and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of mixed beverages and food;
4. The caterer shall notify the ~~board~~ authority in writing at least 24 hours in advance of any events to be catered under ~~his the~~ license. For events to be catered on Saturday, Sunday, or holidays on which the ~~board's~~ authority's offices are closed, such notice shall be given by close of the last business day prior to the event. The notice shall include the date, time, location, and address of the event and the name of the sponsoring person, group, corporation, or association;
5. Persons in attendance at a private event at which alcoholic beverages are served but not sold under the caterer's license may keep and consume their own lawfully acquired alcoholic beverages;
6. The private gathering referred to in subsection A ~~above of~~ this section shall be a social function ~~which that~~ is attended only by persons who are specifically and individually invited by the sponsoring person or organization, not by the caterer;

7. The licensee shall ~~insure~~ ensure that all functions at which alcoholic beverages are sold are ones ~~which that~~ that qualify for a banquet license, ~~for~~ a special event license, or a mixed beverage special events license. Licensees are entitled to all services and equipment ~~now~~ available under a banquet license from wholesalers;

8. A photocopy of the caterer's license must be present at all events at which the privileges of the license are exercised; and

9. The caterer's license shall be considered a retail license for purposes of § 4.1-216 of the Code of Virginia.

3VAC5-50-180. Volunteer fire departments or volunteer rescue squads; banquet facility licenses; restrictions and conditions.

A. Pursuant to § 4.1-206.3 D 2 b of the Code of Virginia, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may grant banquet facility licenses to volunteer fire departments and volunteer rescue squads:

1. Providing volunteer fire or rescue squad services;
2. Having as its premises a fire or rescue squad station regularly occupied by such fire department or rescue squad; and
3. Being duly recognized by the governing body of the city, county, or town in which it is located.

B. The license authorizes the following privileges:

~~The consumption of legally acquired alcoholic beverages on the premises of the licensee or on premises other than such fire or rescue squad station which are occupied and under the control of the licensee while the privilege of its license is being exercised, by any person, association, corporation or other entity, including the fire department or rescue squad, and bona fide members and guests thereof, otherwise eligible for a banquet license and entitled to such privilege for a private affair or special event.~~

C. ~~B.~~ In addition to other applicable statutes and regulations of the ~~board~~ authority, the following restrictions and conditions apply to persons holding such banquet facility licenses:

1. ~~Alcoholic beverages cannot be sold or purchased by the licensee;~~
2. ~~Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;~~
3. ~~The private affair referred to in subsection B shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;~~

~~4. 1.~~ The volunteer fire department or rescue squad shall notify the ~~board~~ authority in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location, and address of the event and the identity of the group, and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of two years;

~~5. 2.~~ A photocopy of the banquet facility license shall be present at all affairs or events at which the privileges of the license are exercised away from the fire or rescue squad station; and

~~6. 3.~~ The fire department or rescue squad shall comply with the requirements of the local governing body concerning sanitation, health, construction, or equipment and shall obtain all local permits or licenses ~~which that~~ which may be required to exercise the ~~privilege~~ privileges of its license.

3VAC5-50-190. Bed and breakfast licenses; restrictions and conditions.

~~A. Pursuant to § 4.1-206.3 A 9 of the Code of Virginia, the board may grant a bed and breakfast license to any person who operates an establishment consisting of:~~

1. ~~No more than 15 bedrooms available for rent;~~
2. ~~Offering to the public, for compensation, transitory lodging or sleeping accommodations; and~~
3. ~~Offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.~~

~~B.~~ In addition to other applicable statutes and regulations of the ~~board~~ Virginia Alcoholic Beverage Control Authority, the following restrictions and conditions apply to persons licensed as bed and breakfast establishments:

1. Alcoholic beverages served under the privileges conferred by the license must be purchased from a government store, wine or beer wholesaler, or farm winery;
2. Alcoholic beverages may be served for on-premises consumption to persons who are registered, overnight guests and are of legal age to consume alcoholic beverages;
3. Lodging, meals, and service of alcoholic beverages shall be provided at one general price and no additional charges, premiums, or surcharges shall be exacted for the service of alcoholic beverages;
4. Alcoholic beverages may be served in dining areas, private guest rooms, and other designated areas, including outside terraces or patios;
5. The bed and breakfast establishment, upon request or order of lodgers making overnight reservations, may purchase and have available for the lodger upon arrival; any

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alcoholic beverages so ordered, provided that no premium or surcharge above the purchase price of the alcoholic beverages may be exacted from the consumer for this accommodation purchase;

6. Alcoholic beverages purchased under the license may not be commingled or stored with the private stock of alcoholic beverages belonging to owners of the bed and breakfast establishment; and

7. The bed and breakfast establishment shall maintain complete and accurate records of the purchases of alcoholic beverages and provide sufficient evidence that at least one meal per day is offered to persons to whom overnight lodging is provided.

3VAC5-50-200. Gift shops; wine and beer off-premises licenses; conditions; records; inspections.

~~A. Pursuant to § 4.1-206.3 C 1 of the Code of Virginia, the board may grant retail wine and beer off-premises licenses to gift shops. Such gift shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum.~~

~~B. The following restrictions and conditions apply to gift shop licenses:~~

~~1. A gift shop shall be defined as any bona fide retail store selling, predominately, (i) floral arrangements or handmade arts and crafts, which may include a combination of gifts, books, souvenirs, specialty items, collectibles, or other original and handmade products; and (ii) which is open to the public on a regular basis in a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.~~

~~2. The board shall consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered a gift shop within the meaning of this section.~~

~~3. 1. Gift shop licenses, pursuant to this regulation, shall be granted only to persons who have places of business which that have been in operation for no less than 12 continuous months next preceding the filing of the application.~~

~~4. 2. Gift shop licenses shall authorize the licensees to sell wine and beer, which that have been purchased from and received at the establishment from farm winery or wholesale licensees; to sell such alcoholic beverages unchilled only within the interior premises of the gift shop in closed containers for off-premises consumption; and to deliver or ship the same to purchasers thereof in accordance with Title 4.1 of the Code of Virginia and regulations of the board Virginia Alcoholic Beverage Control Authority (authority).~~

~~5. 3. In granting licenses under this regulation chapter, the board authority may impose restrictions and conditions upon~~

purchases and sales of wine and beer in accordance with this ~~regulation chapter~~ or as may be deemed reasonable by the ~~board authority~~ to ensure that the distribution of alcoholic beverages is orderly [, ~~and~~] lawful [,] and only incidental to the principal business of the licensee. In no event may the sale of such alcoholic beverages exceed 25% of total annual gross sales at the establishment.

~~6. 4. Every person licensed to sell alcoholic beverages under this regulation chapter shall comply with 3VAC5-70-90.~~

3VAC5-50-210. Manner of compensation of employees of retail licensees.

Employees of a retail licensee shall not receive compensation based directly, in whole or in part, upon the volume of alcoholic beverages sales only; provided, however, that ~~in the case of retail wine and beer or beer only licensees~~, nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of alcoholic beverages.

3VAC5-50-220. Interests in the businesses of licensees.

Persons to whom licenses have been issued shall not allow any other person to receive a percentage of the income of the licensed business or have any beneficial interest in such business; provided, however, that nothing in this section shall be construed to prohibit:

1. The payment by the licensee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the licensed premises, where such is reasonable as compared to prevailing franchise fees of similar businesses;

2. Where the licensed business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section:

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where such rent is reasonable as compared to prevailing rentals of similar businesses; and

b. The landlord from imposing standards relating to the conduct of the business upon the leased premises, where such standards are reasonable as compared to prevailing standards in leases of similar businesses and do not unreasonably restrict the control of the licensee over the sale and consumption of alcoholic beverages; or

3. The payment by the licensee of a management fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted under the license where the licensee has contracted with a management company or promoter to perform operational duties on behalf of the licensee, provided that:

a. All payments to any management company or promoter are less than 10% in aggregate of the gross receipts of the business conducted under the license; and

b. The licensee provides the Virginia Alcoholic Beverage Control Authority (authority) a copy of the contract between the licensee and the management company or promoter that identifies the management company or promoter as an agent of the licensee for the purposes of exercising the privileges of the license and holds the licensee liable for any violations of the Alcoholic Beverage Control Act (§ 4.1-100 of the Code of Virginia) or authority regulation committed by the management company or promoter.

3VAC5-50-240. Alcoholic energy drinks beverage displays.

~~A. "Alcoholic energy drink" means an alcoholic beverage that contains caffeine or other stimulants.~~

~~B. Any establishment licensed to sell beer or wine for off-premises consumption shall display alcoholic energy drinks for sale immediately adjacent to other alcoholic beverage products, and not immediately adjacent to any nonalcoholic beverages.~~

Any establishment licensed to sell beer or wine for off-premises consumption and that displays beer and wine for sale outside of a clearly discernible location reserved for alcoholic beverage products shall (i) place no [~~such~~] alcoholic beverages immediately adjacent to any nonalcoholic beverages containing the same or similar brand name, logo, or packaging and (ii) install additional signage on the shelving or the floor display to indicate that the product is an alcoholic beverage. Such signage shall be clearly visible to consumers and of sufficient size to notify the consumer of the alcohol contents of the product. Nothing in this section shall prohibit the sale and display of nonalcoholic beer or wine in the same display or near similarly branded alcoholic beer or wine products.

3VAC5-50-250. Confectionery; definition; restrictions; labeling.

A. "Confectionery" means baked goods and candies having an alcohol content not more than 5.0% by volume.

B. Any alcohol contained in such confectionery shall not be in liquid form at the time such confectionery is sold. Such alcohol shall be fully integrated or blended into the confectionery product.

C. Any such confectionery shall only be sold to those individuals who can lawfully consume alcohol.

D. Subsections A, B, and C of this section shall only apply to licenses issued pursuant to § 4.1-206.3 C 3 of the Code of Virginia.

E. Any establishment licensed to sell confectioneries for off-premises consumption shall properly label the product with such label, including:

1. Notice that the product contains alcohol;
2. Notice that the product can only be consumed off premises; and
3. Warning that the product should not be consumed by anyone younger than 21 years of age.

3VAC5-50-260. Marketplace license; qualifications; application.

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

1. "Bona fide customer" means a patron of the business enterprise that is seeking to obtain the goods or services of the licensee.
2. "Personalized experience" means goods or services catered to the specifications of an individual or event.

B. The marketplace license is a retail license. A premises described in an application for a marketplace license shall be subject to any regulations and requirements that apply to licensed premises upon which alcoholic beverages may be sold at retail for on-premises consumption. The employees who are involved in the marketplace licensee's service of complimentary alcoholic beverages shall be subject to the regulations and requirements that apply to employees of licensed establishments selling wine or beer at retail. A marketplace licensee's alcoholic beverage control manager shall be subject to the same regulations and requirements as designated managers of licensed establishments selling wine or beer at retail.

C. Marketplace licensees shall be subject to all requirements of 3VAC5-70-90 that apply to licensed premises upon which beer or wine may be sold at retail. In addition, every marketplace licensee shall keep complete, accurate, and separate records of the complimentary service of alcoholic beverages. Such records shall include accurate accounts of daily service of alcoholic beverages, by the drink, showing the kinds and quantities of alcoholic beverages served.

D. In addition to the requirements in § 4.1-206.3 E of the Code of Virginia, the Board of Directors of the Virginia Alcoholic Beverage Control Authority may also consider other requirements for licensure that the Virginia Alcoholic Beverage Control Authority may deem appropriate to protect the public health, safety, and welfare based on a review of the application and determinations of the Virginia Alcoholic Beverage Control Authority, Bureau of Law Enforcement during the investigation of the applicant.

~~E. Any person licensed pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia prior to July 1, 2021, that wishes to maintain licensure after December 31, 2021, shall apply for a marketplace license on or before July 1, 2021. If the licensee fails to apply for a marketplace license,~~

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the licensee shall be authorized to continue to operate under such license until the expiration of its original term.

F. Any person licensed pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia prior to July 1, 2021, whose license expires prior to December 31, 2021, and wishes to renew the license, may renew the license for another year and shall be authorized to continue to operate under such license until the expiration of that term. At least 60 days prior to the expiration of that term, the licensee shall apply for a marketplace license if the licensee wishes to maintain licensure following the expiration of the renewed license.

G. Any persons not currently licensed may apply for issuance of a license pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia on or before December 31, 2021. If such license is issued, the licensee shall be authorized to continue to operate under such license until the expiration of that term. At least 60 days prior to the expiration of that term, the licensee shall apply for a marketplace license if the licensee wishes to maintain licensure following the expiration of the issued license.

VA.R. Doc. No. R23-7512; Filed December 12, 2024, 10:15 a.m.

Final Regulation

Title of Regulation: 3VAC5-60. **Manufacturers and Wholesalers Operations (amending 3VAC5-60-10 through 3VAC5-60-50, 3VAC5-60-70, 3VAC5-60-100; repealing 3VAC5-60-60, 3VAC5-60-80, 3VAC5-60-90).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: February 26, 2025.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

The amendments (i) rearrange requirements into the appropriate sections; (ii) remove references to "retail off-premises" wineries that now have off-premises privileges; (iii) increase the amount of indemnifying bond required of wholesale wine licensees to \$10,000; (iv) add terms; and (v) repeal unnecessary requirements. Changes to the proposed regulation are nonsubstantive and include clarifying sample sizes and clarifying violations regarding failure to pay monthly taxes or to submit monthly reports.

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.

3VAC5-60-10. Solicitor salesmen salespersons; records; employment restrictions; wine and beer importer licenses;

conditions for exercise of license privileges; suspension or revocation of permits.

A. A solicitor ~~salesman~~ salesperson employed by any out-of-state wholesaler to solicit the sale of or sell wine or beer shall keep complete and accurate records for a period of two years, reflecting all expenses incurred by ~~him~~ the salesperson in connection with the solicitation of the sale of ~~his~~ the salesperson's employer's products and shall, upon request, furnish the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) with a certified copy of such records.

B. A solicitor ~~salesman~~ salesperson must be 18 years ~~old~~ of age or older to solicit the sale of wine or beer and may not be employed at the same time by an out-of-state wholesaler and by a licensee to solicit the sale of or sell wine or beer.

~~C. The board may suspend or revoke the permit of a solicitor salesman if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.~~

~~Before suspending or revoking such permit, the board shall accord the solicitor salesman the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.~~

C. The authority shall approve such forms as are necessary to facilitate compliance with § 4.1-218 of the Code of Virginia. Any document executed by or on behalf of brand owners for the purpose of designating wine or beer importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney that provides that the person executing the document on behalf of the brand owner is the attorney-in-fact of the brand owner and has full power and authority from the brand owner to execute the required statements on the brand owner's behalf. The authority may approve a limited power of attorney form to effectuate provisions of this subsection.

D. When filing the list required by § 4.1-218 of the Code of Virginia of all wholesale licensees authorized by a wine or beer importer to distribute brands of wine or beer in the Commonwealth, wine and beer importer licensees shall comply with the provisions of the Wine and Beer Franchise Acts (Chapters 4 (§ 4.1-400 et seq.) and 5 (§ 4.1-500 et seq.) of the Code of Virginia) pertaining to designations of primary areas of responsibility in the case of wholesale wine licensees and designation of sales territories in the case of wholesale beer licensees.

E. In the event that, subsequent to the filing of [a the] brand owner's authorization for a licensed importer to import any brand of wine or beer, the importer makes arrangements to sell

and deliver or ship additional brands of wine or beer into the Commonwealth, the privileges of the importer's license shall not extend to such additional brands until the licensee complies with the requirements of § 4.1-218 of the Code of Virginia and this section in relation to each such additional brand. Likewise, if [a the] brand owner who has previously authorized a licensed importer to import one or more of its brands of wine or beer into the Commonwealth should subsequently withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such brands of wine or beer.

F. The provisions of subsections A through E of this section shall not impair contracts in existence or entered into prior to July 1, 1991, between a licensed importer and the licensed importer's supplier or brand owner.

G. Solicitation of a mixed beverage licensee [for such purpose] other than by a permittee of the authority and in the manner authorized by this section shall be prohibited.

H. Permits for mixed beverage solicitor salesperson.

1. No person shall solicit a mixed beverage licensee unless such person has been issued a permit. To obtain a permit, a person shall:

- a. Register with the authority by filing an application on such forms as prescribed by the authority;
- b. Pay the fee in advance;
- c. Submit with the application a letter of authorization from the manufacturer, brand owner, or a duly designated United States agent of each specific brand of spirits that the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and
- d. Be [an individual] at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the authority.

3. A permit issued pursuant to this chapter shall authorize the permittee to solicit or promote only the brand of spirits that the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or a duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand such permittee is authorized to represent shall be on file with the authority. Until written authorization or a letter of authorization, in a form authorized by the authority, is received and filed with the authority for a particular brand of spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal, or revocation, in whole or in part, of a letter of authorization on file with the authority shall be effective as against the authority until written notice is received and filed with the authority and, until the authority receives such notice, the

permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand specified on the most current authorization on file with the authority.

I. Records for mixed beverage solicitor salespersons. A permittee shall keep complete and accurate records of the permittee's solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by the permittee in connection with the solicitation of the sale of the permittee's employer's products and shall, upon request, furnish the authority with a copy of such records.

J. Permitted activities for mixed beverage solicitor salespersons. Solicitation by a permittee shall be limited to the permittee's authorized brand; may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees of the [licensee licensees] on the licensed premises; and, in conjunction with solicitation, a permittee may:

1. Directly or indirectly distribute written educational material, up to one item per retailer and one item per employee per visit, that may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value in quantities equal to the number of employees of the retail establishment present at the time the items are delivered; and provide film or video presentations of spirits that are essentially educational to licensees and [their] employees only and that are not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one unopened sample container no larger than 375 milliliters [(or 750 milliliters if the product is not marketed in a 375 milliliter container)] of each brand being promoted by the permittee and not sold by the licensee. [~~Such containers and Both the~~] sample [~~containers~~ container used for serving and the unopened furnished container] shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container [~~or sample container label; further.~~ Further], the spirits container [used for serving] shall remain the property of the permittee and may not be left with the licensee [~~and any sample containers.~~ Any unopened container] left with the licensee [pursuant to this subsection] shall not be sold by the licensee;

3. Promote the permittee's authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of [their] members and guests, and shall be limited to:

- a. Sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;

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b. Displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs, provided such merchandise is not sold or given away, except as permitted in this section;

c. Distribution of informational brochures, pamphlets, and the like, relating to spirits;

d. Distribution of novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value;

e. Film or video presentations of spirits that are essentially educational;

f. Displays at the event of the brands being promoted by the permittee;

g. Rental of display booth space if the rental fee is the same as paid by all exhibitors at the event;

h. Provision of [its own] hospitality that is independent from activities sponsored by the association or organization holding the event;

i. Purchase of tickets to functions and payment of registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and

j. Payment for advertisements in programs or brochures issued by the association or organization holding the event if the total payments made for all such advertisements do not exceed \$300 per year for any association or organization holding the event; or

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in 3VAC5-20-20 or 3VAC5-30-80.

K. Prohibited activities. A mixed beverage solicitor salesperson permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or negotiate any contract or contract terms for the sale of spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;

3. Provide or offer to provide gifts, entertainment, or other forms of gratuity to licensees, except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under 3VAC5-30-70;

4. Provide or offer to provide any equipment, furniture, fixtures, property, or other thing of value to licensees, except as permitted by this regulation;

5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to

licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;

6. Be [employed,] directly or indirectly [employed,] in the manufacturing, bottling, importing, or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on the licensee's licensed premises or at conventions, trade association meetings, or similar gatherings as permitted in subdivision D 3 of this section;

8. Solicit or promote any brand of spirits without having on file with the authority a letter from the manufacturer or brand owner authorizing the permittee to represent such brand in the Commonwealth; or

9. Engage in solicitation of spirits other than as authorized by law.

L. Refusal, suspension, or revocation of permits.

1. The authority may refuse, suspend, or revoke a permit if it has reasonable cause to believe that any cause exists that would justify the authority in refusing to issue such person a license or that such person has violated any provision of this section or committed any other act that would justify the authority in suspending or revoking a license.

2. Before refusing, suspending, or revoking such permit, the authority shall follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of the Code of Virginia) and regulations of the authority.

3VAC5-60-20. Wines; purchase orders generally; wholesale wine licensees.

A. Purchases of wine between the ~~board~~, Virginia Alcoholic Beverage Control Authority (authority) licensees or persons outside the Commonwealth shall be executed only on order forms prescribed by the ~~board~~ authority and provided at cost if supplied by the ~~department~~ authority.

B. Wholesale wine licensees shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the ~~board~~ authority by the wholesale wine licensee at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the ~~board~~ authority by the licensee ~~reflecting~~ accurately ~~reflecting~~ the date received and any changes. In lieu of forwarding copies of purchase orders to the ~~board~~ authority, a wholesale licensee may submit a report to the ~~board~~ authority monthly, in a format approved by the ~~board~~ authority, of all purchase orders for the previous month. The report must be submitted to the ~~board~~ authority on or before the 15th day of the succeeding month.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the ~~board~~ authority upon completion of the sale. In lieu of forwarding copies of invoices to the ~~board~~ authority, a wholesale licensee may submit a report to the ~~board~~ authority monthly, in a format approved by the ~~board~~ authority, of all invoices for the previous month. The report must be submitted to the ~~board~~ authority on or before the 15th day of the succeeding month.

3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the ~~board~~ authority upon completion of the sale. In lieu of forwarding copies of invoices to the ~~board~~ authority, a wholesale licensee may submit a report to the ~~board~~ authority monthly, in a format approved by the board, of all invoices for the previous month. The report must be submitted to the ~~board~~ authority on or before the 15th day of the succeeding month.

4. Peddling. A maximum of two cases or 24 bottles of wine may be peddled to retail licensees during an invoiced delivery, provided that the wholesale wine licensee provides a revised purchase order indicating the additional wine peddled during the transaction.

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the ~~board~~ authority and provided at cost if supplied by the ~~board~~ authority, and in compliance with the instructions on the forms.

6. Reports to the ~~board~~ authority. Each month wholesale wine licensees shall, on forms or an electronic system prescribed by the ~~board~~ authority and in accordance with the instructions set forth ~~therein in this section~~, report to the ~~board~~ authority the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to §§ 4.1-234 and 4.1-235 of the Code of Virginia. Each wholesale wine licensee shall, on forms or an electronic system prescribed by the ~~board~~ authority, on a quarterly basis indicate the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements, or adjustments and shall be postmarked or submitted electronically no later than the 15th of the month, or if the 15th ~~is not a business day~~ falls on a Saturday, Sunday, or state or federal holiday, the next business day thereafter.

3VAC5-60-25. Winery, farm winery, and brewery licenses; reports.

A. On or before the 15th day of each month, each winery; and farm winery licensee, or on or before the 10th day of each month each brewery licensee shall, on forms or an electronic

system prescribed by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and in accordance with the instructions set forth ~~therein in this chapter~~, file a report with the ~~board~~ authority of sales made in the previous calendar month. Tax payment in accordance with § 4.1-234 ~~or 4.1-236~~ of the Code of Virginia shall be made with the submission of this report.

B. On or before the 10th day of each month, each brewery licensee shall, on forms or an electronic system prescribed by the authority and in accordance with the instructions set forth in this chapter, file a report with the authority of sales made in the previous calendar month. Tax payment in accordance with § [4.1-234 ~~or~~] 4.1-236 [or 4.1-239] of the Code of Virginia shall be made with the submission of this report.

3VAC5-60-30. Procedures for ~~retail-off-premises~~ winery licenses; purchase orders; segregation, identification, and storage.

A. Wine offered for sale by a ~~retail-off-premises~~ winery licensee shall be procured on order forms prescribed by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and provided at cost if supplied by the ~~board~~ authority. The order shall be accompanied by the correct amount of state wine tax levied by § 4.1-234 of the Code of Virginia, due the Commonwealth in cash, as defined in 3VAC5-30-30.

B. Wine procured for sale at retail shall be segregated from all other wine and stored only at a location on the premises approved by the ~~board~~ authority. The licensee shall place ~~his~~ the licensee's license number and the date of the order on each container of wine so stored for sale at retail. Only wine acquired, segregated, and identified ~~as herein required per the requirements of this section~~ may be offered for sale at retail.

3VAC5-60-40. Indemnifying bond required of wholesale wine licenses.

No wholesale wine license shall be issued unless there shall be on file with the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) an indemnifying bond running to the Commonwealth in the penalty of ~~\$2,500~~ \$10,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth as surety, conditioned upon the faithful compliance with requirements of ~~Title 4.1 the Alcoholic Beverage Control Act~~ (§ 4.1-100 et seq. of the Code of Virginia) and the regulations of the ~~board~~ authority.

A wholesale wine licensee may request in writing a waiver of the surety and the bond by the ~~board~~ authority for good cause shown. If the waiver is granted, the ~~board~~ authority may withdraw such waiver of surety and bond at any time for good cause.

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3VAC5-60-50. Records required of distillers, winery licensees, and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's, winery, or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of two years, which records shall be available during reasonable hours for inspection by any member of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) or its special agents. Such records shall include the following information:

- a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;
- b. The amount of alcoholic beverages on hand at the end of each calendar month;
- c. Withdrawals of alcoholic beverages for sale to the ~~board authority~~ or licensees;
- d. Withdrawals of alcoholic beverages for shipment outside of the Commonwealth, showing:
 - (1) Name and address of consignee;
 - (2) Date of shipment; and
 - (3) Alcoholic content, brand name, type of beverage, size of container, and quantity of shipment;
- e. Purchases of cider or wine, including:
 - (1) Date of purchase;
 - (2) Name and address of vendor;
 - (3) Amount of purchase readily calculable in liters; and
 - (4) Amount of consideration paid; and
- f. A distiller employed to distill any alcoholic beverage shall include in ~~his~~ the distiller's records the name and address of ~~his~~ the distiller's employer for such purpose, the amount of grain, fruit products, or other substances delivered by such employer, the type, amount in liters, and alcoholic content of alcoholic beverage distilled ~~therefrom~~, the place where stored, and the date of the transaction.

2. Distillation for another. A distiller manufacturing spirits for another person shall:

- a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products, or other substances furnished by the owner ~~thereof~~ of those items;
- b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; and
- c. Release the alcoholic beverages so distilled to the custody of the owner; or otherwise, only upon a written permit issued by the ~~board~~ authority.

3. Farm wineries. A farm winery shall keep complete, accurate, and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. Each farm winery must comply with the provisions of § 4.1-219 of the Code of Virginia for its applicable class of winery license relating to production of fresh fruits or other agricultural products. As provided in § 4.1-219, the ~~board~~ authority, upon petition by the Department of Agriculture and Consumer Services, may grant a waiver from the production requirements.

3VAC5-60-60. Wine or beer importer licenses; conditions for exercise of license privileges. (Repealed.)

~~A. In addition to complying with the requirements of § 4.1-206.1 of the Code of Virginia, pertaining to wine and beer importer licenses, holders of wine and beer importer licenses must comply with § 4.1-218 in order to exercise the privileges of such licenses. The board shall approve such forms as are necessary to facilitate compliance with § 4.1-218. Any document executed by, or on behalf of, brand owners for the purpose of designating wine or beer importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney which provides that the person executing the document on behalf of the brand owner is the attorney in fact of the brand owner and has full power and authority from the brand owner to execute the required statements on its behalf. The board may approve a limited power of attorney form in order to effectuate the aforesaid provision.~~

~~B. When filing the list required by § 4.1-218 of the Code of Virginia of all wholesale licensees authorized by a wine or beer importer to distribute brands of wine or beer in the Commonwealth, wine and beer importer licensees shall comply with the provisions of the Wine and Beer Franchise Acts pertaining to designations of primary areas of responsibility in the case of wholesale wine licensees and designation of sales territories in the case of wholesale beer licensees.~~

~~C. In the event that, subsequent to the filing of the brand owner's authorization for a licensed importer to import any brand of wine or beer, the importer makes arrangements to sell and deliver or ship additional brands of wine or beer into this Commonwealth, the privileges of its license shall not extend to such additional brands until the licensee complies with the requirements of § 4.1-218 of the Code of Virginia and this section in relation to each such additional brand. Likewise, if the brand owner who has previously authorized a licensed importer to import one or more of its brands of wine or beer into this Commonwealth should, subsequent thereto, withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing~~

~~of its brand owner authorizing documents indicating the deletion of any such brands of wine or beer.~~

~~D. The foregoing provisions of this regulation shall not impair contracts in existence or entered into prior to July 1, 1991, between the licensed importer and its supplier or brand owner.~~

3VAC5-60-70. Excise taxes; beer and wine coolers.

A. Indemnifying bond required of manufacturers, bottlers, or wholesalers of beer and wine coolers.

1. No license shall be issued to a manufacturer, bottler, or wholesaler of beer or wine coolers unless there shall be on file with the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority), on a form approved or authorized by the ~~board~~ authority, an indemnifying bond running to the Commonwealth in the penalty of not less than \$1,000 or more than \$100,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth as surety, conditioned upon the payment of the tax imposed by § 4.1-236 of the Code of Virginia and in accordance with the provisions thereof and § 4.1-239 of the Code of Virginia.

2. A manufacturer, bottler, or wholesaler of beer or wine coolers may request in writing a waiver of the surety and the bond by the ~~board~~ authority. The ~~board~~ authority may withdraw such waiver at any time for failure to comply with §§ 4.1-236 and 4.1-239 of the Code of Virginia.

B. Shipment of beer and wine coolers to installations of the armed forces.

1. Installations of the United States Armed Forces shall include, ~~but not be limited to~~, all United States Army, Navy, Air Force, Marine, Coast Guard, Department of Defense, and Veteran Administration bases, forts, reservations, depots, or other facilities.

2. The direct shipment of beer and wine coolers from points outside the geographical confines of the Commonwealth to installations of the United States Armed Forces located within the geographical confines of the Commonwealth for resale on such installations shall be prohibited. Beer and wine coolers must be shipped to duly licensed Virginia wholesalers who may deliver the same to such installations, but the sale of such beer and wine coolers so delivered shall be exempt from the excise tax on beer and wine coolers only if the sale ~~thereof~~ meets the exemption requirements of § 4.1-236 of the Code of Virginia.

C. Filing of monthly report and payment of tax falling due on Saturday, Sunday, or legal state or federal holiday; filing or payment by mail.

1. When the last day on which a monthly report may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday, or legal state or federal holiday, then any report required by § 4.1-239 of the Code of Virginia may be

filed or such payment may be made without penalty or interest on the next succeeding business day.

2. When remittance of a monthly report or a tax payment is made by mail, receipt of such report or payment by the person with whom such report is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

D. Rate of interest. Unless otherwise specifically provided, interest on omitted taxes and refunds under the excise tax provisions of Title 4.1 of the Code of Virginia shall be computed in the same manner specified in § 58.1-15 of the Code of Virginia.

~~3VAC5-60-80. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of spirits. (Repealed.)~~

~~A. Generally. This section applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this section shall be prohibited.~~

~~B. Permits.~~

~~1. No person shall solicit a mixed beverage licensee unless he has been issued a permit. To obtain a permit, a person shall:~~

~~a. Register with the board by filing an application on such forms as prescribed by the board;~~

~~b. Pay in advance the fee;~~

~~c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and~~

~~d. Be an individual at least 21 years of age.~~

~~2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.~~

~~3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written~~

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authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice is received and filed with the board, and, until the board receives such notice, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.

D. Permitted activities. Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value (in quantities equal to the number of employees of the retail establishment present at the time the items are delivered); and provide film or video presentations of spirits which are essentially educational to licensees and their employees only and are not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, sample container no larger than 375 milliliters of each brand being promoted by the permittee and not sold by the licensee; such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee, and any sample containers left with the licensee shall not be sold by the licensee;

3. Promote his authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of their members and guests, and shall be limited as follows:

a. To sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;

b. To displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this section;

c. To distribution of informational brochures, pamphlets and the like, relating to spirits;

d. To distribution of novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value;

e. To film or video presentations of spirits which are essentially educational;

f. To display at the event the brands being promoted by the permittee;

g. To rent display booth space if the rental fee is the same as paid by all exhibitors at the event;

h. To provide its own hospitality, which is independent from activities sponsored by the association or organization holding the event;

i. To purchase tickets to functions and pay registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and

j. To make payments for advertisements in programs or brochures issued by the association or organization holding the event if the total payments made for all such advertisements do not exceed \$300 per year for any association or organization holding the event; or

4. Provide or offer to provide point of sale advertising material to licensees as provided in 3VAC5-20-20 or 3VAC5-30-80.

E. Prohibited activities. A permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under that section;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;

~~6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;~~

~~7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3 of this section;~~

~~8. Solicit or promote any brand or brands of spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or~~

~~9. Engage in solicitation of spirits other than as authorized by law.~~

F. Refusal, suspension or revocation of permits:

~~1. The board may refuse, suspend, or revoke a permit if it shall have reasonable cause to believe that any cause exists that would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.~~

~~2. Before refusing, suspending, or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.~~

3VAC5-60-90. ~~Sunday deliveries by wholesalers prohibited; exceptions. (Repealed.)~~

~~Persons licensed to sell alcoholic beverages at wholesale shall make no delivery to retail purchasers on Sunday, except to boats sailing for a port of call outside of the Commonwealth, or to banquet licensees.~~

3VAC5-60-100. Employees ~~Certain employees of manufacturers and wholesalers; approval by the Virginia Alcoholic Beverage Control Authority.~~

If a person licensed as a manufacturer, importer, or wholesaler of alcoholic beverages wishes to employ a person who has committed an act that would justify the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) in suspending or revoking a license under subdivision 1 ~~h~~ i of § 4.1-225 of the Code of Virginia, the licensee may apply to the ~~board~~ authority for approval of such employment. The board will cause the Bureau of Law Enforcement ~~Operations~~ to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the ~~board~~ authority shall accord ~~him~~ the person the same notice and opportunity to be heard and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

V.A.R. Doc. No. R23-7513; Filed December 12, 2024, 10:51 a.m.

Final Regulation

Title of Regulation: **3VAC5-70. Other Provisions (amending 3VAC5-70-10 through 3VAC5-70-40, 3VAC5-70-70 through 3VAC5-70-130, 3VAC5-70-150, 3VAC5-70-160 through 3VAC5-70-250; repealing 3VAC5-70-140).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: February 26, 2025.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

The amendments (i) remove redundant and duplicative language; (ii) revise and add definitions; (iii) increase license suspension periods or civil penalties for any licensee when a first-time offender chooses to settle a violation; (iv) allow first-time offenders more time to settle violations; (v) no longer allow a waiver of penalties for three types of serious offenses; (vi) add new restrictions on the use of grain alcohol; (vii) extend the time period during which a winery, brewery, bottler, or importer is not allowed to increase prices following a notification to the wholesaler; (viii) require monthly rather than quarterly activity reports from wine and beer shippers and Internet retail licensees; (ix) no longer require delivery permittees or licensees with a delivery privilege to file a report of activity if no sales or deliveries were made in the preceding 12 months; (x) add language stating that records kept by all licensees must be available for inspection "any time the licensee is open to the public"; and (xi) update references and language for clarity. Changes to the proposed regulation include creating an exception that allows for the transporting of lawfully acquired samples of alcoholic beverages not meant for consumption or resale within, into, or through the Commonwealth to federally or state-certified laboratories.

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.

3VAC5-70-10. Transportation of alcoholic beverages; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

A. The transportation within or through ~~this the~~ the Commonwealth of alcoholic beverages lawfully purchased within ~~this the~~ the Commonwealth is prohibited, except upon a permit issued by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority), when in excess of the following limits:

1. Wine and beer. No limitation.

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2. Alcoholic beverages other than those described in subdivision 1 of this subsection. Three gallons.

The transportation within, into, or through ~~this the~~ Commonwealth of alcoholic beverages lawfully purchased outside ~~of this the~~ Commonwealth is prohibited, except upon a permit issued by the ~~board authority~~, when in excess of the following limits:

Alcoholic beverages, including wine and beer. Three gallons.

If satisfied that the proposed transportation is otherwise lawful, the ~~board authority~~ shall issue a transportation permit, which shall accompany the alcoholic beverages at all times to the final destination.

B. Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages within, into, or through ~~this the~~ Commonwealth shall, except as ~~hereinafter~~ noted in this subsection, obtain a transportation permit from the ~~board authority~~ or otherwise possess acceptable documentation as required by the following provisions.

A transportation permit may be obtained by filing an application in writing upon forms furnished by the ~~board authority~~. If satisfied that the proposed transportation is otherwise lawful, the ~~board authority~~ shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic beverages upon condition that there shall accompany each ~~such~~ transporting vehicle a bill of lading or other memorandum describing the alcoholic beverages being transported and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment. ~~Such a~~ The bill of lading or other memorandum may serve as a transportation permit so long as it is made available for inspection to special agents of the ~~board authority~~ or any law-enforcement officer upon request.

C. The ~~board authority~~ may refuse, suspend, or revoke a carrier's transportation permit, including the use of a bill of lading or other memorandum as a transportation permit as provided in subsection B of this section, ~~if it shall have reasonable cause to believe that alcoholic beverages have been illegally transported by such carrier or that such carrier has violated any condition of a permit for any reason that it may refuse to issue, suspend, or revoke a license.~~ Before refusing, suspending, or revoking such permit, the ~~board authority~~ shall accord the carrier involved the same notice and opportunity to be heard and follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia.

D. ~~There shall be exempt from the requirements of this section~~ This section shall not apply to the following:

1. Common carriers by water engaged in transporting lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee;

2. Persons transporting wine, beer, ~~or~~ cider, or spirits purchased from the ~~board authority~~ or a licensee;

3. Persons transporting alcoholic beverages that may be manufactured ~~and sold~~ without a license;

4. A licensee transporting lawfully acquired alcoholic beverages ~~he the licensee~~ is authorized to sell in a vehicle owned or leased by the licensee;

5. Persons transporting alcoholic beverages to the ~~board authority~~, or to licensees, provided that a bill of lading or a complete and accurate memorandum accompanies the shipment; and ~~provided further~~, in the case of the licensee, that the merchandise is ~~such as his~~ merchandise that the license entitles him the licensee to sell;

6. Persons transporting alcoholic beverages as a part of their official duties as federal, state, or municipal officers or employees; and

7. Persons transporting lawfully acquired alcoholic beverages in a passenger vehicle, other than those alcoholic beverages referred to in subdivisions D 2 and D 3 of this section, provided ~~the same that the alcoholic beverages~~ are in the possession of the bona fide owners ~~thereof~~ and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A of this section.

[8. Persons transporting lawfully acquired samples of alcoholic beverages not meant for consumption or resale within, into, or through the Commonwealth to federally or state-certified laboratories.]

E. This section shall not be construed to alter the ~~one-gallon (four liters if any part is in a metric sized container)~~ three-gallon limitation upon alcoholic beverages that may be brought into the Commonwealth pursuant to § ~~4.1-310 E~~ 4.1-311 B of the Code of Virginia.

3VAC5-70-20. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. The procedures established by regulations of the ~~board Virginia Alcoholic Beverage Control Authority (authority)~~ for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

~~B. Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth in this section.~~

~~C. Containers of cider containing less than 7.0% alcohol by volume may be sold in any containers that comply with federal regulations for wine and beer provided such containers are labeled in accordance with board regulations. Cider containing 7.0% or more alcohol by volume may be sold in any containers that comply with federal regulations for wine, provided the containers are labeled in accordance with board regulations.~~

~~D. B.~~ If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the ~~board~~ authority.

~~E. C.~~ The markup or profit charged by the board shall be \$.08 per liter or fractional part thereof.

~~F. Persons must be 21 years of age or older to purchase or possess cider.~~

~~G. D.~~ The provisions of subsection A and subdivision B 4 of 3VAC5-60-20 shall not be applicable to the sale of cider by wholesale wine licensees to retail licensees of the ~~board~~ authority.

3VAC5-70-30. Sacramental wine; purchase orders; permits; applications for permits; use of sacramental wine.

A. Purchase orders for sacramental wine shall be on separate order forms prescribed by the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) and provided at cost if supplied by the ~~board~~ authority.

B. Sales for sacramental purposes shall be only upon permits issued by the ~~board~~ authority without cost and on which the name of the wholesaler authorized to make the sale is designated.

C. Requests for permits by a religious congregation shall be in writing, and executed by an officer of the congregation, and shall designate the quantity of wine and the name of the wholesaler from whom the wine shall be purchased.

~~D.~~ Wine purchased for sacramental purposes by a religious congregation shall not be used for any other purpose.

3VAC5-70-40. Alcoholic beverages for culinary purposes; permits; purchases; restrictions.

A. The ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may issue a culinary permit to a person operating an establishment where food is prepared on the premises. The ~~board~~ authority may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse to issue, suspend, or revoke a license.

B. Spirits shall be purchased from government stores. Wine and beer may be purchased from retail licensees when the permittee does not hold any retail ~~on- or off-premises~~ licenses. A permittee possessing a retail ~~on- or off-premises~~ license must purchase its wine and beer from wholesale licensees. ~~However, a permittee who only has an on- or on- and off-premises beer license may purchase its wine from a retail licensee.~~

C. Permittees shall keep complete and accurate records of ~~their~~ purchases of alcoholic beverages at the permittee's place of business for two years. The records shall be available for inspection and copying by any member of the board or its special agents during reasonable hours.

D. Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose. ~~They~~ and shall be stored at the permittee's place of business, separate and apart from all other commodities.

3VAC5-70-70. Permits for persons having alcoholic beverages distilled; limitations.

A. Any person who contracts with or engages a licensed distiller to manufacture spirits from grain fruit, fruit products, or other substances grown or lawfully produced by such person shall obtain a ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) permit before withdrawing the spirits from the distillery's premises. The permit shall accompany the shipment at all times. The application for the permit shall include the following:

1. The name, address, and license number, if any, of the consignee;
2. The kind and quantity in gallons of alcoholic beverages; and
3. The name of the company employed to transport the shipment.

B. Permits shall be issued only for (i) spirits shipments to the ~~board~~ authority, (ii) sales and shipments to a lawful consignee outside the Commonwealth under a bona fide written contract, or (iii) shipments of spirits samples to the person growing or producing the substance [being] distilled. Samples shall be packaged in containers of 375 or 750 milliliters and the words "Sample-Not for Sale" shall be printed in letters of reasonable size on the label.

3VAC5-70-90. Records to be kept by licensees generally; additional requirements for certain retailers; ~~"sale" and "sell" defined~~; gross receipts; reports.

A. All licensees shall keep complete, accurate, and separate records for a period of two years. The records shall be available for inspection and copying by any member of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) or its special agents during reasonable hours. Licensees may use ~~microfilm, microfiche, disks, or other~~ any available technologies for the storage of their records, and may store them off site, provided the records ~~so stored~~ are readily subject to retrieval and made available for viewing on a screen or in hard copy by the ~~board~~ authority or its special agents at the licensed premises between the hours of 9 a.m. and 5 p.m. or any time the licensee is open to the public. At any other time of day, if the licensee's records are not available for inspection, the licensee shall provide the records to a special agent of the

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~~board authority~~ within 24 hours after a request is made to inspect the records.

The ~~board authority~~ and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale, or sold; for the purpose of examining and inspecting all records, invoices, and accounts [~~therein~~].

"Reasonable hours" ~~shall be deemed to~~ include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

B. All licensed manufacturers, bottlers, or wholesalers of alcoholic beverages shall keep a complete, accurate, and separate record of all alcoholic beverages manufactured, bottled, purchased, sold, or shipped by ~~him~~ the licensee. Such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold, or shipped by ~~him~~ the licensee; the dates of all sales, purchases, deliveries, or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries, or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged ~~therefor~~ for the alcoholic beverages, and the taxes applicable ~~thereto~~ to the alcoholic beverages, if any. Every manufacturer and wholesaler, at the time of delivering alcoholic beverages to any person, shall also prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery, and the name of the purchaser to whom the delivery is made.

C. Every retail licensee shall keep complete, accurate, and separate records, including invoices, of the purchases and sales of alcoholic beverages, food, and other merchandise. The records of alcoholic beverages shall be kept separate and apart from other records and shall include all purchases ~~thereof~~ of the alcoholic beverages, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged ~~therefor~~ for the alcoholic beverages, and the names and addresses of the persons from whom purchased.

Additionally, each retail licensee shall keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandising sold and the prices charged ~~therefor~~ for such items.

D. In addition to the requirements of subsections A and C of this section, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the ~~board authority~~, the licensee shall furnish to the ~~board authority~~ or its special agents a complete and accurate inventory of all alcoholic beverages currently held in inventory on the premises by the licensee; and

2. Once a year, each licensee shall submit on prescribed forms to the ~~board authority~~ an annual review report. The report is due within 30 days after the end of the mixed beverage license year and shall include:

a. A complete and accurate inventory of all alcoholic beverages purchased for sale as mixed beverages and held in inventory at the close of business at the end of the annual review period;

b. An accounting of the annual purchases of food, nonalcoholic beverages, and alcoholic beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items; and

c. An accounting of the monthly and annual sales of all merchandise specified in subdivision 2 b of this subsection.

~~E. The terms "sale" and "sell" shall include exchange, barter or traffic, or delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages and other alcoholic beverages, and of meals or food.~~

~~F. E.~~ In determining "gross receipts from the sale of food" for the purposes of § 4.1-206.3 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, ~~as defined in this section~~. Food which ~~that~~ is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

If, in conducting its review pursuant to § 4.1-114 of the Code of Virginia, the ~~board authority~~ determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages or other alcoholic beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the ~~board authority~~ may calculate the number of mixed drinks and other alcoholic beverage drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

~~G. F.~~ Any changes in the officers, directors, or shareholders owning 10% or more of [the outstanding ~~the licensee's~~] capital stock ~~of a corporation if the licensee is a corporation or, if the licensee is a limited liability company, any changes in member-managers or any members owning 10% or more of the membership interest of the limited liability company~~ shall be reported to the ~~board authority~~ within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

~~H. G.~~ All banquet and special event licensees in charge of public events shall report to the ~~board authority~~ the income and expenses associated with the public event on a form prescribed by the ~~board authority~~ when the licensee engages another

person to organize, conduct, or operate the event on behalf of the licensee. Reports shall be made within 90 days after the date of each event. "Public events" shall be deemed to include any event at which alcoholic beverages are sold to the general public and not only to personally invited guests.

All applicants for banquet or special event licenses shall indicate at the time of application whether the event is open to the public and whether another person has been or will be engaged to organize, conduct, or operate the event on behalf of the licensee. If the applicant indicates that the event is open to the public and another person has been or will be engaged to organize, conduct, or operate the event on behalf of the licensee, the applicant shall attach a copy of any contract between the applicant and such other person to the license application.

3VAC5-70-95. Proration of license tax for businesses destroyed by natural disaster.

The ~~board~~ Virginia Alcoholic Beverage Control Authority shall make refunds of the state license tax paid pursuant to subsection A of § 4.1-231 of the Code of Virginia to licensees whose place of business designated in the license is destroyed by an act of God, including ~~but not limited to~~ fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon, upon the following schedule:

If the destruction takes place within the first three months of the license year, 75% of the license tax shall be refunded. If the destruction takes place within the second three months of the license year, 50% of the license tax shall be refunded. If the destruction takes place within the third three months of the license year, 25% of the license tax shall be refunded. No refund shall be issued if the destruction takes place within the last three months of the license year.

3VAC5-70-100. Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records.

A. Gifts of alcoholic beverages by a licensee to any other person are prohibited except as otherwise provided in this section or as provided in §§ 4.1-119 G, 4.1-201, 4.1-201.1, 4.1-206.3, 4.1-209, 4.1-215, 4.1-325, and 4.1-325.2 of the Code of Virginia.

B. Gifts of alcoholic beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no ~~wise way~~ a shift or device to evade the provisions of this section.
2. Samples. A representative of a wholesaler, winery, brewery, or importer may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer if (i) the licensee is licensed to sell such product, provided that in the case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and (ii) the label bears the word "Sample" in

lettering of reasonable size. Such samples may not be sold. For good cause shown, the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) may authorize a larger sample container. Samples must be obtained from licensed wholesalers or purchased from retail licensees in the Commonwealth.

3. Gifts by retail licensees. An on-premises retail licensee may give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons, provided that such gifts are made to patrons to whom such alcoholic beverages may be sold. No subsequent gift shall be provided to the same patrons within 24 hours.

4. Hospitality rooms; conventions. The following activities are permitted:

- a. A brewer or vintner may give samples of ~~his the~~ the brewer's or vintner's products to visitors to ~~his the brewer's or vintner's~~ the brewer's or vintner's winery or brewery for consumption on premises only in a hospitality room approved by the ~~board~~ authority, provided the donees are persons to whom such products may be lawfully sold; and
- b. A manufacturer, importer, bottler, broker, or wholesaler may host an event at conventions of national, regional, or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational, or national purposes upon the premises occupied by such licensee; or upon property of the licensee contiguous to such premises; or in a development contiguous to such premises; that is owned and operated by the licensee or a wholly owned subsidiary.

5. Conventions; educational programs, including alcoholic beverage tastings; research; licensee associations. Manufacturers, importers, bottlers, brokers, and wholesalers may donate alcoholic beverages to:

- a. A convention, trade association, or similar gathering, composed of licensees and their guests; when the alcoholic beverages donated are intended for consumption during the convention;
- b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages being given away;
- c. Research departments of educational institutions; or alcoholic research centers; for the purpose of scientific research on alcoholism; and
- d. Official associations of alcoholic beverage industry members when conducting a bona fide educational program concerning alcoholic beverages, with no promotion of a particular brand, for members and guests of particular groups, associations, or organizations.

6. Conditions. Exceptions authorized by subdivisions 4 b and 5 of this subsection are conditioned upon the following:

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- a. That prior written notice of the activity be submitted to the board authority describing it and giving the date, time, and place of such activity; and
- b. That the activity be conducted in a room ~~or rooms~~ set aside for that purpose and be adequately supervised.

C. Wine and beer wholesalers may participate in a wine or beer tasting sponsored by ~~a gourmet shop~~ an off-premises retail licensee enumerated in § 4.1-206.3 C 1 of the Code of Virginia for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine or beer.

D. Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

3VAC5-70-110. Release of alcoholic beverages from customs and bonded warehouses; receipts; violations; limitation upon sales.

A. Alcoholic beverages held in a United States customs bonded warehouse may be released therefrom for delivery to:

1. The board Virginia Alcoholic Beverage Control Authority (authority);
2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;
3. Boats actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or trade between the United States and any of its possessions outside of the several states and the District of Columbia; or
4. Persons for shipment outside the Commonwealth to someone legally entitled to receive the same alcoholic beverages under the laws of the state of destination.

Releases to any other person shall be under a permit issued by the board authority and in accordance with the instructions ~~therein~~ set forth in such permit.

B. A copy of the permit, if required, shall accompany the alcoholic beverages until delivery to the consignee. The consignee, or ~~his~~ the consignee's duly authorized representative, shall acknowledge receipt of delivery upon a copy of the permit, which receipted copy shall be returned to the board authority by the permittee within 10 days after delivery.

C. The board authority may refuse to issue additional permits to a permittee who has previously violated any provision of this section.

D. A maximum of six imperial gallons of alcoholic beverages may be sold, released, and delivered in any 30-day period to any member of foreign armed forces personnel.

3VAC5-70-120. Approval of warehouses for storage of alcoholic beverages not under customs or internal revenue bond; segregation of merchandise; release from storage; records; exception.

A. Upon the application of a person qualified under the provisions of § 4.1-130 of the Code of Virginia, the board Virginia Alcoholic Beverage Control Authority (authority) may issue a ~~certificate of approval~~ permit for the operation of a warehouse for the storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond, if satisfied that the warehouse is physically secure.

B. The alcoholic beverages of each owner shall be kept separate and apart from merchandise of any other person.

C. Alcoholic beverages shall be released for delivery to persons lawfully entitled to receive the same alcoholic beverages only upon permit issued authorization by the board authority and in accordance with the instructions ~~therein~~ set forth therein. The owner of the alcoholic beverages, or the owner or operator of the approved permitted warehouse as agent of such owner, may apply for release permits, for which a charge may be made by the board enter into a memorandum of understanding with the authority for the purpose of allowing them to submit out-of-bond transfer reports via email.

D. Complete and accurate records shall be kept at the warehouse for a period of two years, which records shall be available during reasonable hours for inspection by a member of the board authority or its special agents. Such records shall include the following information as to both receipts and withdrawals:

1. Name and address of owner or consignee;
2. Date of receipt or withdrawal, as the case may be; and
3. Type and quantity of alcoholic beverage.

E. Alcoholic beverages stored by licensees pursuant to 3VAC5-50-90 are excepted from the operation of this section.

3VAC5-70-130. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

A. Special mixed beverage licenses may be granted to persons by the board Virginia Alcoholic Beverage Control Authority at places primarily engaged in the sale of meals where the place to be occupied (i) is owned by the government of the United States; or any agency thereof, (ii) is located on land used as a port of entry or egress to and from the United States, and (iii) otherwise complies with the requirements of § 7.1-21.1 of the Code of Virginia, ~~which. Such~~ licenses shall convey all of the privileges and be subject to all of the requirements and regulations pertaining to mixed beverage restaurant licensees, except as otherwise altered or modified herein in this chapter.

B. "Meals" ~~need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the sale of food and nonalcoholic beverages at such establishment shall~~

be not less than 45% of the gross receipts from the sale of mixed beverages and food means the same as defined in 3VAC5-50-110 A 5.

C. The annual tax on a special mixed beverage license shall be \$500 and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax ~~thereon on a special mixed beverage license~~ shall be \$25 per day.

3VAC5-70-140. Definitions and requirements for wine licenses; wine; wine coolers. (Repealed.)

~~Wherever the term "wine" appears in this chapter, it shall include "wine coolers" as defined in § 4.1-100 of the Code of Virginia. Wine coolers shall be treated as wine for the purposes of the regulations, except for purposes of taxation and shipments from points outside the Commonwealth to installations of the United States armed forces located within the Commonwealth for resale on such installations, in accordance with §§ 4.1-112 and 4.1-236 of the Code of Virginia and 3VAC5-60-70.~~

~~Any person licensed to manufacture, bottle or sell wine shall not be required to pay any additional state tax for any license to manufacture, bottle or sell, as the case may be, any wine cooler. Such person shall have the privilege to manufacture, bottle or sell any wine cooler under the provisions of Title 4.1 of the Code of Virginia as long as his license remains in full force and effect.~~

3VAC5-70-150. Wholesale alcoholic beverage sales; winery and brewery discounts, price-fixing; price increases; price discrimination; inducements.

A. No winery as defined in § 4.1-401 of the Code of Virginia or brewery as defined in § 4.1-500 of the Code of Virginia shall require a wholesale licensee to discount the price at which the wholesaler shall sell any alcoholic beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler, or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage.

B. No winery as defined in § 4.1-401 of the Code of Virginia or brewery as defined in § 4.1-500 of the Code of Virginia shall increase the price charged to any person holding a wholesale license for alcoholic beverages, except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler, or importer ~~which that~~ shall contain the amount and effective date of the increase.

No increase shall take effect prior to 30 calendar days following the date on which the notice is ~~postmarked; delivered,~~ provided that the board Virginia Alcoholic Beverage Control Authority (authority) may authorize such price increases to take effect with less than the ~~aforsaid~~ [~~30~~] ~~ealendar days'~~ [ealendar-day 30-calendar-day] notice if a winery, brewery, bottler, or importer so requests and

demonstrates good cause [~~therefor~~ for such an expedited increase].

The provisions of this subsection shall not apply in any case where the importer required to provide notice of a price increase and the wholesaler to whom notice is to be provided are the same person.

C. No winery as defined in § 4.1-401 of the Code of Virginia or brewery as defined in § 4.1-500 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers, except where the difference in price charged by such winery or brewery is due to a bona fide difference in the cost of sale or delivery; or where a lower price was charged in good faith to meet an equally low price charged by a competing winery or brewery on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler does occur, the ~~board~~ authority may ask and the winery or brewery shall furnish written substantiation for the price difference.

D. No person holding a license authorizing the sale of alcoholic beverages at wholesale shall knowingly induce or receive a discrimination in price prohibited by subsection C of this section.

3VAC5-70-160. Farm wineries; percentage of Virginia products; other agricultural products; remote outlets.

A. No more than 25% of the fruits, fruit juices, or other agricultural products used by the farm winery licensee shall be grown or produced outside the Commonwealth, except upon permission of the ~~board~~ authority as provided in § 4.1-219 of the Code of Virginia. This 25% limitation applies to the total production of the farm winery, not individual brands or labels. The term "other agricultural products," as used in this subsection, includes wine.

~~B. The term "other agricultural products," as used in subsection A of this section, includes wine.~~

~~C. A farm winery license limits retail sales to the premises of the winery and to five additional retail establishments that need not be located on the premises. These~~ B. The five additional retail outlets permitted for farm winery licenses may be moved throughout the state as long as advance board authority approval is obtained for the location, equipment, and facilities of each remote outlet.

3VAC5-70-170. Credit and debit cards.

Government stores may accept credit or debit cards from consumers and licensees for the purchase of alcoholic beverages subject to the policies of the Virginia Alcoholic Beverage Control Authority (authority). The ~~board~~ authority may establish policies to set purchase requirements, determine the credit or debit cards that will be accepted, provide for the collection of related fees, penalties, or service charges where appropriate, establish credit procedures for returned merchandise, and make any other decisions to carry out the purpose of this chapter.

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3VAC5-70-180. Regulation of the sale of alcoholic beverages in kegs and other containers; permit and registration; other requirements.

A. The following definitions shall apply for purposes of this section:

1. "Keg." Any container capable of holding four gallons or more of beer or wine and ~~which that~~ is designed to dispense beer or wine directly from the container for purposes of consumption; and

2. "Registration seal." Any document, stamp, declaration, seal, decal, sticker, or device approved by the ~~board which~~ Virginia Alcoholic Beverage Control Authority (authority) that is designed to be affixed to kegs and ~~which that~~ displays a registration number and such other information as may be prescribed by the ~~board~~ authority.

B. 1. No person licensed to sell wine or beer at retail for off-premises consumption; or any officer, agent, or employee thereof; shall sell any such alcoholic beverage in a keg without having (i) registered the sale on a form prescribed by the ~~board~~ authority and (ii) affixed a registration seal on the keg at the time of sale; ~~provided; that~~ if the purchaser takes possession of the keg at the premises of the wholesale licensee pursuant to subsection G [of this section], the wholesale licensee shall affix the registration seal.

2. Prior to the sale of alcoholic beverages in kegs, the keg registration declaration and receipt form provided by the ~~board~~ authority shall be properly completed and shall contain:

a. The name and address of the purchaser verified by valid identification as defined in 3VAC5-50-20 B;

b. The type and number of the identification presented by the purchaser;

c. A statement, signed by the purchaser, that the purchaser is 21 years of age or older, does not intend to allow persons ~~under younger than~~ 21 years of age to consume the alcoholic beverages purchased, and that the purchaser will not remove or obliterate the key registration tag affixed to the keg or allow its removal or obliteration; and

d. The particular address or location where the keg will be consumed, and the date ~~or dates~~ on which it will be consumed.

3. Where the purchaser obtains more than one keg for consumption at the same location and on the same date, only one keg registration declaration and receipt form must contain all required information. All other keg registration declaration and receipt forms for that particular transaction shall contain the registration number from the fully completed form as a reference and be signed by the purchaser. ~~Such~~ The keg registration declaration and receipt forms ~~which that~~ contain the reference number of a fully completed form and have been signed by the purchaser

constitute a valid and properly completed keg registration and declaration receipt.

4. The keg registration seal affixed to the keg may serve as the purchaser's receipt. Upon receipt of a properly registered keg from a consumer, the retail licensee shall remove and obliterate the keg registration seal from the keg and note such action on the keg registration declaration and receipt form to be retained by the retail licensee on the licensed premises. Kegs made of disposable packaging do not have to be returned to the retail licensee. The retailer shall indicate on the keg declaration and receipt form that the keg was not returnable due to its disposable packaging.

C. For the purpose of tracing the kegs and purchaser responsibility, it shall be the responsibility of the seller to affix the properly completed and signed keg registration seal to all containers of four gallons or more of alcoholic beverages prior to the container leaving control of the seller.

D. Except in accordance with this section, no person shall remove, alter, deface, or obliterate the registration seal affixed to a keg pursuant to this section. Throwing away empty kegs made of disposable packaging shall not constitute obliteration of the keg registration seal. If any nonlicensee is in possession of a keg containing alcoholic beverages, ~~and which keg that~~ does not bear the registration seal, or upon which ~~keg~~ the registration seal has been altered, defaced, or obliterated, the container and its contents shall be deemed to be contraband and subject to seizure and forfeiture.

E. Licensees shall maintain a complete and accurate record of all registration forms and other documentation of the sale of kegs at the place of business designated in ~~his~~ the license for a period of one year. Such records shall include the registration seal for nondisposable kegs, which the retail licensee shall remove from the keg upon its return by the purchaser. Moreover, such records regarding keg sales shall during reasonable hours be open to inspection by the ~~board~~ authority or its special agents or other law-enforcement officers.

F. Before a purchaser may take possession of a keg at the premises of the wholesale licensee after purchasing such keg from a retail licensee, the purchaser shall be required to (i) complete the registration of the transaction at the premises of the retail licensee and (ii) deliver the registration seal to the wholesale licensee who shall affix it to the keg; however, no wholesale licensee may deliver possession of any such keg to the purchaser until the wholesale licensee has collected payment from the retail licensee pursuant to 3VAC5-30-30.

G. Except as authorized by the ~~board~~ authority, no person shall transfer possession of or give the registered keg or container to another person. This prohibition shall not apply; ~~however,~~ to the return of the registered container to the seller.

3VAC5-70-190. Waiver of banquet license tax; qualifications; restrictions and conditions; exceptions.

A. Pursuant to § 4.1-111 of the Code of Virginia, the board The Virginia Alcoholic Beverage Control Authority (authority) may waive the banquet license tax for a duly organized not-for-profit corporation or association holding a nonprofit event. A "nonprofit event" means income from the event shall not exceed expenses for the event. Fixed costs, including ~~but not limited to~~ staff salaries, rent, utilities, and depreciation, shall not be included as expenses.

B. 1. The applicant shall sign an affidavit certifying the not-for-profit status of the corporation or association and that the event being held is nonprofit.

2. The applicant may serve alcoholic beverages in any combination, ~~the in an amount to be no more than that which~~ equals no more than the total alcohol content by volume in two kegs of beer (31 gallons).

3. The granting of a waiver is limited to two events per fiscal year (July 1 - through June 30) for any qualifying corporation or association.

C. The board authority may issue a permit authorizing a variance from subdivision B 2 of this section for good cause shown.

3VAC5-70-200. Grain alcohol; permits; qualifications; records; refusal, suspension, or revocation.

A. The board Virginia Alcoholic Beverage Control Authority (authority) may issue a yearly permit authorizing the permittee to purchase grain alcohol with a proof greater than 151 at government stores for any of the following purposes:

- 1. Industrial use; ~~2. Commercial use; 3. Culinary use, not to include the manufacturing of products intended for human consumption; or~~
- ~~4. 2. Medical use by a federal or state board-licensed medical professional or hospital.~~

B. The application for such permits shall be on forms provided by the board authority.

C. Permits may be issued to legitimate businesses for any one or more of the purposes stated in subsection A of this section upon presentation of satisfactory evidence of the conduct of the business activity involved. For good cause shown, the board authority may issue a permit to an individual for any of the uses stated in subsection A of this section.

D. A person obtaining a permit shall maintain complete and accurate records of all purchases for a period of two years. The board authority and its special agents shall have free access during reasonable hours to all records required to be kept pursuant to this section.

E. The board authority may refuse to issue, suspend, or revoke a permit if the board authority has reasonable cause to believe that (i) the permittee would use, has used, or allowed to be used grain alcohol for any unlawful purpose ~~or~~, (ii) any cause exists under § 4.1-222 of the Code of Virginia for which the board authority may refuse to grant the applicant any license, or (iii) the permittee has done any act for which the board authority might suspend or revoke a license under § 4.1-225 of the Code of Virginia.

3VAC5-70-210. Schedule of penalties for first-offense violations.

A. Any licensee charged with any violation of board Virginia Alcoholic Beverage Control Authority (authority) regulations or statutes listed in this subsection, if the licensee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may accept an offer by the authority extended in writing to enter a written waiver of hearing and (i) accept the period of license suspension set forth in this subsection for the violation; or (ii) pay the civil charge set forth in this subsection for the violation in lieu of suspension. In the case of a violation involving the sale of beer, wine, or mixed beverages to a person at least 18 years of age but younger than 21 years of age; or to an intoxicated person; or allowing consumption of such beverages by such person, any retail licensee that can demonstrate that it provided alcohol seller or server training certified in advance by the board authority to the employee responsible for such violation within the 12 months immediately preceding the alleged violation may accept the lesser period of license suspension or pay the lesser civil charge listed for the violation in lieu of suspension. ~~Any notice of hearing served on a licensee for a violation covered by this section shall contain a notice of the licensee's options under this section. Any licensee who fails to notify the board of its intent to exercise one of the options provided for under this section within 20 days after the date of mailing of the notice of hearing shall be deemed to have waived the right to exercise such options, and the case shall proceed to hearing. For good cause shown, the board may, in its discretion, allow a licensee to exercise the options provided for under this section beyond the 20-day period.~~

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VIOLATION	SUSPENSION	CIVIL CHARGE	SUSPENSION WITH CERTIFIED TRAINING	CIVIL CHARGE WITH CERTIFIED TRAINING
Sale of beer, wine, or mixed beverages to a person at least 18 <u>years of age</u> but younger than 21 years of age.	25 days	\$2,500	5 <u>15</u> days	\$1,500 <u>\$2,000</u>
Allowing consumption of beer, wine, or mixed beverages by a person at least 18 <u>years of age</u> but younger than 21 years of age.	25 days	\$2,500	5 <u>15</u> days	\$1,500 <u>\$2,000</u>
Aiding and abetting the purchase of alcoholic beverages by a person at least 18 <u>years of age</u> but younger than 21 years of age.	10 <u>15</u> days	\$1,250 <u>\$1,500</u>		
Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Allow an intoxicated person to loiter on the premises.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Sale to an intoxicated person.	25 days	\$2,500	5 <u>15</u> days	\$1,500
Allow consumption by an intoxicated person.	25 days	\$2,500	5 <u>15</u> days	\$1,500
After hours sales or consumption of alcoholic beverages.	10 days	\$1,250 <u>\$1,500</u>		
No designated manager on premises.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Invalid check to wholesaler or board <u>authority</u> .	7 <u>10</u> days	\$500 <u>\$750</u>		
Inadequate illumination.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
ABC license not posted.	7 <u>10</u> days	\$750 <u>\$1,000</u>		

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Not timely submitting report required by statute or regulation.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Designated manager not posted.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Person younger than 18 years of age serving alcoholic beverages; younger than 21 years of age acting as bartender.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Sale of alcoholic beverages in unauthorized place or manner.	10 days	\$1,250 <u>\$1,500</u>		
Consumption of alcoholic beverages in unauthorized area.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Removal of alcoholic beverages from authorized area.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Failure to obliterate mixed beverage stamps.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Employee on duty consuming alcoholic beverages.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Conducting illegal happy hour.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Illegally advertising happy hour.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Unauthorized advertising.	7 <u>10</u> days	\$750 <u>\$1,000</u>		
Failure to remit state beer or wine tax (if deficiency has been corrected).	10 days	\$1,250 <u>\$1,500</u>		
Wholesaler sale of beer or wine in unauthorized manner.	10 days	\$1,250 <u>\$1,500</u>		
Wholesaler sale of beer or wine to unauthorized person.	10 days	\$1,250 <u>\$1,500</u>		

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B. For purposes of this section, the ~~Virginia Alcoholic Beverage Control Authority~~ authority will certify alcohol seller or server training courses that provide instruction on all the topics listed on the ~~Seller/Server [Seller or Server Seller-Server]~~ Training Evaluation form. The following steps should be completed to submit a training program for approval:

1. Complete the Alcohol ~~Seller/Server [Seller or Server Seller-Server]~~ Training Data Sheet and review the ~~[Seller/Server Seller-Server]~~ Training Evaluation form to make sure the program will meet the listed criteria; and
2. Submit the Alcohol ~~Seller/Server [Seller or Server Seller-Server]~~ Training Data Sheet and a copy of the proposed training program materials for review. Materials submitted should include copies of any lesson plans and instructional materials used in the training program.

Requests for certification of training courses should be sent to:

Virginia Alcoholic Beverage Control Authority
~~Education Section~~ Community Health and Engagement
P.O. Box ~~27494~~ 3250
~~Richmond, VA 23264~~ Mechanicsville, VA 23116
Email: ~~education@abc.virginia.gov~~
education@virginiaabc.com

Persons in charge of any certified alcohol server training course shall maintain complete records of all training classes conducted, including the date and location of each class and the identity of all those successfully completing the course.

C. For a licensee that operates more than one retail establishment, each such establishment shall be considered a separate licensee for the purpose of this section.

3VAC5-70-220. Wine or beer shipper's licenses, Internet wine retailer licenses, and Internet beer retailer licenses; application process; common carriers; records.

A. Any person or entity qualified for a wine and beer shipper's license pursuant to § 4.1-209.1 of the Code of Virginia, or an Internet wine and beer retailer license pursuant to ~~subdivision F 2 of~~ § 4.1-206.3 ~~F 2~~ of the Code of Virginia, must apply for such license by submitting ~~form 805-52, Application for the Retail License~~ Application form. In addition to the application, each applicant shall submit as attachments a list of all brands of wine or beer sought to be shipped by the applicant, along with the ~~board-assigned~~ authority-assigned code numbers for each brand or a copy of the label approval by the appropriate federal agency for any brand not previously approved for sale in Virginia pursuant to 3VAC5-40-20 that will be sold only through direct shipment to consumers.

If the applicant is not also the brand owner of the brands listed in the application, the applicant shall obtain and submit with the application a dated letter identifying each brand, from the

brand owner or any wholesale distributor authorized to distribute the brand, addressed to the ~~Supervisor, Tax Management Section,~~ Virginia Alcoholic Beverage Control Authority (authority), indicating the brand owner's or wholesale distributor's consent to the applicant's shipping the brand to Virginia consumers.

The applicant shall attach (i) a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer issued by the appropriate authority for the location from which shipments will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Any brewery, winery, or farm winery that applies for a shipper's license or consents to the application by any other person, other than a retail off-premises licensee, for a license to ship such brewery's, winery's, or farm winery's brands of wine or beer shall notify all wholesale licensees that have been authorized to distribute such brands in Virginia that an application for a shipper's license has been filed. Such notification shall be by a dated letter to each such wholesale licensee, setting forth the brands that wholesaler has been authorized to distribute in Virginia for which a shipper's license has been applied. A copy of each such letter shall be forwarded to the ~~Supervisor, Tax Management Section,~~ authority by the brewery, winery, or farm winery.

C. Any holder of a wine and beer shipper's license or Internet wine and beer retailer's license may add or delete brands to be shipped by letter to the ~~Supervisor, Tax Management Section,~~ authority designating the brands to be added or deleted. Any letter adding brands shall be accompanied by any appropriate brand-owner consents or notices to wholesalers as required with an original application.

D. Any brand owner that consents to a holder of a wine and beer shipper's license or Internet wine and beer retailer's license shipping its brands to Virginia consumers may withdraw such consent by a dated letter to the affected wine and beer shipper's licensee or Internet wine and beer retailer's licensee. Copies of all such withdrawals shall be forwarded by the brand owner, by certified mail, return receipt requested, to the ~~Supervisor, Tax Management Section~~ authority. Withdrawals shall become effective upon receipt of the copy by the ~~Tax Management Section~~ authority, as evidenced by the postmark on the return receipt.

E. Wine and beer shipper's licensees and Internet wine and beer retailer's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped;
4. Names and addresses of recipients; and
5. Price charged.

The records required by this subsection shall be made available for inspection and copying by any member of the ~~board~~ authority or its special agents upon request.

F. On or before the 15th day of each month, each wine and beer shipper's licensee or Internet wine and beer retailer's licensee shall file with the ~~Supervisor, Tax Management Section,~~ authority either in paper form or electronically as directed by the ~~department~~ authority, a report of activity for the previous calendar month. Such report shall include:

1. Whether any shipments were made during the month; and
2. If shipments were made, the following information for each shipment:
 - a. Number of containers shipped;
 - b. Volume of each container shipped;
 - c. Brand of each container shipped;
 - d. Names and addresses of recipients; and
 - e. Price charged.

Unless otherwise paid, payment of the appropriate beer or wine tax shall accompany each report.

G. All shipments by holders of wine and beer shipper's licenses or Internet wine and beer retailer's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for ~~approval~~ a permit to provide common carriage of wine or beer, or both, shipped by holders of wine and beer shipper's licenses or Internet wine and beer retailer's licenses, by ~~dated letter to the Supervisor, Tax Management Section, requesting such approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section~~ application. The ~~board~~ authority may refuse, suspend, or revoke approval if it shall have reasonable cause to believe that a carrier does not possess all necessary licenses or permits, that a carrier has failed to comply with the regulations of the ~~board~~ authority, or that a cause exists with respect to the carrier that would authorize the ~~board~~ authority to refuse, suspend, or revoke a license pursuant to Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the ~~board~~ authority shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the ~~board~~ authority.

H. When attempting to deliver wine or beer shipped by a wine and beer shipper's licensee or Internet wine and beer retailer's licensee, an approved common carrier shall require:

1. The recipient to demonstrate, upon delivery, that the recipient is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section.

The approved common carrier shall refuse delivery when the proposed recipient appears to be younger than 21 years of age and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the wine and beer shipper's or Internet wine and beer retailer's license number of the shipping licensee. No approved common carrier shall accept for shipment any wine or beer to be shipped to anyone other than a licensee of the ~~board~~ authority unless the package bears the information required by this subsection.

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine and beer shipper's licensees or Internet wine and beer retailer's licensees including for each shipment:

1. Date of shipment and delivery;
2. Number of items shipped and delivered;
3. Weight of items shipped and delivered;
4. Acknowledgment signed by recipient; and
5. Names and addresses of shippers and recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the ~~board~~ authority or its special agents upon request.

J. On or before the 15th day of each ~~January, April, July, and October~~ month, each approved common carrier shall file with the ~~Supervisor, Tax Management Section,~~ authority a report of activity for the previous calendar ~~quarter~~ month. Such report shall include:

1. Whether any shipments were delivered during the quarter; and
2. If shipments were made, the following information for each shipment:
 - a. Dates of each delivery; ~~and~~
 - b. Names and address of shippers and recipients for each delivery; and
 - c. Weight of items shipped and delivered.

3VAC5-70-225. Delivery permits; application process; records and reports; delivery requirements.

A. Any ~~out-of-state~~ out-of-state person or entity qualified for a delivery permit pursuant to § 4.1-212.1 of the Code of Virginia must apply for such permit by submitting ~~Form 805-52,~~ the Retail License Application form [for such permit]. The applicant shall attach (i) a photocopy of its current license as

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an alcoholic beverage retailer that is authorized to sell wine or beer at retail for off-premises consumption, issued by the appropriate authority for the location from which deliveries will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Delivery permittees and licensees with delivery privileges pursuant to §§ 4.1-212.1 and 4.1-212.2 of the Code of Virginia shall maintain for two years complete and accurate records of all deliveries made under the privileges of such permits, including for each delivery:

1. Number of containers delivered;
2. Volume of each container delivered;
3. Brand of each container delivered;
4. Names and addresses of recipients;
5. Signature of recipient; and
6. Price charged for the wine or beer delivered.

The records required by this subsection shall be made available for inspection and copying by any member of the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) or its special agents upon request.

C. On or before the 15th day of each month, each delivery permittee and licensees with delivery privileges pursuant to § 4.1-212.1 of the Code of Virginia shall file with the ~~Supervisor, Tax Management Section,~~ authority a report of activity for the previous calendar month; if any deliveries were made during the month for which the licensee or permittee is required to collect and remit excise taxes [due to the authority] pursuant to § 4.1-212.1 H of the Code of Virginia. Such report shall include the following information for each delivery:

1. Number of containers delivered;
2. Volume of each container delivered;
3. Brand of each container delivered;
4. Names and addresses of recipients; and
5. Price charged for the wine or beer delivered.

Unless previously paid, payment of the appropriate beer or wine tax imposed by § 4.1-234 or 4.1-236 of the Code of Virginia shall accompany each report. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report for that month; ~~however, every permittee must submit a report no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.~~

D. All deliveries by holders of delivery permits and licensees with delivery privileges pursuant to § 4.1-212.1 of the Code of Virginia shall be performed by the owner or any ~~agent,~~ officer,

director, shareholder, ~~or~~ employee of the permittee or licensee, or third-party delivery licensee.

E. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person, except that a permittee or licensee may deliver more than four cases of wine or more than four cases of beer if ~~he the permittee or licensee~~ notifies the ~~Supervisor, Tax Management Section,~~ authority in writing at least one business day in advance of such delivery. Any notice given pursuant to this section shall include the number of containers to be delivered, the volume of each container to be delivered, the brand of each container to be delivered, and the name and address of the intended recipient.

F. When attempting to deliver ~~wine or beer~~ alcoholic beverages pursuant to a delivery permit or license privilege pursuant to § 4.1-212.1 of the Code of Virginia, an owner, ~~agent,~~ officer, director, shareholder, ~~or~~ employee of the permittee or licensee, or third-party delivery licensee shall require:

1. The recipient to demonstrate, upon delivery, that ~~he the~~ recipient is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section; however, a signature shall not be required so long as the licensee verifies at the time of delivery that the recipient is 21 years of age or older; ensures that the recipient's bona fide identification, as described in 3VAC5-50-20 B, bears a photograph that reasonably appears to match the appearance of the recipient; and records the recipient's name and date of birth and the address to which the alcoholic beverages were delivered.

The owner, agent, officer, director, shareholder, ~~or~~ employee of the permittee or licensee, or third-party delivery licensee shall refuse delivery when the proposed recipient appears to be ~~under the age of younger than~~ 21 years of age and refuses to present valid ~~identifications~~ identification. All retail permittees or licensees delivering ~~wine or beer~~ alcoholic beverages pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of ~~wine or beer~~ alcoholic beverages delivered in the Commonwealth, in a conspicuous location, stating: "CONTAINS ALCOHOLIC BEVERAGES; ~~SIGNATURE OF RECEIPT BY PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY.~~" Such notice shall also contain the delivery permit number of the delivering permittee or license number of the licensee and shall be affixed to the package even if the product is delivered in the manufacturer's original sealed container. Third-party delivery licensees shall not deliver any alcoholic beverages that do not bear the required label.

3VAC5-70-230. Sale of designer or vintage spirit bottles.

A. The following definitions shall apply to designer and vintage bottles of spirits:

1. Designer: A bottle of spirits manufactured specifically as a departure from the manufacturer's standard trademark, design, or packaging; originally sold in limited quantities; and with a retail value in excess of \$500. Each bottle shall be accompanied by the manufacturer's certificate of designer status.

2. Vintage: A bottle of spirits wherein the product therein has been bottled for at least 20 years or has not been sold by the brand owner for a minimum of 10 years.

3. In either instance the bottle must be (i) the original manufacturer's unopened bottle; (ii) neither owned by a distillery nor sold on behalf of a distillery, manufacturer, or wholesaler; and (iii) not otherwise available for purchase from the Virginia Alcoholic Beverage Control Authority (authority).

B. Collectors of designer or vintage bottles containing distilled spirits may sell them at auction under the following conditions:

1. The seller shall notify the [~~secretary to the board~~ authority] of the date, time, and place of the auction sale.

2. Any bottle sold must be unopened and the manufacturer's seals, marks, or stamps affixed to the bottles must be intact.

3. The auction must be conducted in accordance with the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia.

4. Any purchaser at such auction must be a minimum of 21 years of age.

5. For two years from the date of sale, the auctioneer must keep records, available to the ~~board~~ authority upon request, of the name and address of each purchaser and a description of the alcoholic beverages purchased.

3VAC5-70-240. Marketing portal and fulfillment warehouse approval process.

A. Any holder of a wine and beer shipper's license wishing to use the services of a marketing portal or fulfillment warehouse, as defined in § 4.1-209.1 of the Code of Virginia, must use an approved marketing portal or fulfillment warehouse. Marketing portals or fulfillment warehouses licensed to perform such services by the state in which they are located may apply for approval to provide such services to holders of Virginia wine or beer shipper's licenses by letter to the ~~Supervisor, Tax Management Section, Virginia Alcoholic Beverage Control Authority, requesting such approval~~ Virginia Alcoholic Beverage Control Authority (authority). Each applicant shall submit as attachments copies of all licenses issued by the state in which its place of business is located that authorize the provision of the services to be provided. A marketing portal shall submit as attachments copies of documents showing that it is properly organized as an agricultural cooperative in the state where it is located. The

~~board~~ authority may refuse, suspend, or revoke approval if it ~~shall have~~ has reasonable cause to believe that a marketing portal or fulfillment warehouse is not licensed to provide such services by its home state, that it has failed to comply with the regulations of the ~~board~~ authority, or that a cause exists with respect to the marketing portal or fulfillment warehouse that would authorize the ~~board~~ authority to refuse, suspend, or revoke a license pursuant to the Alcoholic Beverage Control Act (§ 4.1-100 et seq. of Title 4.1 of the Code of Virginia). Before refusing, suspending, or revoking such approval, the ~~board~~ authority shall follow the same administrative procedures accorded an applicant or licensee under ~~§ 4.1-100 et seq. of Title 4.1 of the Code of Virginia~~ the Alcoholic Beverage Control Act and regulations of the ~~board~~ authority.

B. Any approved marketing portal or fulfillment warehouse shall, prior to performing services for a wine and beer shipper's licensee, enter into a written contract. The contract must designate the marketing portal or fulfillment warehouse as the agent of the shipper for the purposes of complying with the provisions of this regulation and §§ 4.1-206.3 and 4.1-209.1 of the Code of Virginia. A copy of each such contract shall be submitted by the marketing portal or fulfillment warehouse to the ~~Supervisor, Tax Management Section, Alcoholic Beverage Control Authority, authority~~ authority prior to the commencement of services.

C. Approved fulfillment warehouses shall maintain for two years complete and accurate records of all shipments made on behalf of Virginia wine and beer shippers, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped; and
4. Names and addresses of recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the ~~board~~ authority or its special agents upon request.

3VAC5-70-250. Waiver of penalty for certain first-time violations.

A. In accordance with ~~subdivision E 4 of § 4.1-227~~ E 5 of the Code of Virginia, whenever the ~~board~~ Virginia Alcoholic Beverage Control Authority (authority) finds that a charge against a licensee for a violation listed in this subsection is substantiated, the licensee has had no prior violations within five years immediately preceding the date of the subject violation, and the subject violation was not willful and knowing, the ~~board shall~~ authority may enter an order substantiating the violation without imposing a penalty. The provisions of this subsection shall apply to the following violations:

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1. Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid;
- ~~2. Allowing an intoxicated person to loiter on the premises;~~
- ~~3. After hours sales or consumption of alcoholic beverages;~~
4. 2. No designated manager on premises;
- ~~5. 3. Invalid check to wholesaler or board authority;~~
6. 4. Inadequate illumination;
7. 5. Not timely submitting a report required by statute or regulation;
- ~~8. 6. Designated manager not posted;~~
9. 7. Person less younger than 18 years of age serving alcoholic beverages; less younger than 21 years of age acting as bartender;
- ~~10. 8. Sale of alcoholic beverages in unauthorized place or manner;~~
11. 9. Consumption of alcoholic beverages in unauthorized area;
12. 10. Removal of alcoholic beverages from authorized area;
13. 11. Failure to obliterate mixed beverage stamps;
14. 12. Employee on duty consuming alcoholic beverages;
15. 13. Conducting illegal happy hour;
16. 14. Illegally advertising happy hour;
17. 15. Unauthorized advertising;
18. 16. Failure to remit state ~~beer/wine~~ beer or wine tax (if deficiency has been corrected); and
19. 17. Wholesaler sale of ~~wine/beer~~ beer or wine in unauthorized manner; and
20. ~~Wholesaler sale of wine/beer to unauthorized person.~~

B. Whenever any licensee who has not had any substantiated violations of regulation or statute within the previous five years is charged with a violation, the board authority, if the facts found by the board authority would justify a finding that the charge is substantiated but is not a willful and knowing violation, with the consent of the licensee, may defer further proceedings and place the licensee on probation upon terms and conditions.

As a term or condition, the board authority shall require the licensee to participate in or provide employees such ~~board-approved seller/server~~ authority-approved seller or server or manager training as, in the opinion of the board authority, may be best suited to the needs of the licensee based upon consideration of the nature of the violation.

As a condition of probation, the board authority shall require the licensee to (i) successfully complete the required training program and (ii) comply with all alcoholic beverage laws and regulations during the period of probation.

Upon violation of a term or condition, the board authority may enter an adjudication that the charge is substantiated and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the board authority shall dismiss the proceedings against the licensee. Dismissal under this section shall be without adjudication of the charge and is a substantiated violation only for the purposes of applying this section in subsequent proceedings.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

FORMS (3VAC5-70)

[Retail License Application \(rev. 7/2024\)](#)

[Order and Permit for Transportation of Alcohol \(rev. 11/2015\)](#)

[Order and Permit for Transportation of Alcoholic Beverages \(rev. 11/2015\)](#)

[Instructions for Completion of the Mixed Beverage Annual Report and Inventory Report \(rev. 6/2018\)](#)

[Application for Grain Alcohol Permit, #805-75 \(filed 8/2021\)](#)

[Special Event License Application Addendum - Notice to Special Event Licenses Applicants, Form SE-1 \(rev. 3/2019\)](#)

[Statement of Income and Expenses for Special Event Licenses \(with instructions\), Form SE-2 \(rev. 3/2019\)](#)

[Alcohol ~~Seller/Server~~ Seller-Server Training Data Form and Evaluation Form \(eff. 7/2009\)](#)

VA.R. Doc. No. R23-7514; Filed December 12, 2024, 10:52 a.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Fast-Track Regulation

Title of Regulation: 8VAC20-90. Procedure for Adjusting Grievances (amending 8VAC20-90-10, 8VAC20-90-70).

Statutory Authority: §§ 22.1-16 and 22.1-308 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 12, 2025.

Effective Date: February 27, 2025.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Basis: The State Board of Education's overall regulatory authority is found in § 22.1-16 of the Code of Virginia. The board's regulatory authority over grievance procedures is found in § 22.1-309 of the Code of Virginia.

Purpose: The amendments are essential to protect the public health, safety, or welfare as § 22.1-308 A 9 of the Code of Virginia requires the board to prescribe a grievance procedure that includes the provisions of §§ 22.1-309 through 22.1-313 of the Code of Virginia.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the proposed changes are required by Virginia statute and the agency is not exercising discretion in the changes.

Substance: The amendments add and amend definitions and update the regulation to comport with legislative changes concerning procedures for hearings and school board determinations.

Issues: The primary advantage to the public, the agency, and the Commonwealth is that the amendments effectuate changes made by the Virginia General Assembly. There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The State Board of Education (board) proposes several amendments to 8VAC20-90, Procedure for Adjusting Grievances (regulation), to reflect the current Code of Virginia. Changes to relevant portions of the Code of Virginia occurred due to Chapter 875 of the 2020 Acts of Assembly (Chapter 875), Chapter 1137 of the 2020 Acts of Assembly (Chapter 1137), and Chapter 477 of the 2021 Acts of Assembly (Chapter 477).

Background. Chapter 875 amends § 22.1-309 of the Code of Virginia and states that "In the event a division superintendent determines to recommend dismissal of any teacher, the teacher

may request a hearing." Prior to Chapter 875, § 22.1-311 A stated: "Upon a timely request for a hearing pursuant to 22.1-309, the school board or, at the option of the school board, a hearing officer appointed by the school board shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place." Chapter 875 amended this to: (i) add another type of hearing option, (ii) remove the mandate that the hearing be set "within 15 days of the request," and (iii) increase the minimum number of days of written notice given to the teacher from five to 10. Consequently, this sentence in § 22.1-311 A became: "Upon a timely request for a hearing pursuant to 22.1-309, the school board or, at the option of the school board, a hearing officer appointed by the school board or a three-member fact-finding panel shall set a hearing and the teacher shall be given at least ten days' written notice of the time and the place." Chapter 875 also added § 22.1-311 C, which specifies requirements if a three-member fact-finding panel is used. Among the requirements is that "The teacher and the division superintendent shall each select one panel member, and the two panel members so selected shall select an impartial hearing officer to serve as the chairman of the panel." The board proposes to amend 8VAC20-90-70 of the regulation so that it is consistent with the changes that occurred in Chapter 875.

Chapters 1137 and 477. The board also proposes to amend 8VAC20-90-10 to conform the definition of "grievance" and add a definition of "military status," pursuant to Chapter 1137 and Chapter 477, respectively. Chapter 1137, in part, added sexual orientation and gender identity to the list of bases for which discrimination would give employees grievance rights. Chapter 477 created a new definition for "military status," which the board proposes to adopt in its entirety.

Estimated Benefits and Costs: By amending the regulation to be consistent with statute, the law in effect would not change. Nevertheless, it may be beneficial in that it would inform interested parties who read this regulation but not the statute of the actual law in effect. According to the Department of Education (DOE), the agency is not aware of any three-member fact finding panels having been convened since the 2020 enactment of Chapter 875. Additionally, DOE does not track how many hearings occur annually.

Businesses and Other Entities Affected. All the proposed amendments are essentially already in effect through legislation. The legislation potentially affects teachers who have been recommend for dismissal and the 131 public school divisions in the Commonwealth.² The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.³ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁴ As the proposed amendments do not have impact beyond better informing the public of the law in effect, no adverse impact is indicated.

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Small Businesses⁵ Affected.⁶ The proposed amendments do not adversely affect small businesses.

Localities⁷ Affected.⁸ The proposed amendments neither disproportionately affect any particular locality nor introduce costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property or real estate development costs.

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² Data source: DOE.

³ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁴ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁵ Pursuant to § 2.2-4007.04, 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."

⁶ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁷ "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.

⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The State Board of Education thanks the Department of Planning and Budget for its thorough economic impact analysis concerning this action.

Summary:

Pursuant to Chapter 875 of the 2020 Acts of Assembly, the amendments permit a school board to conduct a teacher grievance hearing before a three-member fact-finding panel consisting of one member selected by the teacher, one member selected by the division superintendent, and an impartial hearing officer selected by the other two panel members to serve as the chairman of the panel. The school board continues to have the option of appointing a hearing officer or conducting the hearing itself. The amendments also remove the requirement that a teacher grievance hearing be set within 15 days of the request for such hearing and extends to 10 days the minimum period of advanced written notice to the teacher of the time and place of such hearing. Pursuant to Chapter 1137 of the 2020 Acts of Assembly and Chapters 477 and 478 of the 2021 Acts of Assembly, Special Session I, the definition of "grievance" is updated and a definition of "military status" is added.

8VAC20-90-10. Definitions.

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

"Business day" means any day that the relevant school board office is open.

"Days" means calendar days unless a different meaning is clearly expressed in this procedure. Whenever the last day for performing an act required by this procedure falls on a Saturday, Sunday, or legal holiday, the act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

"Dismissal" means the dismissal of any teacher within the term of such teacher's contract.

"Grievance" means, ~~for the purpose of Part II (8VAC20-90-20 et seq.),~~ a complaint or a dispute by a teacher relating to ~~his~~ the teacher's employment, including but not necessarily limited to (i) disciplinary action, including dismissal; (ii) the application or interpretation of (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances, and (e) statutes; (iii) acts of reprisal against a teacher for filing or processing a grievance, or participating as a witness in any step, meeting, or hearing related to a grievance, or serving as a member of a fact-finding panel; or and (iv) complaints of discrimination on the basis of race, color, creed, religion, political affiliation, handicap disability, age, national origin, or sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation, gender identity, or military status. Each school board shall have the exclusive right to manage the affairs and operations of the school division. ~~"Grievance" means, for the purposes of Part III (8VAC20-90-60 et seq.), a complaint or a dispute involving a teacher relating to his employment involving dismissal. The~~ Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to (i) the establishment and revision of wages

or salaries, position classifications, or general benefits; (ii) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status; (iii) the establishment or contents of ordinances, statutes, or personnel policies, procedures, rules, and regulations; (iv) failure to promote; (v) discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment in or abolition of a particular subject, or insufficient funding; (vi) hiring, transfer, assignment, and retention of teachers within the school division; (vii) suspension from duties in emergencies; (viii) the methods, means, and personnel by which the school division's operations are to be carried on; or (ix) coaching or extracurricular activity sponsorship. While these management rights are reserved to the school board, failure to apply, where applicable, ~~these~~ the rules, regulations, policies, or procedures as written or established by the school board is grievable.

"Hearing officer" means an impartial hearing officer from outside the school division who possesses some knowledge and expertise in public education and education law and who is capable of presiding over an administrative hearing.

"Military status" means status (i) as a member of the uniformed forces, as defined in 10 USC § 101(a)(5), of the United States or a reserve component thereof named under 10 USC § 10101, (ii) a veteran as defined in 38 USC § 101(2), or (iii) a dependent as defined in 50 USC § 3911(4), except that the support provided by the service member to the individual shall have been provided 180 days immediately preceding an alleged action that, if proven true, would constitute unlawful discrimination under this section instead of 180 days immediately preceding an application for relief under 50 USC Chapter 50.

"Personnel file" means, for the purposes of Part III (8VAC20-90-60 et seq.), any and all memoranda, entries, or other documents included in the teacher's file as maintained in the central school administration office or in any file regarding the teacher maintained within a school in which the teacher serves.

"Teacher" ~~or "teachers"~~ means, for the purposes of Part II (8VAC20-90-20 et seq.), all employees of the school division involved in classroom instruction and all other full-time employees of the school division except those employees classified as supervising employees. "Teacher" means, for the purposes of Part III (8VAC20-90-60 et seq.), all regularly licensed professional public school personnel employed by any school division under a written contract as provided by § 22.1-302 of the Code of Virginia as a teacher or as an assistant principal, principal, or supervisor as provided by § 22.1-294 of the Code of Virginia.

"Shall file," "shall respond in writing," or "shall serve written notice" means the document is either delivered personally or is mailed by registered or certified mail, return receipt requested, and postmarked within the time limits prescribed by this

procedure to the grievant or office of the proper school board representative.

"Supervisory employee" means any person having authority in the interest of the ~~board~~ State Board of Education to (i) ~~to~~ hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees; and (ii) ~~to~~ direct other employees; or (iii) ~~to~~ adjust the grievance of other employees; or (iv) ~~to~~ recommend any action set forth in clause (i), (ii), or (iii) ~~above of this definition~~; provided that the authority to act as set forth in clause (i), (ii), (iii), or (iv) requires the exercise of independent judgment and is not merely routine and clerical in nature.

"Written grievance appeal" means a written or typed statement describing the event or action complained of, the date of the event or action complained of, and a concise description of those policies, rules, regulations, or statutes upon which the teacher bases ~~his~~ the claim. The grievant shall specify what ~~he~~ the grievant expects to obtain through use of the grievance procedure. A written grievance appeal shall be on forms prescribed by the State Board of Education and supplied by the local school board.

8VAC20-90-70. Procedure for dismissals.

A. Notice to teacher of recommendation for dismissal.

1. In the event a division superintendent determines to recommend dismissal of any teacher, written notice shall be sent to the teacher on forms prescribed by the State Board of Education notifying ~~him~~ the teacher of the proposed dismissal and informing the teacher that within 10 business days after receiving the notice, the teacher may request a hearing before the school board or, at the option of the school board, a hearing officer appointed by the school board, as provided in § 22.1-311 of the Code of Virginia.
2. During such 10-business-day period and thereafter until a hearing is held in accordance with the provisions ~~herein of this subsection~~, if one is requested by the teacher, the merits of the recommendation of the division superintendent shall not be considered, discussed, or acted upon by the school board except as provided ~~for herein in this subsection~~.
3. At the request of the teacher, the division superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview. In the event a teacher requests a hearing pursuant to § 22.1-311 ~~or 22.1-312~~ of the Code of Virginia, the division superintendent shall provide, within 10 days of the request, the teacher; or ~~his~~ the teacher's representative; with the opportunity to inspect and copy ~~his~~ the teacher's personnel file and all other documents relied upon in reaching the decision to recommend dismissal. Within 10 days of the request of the division superintendent, the teacher; or ~~his~~ the teacher's representative; shall provide the division superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend

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dismissal. The division superintendent and the teacher or ~~his~~ the teacher's representative shall be under a continuing duty to disclose and produce any additional documents identified later that may be used in the respective parties' cases-in-chief. The cost of copying such documents shall be paid by the requesting party.

4. Upon a timely request for a hearing, the school board or, at the ~~school board's~~ option of the school board, a hearing officer appointed by the school board shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place of the hearing.

B. Procedure for hearing.

1. ~~The~~ Upon a timely request for a hearing shall be conducted by the pursuant to subsection A of this section, the school board or, at the ~~school board's~~ option of the school board, a hearing officer appointed by the school board ~~or a three-member fact-finding panel shall set a hearing, and the teacher shall be given at least a 10-day written notice of the time and the place. The teacher and the division superintendent may be represented by legal counsel or other representatives.~~ The hearing shall be private, unless the teacher requests ~~a public~~ the hearing to be public. At the hearing, the teacher may appear with or without a representative and be heard, presenting testimony of witnesses and other evidence. ~~The school board or hearing officer, as the case may be, shall establish the rules for the conduct of the hearing, and such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses, and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the school board or hearing officer.~~

2. ~~The parties shall produce such additional evidence as the school board or hearing officer may deem necessary to an understanding and determination of the dispute. The school board or hearing officer shall determine the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the school board or hearing officer and of the parties. Each school board may appoint an impartial hearing officer from outside the school division to conduct hearings pursuant to this section. A hearing officer shall not have been involved in the recommendation of dismissal as a witness or a representative. A hearing officer shall possess some knowledge and expertise in public education and education law and be capable of presiding over an administrative hearing. The hearing officer shall schedule and preside over such hearings and shall create a record or recording of such proceedings. The hearing officer shall make a written recommendation to the school board, a copy of which shall be provided to the teacher. The hearing officer shall transmit the recommendation and the record or~~

recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing. In the event of a hearing before a hearing officer, the school board may make its decision upon the record or recording of such hearing, pursuant to subsection C of this section, or the school board may elect to conduct a further hearing to receive additional evidence by giving written notice of the time and place to the teacher and the division superintendent within 10 business days after the board receives the record or recording of the initial hearing. Such notice shall also specify each matter to be inquired into by the school board.

3. ~~Exhibits offered by the~~ Each school board may elect for a three-member fact-finding panel to conduct hearings pursuant to this section. The teacher or and the division superintendent may be received in evidence by the school board or shall each select one panel member, and the two panel members so selected shall select an impartial hearing officer and, when so received, shall be marked and made a part of the record to serve as the chairman of the panel. The fact-finding panel shall schedule and preside over such hearings and shall create a record or recording of such proceedings. The fact-finding panel shall make a written recommendation to the school board, a copy of which shall be provided to the teacher. The fact-finding panel shall transmit the recommendation and the record or recording of the hearing to the school board as soon as practicable but in no case more than 10 business days after the hearing. In the event of a hearing before a fact-finding panel, the school board may make its decision upon the record or recording of such hearing, pursuant to subsection C of this section, or the school board may elect to conduct a further hearing to receive additional evidence by giving written notice of the time and place of the hearing to the teacher and the division superintendent within 10 business days after the board receives the record or recording of the initial hearing. Such notice shall also specify each matter to be inquired into by the school board.

4. A ~~stenographic~~ record or tape recording of the proceedings any hearing conducted pursuant to this section shall be taken made. The two parties shall share the cost of the recording equally. ~~The~~ In proceedings concerning grievances not related to dismissal, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation. In cases of dismissal, the record or recording of the proceedings shall be preserved for a period of six months. If the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the transcription.

~~5. The teacher shall bear his own expenses. The school board shall bear the expenses of the division superintendent and the hearing officer.~~

~~6. 5. Witnesses who are employees of the school board shall be granted release time if the hearing is held during the school day. The hearing shall be held at the school in which most witnesses work, if feasible.~~

~~7. In the event of a hearing conducted by a hearing officer, the recommendation of the hearing officer shall be based exclusively upon the evidence presented at the hearing. Upon the hearing officer's own motion or upon application by the teacher or the division superintendent, the hearing officer may reopen the hearing for the purpose of hearing after discovered evidence upon a finding of good cause by the hearing officer at any time before his recommendation is due. The hearing officer shall transmit his written recommendation and a record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing.~~

~~8. In the event of a hearing by a hearing officer, the school board may make its decision upon the record or recording of such hearing or the school board may elect to conduct a further hearing to receive additional evidence. The school board must hold such further hearing as soon as practicable and must give written notice of the time and place of such further hearing to the division superintendent and the teacher within 10 business days after the board received the record or recording of the initial hearing. The notice must specify each matter to be inquired into by the school board. The school board shall determine the procedure to be followed at such further hearing.~~

6. The school board, hearing officer, or three-member fact-finding panel, as the case may be, shall establish the rules for the conduct of the hearing, and such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses, and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the school board or hearing officer.

7. The parties shall produce such additional evidence as the school board, hearing officer, or three-member fact-finding panel may deem necessary to an understanding and determination of the dispute. The school board, hearing officer, or three-member fact-finding panel shall determine the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the school board, hearing officer, or three-member fact-finding panel and of the parties.

8. Exhibits offered by the teacher or the division superintendent may be received in evidence by the school

board or hearing officer and, when so received, shall be marked and made a part of the record.

C. School board determination.

1. The school board shall retain exclusive and final authority over matters concerning employment and supervision of the school board's personnel, including dismissals and suspensions.

2. In the event of a hearing before the school board, the school board shall give the teacher its written decision as soon as practicable and but in no case more than 30 days after the hearing. The decision of the school board shall be reached after considering the evidence and information presented at the school board hearing.

2. 3. In the event of a hearing before a hearing officer followed by a further hearing by the school board pursuant to subdivision B 8 of this section appointed by the school board or a three-member fact-finding panel, the school board shall give the teacher its written decision as soon as practicable and but in no case more than 30 days after such further receiving the record or recording of the hearing; however, should there be a further hearing before the school board, such decision shall be furnished the teacher as soon as practicable but in no case more than 30 days after such hearing. The decision of the school board shall be reached after considering the record or recording of the initial hearing, the recommendations of the hearing officer or three-member fact-finding panel, and the evidence and information presented at the further hearing before the school board.

3. In the event of a hearing before a hearing officer in cases in which no further hearing is conducted by the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after receiving the record or recording of the hearing. The decision of the school board shall be reached after considering the record or recording of the hearing and the recommendations of the hearing officer.

4. The school board may dismiss or suspend a teacher upon a majority vote of a quorum of the school board.

5. The school board's attorney, assistants, or representative, if he the attorney, assistants or they representative represented a participant in the prior proceedings; the grievant; the grievant's attorney or representative; and, notwithstanding the provisions of § 22.1-69 of the Code of Virginia, the superintendent shall be excluded from any executive session of the school board that has as its purpose reaching a decision on a grievance. However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the school board's attorney or representative and the superintendent may join the school board in executive session to assist in the writing of the decision.

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6. In those instances when licensed personnel are dismissed or resign due to a conviction of any felony, any offense involving the sexual molestation, physical or sexual abuse, or rape of a child, any offense involving drugs, or due to having become the subject of a founded case of child abuse or neglect, the local school board shall notify the State Board of Education within 10 business days of such dismissal or the acceptance of such resignation.

VA.R. Doc. No. R25-7129; Filed December 18, 2024, 3:18 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Forms

REGISTRAR'S 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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

Title of Regulation: 12VAC5-381. Regulations for the Licensure of Home Care Organizations.

Agency Contact: Val Hornsby, Policy Analyst, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 875-1089, or email val.hornsby@vdh.virginia.gov

FORMS (12VAC5-381)

~~Application for Home Care Organization Licensure (rev. 4/2021)~~

~~Renewal Addendum for Licenses Expiring July 31, 2021 (eff. 4/2021)~~

VA.R. Doc. No. R25-8181; Filed December 17, 2024, 10:55 a.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-10, 18VAC85-20-26, 18VAC85-20-28, 18VAC85-20-29, 18VAC85-20-30,

18VAC85-20-120, 18VAC85-20-140, 18VAC85-20-141, 18VAC85-20-210, 18VAC85-20-225, 18VAC85-20-235, 18VAC85-20-330; repealing 18VAC85-20-20, 18VAC85-20-40, 18VAC85-20-50, 18VAC85-20-80, 18VAC85-20-90, 18VAC85-20-285, 18VAC85-20-350, 18VAC85-20-400, 18VAC85-20-410, 18VAC85-20-420).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: February 12, 2025.

Effective Date: February 27, 2025.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations of the Board of Medicine are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the board the authority to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-400 et seq. of the Code of Virginia). In addition, § 54.1-2929 of the Code of Virginia prohibits any individual from practicing medicine, osteopathy, podiatry, or chiropractic without obtaining a license from the board.

Purpose: The elimination of redundant provisions and reduction of barriers to licensure generally protect the health, safety, and welfare of citizens by ensuring a sufficient workforce of medical doctors, doctors of osteopathic medicine, doctors of pediatric medicine, and doctors of chiropractic with a reduction of barriers and reduction of redundant or outdated requirements.

Rationale for Using Fast-Track Rulemaking Process: These amendments are noncontroversial and appropriate for the fast-track rulemaking process because the changes delete or modify provisions that are redundant of statutory requirements, outdated, or otherwise ineffectual.

Substance: The amendments remove redundant statutory provisions or useless directions, including provisions related to (i) conversion therapy; (ii) public participation regulations; (iii) the closing or selling of a practice; (iv) repeated information concerning communication with patients; (v) advertising restrictions; (vi) recommendations for the use of vitamins, minerals, and supplements; (vii) prescriptions of anabolic steroids; (viii) solicitation or remuneration in exchange for referrals; (ix) the use of pharmacotherapy for weight loss; (x) the requirement to attest to any hours of Type 2 continuing education; (xi) the board's requirement to periodically conduct random audits; (xii) regulatory language regarding what a practitioner may voluntarily provide on the practitioner profile site; (xiii) informed consent for office-based procedures; and (xiv) requirements for mixing, diluting, or reconstituting drugs for administration. The amendments also eliminate the need for an applicant for licensure to provide a complete chronological record of professional activities

beyond 10 years prior to application and reduce the requirements for active practice for licensure by endorsement.

Issues: The primary advantage to the public is a potential increase in numbers of practitioners obtaining license by endorsement, thereby increasing the number of practitioners available in the Commonwealth to see patients. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. As a result of a 2022 periodic review² and in response to Executive Order 19 (2022)³ (EO 19), the Board of Medicine (board) is proposing to (i) eliminate a \$10 registration fee for out-of-state volunteers; (ii) reduce the reporting timeframe for a chronological record of all professional activities and eliminate the requirements to give location, dates, and types of services performed on such records for licensure by endorsement applications; (iii) eliminate the currently required 30 hours of Type 2 continuing education per biennium; (iv) repeal the requirement that the board conduct random periodic audits of continuing education; (v) allow residents who have obtained specialized residency to obtain licensure by endorsement; (vi) revise the duration of active practice required for licensure by endorsement applicants from "five years" to "two out of the last five years"; and (vii) make numerous editorial changes.

Background. As a result of the 2022 periodic review and in order to reduce regulatory requirements as directed by EO 19, the board proposes several amendments to generally reduce compliance costs by eliminating fees, reducing reporting requirements, reducing continuing education requirements, and allowing certain individuals to obtain licensure by endorsement. Further, other changes delete provisions that duplicate statutory requirements or that the board has determined are not useful, including provisions related to: conversion therapy; public participation regulations; the closing or selling of a practice; repeated information concerning communication with patients; advertising restrictions; recommendations for the use of vitamins, minerals, and supplements; prescriptions of anabolic steroids; provisions related to solicitation or remuneration in exchange for referrals; the use of pharmacotherapy for weight loss; regulatory language regarding what a practitioner may voluntarily provide on the practitioner profile site; consolidation of information related to informed consent for office-based procedures and subsequent elimination of redundant or extraneous language; and elimination of

requirements for mixing, diluting, or reconstituting of drugs for administration.

Estimated Benefits and Costs: One of the proposed changes would eliminate the \$10 registration fee collected from out-of-state practitioners volunteering in Virginia. The board states that the fee is so minimal and used so infrequently that its elimination will have virtually no effect on board funds. In recent history spanning over several years, this fee was collected no more than three times. Therefore, the elimination of this fee is not expected to have a significant impact on the board. Moreover, the elimination of this fee may encourage volunteering activities by out-of-state practitioners in Virginia should the need arise. Another change would reduce the reporting requirements for licensure by endorsement applications. The board proposes to set the timeframe to the previous 10 years and to eliminate such required details as location, dates, and types of services performed. Currently, the regulation requires a complete chronological record without referencing any timeframe and requires details such as location, dates, and types of services performed on such records. According to the board, the existing requirements are extraordinarily burdensome for any individual who has practiced for more than 10 years. An experienced physician who, for example, has been in practice for 30 years in many states could face an almost insurmountable task. The board feels that limiting this requirement to no more than 10 years prior to the application and the elimination of some of the specific reporting requirements would reduce this burden. As a result, an unknown number of future licensure by endorsement applicants would be provided some relief in administrative costs in terms of completing the application faster and easier than otherwise would be possible. This action also includes a proposal to eliminate the currently required 30 hours of Type 2 continuing education per biennium (i.e., 15 hours per year). Type 2 continuing education hours are earned from sources other than the formal continuing education providers, such as reading journals or talking to other practitioners. The board states that the requirement for Type 2 hours is unnecessary because most practitioners would complete the activities that are included as Type 2 regardless of the requirement and most practitioners obtain far more than 30 hours of Type 2 continuing education per renewal cycle. Thus, the board believes that the Type 2 continuing education requirement is an unnecessary and often impossible to verify requirement. Given that most practitioners already participate in activities that can be counted as Type 2 continuing education, and potentially more than the required amount, they would likely continue to do so without being required. Thus, this change is not expected to create a significant economic impact. The board also proposes to repeal the requirement that the board conduct random periodic audits of continuing education. The board reports that it has only performed one or two of these audits in the last two decades, and only on two sets of its 21 types of licensees. The board states that it does not have staff or the ability to conduct such audits and has not

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for years. Since the audits have not been performed in the past, this change is also unlikely to create any significant economic impact. The board also proposes to allow residents who have obtained specialized residency, such as in pediatric cardiology, to obtain licensure by endorsement. Currently, the regulation requires an applicant for licensure by endorsement to have held an "unrestricted" license in another jurisdiction for five years preceding application. The board proposes to replace the word "unrestricted" with "active." The intent of this change is to allow some residents who have obtained specialized residency, such as in pediatric cardiology, to obtain licensure by endorsement. The current language would exclude such residents because their residency license is "restricted" to practice at a particular facility. This change would benefit an unknown number of future applicants by allowing them to obtain licensure by endorsement. Another proposed change would revise the duration of active practice required for licensure by endorsement applicants from "five years" after postgraduate training and immediately preceding application to "two out of the last five years." According to the board, this change is intended to account for individuals who may not have consecutive practice in the five years preceding the application. This would include military spouses and individuals who may have taken a year or more away from practice to care for family. The board states that this change is consistent with language in regulation of other boards and is intended to reduce the burden on endorsement applicants. Similarly, this change would benefit an unknown number of future applicants who have more than two years of active practice in the last five years by allowing them to obtain licensure by endorsement. Finally, the board states that all of the remaining proposed changes to this regulation are editorial in nature and would not affect the practice of medicine, osteopathic medicine, podiatry, and chiropractic. For example, elimination of language regarding conversion therapy, public participation regulations, the closing or selling of a practice, repeated information concerning communication with patients, advertising restrictions, recommendations for the use of vitamins, minerals, and supplements; prescriptions of anabolic steroids would not make this regulation any less enforceable or applicable because these requirements are still enforceable under more general regulatory provisions or under statute. However, to the extent that practitioners and other members of the public relied upon these regulatory provisions to better understand the requirements, some lack of clarity about these requirements may result.

Businesses and Other Entities Affected. The proposed changes apply to current licensees, potential applicants by endorsement, and potential registrants for voluntary out of state licenses. The board has no data regarding any potential applicants by endorsement or potential registrants for voluntary out of state licenses. However, as of June 30, 2022, there were 41,926 individuals licensed as medical doctor and 4,733 licensed as doctor of osteopathy. There were 1,775 individuals licensed as chiropractors and 560 licensed as

podiatrists. None of the regulants appear to be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. This action would in general provide some savings in compliance costs and allow certain individuals to apply for licensure by endorsement but is not anticipated to increase costs or reduce revenues for any entity. Thus, no adverse impact is indicated.

Small Businesses⁵ Affected.⁶ The proposed amendments do not appear to adversely affect any entity including small businesses.

Localities⁷ Affected.⁸ The proposed amendments neither introduce costs for localities nor disproportionately affect any locality.

Projected Impact on Employment. The proposal to allow certain individuals (i.e., applicants with specialized residency and applicants in active status with less than five consecutive year but more than two year out of the last five years) to apply for licensure by endorsement would likely have a positive impact on employment, but whether such impact would be significant is not known as there is no estimate on how many individuals may make use of this change.

Effects on the Use and Value of Private Property. The proposed changes are expected to provide some savings in compliance costs in terms of reduced reporting, fees, or other costs, but the magnitude of any such savings and consequently on the asset value of affected businesses is not known. No impact on the use of private property or real estate development costs is expected.

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://townhall.virginia.gov/ViewPREview.cfm?PRid=2147>.

³ <https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

⁴ Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁵ Pursuant to § 2.2-4007.04, 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."

⁶ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁷ "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.

⁸ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Board of Medicine concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Pursuant to a periodic review and in response to Executive Order 19 (2022), the amendments (i) remove provisions related to conversion therapy; (ii) eliminate public participation regulations; (iii) eliminate a \$10 registration fee for out-of-state volunteers; (iv) reduce the reporting timeframe for a chronological record of all professional activities and eliminate the requirements to give location, dates, and types of services performed on such records for licensure by endorsement applications; (v) eliminate provisions related to the closing and selling of a practice; (vi) eliminate provisions related to the use of vitamins, minerals, and supplements; (vii) eliminate provisions related to prescriptions of anabolic steroids; (viii) eliminate provisions related to solicitation or remuneration in exchange for referrals; (ix) eliminate the currently required 30 hours of Type 2 continuing education per biennium; (x) repeal the requirement that the board conduct random periodic audits of continuing education; (xi) allow residents who have obtained specialized residency to obtain licensure by endorsement; (xii) revise the duration of active practice required for licensure by endorsement applicants to two of the past five years; (xiii) eliminate requirements for mixing, diluting, or reconstituting of drugs for administration; and (xiv) make numerous editorial changes.

18VAC85-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

- Board
- Healing arts
- Practice of chiropractic
- Practice of medicine or osteopathic medicine
- Practice of podiatry

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

"Approved institution" means any accredited school or college of medicine, osteopathic medicine, podiatry, or chiropractic located in the United States, its territories, or Canada.

~~"Conversion therapy" means any practice or treatment as defined in § 54.1-2409.5 A of the Code of Virginia.~~

"Principal site" means the location in a foreign country where teaching and clinical facilities are located.

18VAC85-20-20. Public Participation Guidelines. (Repealed.)

~~A separate board regulation, 18VAC85-11, entitled Public Participation Guidelines, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.~~

18VAC85-20-26. Patient records.

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records.

B. Practitioners shall provide patient records to another practitioner or to the patient or the patient's personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage patient records and shall maintain timely, accurate, legible, and complete patient records.

D. Practitioners shall maintain a patient record for a minimum of six years following the last patient encounter with the following exceptions:

1. Records of a minor child, including immunizations, shall be maintained until the child reaches ~~the age of 18~~ years of age or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or the patient's personal representative; or

3. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

E. Practitioners shall post information or in some manner inform all patients concerning the timeframe for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.

~~F. When a practitioner is closing, selling, or relocating his practice, he shall meet the requirements of § 54.1-2405 of the~~

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Code of Virginia for giving notice that copies of records can be sent to any like regulated provider of the patient's choice or provided to the patient.

18VAC85-20-28. Practitioner-patient communication; termination of relationship.

A. Communication with patients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately inform a patient or ~~his the patient's~~ legally authorized representative of ~~his the~~ patient's medical diagnoses, prognosis, and prescribed treatment or plan of care in understandable terms. A No practitioner shall ~~not~~ deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a medication, treatment, or procedure prescribed or directed by the practitioner in the treatment of any disease or condition.

~~2. A practitioner shall present information relating to the patient's care to a patient or his legally authorized representative in understandable terms and encourage participation in the decisions regarding the patient's care.~~

~~3. 2.~~ Before surgery or any invasive procedure is performed, informed consent shall be obtained from the patient in accordance with the policies of the health care entity. Practitioners shall inform patients of the risks, benefits, and alternatives of the recommended surgery or invasive procedure that a reasonably prudent practitioner in similar practice in Virginia would tell a patient.

a. In the instance of a minor or a patient who is incapable of making an informed decision on ~~his the patient's~~ own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

b. An exception to the requirement for consent prior to performance of surgery or an invasive procedure may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the patient.

c. For the purposes of this provision, "invasive procedure" means any diagnostic or therapeutic procedure performed on a patient that is not part of routine, general care and for which the usual practice within the health care entity is to document specific informed consent from the patient or surrogate decision maker prior to proceeding.

~~4. 3.~~ Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from patients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the ~~practitioner-patient~~ practitioner-patient relationship.

1. The practitioner or the patient may terminate the relationship. In either case, the practitioner shall make a copy of the patient record available, except in situations where denial of access is allowed by law.

2. Except as provided in § 54.1-2962.2 of the Code of Virginia, a no practitioner shall ~~not~~ terminate the relationship or make ~~his~~ the practitioner's services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-20-29. Practitioner responsibility.

A. A No practitioner shall ~~not~~:

1. Knowingly allow subordinates to jeopardize patient safety or provide patient care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate patient care only to subordinates who are properly trained and supervised;

2. Engage in an egregious pattern of disruptive behavior or an interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient; or

3. Exploit the ~~practitioner and patient~~ practitioner-patient relationship for personal gain; ~~or~~

~~4. Engage in conversion therapy with a person younger than 18 years of age.~~

B. Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited ~~in~~ by subdivision A 2 of this section.

18VAC85-20-30. Advertising ethics.

~~A. Any statement specifying a fee, whether standard, discounted or free, for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.~~

~~B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide emergency. This provision may not be waived by agreement of the patient and the practitioner.~~

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall disclose the complete name of the specialty board that conferred the certification when using or authorizing the use of the term "board-certified" or any similar words or phrase calculated to convey the same meaning in any advertising for his practice.

E. A No licensee of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

F. Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years.

18VAC85-20-40. Vitamins, minerals and food supplements. (Repealed.)

A. The recommendation or direction for the use of vitamins, minerals or food supplements and the rationale for that recommendation shall be documented by the practitioner. The recommendation or direction shall be based upon a reasonable expectation that such use will result in a favorable patient outcome, including preventive practices, and that a greater benefit will be achieved than that which can be expected without such use.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in doses that would be contraindicated based on the individual patient's overall medical condition and medications.

C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

18VAC85-20-50. Anabolic steroids. (Repealed.)

A practitioner shall not sell, prescribe, or administer anabolic steroids to any patient for other than accepted therapeutic purposes.

18VAC85-20-80. Solicitation or remuneration in exchange for referral. (Repealed.)

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in

§ 37.2-100 of the Code of Virginia, or hospital as defined in § 32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320a-7b(b), as amended, or any regulations promulgated thereto.

18VAC85-20-90. Pharmacotherapy for weight loss. (Repealed.)

A. A practitioner shall not prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. A practitioner shall not prescribe controlled substances, Schedules III through VI, for the purpose of weight reduction or control in the treatment of obesity, unless the following conditions are met:

1. An appropriate history and physical examination are performed and recorded at the time of initiation of pharmacotherapy for obesity by the prescribing physician, and the physician reviews the results of laboratory work, as indicated, including testing for thyroid function;
2. If the drug to be prescribed could adversely affect cardiac function, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity;
3. A diet and exercise program for weight loss is prescribed and recorded;
4. The patient is seen within the first 30 days following initiation of pharmacotherapy for weight loss by the prescribing physician or a licensed practitioner with prescriptive authority working under the supervision of the prescribing physician, at which time a recording shall be made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy;
5. The treating physician shall direct the follow-up care, including the intervals for patient visits and the continuation of or any subsequent changes in pharmacotherapy. Continuation of prescribing for treatment of obesity shall occur only if the patient has continued progress toward achieving or maintaining a target weight and has no significant adverse effects from the prescribed program.

C. If specifically authorized in his practice agreement with a supervising or patient care team physician, a physician assistant or nurse practitioner may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity, as specified in subsection B of this section.

18VAC85-20-120. Prerequisites to licensure.

Every applicant for licensure shall:

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1. Meet the educational requirements specified in 18VAC85-20-121 or 18VAC85-20-122 and the examination requirements as specified for each profession in 18VAC85-20-140;

2. File the complete application and appropriate fee as specified in 18VAC85-20-22 with the executive director of the board; and

3. File the required credentials with the executive director as specified ~~below~~ in this subdivision:

a. Graduates of an approved institution shall file:

(1) Documentary evidence that ~~he~~ the applicant received a degree from the institution; and

(2) A ~~complete~~ chronological record of all professional activities since graduation from professional school, ~~giving location, dates, and types of services performed or the last 10 years, whichever is less.~~

b. Graduates of an institution not approved by an accrediting agency recognized by the board shall file:

(1) Documentary evidence of education as required by 18VAC85-20-122;

(2) A translation made and endorsed by a consul or by a professional translating service of all such documents not in the English language; and

(3) A ~~complete~~ chronological record of all professional activities since graduation from professional school, ~~giving location, dates, and types of services performed or the last 10 years, whichever is less.~~

18VAC85-20-140. Examinations, general.

A. The Executive Director of the Board of Medicine or ~~his~~ the executive director's designee shall review each application for licensure and in no case shall an applicant be licensed unless there is evidence that the applicant has passed an examination equivalent to the ~~Virginia Board of Medicine~~ examination required by the board at the time ~~he~~ the applicant was examined and meets all requirements of Part III (18VAC85-20-120 et seq.) of this chapter. If the executive director or ~~his~~ the executive director's designee is not fully satisfied that the applicant meets all applicable requirements of Part III of this chapter and this part, the executive director or ~~his~~ the executive director's designee shall refer the application to the Credentials Committee for a determination on licensure.

B. A doctor of medicine or osteopathic medicine who has passed the examination of the National Board of Medical Examiners or of the National Board of Osteopathic Medical Examiners, Federation Licensing Examination, or the United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada or other such examinations as prescribed in § 54.1-2913.1 of the Code of Virginia may be accepted for licensure.

C. A doctor of podiatry who has passed the National Board of Podiatric Medical Examiners examination and has passed a

clinical competence examination acceptable to the board may be accepted for licensure.

D. A doctor of chiropractic who has met the requirements of one of the following may be accepted for licensure:

1. An applicant who graduated after January 31, 1996, shall document successful completion of Parts I, ~~II, III, and~~ through IV of the National Board of Chiropractic Examiners examination (NBCE).

2. An applicant who graduated from January 31, 1991, to January 31, 1996, shall document successful completion of Parts I, II, and III of the National Board of Chiropractic Examiners examination (NBCE).

3. An applicant who graduated from July 1, 1965, to January 31, 1991, shall document successful completion of Parts I, II, and III of the NBCE, or Parts I and II of the NBCE and the Special Purpose Examination for Chiropractic (SPEC), and document evidence of licensure in another state for at least two years immediately preceding ~~his~~ application.

4. An applicant who graduated prior to July 1, 1965, shall document successful completion of the SPEC; and document evidence of licensure in another state for at least two years immediately preceding ~~his~~ application.

E. Applicants who sat for the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensure Examination (COMLEX-USA) shall provide evidence of passing all steps within a 10-year period unless the applicant is board certified in a specialty approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists of the American Osteopathic Association.

F. Applicants for licensure in podiatry shall provide evidence of having passed the National Board of Podiatric Medical Examiners Examination to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia.

18VAC85-20-141. Licensure by endorsement.

To be licensed by endorsement, an applicant shall:

1. Hold at least one current, ~~unrestricted~~ active license in a United States jurisdiction or Canada ~~for the five years immediately preceding application to the board~~;

2. Have been engaged in active practice, defined as ~~an average of 20 hours per week or 640 hours per year, for two out of the last five years after postgraduate training and immediately preceding application, where such practice is not required to be consecutive~~;

3. Verify that the most recent license held in another United States jurisdiction or in Canada is in good standing, defined as current and unrestricted, or if lapsed, eligible for renewal or reinstatement;

4. Hold current certification by one of the following:

- a. American Board of Medical Specialties;
 - b. Bureau of Osteopathic Specialists;
 - c. American Board of Foot and Ankle Surgery;
 - d. American Board of Podiatric Medicine;
 - e. Fellowship of Royal College of Physicians of Canada;
 - f. Fellowship of the Royal College of Surgeons of Canada; or
 - g. College of Family Physicians of Canada;
5. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank; and
6. Have no grounds for denial based on provisions of § 54.1-2915 of the Code of Virginia or regulations of the board nor any disciplinary restrictions on a current, active license.

18VAC85-20-210. Limited licenses to foreign medical graduates.

A. A physician who graduated from an institution not approved by an accrediting agency recognized by the board applying for a limited professorial license or a limited fellow license to practice medicine in an approved medical school or college in Virginia shall:

- 1. Submit evidence of authorization to practice medicine in a foreign country.
- 2. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent. Such required evidence may be waived by the Credentials Committee or its designee based on other evidence of medical competency and English proficiency.
- 3. Submit a recommendation from the dean of an accredited medical school in Virginia that the applicant is a person of professorial or of fellow rank whose knowledge and special training meet the requirements of § 54.1-2936 of the Code of Virginia.

B. The limited professorial license or limited fellow license applies only to the practice of medicine in hospitals and outpatient clinics where medical students, interns, or residents rotate and patient care is provided by the medical school or college recommending the applicant. ~~1. The A limited professorial license or limited fellow license shall be valid for one year and may be renewed annually. Renewals shall be based upon the recommendation of the dean of the medical school and upon continued full-time service as a faculty member. 2. The limited fellow license shall be valid for one year and may be renewed not more than twice upon the recommendation of the dean of the medical school and upon continued full-time or employment as a fellow, although a limited fellow license may not be renewed more than twice.~~

C. An individual who has practiced with a limited professorial license for five continuous years may have a waiver when

applying for a full license to practice medicine in the Commonwealth of Virginia. The limited professorial licensee applying for a full license shall meet the requirements of 18VAC85-20-120 and 18VAC85-20-122.

18VAC85-20-225. Registration for voluntary practice by out-of-state licenses.

Any doctor of medicine, osteopathic medicine, podiatry, or chiropractic who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision A 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

- 1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;
- 2. Provide a complete record of professional licensure in each state in which ~~he~~ the applicant has held a license and a copy of any current license;
- 3. Provide the name of the nonprofit organization, the dates, and the location of the voluntary provision of services; and
- ~~4. Pay a registration fee of \$10; and~~
- ~~5.~~ 4. Provide a notarized statement from a representative of the nonprofit organization attesting to ~~its~~ the nonprofit's compliance with provisions of subdivision A 27 of § 54.1-2901 of the Code of Virginia.

18VAC85-20-235. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall attest to completion of at least ~~60~~ 30 hours of continuing learning activities within the two years immediately preceding renewal ~~as follows: 1. A minimum of 30 of the 60.~~ The hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession.

- ~~a.~~ 1. Type 1 hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the Council on Chiropractic Education or any other organization approved by the board.
- ~~b.~~ 2. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.
- ~~2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of~~

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~~care, patient safety, new medical technology, and patient communication.~~

~~a. Up to 15 of the Type 2 continuing education hours may be satisfied through delivery of services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for one hour of providing such volunteer services. For the purpose of continuing education credit for voluntary service, documentation by the health department or free clinic shall be acceptable.~~

~~b. Type 2 hours may include teaching in a health care profession field.~~

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in ~~his~~ the practitioner's records all supporting documentation for a period of six years following the renewal of an active license.

~~D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.~~

~~E. D.~~ Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

~~F. E.~~ The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

~~G. F.~~ The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

~~H. G.~~ The board may grant an exemption for all or part of the requirements for a licensee who:

1. Is practicing solely in an uncompensated position, provided ~~his~~ the licensee's practice is under the direction of a physician fully licensed by the board; or
2. Is practicing solely as a medical examiner, provided the licensee obtains six hours of medical examiner training per year provided by the Office of the Chief Medical Examiner.

18VAC85-20-285. Voluntary information. (Repealed.)

~~A. The doctor may provide names of insurance plans accepted or managed care plans in which he participates.~~

~~B. The doctor may provide additional information on hours of continuing education earned, subspecialties obtained, and honors or awards received.~~

18VAC85-20-330. Qualifications of providers.

A. Doctors who utilize office-based anesthesia shall ensure that all medical personnel assisting in providing patient care are appropriately trained, qualified and supervised, are sufficient in numbers to provide adequate care, and maintain training in basic cardiopulmonary resuscitation.

B. All providers of office-based anesthesia shall hold the appropriate license and have the necessary training and skills to deliver the level of anesthesia being provided.

1. Deep sedation, general anesthesia, or a major conductive block shall be administered by an anesthesiologist or by a certified registered nurse anesthetist. If a major conductive block is performed for diagnostic or therapeutic purposes, it may be administered by a doctor qualified by training and scope of practice.

2. Moderate sedation/conscious sedation may be administered by the operating doctor with the assistance of and monitoring by a licensed nurse, a physician assistant or a licensed intern or resident.

C. Additional training.

1. On or after December 18, 2003, the doctor who provides office-based anesthesia or who supervises the administration of anesthesia shall maintain current certification in advanced resuscitation techniques.

2. Any doctor who administers office-based anesthesia without the use of an anesthesiologist or certified registered nurse anesthetist shall obtain four hours of continuing education in topics related to anesthesia within the 60 hours required each biennium for licensure renewal, which are subject to random audit by the board.

D. Prior to administration, the anesthesia plan shall be discussed with the patient or responsible party by the health care practitioner administering the anesthesia or supervising the administration of anesthesia. Informed consent for the nature and objectives of the anesthesia planned shall be in writing and obtained from the patient or responsible party before the procedure is performed. Such consent shall include a discussion of discharge planning and what care or assistance the patient is expected to require after discharge. Informed consent shall only be obtained after a discussion of the risks, benefits, and alternatives, contain the name of the anesthesia provider, and be documented in the medical record.

18VAC85-20-350. Informed consent. (Repealed.)

~~A. Prior to administration, the anesthesia plan shall be discussed with the patient or responsible party by the health care practitioner administering the anesthesia or supervising the administration of anesthesia. Informed consent for the nature and objectives of the anesthesia planned shall be in writing and obtained from the patient or responsible party before the procedure is performed. Such consent shall include~~

a discussion of discharge planning and what care or assistance the patient is expected to require after discharge. Informed consent shall only be obtained after a discussion of the risks, benefits, and alternatives, contain the name of the anesthesia provider, and be documented in the medical record.

~~B. The surgical consent forms shall be executed by the patient or the responsible party and shall contain a statement that the doctor performing the surgery is board certified or board eligible by one of the American Board of Medical Specialties boards, the Bureau of Osteopathic Specialists of the American Osteopathic Association, the American Board of Podiatric Medicine, or the American Board of Foot and Ankle Surgery. The forms shall either list which board or contain a statement that doctor performing the surgery is not board certified or board eligible.~~

~~C. The surgical consent forms shall indicate whether the surgery is elective or medically necessary. If a consent is obtained in an emergency, the surgical consent form shall indicate the nature of the emergency.~~

18VAC85-20-400. Requirements for immediate use sterile mixing, diluting, or reconstituting. (Repealed.)

~~A. For the purposes of this chapter, the mixing, diluting, or reconstituting of sterile manufactured drug products when there is no direct contact contamination and administration begins within 10 hours of the completion time of preparation shall be considered immediate use with the exception of drugs in fat emulsion for which immediate use shall be one hour. If manufacturers' instructions or any other accepted standard specifies or indicates an appropriate time between preparation and administration of less than 10 hours, the mixing, diluting, or reconstituting shall be in accordance with the lesser time. No direct contact contamination means that there is no contamination from touch, gloves, bare skin, or secretions from the mouth or nose. Emergency drugs used in the practice of anesthesiology and administration of allergens may exceed 10 hours after completion of the preparation, provided administration does not exceed the specified expiration date of a multiple use vial and there is compliance with all other requirements of this section.~~

~~B. Doctors of medicine or osteopathic medicine who engage in immediate use mixing, diluting, or reconstituting shall:~~

- ~~1. Utilize the practices and principles of disinfection techniques, aseptic manipulations and solution compatibility in immediate use mixing, diluting, or reconstituting;~~
- ~~2. Ensure that all personnel under their supervision who are involved in immediate use mixing, diluting, or reconstituting are appropriately and properly trained in and utilize the practices and principles of disinfection techniques, aseptic manipulations, and solution compatibility;~~

~~3. Establish and implement procedures for verification of the accuracy of the product that has been mixed, diluted, or reconstituted to include a second check performed by a doctor of medicine or osteopathic medicine or by a physician assistant or a registered nurse who has been specifically trained pursuant to subdivision 2 of this subsection in immediate use mixing, diluting, or reconstituting. Mixing, diluting, or reconstituting that is performed by a doctor of medicine or osteopathic medicine or by a specifically trained physician assistant or registered nurse or mixing, diluting, or reconstituting of vaccines does not require a second check;~~

~~4. Provide a designated, sanitary work space and equipment appropriate for aseptic manipulations;~~

~~5. Document or ensure that personnel under his supervision document in the patient record or other readily retrievable record that identifies the patient; the names of drugs mixed, diluted or reconstituted; and the date of administration; and~~

~~6. Develop and maintain written policies and procedures to be followed in mixing, diluting, or reconstituting of sterile products and for the training of personnel.~~

~~C. Any mixing, diluting, or reconstituting of drug products that are hazardous to personnel shall be performed consistent with requirements of all applicable federal and state laws and regulations for safety and air quality, to include but not be limited to those of the Occupational Safety and Health Administration (OSHA). For the purposes of this chapter, Appendix A of the National Institute for Occupational Safety and Health publication (NIOSH Publication No. 2004-165), Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings is incorporated by reference for the list of hazardous drug products and can be found at www.cdc.gov/niosh/does/2004-165.~~

18VAC85-20-410. Requirements for low-risk, medium-risk, or high-risk sterile mixing, diluting, or reconstituting. (Repealed.)

~~A. Any mixing, diluting, or reconstituting of sterile products that does not meet the criteria for immediate use as set forth in 18VAC85-20-400 A shall be defined as low-risk, medium-risk, or high risk compounding under the definitions of Chapter 797 of the U.S. Pharmacopeia (USP).~~

~~B. Doctors of medicine or osteopathic medicine who engage in low risk, medium risk, or high risk mixing, diluting, or reconstituting of sterile products shall comply with all applicable requirements of the USP Chapter 797. Subsequent changes to the USP Chapter 797 shall apply within one year of the official announcement by USP.~~

~~C. A current copy, in any published format, of USP Chapter 797 shall be maintained at the location where low risk, medium risk, or high risk mixing, diluting, or reconstituting of sterile products is performed.~~

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18VAC85-20-420. Responsibilities of doctors who mix, dilute or reconstitute drugs in their practices. (Repealed.)

~~A. Doctors of medicine or osteopathic medicine who delegate the mixing, diluting or reconstituting of sterile drug products for administration retain responsibility for patient care and shall monitor and document any adverse responses to the drugs.~~

~~B. Doctors who engage in the mixing, diluting or reconstituting of sterile drug products in their practices shall disclose this information to the board in a manner prescribed by the board and are subject to unannounced inspections by the board or its agents.~~

VA.R. Doc. No. R25-7377; Filed December 18, 2024, 1:28 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Proposed Regulation

Title of Regulation: 18VAC145-40. Regulations for the Geology Certification Program (amending 18VAC145-40-10, 18VAC145-40-30, 18VAC145-40-60, 18VAC145-40-70, 18VAC145-40-83 through 18VAC145-40-100, 18VAC145-40-120; repealing 18VAC145-40-80, 18VAC145-40-140, 18VAC145-40-150).

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

Public Hearing Information:

January 22, 2025 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Training Room 1, Richmond, VA 23233.

Public Comment Deadline: March 14, 2025.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email soilscientist@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia provides the powers and duties of regulatory boards to (i) establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation and to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to ensure continued competency and (ii) prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system.

Purpose: As mandated by the General Assembly, the board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to ensure continued competency and to prevent deceptive or misleading

practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the board.

Substance: The proposed amendments:

1. Revise 18VAC145-40-10 to (i) incorporate relevant statutory definitions by reference and (ii) revise the definition of "related geological science degree."
2. Revise 18VAC145-40-30 to remove a provision related to the renewability of certificates that are suspended or revoked by the board.
3. Revise provisions regarding use of a seal by a certified professional geologist in 18VAC145-40-60, including provisions regarding the size and dimension of the seal.
4. Revise 18VAC145-40-70 to (i) refer to the statutory qualifications for certification in § 54.1-2208.2 of the Code of Virginia; (ii) provide qualification requirements for an applicant to establish "ethical character"; (iii) remove provisions that are duplicative of statutory requirements; and (iv) amend other provisions related to qualifying education or experience.
5. Repeal of the examination waiver provisions in 18VAC145-40-80 as the provisions of this section are not necessary to be in the regulation.
6. Revise the provisions for qualifications for the Fundamentals of Geology examination in 18VAC145-40-83, including revising provisions related to specific course subjects required for an individual seeking to qualify with a nongeological science degree.
7. Revise the provisions for qualifications for a geologist-in-training (GIT) designation in 18VAC145-40-85 to (i) provide for qualification requirements for an applicant to establish "ethical character"; (ii) simplify and reduce qualifying education requirements; (iii) remove the requirement that an applicant make application on a board-provided form; and (iv) remove unnecessary provisions regarding the authority of the holder of a GIT designation to practice as a certified professional geologist.
8. Revise 18VAC145-40-90 to remove certain standards of conduct that are not necessary to protect the public health, safety, and welfare.
9. Revise 18VAC145-40-100 to make requirements for reporting a change of name or address applicable to individuals holding a GIT designation.
10. Revise 18VAC145-40-120 to replace a prohibition on offering consideration in seeking work with a prohibition on soliciting or accepting gratuities in connection with work for which the regulant is responsible.
11. Repeal 18VAC145-40-140, which provides for the board's authority to impose regulatory discipline, as these provisions are duplicative of statutory provisions.
12. Repeal 18VAC145-40-150, which provides for reissuing a certificate after revocation.

Issues: The primary advantages to the public and regulated community include providing clarification to provisions of the regulation, ensuring the regulation complements Virginia law and reflects current agency procedures, and reducing regulatory burdens by removing requirements that are not necessary to protect the health, safety, and welfare of the public. There are no identifiable disadvantages to the public or the Commonwealth. It is not anticipated that the regulatory change will create any substantial disadvantages to the regulated community.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation. The Board for Professional Soil Scientists, Wetland Professionals, and Geologists (board) proposes to (i) amend the 30 hours of coursework needed to be certified as a professional geologist to remove the requirement that the coursework be in seven specific geological science subjects, (ii) amend the 12 minimum hours of geological science coursework needed to become a geologist-in-training to replace paleontology with hydrogeology, and (iii) stipulate in the regulation how an applicant for certification as a professional geologist may establish ethical character.

Background. The initial impetus for this action was Executive Directive Number One (2022), which directs executive branch entities under the authority of the Governor to initiate regulatory processes to reduce by at least 25% the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth. This regulation establishes rules for individuals who practice or offer to practice as a geologist or in a geological specialty by providing that such individuals may voluntarily obtain certification from the board as a certified geologist as evidence of qualification to engage in this occupation. Individuals that meet the requirements of certification are authorized to represent themselves to the public as certified geologists. However, a lack of certification does not prohibit the practice of geology. The regulation ensures that individuals who are certified have met the minimum standards (including education, experience, and examination) that have been established by the General Assembly and the board to practice as a certified geologist. In order to comply with Executive Directive Number One, the board primarily proposes changes that would repeal language that is duplicative of statute and nonregulatory in nature. Two other proposed changes aim to reduce regulatory burdens, and one proposed change would

provide clarity on how an applicant may establish ethical character.

Estimated Benefits and Costs: The main goal of this regulatory action is to reduce regulatory text that is either duplicative of statute or text that is nonregulatory in nature. In addition, two of the proposed changes would depart from current requirements. One change would remove the requirement that the 30 hours of required courses to sit for the fundamentals of geology exam (needed to apply for certification as a professional geologist) be in seven specific geological science subjects (i.e., stratigraphy, structural geology, mineralogy, paleontology, petrology, geomorphology, and field geology). Another change in this category would amend the requirements for persons applying to be a geologist-in-training by replacing paleontology with hydrogeology as one of the seven qualifying course subjects in at least four of which the required 12 minimum hours of geological science courses must be completed. According to the board, these changes provide more flexibility to those who would take the fundamentals of geology exam and would be less stringent for those who are seeking geologist-in-training designation. Accordingly, more individuals may qualify to sit for the exam and obtain certification. A third change would provide details on how an applicant may establish that the applicant is of ethical character. The proposed requirements relate to disclosing prior convictions and disciplinary actions and reflect current practice. Currently, being of an ethical character is required but the regulation does not describe how the board makes this determination. Thus, the proposed change may provide clarity.

Businesses and Other Entities Affected. Currently, there are 959 certified professional geologists and 84 geologists-in-training in Virginia. No regulants appear to be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.² An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.³ The proposed changes do not represent an increase in net cost or reduction in net benefit for any entity. Thus, no adverse impact is indicated.

Small Businesses⁴ Affected.⁵ No adverse impact on small businesses is expected.

Localities⁶ Affected.⁷ The proposed amendments do not introduce costs for local governments, nor do they disproportionately affect any locality more than others.

Projected Impact on Employment. One of the proposed changes provides more flexibility to those who would take the fundamentals of geology exam, and another change is less stringent for those who is seeking geologist in training certification. Accordingly, more individuals may qualify to sit for the exam and obtain certification. However, whether the proposed changes have the potential to affect total employment is not known.

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Effects on the Use and Value of Private Property. Professional geologist certifications are issued to individuals, not business entities. Thus, no direct impact on the use and value of private property or on real estate development costs is expected.

¹ Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

³ Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁴ Pursuant to § 2.2-4007.04, 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."

⁵ If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁶ "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.

⁷ Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Professional Soil Scientists, Wetland Professionals, and Geologists concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments update (i) the definitions section; (ii) provisions for the expiration, renewal, and reinstatement of certificates; (iii) provisions for use of seal; (iv) provisions for qualification for certification, including qualifying experience and education; (v) provisions for qualifying for the Fundamentals of Geology examination and receiving a

Geologist-in-Training designation; and (vi) standards of practice and conduct.

18VAC145-40-10. Definitions.

A. Section 54.1-2200 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Board

Geologist

Geology

Practice of geology

Qualified geologist

Virginia certified professional geologist

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

~~"Board" means the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.~~

"Geological mapping" means the process of creating a map on which is recorded geological information, such as the distribution, nature, and age of relationships of rock units, in which surficial deposits may or may not be mapped separately, and the occurrence of structural features such as folds, faults, and joints; mineral deposits; and fossil localities. "Geological mapping" may indicate geologic structure by means of formational outcrop patterns, by conventional symbols giving the direction and amount of dip at certain points, or by structure-contour lines.

~~"Geologist" means a person engaged in the practice of geology.~~

"Geologist-in-Training ~~(GIT)~~" or "GIT" means an individual who has completed the academic requirements specified in this chapter and has passed the Fundamentals of Geology examination, but has not met all requirements to qualify as a Virginia certified professional geologist.

~~"Geology" means the science encompassing those principles methods related to (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures that compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases, and other natural materials.~~

~~"Practice of geology" means the performance of any professional service or work wherein the principles and methods of geology are applied, including (i) investigating, evaluating, and consulting; (ii) geological mapping; (iii) describing the natural processes that act upon the earth's materials; (iv) predicting the probable occurrence of natural~~

~~processes; and (v) inspecting, planning, and performing and supervising geological work in order to enhance and protect the health, safety, and welfare of the public and the environment.~~

~~"Qualified geologist" means an uncertified person who possesses all the qualifications specified in § 54.1-2208.2 of the Code of Virginia for certification.~~

"Related geological science degree" means a degree that ~~shall include a degree in economic geology or petroleum geology~~ includes 30 semester hours of courses in the geosciences, including 12 or more semester hours from at least four of the following disciplines: stratigraphy, structural geology, hydrogeology, mineralogy, petrology, geomorphology, and field geology.

"Responsible charge" means the direct control and supervision of the practice of geology.

"Supervision" means quality control review of all significant data collection, interpretation, and conclusions.

~~"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the board through certification.~~

18VAC145-40-30. Expiration, renewal and fee of certificate holders.

A. Certificates issued under this chapter shall expire on August 31 of the odd-numbered year following the date of issuance. Certificate holders shall be notified by mail of the fee and the procedure for certificate renewal at least 45 days before the certificate expires. Each certificate holder desiring to renew ~~his~~ a certificate shall submit the renewal notice with the appropriate fee before the certificate expires.

B. There shall be a penalty fee for late renewal assessed in addition to the renewal fee for any certificate holder failing to renew the certificate within 30 days following the date of expiration.

C. Failure to receive written notice from the Department of Professional and Occupational Regulation does not relieve the regulant from the requirement to renew ~~his~~ the certificate. If the certificate holder fails to receive the renewal notice, a copy of the certificate may be submitted with the required fee.

D. The date a fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether a penalty fee or the requirement for reinstatement of a certificate is applicable.

~~E. Revoked or suspended certificates are not renewable until reinstated by the board.~~

18VAC145-40-60. Use of seal.

A certified professional geologist may apply a rubber stamp or preprinted seal to final and complete cover sheets and to

each original sheet of plans or drawings prepared or reviewed and approved by the regulant. The seal may be applied to the cover sheet of technical reports and specifications prepared or reviewed and approved by the regulant.

1. All seal imprints on final documents shall be signed.
2. Application of the seal and signature shall indicate acceptance of responsibility for work shown thereon.
3. The original seal shall be two inches in diameter and conform in detail and size to the design illustrated below; in this subdivision.



~~*The number referred to is the number, usually three or four digits, as shown on the wall certificate and is the license renewal number issued each biennium as indicated on the licensee's pocket card. The number will not change every two years, but is permanent on the seal is the last four digits of the certificate number.~~

18VAC145-40-70. Qualifications for certification.

A. ~~Each~~ In addition to the requirements in § 54.1-2208.2 of the Code of Virginia, each applicant for certification as a ~~certified~~ professional geologist in Virginia shall:

1. Make application on forms provided by the board;
2. Be of ethical character; which may be established if the applicant:
 - a. Has not been convicted of a non-marijuana misdemeanor in the last 10 years or has never been convicted of a felony that would render the applicant unfit or unsuited to engage in the occupation or profession applied for in accordance with § 54.1-204 of the Code of Virginia;
 - b. Has committed no act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to:
 - (1). The proposed area of practice within 10 years prior to application for licensure, certification, or registration; or

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(2). The area of practice related to licensure, certification, or registration by the board while under the authority of the board;

c. Has not engaged in fraud or misrepresentation in connection with the application for licensure, certification, or registration, or related exam;

d. Has not had a license, certification, or registration revoked or suspended for cause or been disciplined by the Commonwealth or by any other jurisdiction, or surrendered a license, certificate, or registration in lieu of disciplinary action; or

e. Has not practiced without the required license, certification, or registration in the Commonwealth or in another jurisdiction within the five years immediately preceding the filing of the application for licensure, certification, or registration by the Commonwealth.

~~3. Hold a baccalaureate or higher degree from an accredited college or university with a major in geology, engineering geology, geological engineering or a related geological science. In the absence of one of the aforementioned degrees, each applicant shall provide evidence of the satisfactory completion of 30 semester hours (or the equivalent) of geological science courses including, but not limited to, the following subjects:~~

- ~~a. Stratigraphy;~~
- ~~b. Structural geology;~~
- ~~c. Mineralogy;~~
- ~~d. Paleontology;~~
- ~~e. Petrology;~~
- ~~f. Geomorphology; and~~
- ~~g. Field geology.~~

~~At least 12 semester hours must have been completed in four of the seven subjects listed in this subsection.~~

~~4. Provide the board with written documentation that demonstrates that the courses satisfactorily completed by the applicant are equivalent to those required by this section.~~

~~5. 3. Have at least seven years of geological work that shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional geologist; or a minimum of three years of experience in responsible charge of geological work. The work shall include, but not be limited to, one or more of the following areas:~~

- ~~a. Mineralogy.~~
 - ~~(1) Identify and classify major rock types.~~
 - ~~(2) Identify mineral assemblages.~~
 - ~~(3) Determine probable genesis and sequence of mineral assemblages.~~
 - ~~(4) Identify minerals on the basis of chemical composition.~~

(5) Predict subsurface mineral characteristics on the basis of exposures and drillholes.

b. ~~Petrography/petrology~~ Petrography or petrology.

- (1) Identify and classify major rock types.
- (2) Determine physical properties of rocks.
- (3) Determine chemical properties of rocks.
- (4) Determine types or degrees of rock alteration.
- (5) Determine suites of rock types.

c. Geochemistry.

- (1) Establish analytical objectives and approaches.
- (2) Evaluate geochemical data.
- (3) Construct models based on results of geochemical analysis.
- (4) Make recommendations based upon results of geochemical analyses.

d. Hydrogeology.

- (1) Design and interpret hydrologic testing programs.
- (2) Utilize chemical data to evaluate hydrogeologic conditions.
- (3) Apply geophysical methods to analyze hydrogeologic conditions.
- (4) Determine physical and chemical properties of aquifers and vadose zones.
- (5) Determine groundwater flow systems.
- (6) Evaluate groundwater resources.
- (7) Evaluate groundwater quality.
- (8) Design wells and drilling programs.
- (9) Develop groundwater resource management plans.
- (10) Plan and evaluate remedial action programs.

e. Engineering geology.

- (1) Provide geological information and interpretations for engineering design.
- (2) Identify and evaluate potential seismic and other geologic hazards.
- (3) Provide geologic consultation during and after construction.
- (4) Develop and interpret engineering geology maps and sections.
- (5) Evaluate materials resources.
- (6) Define and establish site selection and evaluation criteria.
- (7) Design and implement field and laboratory programs.
- (8) Describe and sample soils for geologic analysis and materials properties testing.

f. Mining geology.

- (1) Formulate exploration programs.
- (2) Implement field investigations on prospects.

- (3) Perform geologic interpretations for mineral reserves.
- (4) Perform economic ~~analyses/appraisals~~ analyses or appraisals.
- (5) Provide geologic interpretations for mine development and production activities.
- (6) Provide geologic interpretations for mine abandonments, closures, or restorations.

g. Petroleum geology.

- (1) Formulate exploration programs.
- (2) Implement field investigations on prospects.
- (3) Perform geologic interpretations of physical properties and hydrocarbon reserves.
- (4) Perform petroleum economic ~~analyses/appraisals~~ analyses or appraisals.
- (5) Provide geologic interpretations for development and production activities.
- (6) Provide geologic interpretations for abandonments, closures, or restorations.

~~B. Each year of full time undergraduate study in the geological sciences shall count as one half year of experience up to a maximum of two years, and each year of full time graduate study shall count as a year of experience up to a maximum of three years. Credit for undergraduate and graduate study shall in no case exceed a total of four years toward meeting the requirements for at least seven years of geological work. The board may consider in lieu of the above-described geological work, the cumulative total of geological work or geological research of persons occupying research or post graduate positions as well as those teaching geology courses at the college or university level, provided such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the geological work required above. Applicants holding degrees other than those listed in § 54.1-2208.2 B 2 of the Code of Virginia shall provide the board with written documentation that demonstrates that the courses satisfactorily completed by the applicant are equivalent geological science courses.~~

C. A year of full-time employment is a minimum of 1,760 hours or 220 workdays in a 12 month period. More than 1,760 hours or 220 workdays during a 12 month period shall not be considered as more than one year of full-time experience 32 hours per week. Partial credit may be given for actual hours of work or workdays experience if the applicant works as a geologist less than full time.

~~D. Each applicant shall successfully pass an appropriate examination approved by the board and designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.~~

18VAC145-40-80. Waiver of examination. (Repealed.)

~~The board may waive the examination requirement for any applicant who makes written application, otherwise meets the requirements of Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia and also meets one of the following conditions:~~

- ~~1. Provides evidence of at least 12 years of geological work that includes the geological work as specified in 18VAC-145-40-70; or~~
- ~~2. Provides evidence of an unexpired certificate of registration, certification or license to engage in the practice of geology issued on the basis of comparable requirements by a proper authority of a state, territory or possession of the United States or the District of Columbia.~~

18VAC145-40-83. Qualifications for the Fundamentals of Geology (FG) examination.

A. The board may approve applicants to sit for the Fundamentals of Geology (FG) examination without having met the experience requirements of 18VAC145-40-70. The applicant shall submit an application on forms provided by the board, pay the fee established in 18VAC145-40-20, and satisfy one of the following requirements:

- 1. Hold a baccalaureate or higher degree from an accredited college or university with a major in geology, engineering geology, geological engineering, or a related geological science and ~~provide an official college transcript that demonstrates satisfactory completion of the degree program.~~
- 2. Hold a baccalaureate or higher degree from an accredited college or university with a major other than geology, engineering geology, geological engineering, or a related geological science and have satisfactorily completed at least 30 semester hours (or the equivalent) of geological science courses ~~including, but not limited to, the following subjects:~~
 - ~~a. Stratigraphy;~~
 - ~~b. Structural geology;~~
 - ~~c. Mineralogy;~~
 - ~~d. Paleontology;~~
 - ~~e. Petrology;~~
 - ~~f. Geomorphology; and~~
 - ~~g. Field geology.~~

~~At least 12 of the 30 semester hours of geological science courses must have been completed in four of the seven subjects listed in this subsection. The applicant shall provide an official college transcript and written documentation that demonstrates the courses satisfactorily completed are equivalent to those required by this section.~~

- 3. Be enrolled in an undergraduate geology, engineering geology, geological engineering, or a related geological science curriculum of at least four years at an accredited

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college or university and be within 12 months of completing undergraduate degree requirements. ~~The applicant shall provide an official college transcript that demonstrates satisfactory completion of course work.~~

4. Be enrolled in a graduate geology, engineering geology, geological engineering, or a related geological science curriculum at an accredited college or university and be within six months of completing graduate degree requirements. ~~The applicant shall provide an official college transcript that demonstrates satisfactory completion of course work.~~

B. Applicants must provide an official college transcript that demonstrates satisfactory completion of a degree program or course work as applicable to meet the requirements established in subsection A of this section.

18VAC145-40-85. Qualifications for Geologist-in-Training (GIT) designation.

A. To be eligible to obtain the GIT designation, each applicant shall:

- ~~1. Make application on forms provided by the board;~~
- ~~2. 1. Be of ethical character in accordance with the provisions of 18VAC145-40-70 A 2;~~
- ~~3. 2. Have achieved a passing score on a board-approved Fundamentals of Geology examination;~~
- ~~4. Hold a baccalaureate or higher degree from an accredited college or university with a major in geology, engineering geology, geological engineering, or a related geological science; or~~
- ~~5. 3. Hold a baccalaureate or higher degree from an accredited college or university with a major other than geology, engineering geology, geological engineering, or a related geological science and have satisfactorily completed at least 30 semester hours (or the equivalent) of geological science courses in courses in the geosciences, including, but not limited to, the following subjects 12 or more semester hours in at least four of the following disciplines: stratigraphy, structural geology, hydrogeology, mineralogy, paleontology, petrology, geomorphology, and field geology. At least 12 of the 30 semester hours of geological science courses must have been completed in four of the seven subjects listed in this subsection.~~

B. Prior to obtaining the designation of GIT, an applicant who qualified to sit for a board-approved Fundamentals of Geology examination under ~~subdivision 3 or 4~~ of 18VAC145-40-83 A 3 or A 4 and passed the examination must provide an official college transcript that demonstrates satisfactory completion of the degree program.

C. The designation of GIT will remain valid until the individual meets all requirements for certification as a Virginia certified professional geologist.

~~D. The designation of GIT does not give an individual the authority to practice as a certified professional geologist. An individual may not practice as a certified professional geologist in the Commonwealth of Virginia until his competence has been attested by the board through certification.~~

18VAC145-40-90. Disclosure.

A certified professional geologist:

1. Shall not submit any false statements or fail to disclose any facts requested concerning his the geologist's or another's application for certification.
- ~~2. Shall not falsely or maliciously attempt to injure the reputation or business of another.~~
- ~~3. 2. Shall not engage in any fraud, deceit, or misrepresentation in advertising, in soliciting, or in providing professional services.~~
4. 3. Shall not knowingly sign, stamp, or seal any plans, drawings, blueprints, surveys, reports, specifications, or other documents not prepared or reviewed and approved by the certificate holder.
- ~~5. 4. Shall make full disclosure to all parties of:~~
 - ~~a. Any transaction involving payments made to any person for the purpose of securing a contract, assignment, or engagement; or~~
 - ~~b. Any any monetary, financial, or beneficial interest he the geologist may have in any contract or entity providing goods or services, other than his professional services, to a project or engagement.~~
- ~~6. Shall express an opinion only when it is founded on adequate knowledge of established facts at issue, on a background of technical competence in the subject matter, and on an honest conviction of the accuracy of the testimony when serving as an expert or technical witness before any court, commission, or other tribunal.~~
- ~~7. Shall provide adequate representation of his qualifications and scope of responsibilities for all previous experience claimed when negotiating with prospective clients.~~

18VAC145-40-100. Change of address or name.

Each certified professional geologist and geologist-in-training shall notify the board, in writing, of any change of address or name. This notification shall be sent to the board within 30 days after such change of address or name.

18VAC145-40-120. Conflicts of interest.

~~A No certified professional geologist shall not:~~

1. Accept any work on any project or other professional engagement when a duty to a client or to the public would conflict with his the geologist's personal interest or the interest of another client, unless immediate disclosure of all

material facts of the conflict is made to each client related to the project or engagement.

2. Accept compensation for services related to the same project or professional engagement from more than one party without making prior full disclosure to all parties involved.

3. ~~Offer, either directly or indirectly, any commission, political contribution, or other consideration in seeking work except to secure a salaried position through employment agencies~~ Solicit or accept gratuities, directly or indirectly, from contractors, agents of contractors, or other parties dealing with a client or employer in connection with work for which the regulant is responsible.

18VAC145-40-140. Grounds for suspension, revocation, or denial to renew or grant certification. (Repealed.)

~~The board may suspend, revoke, or refuse to renew the certification of any geologist who, after a formal hearing as provided for in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), is found to have committed:~~

- ~~1. Fraud or deceit in obtaining or renewing certification (See subdivision 5 of § 54.1-111 of the Code of Virginia);~~
- ~~2. Any violation of Part III—Standards of Practice and Conduct, other regulations of the board, or governing statutes of the board;~~
- ~~3. An act or acts of gross negligence, incompetence, or misconduct in the practice of geology as a certified professional geologist; or~~
- ~~4. Any conviction of a felony that in the opinion of the board would adversely affect the practice of geology.~~

18VAC145-40-150. Reissuance of certificate after revocation. (Repealed.)

~~An individual whose certificate has been revoked in accordance with 18VAC145-40-140 shall file a new application and obtain approval of the board to regain the certificate.~~

VA.R. Doc. No. R24-7617; Filed December 19, 2024, 1:28 p.m.

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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

BOARD OF ACCOUNTANCY

Title of Document: [Electronic Participation in Virginia Board of Accountancy Meetings](#).

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Alessandra Gabriel, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, telephone (804) 367-0728, or email alessandra.gabriel@boa.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Rehabilitation Manual, Chapter 7](#).

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, or email syreeta.stewart@dmas.virginia.gov.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Title of Document: [Virginia Industrial Hemp Extract Intended for Human Consumption Law Civil Penalty Matrix](#).

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Nikeya Thomas, Program Manager, Office of Hemp Enforcement, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1382, or email nikeya.thomas@vdacs.virginia.gov.

BOARD OF PSYCHOLOGY

Title of Document: [Education for Psychological Practitioner Applicants](#).

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Erin Barrett, Director of Legislative and Regulatory Affairs, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 750-3912, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: [Board of Education Approved Courses to Satisfy Graduation Requirements for the Standard, Advanced Studies, and Modified Standard Diplomas in Virginia Public Schools](#).

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

GUIDANCE DOCUMENTS

The following guidance documents have been submitted for deletion and the listed agencies have opened up a 30-day public comment period. The listed agencies had previously identified these documents as certified guidance documents, pursuant to [§ 2.2-4002.1](#) of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact.

STATE BOARD OF EDUCATION

Titles of Documents: [Guidelines for Educating Students with Autism Spectrum Disorders.](#)

[Guidelines for Working with Students Who Are Deaf or Hard of Hearing in Virginia Public Schools.](#)

[Models of Best Practice in the Education of Students with Autism Spectrum Disorders.](#)

[Speech-Language Pathology Services in the Schools - Guidelines for Best Practice.](#)

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

COMMISSION ON LOCAL GOVERNMENT

MANUFACTURED HOUSING BOARD

Title of Document: [Vibrant Community Initiative.](#)

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Chase Sawyer, Policy and Legislative Services Manager, Department of House and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 310-5872, or email chase.sawyer@dhcd.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Title of Document: [Virginia Troops to Trucks.](#)

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Nicholas Megibow, Senior Policy Analyst, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-6701, or email nicholas.megibow@dmv.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Title of Document: [Multimodal System Design Guidelines.](#)

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Andrew Wright, Director of Policy, Communications, and Legislative Affairs, Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, telephone (804) 241-0301, or email andrew.wright@drpt.virginia.gov.

DEPARTMENT OF THE TREASURY

Titles of Documents: [Certification Letter.](#)

[Collateral Change Request.](#)

[Escrow Agent Online User Manual.](#)

[Frequently Asked Questions.](#)

[Letter of Credit Format.](#)

[Monthly Listing of Qualified Banks.](#)

[Qualified Escrow Agents.](#)

[Security for Public Deposits Act \(SPDA\) Link.](#)

[Security for Public Deposits Act \(SPDA\) Online User Manual.](#)

[SPDA Collateral Requirements.](#)

[SPDA Letter of Credit Final Agreement.](#)

[SPDA Letter of Credit Resolution.](#)

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Bill Watt, Senior Policy Analyst, Department of the Treasury, James Monroe Building, 101 North 14th Street, Third Floor, Richmond, VA 23219, telephone (804) 836-8523, or email william.watt@trs.virginia.gov.

UNIVERSITY OF VIRGINIA

Titles of Documents: [Health Sciences Library Policies.](#)

[UVA Health Policy Directory.](#)

Public Comment Deadline: February 12, 2025.

Effective Date: February 13, 2025.

Agency Contact: Connor Andrews, Director for State Government Relations, University of Virginia, 11 South 12th Street, Richmond, VA 23220, telephone (434) 297-5949, or email cba3dq@virginia.edu.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for A and K Development

The Department of Environmental Quality (DEQ) is proposing an enforcement action for A and K Development for violations of State Water Control Law and regulations and the applicable permit at the Twin Lake Villas Phase 1 located in Orange, Virginia. The proposed order (SW2023-07-NRO-001) is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept written comments from January 13, 2025, to February 12, 2025.

Contact Information: Holly Shupe, Regional Enforcement Specialist, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6923, or email holly.shupe@deq.virginia.gov.

Proposed Enforcement Action for Town of Chase City

The Department of Environmental Quality (DEQ) is proposing an enforcement action for the Town of Chase City for violations of the State Water Control Law and regulations at 1328 High Street, Chase City, Virginia. The proposed order is available at the DEQ office listed or online at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email from January 13, 2025, through February 12, 2025.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, 4949 Cox Road, Suite A, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Action for Dutoy Creek Wastewater Treatment Plant

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Powhatan County for violations of the State Water Control Law and regulations at 2040 Anderson Highway, Powhatan, Virginia. The proposed order is available at the DEQ office listed or online at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email or postal mail from January 13, 2025, through February 12, 2025.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, 4949 Cox Road, Suite A, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Action for Irene Carnes

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Irene Carnes for alleged violation of the State Water Control Law and regulations at 4050 Jefferson Park Road (Parcel No. 015-49) in Powhatan County, Virginia. The proposed order is available at the DEQ office listed or online at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email or postal mail from January 13, 2025, through February 12, 2025.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, 4949 Cox Road, Suite A, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Proposed Enforcement Action for King George County Service Authority

The Department of Environmental Quality (DEQ) is proposing an enforcement action for King George County Service Authority for violations of State Water Control Law and regulations and the applicable permit at the Purkins Corner wastewater treatment plant and Oakland Park sewage treatment plant facilities located in King George, Virginia. The proposed order is available from the DEQ contact or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept written comments from January 13, 2024, to February 12, 2024.

Contact Information: Katherine Mann, Regional Enforcement Specialist, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6095, or email katherine.mann@deq.virginia.gov.

Proposed Enforcement Action for VA Express Holdings LLC

The Department of Environmental Quality (DEQ) is proposing an enforcement action for VA Express Holdings LLC for violations of the State Water Control Law and regulations in Powhatan County, Virginia. The proposed order is available from the DEQ contact listed or at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact will accept comments by email or postal mail from January 13, 2025, through February 12, 2025.

Contact Information: Matt Richardson, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 659-2696, or email matthew.richardson@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Public Comment Opportunity for Community Psychiatric Support and Treatment

As part of the Right Help, Right Now Medicaid Behavioral Health Services Redesign, the Department of Medical Assistance Services (DMAS) is seeking public comment on a new behavioral health service, Community Psychiatric Support and Treatment (CPST). A draft service definition for CPST is available at <https://www.dmas.virginia.gov/media/bq2i3rbd/community-psychiatric-support-and-treatment-draft-service-definition-for-public-comment-12-16-2024.pdf>. Additional information on the Right Help, Right Now Medicaid Behavioral Health Services Redesign is available at <https://www.dmas.virginia.gov/providers/benefits-services-for-providers/behavioral-health/medicaid-behavioral-health-services-redesign/>.

Contact Information: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, FAX (804) 786-1680, TDD (800) 343-0634, or email syreeta.stewart@dmas.virginia.gov.

Public Notice of Intent to Amend State Plan - Reimbursement of Tribal Providers

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 Rate; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)). A copy of this notice is available for public review from the DMAS contact listed.

DMAS is specifically soliciting input from stakeholders, providers, and beneficiaries, on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted in writing by March 14, 2025, and such comments are available for review at <https://townhall.virginia.gov/L/generalnotice.cfm>.

Methods and Standards for Establishing Payment Rate; Other Types of Care (12VAC30-80)

The State Plan amendment (SPA) (i) clarifies that tribal clinics cannot be reimbursed at the facility rate, that is, the all-inclusive rate (AIR) for nonclinic services, including pharmacy, dental, transportation, and § 1915(c) waiver services, such as personal care; (ii) clarifies that Tribal Federally Qualified Health Centers (FQHCs) cannot be reimbursed at the AIR for pharmacy, transportation, or § 1915(c) waiver services and that dental services provided by Tribal FQHCs are reimbursed through the Alternative Payment Methodology (APM) established in the Medicaid State Plan at Attachment 4.19-B, pages 4.6 to 4.7; (iii) clarifies the definition of the per-visit rate for purposes of reimbursement at the AIR, specifying that it is a bundled, all-inclusive encounter rate and must not be unbundled and billed as

separate encounter claims; and (iv) specifies that an Indian Health Service or tribal or urban Indian organization, including a Tribal 638 facility that operates a retail pharmacy, must enroll separately as a pharmacy provider and that payment for pharmacy services shall align with an existing pharmacy payment methodology and shall not be at the AIR. Drugs provided as part of an outpatient clinic visit are included in the all-inclusive rate for the encounter.

The SPA also makes a change needed to reflect new federal requirements for Medicaid reimbursement to tribal clinics, clarifying that these services include (i) professional services furnished at the clinic by or under the direction of a physician and (ii) services furnished outside the clinic by clinic personnel under the direction of a physician.

The expected decrease in annual aggregate fee-for-service expenditures is \$7,817,289 in state general funds and \$29,477,175 in federal fiscal year 2025. The expected decrease in annual aggregate fee-for-service expenditures is \$10,912,457 in state general funds and \$42,122,887 in federal funds in federal fiscal year 2026.

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, or email emily.mcclellan@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North Ninth Street, Fourth 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/cumulstab.pdf>.

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

ERRATA

**VIRGINIA ALCOHOLIC BEVERAGE CONTROL
AUTHORITY**

Title of Regulation: **3VAC5-60. Manufacturers and Wholesalers Operations.**

Publication: 40:26 VA.R. 2090-2099 August 12, 2024.

Correction to Proposed Regulation:

Page 2099, 3VAC5-60-100, line 4, after "authority in" add "suspending or revoking a license under subdivision 1 i of §"

VA.R. Doc. No. R23-7513; Filed December 17, 2024, 10:39 a.m.