



# VIRGINIA

## REGISTER OF REGULATIONS

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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**

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## April 2025 through April 2026

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 ( <b>Monday</b> )	December 1, 2025
42:9	November 24, 2025 ( <b>Monday</b> )	December 15, 2025
42:10	December 9, 2025	December 29, 2025
42:11	December 22, 2025 ( <b>Monday</b> )	January 12, 2026
42:12	January 6, 2026 ( <b>Tuesday</b> )	January 26, 2026
42:13	January 21, 2026	February 9, 2026
42:14	February 4, 2026	February 23, 2026
42:15	February 18, 2026	March 9, 2026
42:16	March 4, 2026	March 23, 2026
42:17	March 18, 2026	April 6, 2026
42:18	April 1, 2026	April 20, 2026

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### 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 and 54.1-3102 of the Code of Virginia.

**Name of Petitioner:** Bertha Simmons.

**Nature of Petitioner's Request:** The petitioner requests that the Board of Long-Term Care Administrators amend 18VAC95-20-310 to allow content in an assisted living facility administrator-in-training (AIT) program that is similar to required content for a nursing home administrator AIT program also count toward a nursing home administrator AIT program.

**Agency Plan for Disposition of Request:** The petition for rulemaking will be published in the Virginia Register of Regulations on March 24, 2025. The petition will also be published on the Virginia Regulatory Town Hall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) to receive public comment, which opens March 24, 2025, and closes April 23, 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 scheduled for June 24, 2025. The petitioner will be notified of the board's decision after that meeting.

**Public Comment Deadline:** April 23, 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, FAX (804) 527-4413, or email [corie.wolf@dhp.virginia.gov](mailto:corie.wolf@dhp.virginia.gov).

VA.R. Doc. No. PFR25-32; Filed February 21, 2025, 9:25 a.m.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-90, Procedure for Adjusting Grievances**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 27, 2025, to support this decision.

The regulation remains necessary for the protection of public health, safety, and welfare because it sets out the grievance procedure for teachers required by § 22.1-308 of the Code of Virginia. Further, the regulation is clearly written and easily understandable. The regulation will be retained because the grievance procedure is required by statute.

There is a continued need for the regulation as it provides rules governing the procedure for adjusting grievances. At this time, the agency has received no comments concerning the regulation and is unaware of any complaints. The regulation was last amended in 2016. The agency's decision to retain the regulation will have no impact on small business.

Contact Information: 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](mailto:jim.chapman@doe.virginia.gov).

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia**, and determined that this regulation should be repealed. The board is publishing its report of findings dated February 27, 2025, to support this decision.

This regulation does not need to be an independent chapter, but can be incorporated into 8VAC20-720, which will enhance clarity and reduce the number of board regulations. Some provisions of 8VAC20-150 are necessary for the protection of public health, safety, and welfare because the rules concern the management of a student's scholastic record in the public schools of Virginia. These provisions are in accordance with the federal Family Educational Rights and Privacy Act, the Individuals with Disabilities Education Act, and the Code of Virginia. The chapter being repealed is neither clearly written nor easily understandable.

At this time, the agency has received no comments concerning the regulation and is unaware of any complaints. The regulatory chapter was last amended in 1995. The agency's decision to repeal the regulation and move certain provisions will have no impact on small business.

Contact Information: 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](mailto:jim.chapman@doe.virginia.gov).

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-330, Rules Governing Alternative Education**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 26, 2025, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because its provisions govern alternative education. Alternative education is necessary to ensure that the varied needs of children are met by the Commonwealth's education system. The regulation is clearly written and easily understandable.

The regulation will be retained as is because there is a continued need for provisions governing alternative education programs. At this time, the agency has received no comments concerning the regulation and is unaware of any complaints. There is no known overlap between the regulation and any other state or federal law or regulation. The regulation has not been amended since it became effective in 1980. The agency's decision to retain the regulation will have no impact on small businesses.

Contact Information: 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](mailto:jim.chapman@doe.virginia.gov).

#### Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-340, Regulations Governing Driver Education**, and determined that this regulation should be amended. The board is publishing its report of findings dated February 26, 2025, to support this decision.

The regulation is necessary for the protection of public health, safety, and welfare because it sets out requirements that govern driver education for children. Ensuring that children are adequately prepared to safely operate a motor vehicle is of the

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# Periodic Reviews and Small Business Impact Reviews

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utmost necessity in protecting public health, safety, and welfare. The regulation is clearly written and easily understandable.

The regulation will be amended to remove a document incorporated by reference (DIBR) in order to conform to 1VAC7-10-140 D. The DIBR will then be housed on the agency's website. Additionally, 8VAC20-340-10 will be amended to bring it into alignment with § 22.1-205 of the Code of Virginia and the Department of Motor Vehicle's regulations and practices.

The agency has received no comments on the regulation and is unaware of any complaints concerning the regulation. The regulation is not complex. It does not appear that the regulation overlaps, duplicates, or conflicts with any other state or federal law or regulation. The agency's decision will not impact small businesses.

Contact Information: 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](mailto:jim.chapman@doe.virginia.gov).

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-390, Rules Governing Division Superintendent of Schools**, and determined that this regulation should be amended. The board is publishing its report of findings dated February 27, 2025, to support this decision.

The regulation remains necessary for the protection of public health, safety, and welfare because it sets out rules governing division superintendents of schools, who play an integral part in the operation of school divisions. The regulation is clearly written and easily understandable.

The regulation will be amended. The qualifications to be placed on the list of eligible candidates found in 8VAC20-390-10 conflict with the requirements to be a candidate for the list of eligible superintendents found in 8VAC20-23-630. 8VAC20-390-10 will be repealed to resolve this conflict.

There is a continued need for the regulation as it provides rules governing division superintendents of schools. At this time, the agency has received no comments concerning the regulation and is unaware of any complaints. The regulation conflicts with 8VAC20-23-630. The regulation was last amended in 2022. The agency's decision to amend the regulation will have no impact on small business.

Contact Information: 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](mailto:jim.chapman@doe.virginia.gov).

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-410, Regulations Governing Allowable Credit for Teaching Experience**, and determined that this regulation should be repealed. The board is publishing its report of findings dated October 24, 2024, to support this decision.

The content of the regulation is necessary for the protection of public health, safety, and welfare because it describes how credit for teaching experience may be allowed. Credit for teaching experience is necessary for numerous teacher licensure types and to ensure that teachers gather the necessary experience to be effective instructors. The regulation is clearly written and easily understandable, so necessary provisions will be retained and moved.

The regulation will be repealed, but its language will be edited to be appropriate for a definition and moved to 8VAC20-23-10. Licensure Regulations for School Personnel (8VAC20-23) concerns teacher licensure and contains numerous references to "credit for teaching experience." Shifting the language of 8VAC20-410 to 8VAC20-23 will reduce the number of board regulations.

There is a continued need for the text of regulation, but no need for it to exist in a distinct chapter. The agency has received no comments and is unaware of any complaints concerning the regulation. The regulation text is not complex. It does not appear that the regulation overlaps, duplicates, or conflicts with any other state or federal law or regulation. The agency's decision will not impact small business.

Contact Information: 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](mailto:jim.chapman@doe.virginia.gov).

## Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Education conducted a periodic review and a small business impact review of **8VAC20-760, Regulations Governing the Designation of School Divisions of Innovation**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated February 27, 2025, to support this decision.

The regulation remains necessary for the protection of public health, safety, and welfare because it sets out regulations governing the designation of school divisions of innovation. School divisions of innovation play an integral part in improving student learning; educational performance; and college, career, and citizenship readiness skills in one or more schools, for the benefit of all schools in the school division. Further, the regulation is clearly written and easily

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# Periodic Reviews and Small Business Impact Reviews

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understandable. The regulation will be retained as is. At this time, the agency has received no comments concerning the regulation and is unaware of any complaints. The regulation was last amended in 2019. The agency's decision to retain the regulation as is will have no impact on small business.

Contact Information: 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](mailto:jim.chapman@doe.virginia.gov).



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-325, Fraud Reduction/Elimination Effort**. The Notice of Intended Regulatory Action to amend 22VAC40-325, which is published in this issue of the Virginia Register, serves as the agency notices of announcement.

Contact Information: Susan Lloyd, Fraud Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 682-1207, or email [susan.lloyd@dss.virginia.gov](mailto:susan.lloyd@dss.virginia.gov).



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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending **18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic**. The purpose of the proposed action is to provide a licensure pathway for foreign physicians using a system of provisional and restricted licensure consistent with Chapter 464 of the 2024 Acts of Assembly, which amended the Code of Virginia to allow the Board of Medicine the authority to create such a pathway for foreign physicians. Amendments being considered would establish (i) fees associated with initial applications and renewals of provisional and restricted licenses; (ii) application requirements for provisional and restricted licenses; (iii) renewal requirements for provisional and restricted licenses; (iv) criteria for assessment and evaluation programs of provisional licensees; (v) criteria to obtain a provisional license; (vi) disciplinary provisions; and (vii) reinstatement provisions for provisional and restricted licensees.

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

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

Public Comment Deadline: April 23, 2025.

Agency Contact: William L. Harp, MD, 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](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R25-8127; Filed February 20, 2025, 1:54 p.m.

provides more weight to the size of a locality's caseloads for programs and less weight to actual fraud control activities taken or completed. This results in uneven reimbursement rates when compared to performance of desired outcomes, such as investigations initiated, claims established, or other similar actions. This regulatory action will move away from a formula that is caseload based to one that reflects actual fraud work.

In addition, pursuant to § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: §§ 63.2-217 and 63.2-526 of the Code of Virginia.

Public Comment Deadline: April 23, 2025.

Agency Contact: Susan Lloyd, Fraud Consultant, Department of Social Services, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 682-1207, or email [susan.lloyd@dss.virginia.gov](mailto:susan.lloyd@dss.virginia.gov).

VA.R. Doc. No. R25-8195; Filed February 27, 2025, 10:07 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-325, Fraud Reduction/Elimination Effort**. The purpose of the proposed action is to rename the Fraud Reduction/Elimination Effort as the Statewide Fraud Control Program and change the methodology used to reimburse local departments of social services. The current formula for reimbursement to local departments of social services for fraud control activities

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# REGULATIONS

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

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## 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.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** 4VAC20-1360. Pertaining to Commercial Electrofishing (amending 4VAC20-1360-20, 4VAC20-1360-40).

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

**Effective Date:** March 1, 2025.

**Agency Contact:** Zachary Widgeon, Director of Communications, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 414-0713, FAX (757) 247-2002, or email [zachary.widgeon@mrc.virginia.gov](mailto:zachary.widgeon@mrc.virginia.gov).

#### Summary:

*The amendments (i) remove size limits on blue catfish that can be taken using electrofishing, and (ii) clarify and expand the proximity to a pier or fixed fishing device within which electrofishing is allowed.*

#### 4VAC20-1360-20. Definitions.

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

"Agent" means any individual who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Blue catfish" means any fish of the nonnative species *Ictalurus furcatus*.

"Commercial electrofishing fishery" means low-frequency electrofishing and subsequent harvest by any individual where the harvest is for sale, barter, trade, or any commercial purpose or is intended for sale, barter, trade, or any commercial purpose.

"Electrofishing" means a method by which fish are immobilized by an electrical field created by pulsing direct current at a frequency not above 15 Hz.

"Fixed fishing device" means any fishing device requiring the use of more than two poles or stakes that have been pushed or pumped into the bottom, to include only fyke nets, pound nets, staked gill nets, and crab traps.

"Flathead catfish" means any fish of the nonnative species *Pylodictis olivaris*.

"Harvest area" means the waters of (i) the mainstem of the James River, from the James River Bridge upstream to the southern point of Turkey Island; (ii) the mainstem of the Pamunkey River, from the Route 33 Eltham Bridge upstream to the mouth of Matadequin Creek; and (iii) the mainstem of the Rappahannock River, from the Route 360 Downing Bridge upstream to the Route 301 James Madison Memorial Bridge.

"Pier" means any noncommercial or commercial open pile or floating structure extending from the uplands channelward of mean low water.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

#### 4VAC20-1360-40. Prohibitions.

A. It shall be unlawful for any individual to harvest any fish immobilized by commercial electrofishing gear without possessing a Commercial Fisherman Registration License and Fish Dip Net License or a Commercial Electrofishing License.

B. It shall be unlawful for any individual in the commercial electrofishing fishery to: ~~1. Take take, harvest, or possess any species other than blue catfish or flathead catfish.~~

~~2. Take, harvest, or possess any blue catfish greater than 25 inches in total length, except that up to 12 blue catfish per trip may be between 25 and 28 inches in total length.~~

C. It shall be unlawful for any individual licensed under the provisions of 4VAC20-1360-30 to:

1. Fail to be onboard the electrofishing vessel when conducting commercial electrofishing.

2. Conduct commercial electrofishing from October 16 through April 30.
3. Conduct commercial electrofishing between 11:59 a.m. Friday and 12:01 a.m. Monday.
4. Conduct commercial electrofishing within 300 yards of any fixed fishing devices or within 100 yards of any other marked commercial fishing gear.
5. Conduct commercial electrofishing within the week prior to or during any local sampling conducted by the Virginia Department of ~~Game and Inland Fisheries~~ Wildlife Resources. The dates and locations of such sampling will be provided to licensees.
6. Fail to contact the Virginia Marine Resources Commission Operations Station toll free line at 1-800-541-4646 when intending to conduct commercial electrofishing within the following 24-hour period to report the specific location and estimated time of fishing.
7. Conduct commercial electrofishing in Virginia waters, except in the harvest area specified on the individual's Commercial Electrofishing License.
8. Conduct commercial electrofishing within ~~400~~ 300 yards of any public boat ramp, ~~fishing public or private~~ pier, or where people are in the water, including such activities as swimming and diving.

VA.R. Doc. No. R25-8178; Filed February 26, 2025, 11:23 a.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:** **12VAC5-501. Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps.**

**Agency Contact:** Briana Bill, Environmental Health Coordinator, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 584-6340, or email [briana.bill@vdh.virginia.gov](mailto:briana.bill@vdh.virginia.gov).

FORMS (12VAC5-501)

~~Migrant Labor Camp Inspection Report, EHS-174 (rev. 12/04).~~

[Application for a Migrant Labor Camp Operation Permit, EHS-V23, \(eff. 3/2025\)](#)

VA.R. Doc. No. R25-8225; Filed March 4, 2025, 9:58 a.m.

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**Fast-Track Regulation**

**Titles of Regulations:** **12VAC30-10. State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-610).**

**12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-200).**

**Statutory Authority:** § 32.1-325 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** April 23, 2025.

**Effective Date:** May 8, 2025.

**Agency Contact:** Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email [emily.mcclellan@dmas.virginia.gov](mailto:emily.mcclellan@dmas.virginia.gov).

**Basis:** Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance, and § 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority, as established by § 1902(a) of the Social Security Act (42 USC § 1396a), provides governing authority for payments for services.

**Purpose:** The proposed changes are required in order for DMAS to be in compliance with federal rules stipulating that State Medicaid plans comply with third-party liability (TPL) requirements reflected in current law. This regulatory change is essential to protect the health, safety, and welfare of citizens because it allows DMAS to make payments without regard to potential third-party liability for pediatric preventive services under certain circumstances, which will allow providers to provide preventive services to pediatric patients without fear of delayed payment, thereby providing easier, more widespread access for pediatric patients to receive necessary preventive care. This action also benefits the health and welfare of citizens by barring liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under

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the third-party payer's rules, which may result in fewer claims being denied on this basis, protecting Medicaid members from receiving bills for personal payment of these services.

**Rationale for Using Fast-Track Rulemaking Process:** This action is expected to be noncontroversial and, therefore, appropriate for the fast-track rulemaking process because it aligns the regulations with current federal and state law and does not reduce services.

**Substance:** In accordance with a Centers for Medicare and Medicaid Services directive, the changes update Virginia's TPL provisions from a "cost avoidance" model to a "pay and chase" model for pediatric preventive claims. Specifically, the changes (i) allow DMAS to comply with the federal requirements related to prior authorization, to comply with state legislation related to liens, and to establish a clear process for individuals to follow with regard to Medicaid liens; (ii) require DMAS to apply cost-avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services; (iii) require DMAS to make payments without regard to potential third-party liability for pediatric preventive services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days; and (iv) provide DMAS with flexibility to make payments without regard to potential third-party liability for up to 100 days for claims related to child support enforcement beneficiaries.

**Issues:** The primary advantage to this action is that the changes align DMAS regulations with federal and state requirements. There are no disadvantages to the public, the agency, the Commonwealth, or 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.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. This regulatory action would make language-only changes to the regulatory text in order to (i) comply with two Centers for Medicare and Medicaid Services (CMS) directives; (ii) incorporate a third-party claim process as required by Chapter 807 of the 2024 Acts of Assembly; and (iii) respond to a 2022 petition for rulemaking.

Background. The proposed changes in this action involve Medicaid third party liability (TPL) rules, which address situations where Medicaid beneficiaries have one or more additional sources of health care coverage in addition to Medicaid. TPL refers to the legal obligation of third parties to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan. Examples include beneficiaries with other health insurance (e.g., group health plans, self-insured plans, managed care organizations,

pharmacy benefits, Medicare, court-ordered health coverage as part of child support order, workers' compensation, long-term care insurance), settlements from a liability insurer (e.g., treatment of personal injuries for which a car insurer is responsible), and other state or federal coverage programs (unless specifically excluded by law). In such cases, TPL rules generally dictate that Medicaid is the payer of last resort.<sup>2</sup> In other words, all other available third-party resources must meet their legal obligations to pay claims before the Medicaid program pays for the care of a Medicaid beneficiary. States are required to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services that are available under the Medicaid state plan. If the Medicaid agency has determined that a third party is likely liable for a claim, it must reject payment of the claim by Medicaid in most circumstances (an example of cost avoidance). The Medicaid agency then sends the claim back to the provider noting the third party that Medicaid believes to be legally responsible for paying the claim, and the provider should then bill the legally liable third party. The first set of proposed changes are needed in order to respond to a CMS informational bulletin<sup>3</sup> requiring states to ensure that their Medicaid state plans comply with TPL requirements reflected in current law. The bulletin directed states to update their Medicaid TPL state plan pages and submit amendments to CMS to reflect the following: (i) the requirement for states to apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services; (ii) the requirement for states to make payments without regard to potential TPL for pediatric preventive services, unless the state has made a determination related to cost effectiveness and access to care that warrants cost avoidance for 90 days; and (iii) state flexibility to make payments without regard to potential TPL for up to 100 days for claims related to child support enforcement beneficiaries. According to the Department of Medical Services (DMAS), the Virginia Medicaid program has been in compliance with all three requirements since CMS approved a state plan amendment on July 25, 2022. Consequently, this action aims to update the Virginia Administrative Code accordingly but does not make substantive changes to policy or practice. Second, CMS issued a state Medicaid director letter 23-002,<sup>4</sup> which required Medicaid agencies to issue state rules to bar liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer rules. The proposed regulatory language changes relating to that requirement are also included in this action. Third, the proposed changes would add regulatory text to effectuate Chapter 807 of the 2024 Acts of Assembly,<sup>5</sup> which amended § 8.01-66.9:2 of the Code of Virginia and set out a process for placing a lien in favor of DMAS on claim for personal injuries. The amendments to the regulatory text in this action would incorporate the processes as laid out in § 8.01-66.9:2 of the Code of Virginia. Finally, a set of proposed changes are intended to respond to a petition for rulemaking that was filed on November 3, 2022 relating to lien amounts arising from

the Medicaid program and asserted against personal injury claims proceeds. In response to the petition, the proposal would add regulatory text to detail the process for requesting information about a Medicaid lien.

**Estimated Benefits and Costs:** DMAS states that all of the proposed changes to the regulatory text are strictly language-only and do not change any requirements in practice. For example, the first and second set of proposed changes are directed by CMS and pertain respectively to how the Medicaid state plan reflects TPL requirements in current law and to the introduction of rules to prevent third parties from refusing liability based on lack of prior authorization from themselves. Similarly, the third and fourth sets of proposed changes incorporate the statutory requirements by laying out a process and adding details about requesting information about a Medicaid lien. Although, no significant economic is expected from the proposed changes, they would better inform the readers of the regulation (particularly law firms involved in Medicaid claims with TPL) about the rules and also update the regulatory text to align with existing federal and state laws.

**Businesses and Other Entities Affected.** In fiscal years 2023 and 2024, there were 27,001 and 36,000 Medicaid claims involving a TPL, respectively. In those two years, \$79.1 million and \$105.4 million in total funds (one-half state and one-half federal) were recovered respectively from third parties liable for part or all of the medical services furnished to Medicaid recipients. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>7</sup> 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.<sup>8</sup> The proposed changes are language-only changes and are not expected to create any significant economic impact other than updating the text to conform to current federal and state laws and practice. Thus, an adverse impact is not indicated.

**Small Businesses<sup>9</sup> Affected.**<sup>10</sup> The proposed amendments do not appear to adversely affect small businesses.

**Localities<sup>11</sup> Affected.**<sup>12</sup> The proposed amendments do not introduce costs for localities, nor do they disproportionately affect any locality.

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

**Effects on the Use and Value of Private Property.** No significant impact on the use and value of private property nor on real estate development costs is expected.

<sup>1</sup> 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.

<sup>2</sup> <https://www.medicaid.gov/medicaid/eligibility/coordination-of-benefits-third-party-liability/index.html>.

<sup>3</sup> <https://www.medicaid.gov/federal-policy-guidance/downloads/cib082721.pdf>.

<sup>4</sup> <https://www.medicaid.gov/federal-policy-guidance/downloads/smd23002.pdf>.

<sup>5</sup> <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+ful+CHAP0807>.

<sup>6</sup> <https://townhall.virginia.gov/L/viewpetition.cfm?petitionid=377>.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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."

<sup>10</sup> 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.

<sup>11</sup> "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.

<sup>12</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

**Summary:**

*In accordance with a Centers for Medicare and Medicaid Services directive, in response to a petition for rulemaking, and pursuant to Chapter 807 of the 2024 Acts of Assembly, the amendments (i) allow the Department of Medical Assistance Services (DMAS) to comply with the federal requirements related to prior authorization, to comply with state legislation related to liens, and to establish a clear process for individuals to follow with regard to Medicaid liens; (ii) require DMAS to apply cost-avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services; (iii) require DMAS to make payments without regard to potential third-party liability for pediatric preventive services, unless the state has made a*

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determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days; and (iv) provide DMAS with flexibility to make payments without regard to potential third-party liability for up to 100 days for claims related to child support enforcement beneficiaries.

## 12VAC30-10-610. ~~Third-party~~ Third-party liability.

A. The Medicaid agency meets all requirements of:

1. 42 CFR 433.138 and 433.139;
2. 42 CFR 433.145 through 433.148;
3. 42 CFR 433.151 through 433.154; and
4. ~~Sections~~ Section 1902(a)(25)(H) and ~~(I)~~ (a)(25)(I) of the Social Security Act.

B. 12VAC30-20-190, governing the identification of liable resources with respect to ~~third-party~~ third-party liability:

1. Specifies the frequency with which the data exchanges required in § 42 CFR 433.138(d)(1), (d)(3), and (d)(4) and the diagnosis and trauma code edits required in § 42 CFR 433.138(e) are conducted;
2. Describes the methods the agency uses for meeting the follow-up requirements contained in §§ 42 CFR 433.138(g)(1)(i) and (g)(2)(i);
3. Describes the methods the agency uses for following up on information obtained through the ~~State~~ state motor vehicle accident report file data exchange required under § 42 CFR 433.138(d)(4)(ii) and specifies the ~~time frames~~ timeframes for incorporation into the eligibility case file and into its ~~third-party data base~~ third-party database and ~~third-party~~ third-party recovery unit of all information obtained through the follow-up that identifies legally liable ~~third-party~~ third-party resources; and
4. Describes the methods the agency uses for following up on paid claims identified under § ~~433.13(a)~~ 42 CFR 433.138(a) (methods include a procedure for periodically identifying those trauma codes that yield the highest ~~third-party~~ third-party collections and giving priority to following up on those codes) and specifies the ~~time frames~~ timeframes for incorporation into the eligibility case file and into its ~~third-party data base~~ third-party database and ~~third-party~~ third-party recovery unit of all information obtained through the follow-up that identifies legally liable ~~third-party~~ third-party resources.

C. Providers are not required to bill liable third parties when services covered under the plan are furnished to an individual on whose behalf child support enforcement is being carried out by the ~~State~~ state Title IV-D agency.

D. 12VAC30-20-200, governing the payment of claims with respect to ~~third-party~~ third-party liability, specifies:

1. The method used in determining a provider's compliance with the ~~third-party~~ third-party billing requirements at § ~~433.139(b)(3)(ii)(C)~~ 42 CFR 433.139(b)(3)(ii)(C).

2. The threshold amount or other guideline used in determining whether to seek recovery or reimbursement from a liable third party, or the process by which the agency determines that seeking recovery of reimbursement would not be ~~cost-effective~~ cost-effective.

3. The dollar amount or time period the ~~State~~ state uses to accumulate billings from a particular liable third party in making the decision to seek recovery of reimbursement.

E. The Medicaid agency ensures that the state has in effect the laws that require third parties to comply with the provisions, including those that require third parties to provide the state with coverage, eligibility, and claims data under § 1902(a)(25) of the Social Security Act, and specifies the compliance with § 1902(a)(25)(E) and (a)(25)(F) of the Social Security Act.

F. The Medicaid agency ensures that laws are in effect that bar liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules. These laws comply with the provisions of § 202 of the Consolidated Appropriations Act of 2022.

G. The Medicaid agency ensures that the provider furnishing a service for which a third party is liable follows the restrictions specified in 42 CFR 447.20.

H. The Medicaid agency has written cooperative agreements for the enforcement of rights to and collection of third-party third-party benefits assigned to the State state as a condition of eligibility for remedial assistance with the State state Title IV-D agency. The requirements of 42 CFR 433.152(b) are met.

I. The Medicaid agency assures ensures that the State state has in effect the laws relating to medical child support under § 1908 of the Social Security Act.

H. J. The Medicaid agency specifies the guidelines used in determining the ~~cost-effectiveness~~ cost-effectiveness of an employer-based group health plan; the State state provides methods for determining ~~cost-effectiveness~~ cost-effectiveness in 12VAC30-20-210.

## 12VAC30-20-200. Requirements for third party liability; payment of claims.

Requirements for third-party liability payment of claims include the following:

1. Probable liability is established at the time the claim is filed.

- a. When the Title XIX agency has established the probable existence of ~~third-party~~ third-party liability at the time the claim is filed, the agency rejects the claim and returns it to

the provider for a determination of the amount of liability. The establishment of ~~third-party~~ third-party liability takes place when the agency receives confirmation from the provider or a ~~third-party~~ third-party resource indicating the extent of ~~third-party~~ third-party liability. When the amount of liability is determined, the agency pays the claim to the extent that maximum payment allowed under the agency's payment schedule exceeds the amount of the ~~third-party~~ third-party payment.

b. Exhausting all available ~~third-party~~ third-party resources is the responsibility of the providers. The Medicaid Management Information Enterprise System (MMIS) (MES) does not allow payments to be made by Virginia Medicaid unless the invoice indicates that the third party has either paid or denied the claim.

c. There are certain circumstances in which cost avoidance may not be utilized:

~~1.~~ (1) Medical support enforcement. In the case of any service covered under Medicaid provided to an individual on whose behalf child support enforcement is being carried out by the IV-D agency, Medicaid makes payment for such service in accordance with the usual payments schedule. These payments are made without regard to any ~~third-party~~ third-party liability, if such ~~third-party~~ third-party liability is derived, through insurance or otherwise, from the parent whose obligation to pay support is being enforced by the IV-D agency. Medicaid shall make these payments ~~providing, provided that they~~ the payments have not been made by such third party within ~~30~~ 100 days after such service is furnished.

Providers shall not be required to bill the third party in this situation. When the provider ~~does bill~~ bills Medicaid, ~~he~~ the provider must certify either:

(a) That ~~he~~ the provider has not billed the third party documented on the claim due to medical support enforcement; ~~;~~ or

(b) That ~~he~~ the provider has billed the third party documented on the claim but ~~that he~~ has not received payment or denial for the service from the third party within ~~30~~ 100 days after the ~~service was furnished~~ provider of such services initially submitted a claim. In this case, ~~30 up to 100 days must elapse from the date of service to after the date of provider certification of such services initially submits a claim.~~

~~2. Prenatal Care. When the claim is for prenatal, labor and delivery, or postpartum care that is covered under the State Plan, the Commonwealth makes payment for such services in accordance with the usual payment schedule without regard to the liability of a third party for payment for such services.~~

~~3.~~ (2) Preventive ~~Pediatric Care~~ pediatric care. When the claim is for preventive pediatric care, including services covered under the Early and Periodic Screening,

Diagnosis and Treatment (EPSDT) ~~services that are covered under the State Plan benefit~~, the Commonwealth makes payment for such services in accordance with the usual payment schedule without regard to the liability of a third party for payment for such services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days.

~~4. In order to accomplish this pay and chase activity, in accordance with 42 CFR 433.139, (once the claims have been processed for payment), a report is generated advising the third-party unit so that recovery of funds can be made.~~

2. Virginia complies with the following requirements:

a. The requirement for states to apply cost-avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services, in accordance with the provisions of § 1902(a)(25)(E) of the Social Security Act;

b. The requirement for states to make payments without regard to potential third-party liability for pediatric preventive services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days, in accordance with the provisions of § 1902(a)(25)(E) of the Social Security Act; and

c. The requirement for state flexibility to make payments without regard to potential third-party liability for up to 100 days for claims related to child support enforcement beneficiaries, in accordance with the provisions of § 1902(a)(25)(F) of the Social Security Act.

~~3.~~ Probable liability is not established or benefits are not available at the time claim is filed. If the probable existence of ~~third-party~~ third-party liability cannot be established or ~~third-party~~ third-party benefits are not available to pay the recipient's medical expenses at the time the claim is filed, the agency pays the full amount allowed under the agency's payment schedule.

~~3.~~ 4. Recovery of reimbursement.

a. When the Title XIX agency learns of the existence of a liable third party after a claim is paid, or benefits become available from a third party after a claim is paid, the Title XIX agency seeks recovery of reimbursement within 60 days after the end of the month it learns of the existence of the liable third party or benefits become available.

b. Reimbursement is sought by the Title XIX agency unless the agency determines that recovery will not be ~~cost effective~~ cost-effective. The agency uses the threshold amount of \$50 as a guideline in its attempts to recover from liable third parties in casualty cases. This \$50 guideline is used in consideration with other factors (i.e., expense and difficulty of recovery) in deciding whether to

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pursue recoveries in the range of smaller dollar expenditures (less than \$50). The threshold amount in the determination for the recovery of funds by the health insurance unit is \$40. However, the threshold amount may be waived when the agency deems it to be economically and administratively feasible to collect less than the stated amounts. The threshold amounts are based on effectiveness with normal effort for the recovery of funds. Should it be determined that a recovery effort would be ~~cost-effective~~ cost-effective, then attempts are made for recovery of amounts below the threshold levels.

~~4. Code of Virginia § 8.01-66.9. Lien in favor of Commonwealth and state institutions or Department of Rehabilitative Services on claim for personal injuries. The State Agency~~ 5. Prior authorizations.

a. The DMAS payment of a claim for a medical item or service shall be the equivalent of the medical assistance recipient having obtained a prior authorization for the item or service from the third party, other than Medicare plans.

b. No third-party payer shall deny a claim that is submitted by DMAS solely on the basis of the medical assistance recipient's failure to obtain a prior authorization under the third-party payer's rules for the medical item or service.

c. A third-party payer shall respond to an inquiry by DMAS regarding a claim for payment of a medical item or service that was submitted to the third party not later than three years after the date of the provision of such medical item or service; the third-party payer must respond within 60 days of receiving the inquiry.

6. DMAS meets all the requirements of ~~this section~~ §§ 8.01-66.9 and 8.01-66.9:2 of the Code of Virginia with respect to liens on claims for personal injury.

7. To obtain information about a Medicaid member's enrollment status or an itemization of lien against a personal injury claim, the member or the member's authorized representative shall furnish DMAS or the DMAS designated representative with relevant information that DMAS or the DMAS designated representative shall request. The member or the member's authorized representative shall use the DMAS public-facing portal designed for electronic data interchange to submit any requested information to DMAS or the DMAS designated representative. The following information is required to be furnished to DMAS or the DMAS designated representative:

a. A letter of representation signed by the Medicaid member or the member's authorized representative and dated within the last 12 months if the request is made by a representative.

b. A Health Insurance Portability and Accountability Act of 1996 (HIPAA) complaint release form signed by the member and dated within the last 12 months that authorizes both DMAS and the Office of the Attorney General to disclose medical information to the member or

the member's authorized representative and to any other third parties or contractors that are or will be involved with the lien.

c. The full legal name of the Medicaid member.

d. The full social security number of the Medicaid member.

e. A copy of the front and back of the Medicaid member's health insurance card.

f. A description of the member's injuries sustained as a result of the accident.

g. An itemized statement of the Medicaid member's medical damages, including providers and dates of service, along with copies of medical bills.

h. The date and location of the accident, the identities of all parties involved in the accident, and a copy of the police report, if available.

i. The full name, mailing address, telephone number, and email address of the authorized representative named in the HIPAA release to whom DMAS should direct communications about the Medicaid lien.

j. If any of the required information changes after the date the information is submitted to DMAS, the member or the member's authorized representative shall notify DMAS of the change as soon as possible.

8. To make a request for a reduction of any portion of a Medicaid lien, the member or the member's authorized representative shall furnish DMAS or the DMAS designated representative with relevant information that DMAS or the DMAS designated representative shall request. The member or the member's authorized representative shall use the DMAS public-facing portal designed for electronic data interchange to submit any requested information to DMAS or the DMAS designated representative. The following information is required to be furnished to DMAS or the DMAS designated representative:

a. The member's prognosis and anticipated future treatment expenses.

b. If the member is permanently disabled as a result of the accident, the disability rating.

c. The member's current income, financial resources, and employment status.

d. The amount of all other liens or claims against the members personal injury claim.

e. Whether any liability insurance policies are available and, if so, the amount paid by each and the policyholder's name for each.

f. Whether any settlements have occurred related to the accident, including the amount of the settlement, the terms, and a copy of the signed settlement agreement.



g. Whether any lawsuits have been filed related to the accident, the jurisdiction and case number, a copy of the complaint, and any other filings.

h. The amount of all medical reimbursement payments coverage related to the accident, such as Medical Payments Insurance, also known as "medpay."

i. An itemized statement of all attorney fees and costs and any voluntary reductions.

j. A written explanation of why the request is being made, along with details about the compromise or waiver that is being requested and any other facts or documentation that are being relied upon to support the request.

k. If any of the required information changes after the date the information is submitted to DMAS, the member or the member's authorized representative shall notify DMAS of the change as soon as possible.

9. To make a request to remove charges contained in the DMAS itemization of lien that are believed to be unrelated to the personal injury claim of the member, the member or the member's authorized representative shall furnish DMAS or the DMAS designated representative with relevant information that DMAS or the DMAS designated representative shall request. The member or the member's authorized representative shall use the DMAS public-facing portal designed for electronic data interchange to submit any requested information to DMAS or the DMAS designated representative. The following information is required to be furnished to DMAS or the DMAS designated representative:

a. A written statement detailing the specific charges that the member or the member's authorized representative believes are unrelated to the personal injury claim.

b. Any and all documentation from the member or the member's authorized representative to any third party detailing claimed medical damages, itemized medical bills, or other related information, including demand packages, list of medical specials, and correspondence concerning medical damages.

c. Any and all documentation showing where the member or the member's authorized representative informed any third party that certain charges were unrelated.

VA.R. Doc. No. R25-7436; Filed February 27, 2025, 7:58 a.m.

**TITLE 16. LABOR AND EMPLOYMENT**

**DEPARTMENT OF LABOR AND INDUSTRY**

**Proposed Regulation**

**Title of Regulation: 16VAC15-70. Local Government Union Requirements and Employee Protections (adding 16VAC15-70-10, 16VAC15-70-20, 16VAC15-70-30).**

Statutory Authority: §§ 40.1-2.1 and 40.1-6 of the Code of Virginia.

Public Hearing Information:

April 18, 2025 - 10 a.m. - Tuckahoe Public Library, 1901 Starling Drive, Henrico, VA 23229.

Public Comment Deadline: May 23, 2025.

Agency Contact: Cristin Bernhardt, Regulatory Coordinator, Hearing Legal Services Office, Department of Labor and Industry, 6606 West Broad Street, Suite 500, Richmond, VA 23230, telephone (804) 786-2392, or email [cristin.bernhardt@doli.virginia.gov](mailto:cristin.bernhardt@doli.virginia.gov).

Basis: Section 40.1-2.1 of the Code of Virginia authorizes the Commissioner of Labor and Industry (commissioner) to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Section 40.1-6 of the Code of Virginia authorizes the commissioner to make such rules and regulations necessary for the enforcement of Title 40.1 of the Code of Virginia.

Purpose: The proposed regulation is essential to the public health, safety, and welfare because it ensures equal opportunity, application, and protection of the law for local government employers and employees in union elections.

Substance: The proposed regulation (i) defines necessary terms, (ii) extends certain statutory labor protections to local government public employers, and (iii) allows the commissioner to request prosecution by the appropriate attorney for the Commonwealth for all violations of law relating to local government union requirements and employee protections before any court of competent jurisdiction.

Issues: The advantage of the proposed regulation to the public and the Commonwealth is that the regulation clarifies that the identified statutory requirements that currently apply to any private sector union elections apply to union elections for local government employees, thereby providing equal opportunity, application, and protection of the law for local government employers and employees. There are no 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.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Department of Labor and Industry (DOLI) proposes to promulgate a new regulation concerning local government entities in the Commonwealth and collective bargaining.

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Background. Identical Chapters 1209 and 1276 of the 2020 Acts of Assembly<sup>2</sup> amended § 40.1-57.2 of the Code of Virginia to permit counties, cities, and towns (local government public employers) to adopt local ordinances authorizing them to (i) recognize any labor union or other employee association as a bargaining agent of any public officers or employees, except for Constitutional officers and their employees, and including public school employees and (ii) collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment. Further, the legislation states that for any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body is required, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, to take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. The legislation also provides that the prohibition against striking for public employees applies, irrespective of any such local ordinance.

Estimated Benefits and Costs: In addition § 40.1-2.1 of the Code of Virginia states that the provisions within Title 40.1 and the regulations issued pursuant to the authority of that chapter shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the commissioner or the board. Thus, according to DOLI, the following provisions of Title 40.1 do not apply to local government employers until the proposed 16VAC15-70 Local Government Union Requirements and Employee Protections becomes effective:<sup>3</sup> § 40.1-6 2 of the Code of Virginia, § 40.1-7 of the Code of Virginia, § 40.1-29 C, E, F, G, and H of the Code of Virginia, and § 40.1-49.4 F 2 of the Code of Virginia. For example, the proposed regulation would apply § 40.1-29 C of the Code of Virginia to local government public employers and thereby prohibit an employer from withholding union dues from an employee's pay without the written and signed authorization of the employee, as is already the case for private sector employees. Several localities have initiated collective bargaining,<sup>4</sup> but no information is available on the provisions or mechanisms used in those agreements.<sup>5</sup>

Businesses and Other Entities Affected. The proposed regulation potentially affects local governments in the Commonwealth and their employees. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> 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.<sup>7</sup> By applying existing statutory requirements to local government public employers, the proposed regulation would affect net costs or net benefits to the degree that

collective bargaining agreements do not incorporate the statutory requirements. However, such information is not currently available. Thus, an adverse impact is not indicated.

Small Businesses<sup>8</sup> Affected.<sup>9</sup> The proposed regulation does not appear to adversely affect small businesses.

Localities<sup>10</sup> Affected.<sup>11</sup> Localities where both the local government and a majority of the public employees wish to have collective bargaining would be particularly affected. As choosing to have collective bargaining would not be required by this regulation, no substantive costs would be imposed on local governments.

Projected Impact on Employment. The proposed regulation does not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposed regulation does not substantively affect the use and value of private property or real estate development costs.

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<sup>1</sup> 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.

<sup>2</sup> See <https://legacylis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1209>.

<sup>3</sup> Section 40.1-54.3 of the Code of Virginia, right to vote by secret ballot on labor organization representation, already applies to local governments per the Office of the Attorney General. Section 40.1-62 of the Code of Virginia, employer not to require payment of union dues, etc.; § 40.1-66 of the Code of Virginia, conduct causing violation of article illegal; peaceful solicitation to join union, § 40.1-67 of the Code of Virginia, injunctive relief against violation; recovery of damages; and § 40.1-69 of the Code of Virginia, violation a misdemeanor, already apply to local government by virtue of § 40.1-58.1 of the Code of Virginia, application of article to public employers and employees.

<sup>4</sup> See <https://www.nea.org/nea-today/all-news-articles/pay-planning-time-more-what-collective-bargaining-means-virginia>.

<sup>5</sup> Source: DOLI.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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."

<sup>9</sup> 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.

<sup>10</sup> "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.

<sup>11</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Department of Labor and Industry concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed regulation (i) defines necessary terms, (ii) extends certain statutory labor protections to local government public employers and employees, and (iii) allows the Commissioner of Labor and Industry to request prosecution by the appropriate attorney for the Commonwealth for all violations of law relating to local government union requirements and employee protections before any court of competent jurisdiction.*

Chapter 70

Local Government Union Requirements and Employee Protections

**16VAC15-70-10. Definitions.**

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

"Commissioner" means the same as that term is defined in § 40.1-2 of the Code of Virginia.

"Employee" means the same as that term is defined in § 40.1-2 of the Code of Virginia.

"Labor organization" means the same as that term is defined in § 40.1-54.3 A of the Code of Virginia.

"Local government public employer" means any county, city, town, or governing body of a locality, including any local school board.

"Secret ballot" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

**16VAC15-70-20. Applicability of statute to local government public employers.**

A. Pursuant to § 40.1-2.1 of the Code of Virginia, the commissioner extends coverage of the following provisions to local government public employers:

1. Subdivision 2 of § 40.1-6 of the Code of Virginia;
2. Section 40.1-7 of the Code of Virginia;
3. Section 40.1-49.4 F 2 of the Code of Virginia;
4. Section 40.1-54.3 of the Code of Virginia;
5. Section 40.1-62 of the Code of Virginia;
6. Section 40.1-66 of the Code of Virginia;
7. Section 40.1-67 of the Code of Virginia; and
8. Section 40.1-69 of the Code of Virginia.

B. Pursuant to § 40.1-29 C of the Code of Virginia, to the extent that an alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind to any labor union or labor organization, no local government public employer shall withhold any part of the wages or salaries of any employee except for payroll, wage, or withholding taxes or in accordance with law without the written and signed authorization of the employee.

C. To the extent that alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind to any labor union or labor organization, § 40.1-29 E through H of the Code of Virginia shall apply to local government public employers.

**16VAC15-70-30. Prosecution of violations.**

The commissioner may request prosecution by the appropriate attorney for the Commonwealth of all violations of law relating to local government union requirements and employee protections before any court of competent jurisdiction.

V.A.R. Doc. No. R25-8060; Filed February 28, 2025, 8:31 a.m.



**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS**

**Proposed Regulation**

Titles of Regulations: 18VAC15-20. Virginia Asbestos Licensing Regulations (repealing 18VAC15-20-10 through 18VAC15-20-880).

**18VAC15-21. Asbestos Licensing Regulations (adding 18VAC15-21-10 through 18VAC15-21-600).**

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Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Hearing Information:

April 10, 2025 - 2 p.m. - 9960 Mayland Drive, Second Floor, Board Room 2, Richmond, VA 23233.

Public Comment Deadline: May 23, 2025.

Agency Contact: Cameron Parris, Regulatory Operations Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-9183, FAX (866) 350-5354, or email [cameron.parris@dpor.virginia.gov](mailto:cameron.parris@dpor.virginia.gov).

Basis: Section 54.1-201 of the Code of Virginia authorizes the Virginia Board for Asbestos, Lead, and Home Inspectors to promulgate regulations necessary to ensure continued competency and prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system. Section 54.1-501 of the Code of Virginia allows the board to promulgate regulations for the licensing of home inspectors regarding (i) professional qualifications of home inspector applicants, (ii) requirements necessary for passing home inspector examinations, (iii) proper conduct of examinations, (iv) proper conduct of the home inspectors licensed by the board, and (v) proper discharge of the board's duties.

Purpose: The board has determined that repeal and replacement of the regulation is necessary to ensure that the regulation (i) is organized, clear, and understandable to regulants and the public; (ii) complements current Virginia law and meets applicable federal requirements; and (iii) provides minimal burdens on regulants while still protecting the public. The board has been charged with administering the licensure program for those who engage in asbestos remediation or abatement and approving accredited asbestos training programs. By establishing the regulation in a clear and organized manner, the board is better able to ensure the regulation is understandable and presented in a way that aligns with Virginia law, federal requirements, and agency policy. Holding licensees to regulatory standards also provides for the continued protection of the health, safety, and welfare of the public. The goal of repealing and replacing the regulation is to ensure that the regulation is achieving the intended purposes and allowing properly qualified individuals to engage in the profession while reducing or mitigating unnecessary regulatory burdens placed on applicants and regulants, all while protecting public welfare.

Substance: This action repeals the current regulation (18VAC15-20) and replaces it with a new chapter (18VAC15-21). The new chapter ensures that the regulation is well organized and understandable and reduces unnecessary regulatory burdens while remaining consistent with the Code of Virginia and applicable federal regulations. Additionally, several new sections are added to reorganize and clarify existing provisions.

The proposed amendments:

1. Incorporate definitions from § 54.1-500 of the Code of Virginia; add terms that are used within the regulation, but that are not currently defined; amend existing definitions for clarity; and remove definitions for terms that are not used within the regulation or that are incorporated by reference.
2. Adjust the monetary amount constituting financial interest from \$1,000 to \$2,000.
3. Create new sections for each specific individual asbestos license type.
4. Create new sections to enumerate provisions specific to (i) acceptable degree programs, (ii) experience used to qualify for licensure, (iii) individuals certified or licensed in other jurisdictions, and (iv) qualifications for asbestos contractor and asbestos analytical laboratory licenses.
5. Revise application procedures to (i) require that applications be completed in accordance with instruction contained in the regulation; (ii) require that an applicant immediately report any changes to information supplied with the application; and (iii) provide that applications are not considered completed until all required documents are received by the board.
6. Revise criminal history disclosure requirements for initial licensure of individuals to (i) reduce the "look back" period for most reportable misdemeanor offenses and (ii) expand the scope of reportable misdemeanor convictions to include all misdemeanor convictions other than marijuana convictions.
7. Revise prior disciplinary history disclosure requirements for initial licensure of individuals to require disclosure of any disciplinary action taken against a professional or occupational license issued to the applicant.
8. Revise education and experience qualifications for the following individual asbestos licenses: asbestos supervisor license, asbestos inspector license, asbestos management planner license, asbestos project designer license, and asbestos project monitor license.
9. Revise qualifications for (i) asbestos supervisor licenses to add minimum education and experience qualifications; (ii) asbestos inspector, management planner, and project designer licenses to reduce experience qualifications; and (iii) asbestos project monitor licenses to add a minimum education qualification and reduce overall experience qualifications.
10. Add the criteria for acceptable degree programs and incorporate existing board guidance regarding acceptable degree programs for individuals to qualify for asbestos inspector, management planner, and project designer licenses.
11. Revise initial licensure of management planner licenses to clearly specify that management planners must complete both asbestos management planner training and asbestos inspector training to qualify for initial licensure.
12. Add the criteria for acceptable experience to qualify for licensure.

13. Revise the requirements for licensure as an asbestos contractor to tie qualifications for an asbestos contractor license to the requirements and qualifications for a contractor license issued by the Board for Contractors. Under this change, a contractor that meets the requirements of the Board for Contractors for asbestos contracting would be deemed qualified for an asbestos contractor license from the board and would be issued a license for a term that coincides with the term of license issued by the Board for Contractors. This change will also remove the requirements for an asbestos contractor to pay fees to the board for obtaining and renewing a license.

14. Revise the requirements for licensure as an asbestos analytical laboratory to (i) remove unnecessary provisions that impose requirements specific to an applicant firm's form of organization; (ii) reduce the "look back" period for most reportable misdemeanor offenses; (iii) expand the scope of reportable misdemeanor convictions to include all misdemeanor convictions other than marijuana convictions; and (iv) require disclosure of any disciplinary action taken against a professional or occupational license issued to the applicant and the applicant's principals.

15. Remove obsolete language related to some temporarily reduced renewal fees and late renewal fees.

16. Revise the expiration and renewal of asbestos contractor licenses to (i) tie the expiration date of the license to the expiration date of the corresponding contractor license issued by the Board for Contractors and (ii) require documentation that the license issued by the Board for Contractors to the contractor is current and valid in order for an asbestos contractor license to be renewed.

17. Revise the renewal of asbestos analytical laboratory licenses to require that a laboratory submit documentation that the laboratory continues to meet the requirements for the type of laboratory analysis it is licensed to perform.

18. Revise the renewal of management planner licenses to clearly specify that management planners must complete both management planner refresher training and asbestos inspector refresher training to renew licensure.

19. Revise the renewal of training program approvals to remove unnecessary requirements for submission of documentation.

20. Revise the renewal of asbestos worker licenses to allow for the acceptance of asbestos supervisor refresher training to meet renewal requirements for a worker license.

21. Revise the renewal of licenses and training program approvals to (i) allow for email or electronic delivery of renewal notices to regulants and (ii) remove the requirement that regulants submit a copy of the renewal notice to the board.

22. Revise application procedures to outline the documentation and information an applicant for an accredited asbestos training program must provide to the board, including

information on the program training manager and principal instructor.

23. Incorporate current board guidance exempting out-of-state asbestos courses that are currently approved in an Asbestos Model Accreditation Plan (MAP) state from an onsite audit for application approval.

24. Remove (i) the requirement that state-of-the-art work practices be included as a review topic in refresher training for asbestos workers and asbestos supervisors; (ii) the requirement that budgeting and cost estimation be included as a topic in refresher training for asbestos project designers; and (iii) the suggested use of training exercises for training programs.

25. Revise prohibited acts and reorganize prohibited acts to group similar types of offenses together. Several prohibited acts are revised, including (i) amending the prohibited act regarding obtaining a license or training program approval by fraudulent representation to (a) apply to attempting to obtain a license or training program approval by false or fraudulent representation and (b) include maintaining, renewing, or reinstating a license by false or fraudulent representation; (ii) amending a prohibited act that proscribes negligence, misconduct, and incompetence in the practice of the profession, and specifies actions that would constitute a violation; (iii) adding a new prohibited act that proscribes improper, fraudulent, and dishonest conduct and specifies actions that would constitute a violation; and (iv) revising a prohibited act addressing refusal to allow state or federal representatives access to an abatement site, analytical laboratory, or training facility for purpose of compliance inspections or audits.

26. Remove sections in the current chapter relating to responsibility to the public, public statements, and solicitation of work. Certain provisions within these sections are incorporated into language contained under the prohibited acts.

27. Revise provisions regarding conflicts of interest to provide that the requirements do not apply to a contractor-subcontractor relationship between an asbestos contractor and an asbestos project monitor.

28. Increase from 10 to 30 days the timeframe for an asbestos analytical laboratory to report changes of status, such as changes in (i) laboratory location, (ii) responsible person, and (iii) accreditation or proficiency rating.

29. Revise responses to complaints and production of records to (i) provide required timeframes for responses to inquiries and production of requested records and (ii) prohibit providing false, misleading, or incomplete responses to inquiries.

30. Streamline standards for individuals to remove requirements that are unnecessary or duplicative of federal regulation. These include requirements for asbestos inspections and asbestos management plans.

31. Revise standards for asbestos project designs to clarify that a project design include air sampling procedures.

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32. Revise provisions for asbestos project monitoring to (i) clarify when a project monitor is required on a project and (ii) remove an unnecessary signature requirement for an air sample report.

33. Revise onsite analysis by project monitors to permit a project monitor to be affiliated, rather than employed, by a laboratory.

34. Remove standards for asbestos contractors and asbestos training programs that are advisory in nature.

35. Revise standards for asbestos analytical laboratories to incorporate by reference certain documents that prescribe mandatory procedures for performing analysis of asbestos-containing material or suspected asbestos-containing material.

36. Allow for the electronic delivery of asbestos refresher training courses.

37. Remove mandates on a minimum student-to-instructor ratio and a limit on the number of students for hands-on exercises.

38. Remove mandates that training providers keep a list of equipment used for training.

39. Revise reporting of changes to an approved training program to provide that all changes to a program be reported to the board prior to implementation of the change.

40. Revise notification of training dates and times and reporting of program participant lists to streamline these requirements.

**Issues:** The primary advantages to the public and the regulated community are that the proposed amendments to the regulation will (i) provide needed updating and clarification by reorganizing the regulation; (ii) reduce regulatory burdens while still protecting the public health, safety, and welfare; (iii) remove requirements in the regulation that are not necessary to protect the public welfare; and (iv) enhance standards of conduct and practice that will better serve to protect members of the public. There are no identifiable disadvantages to the public. It is not anticipated that the proposed changes will create any substantial disadvantages to the regulated community. The primary advantage of the proposed changes to the Commonwealth is that they will allow the agency to administer the licensure program more efficiently.

### 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.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. The Virginia Board for Asbestos, Lead, and Home Inspectors (board) proposes to revise and reorganize asbestos licensing by repealing and replacing the regulation. As part of this, the

board would (i) reduce fees for asbestos contracting firms, (ii) require a high school diploma or equivalent requirement as a minimum education qualification for asbestos supervisor and asbestos project monitor applicants and require at least three months of experience for asbestos supervisor applicants, (iii) reduce experience requirements by 50% for asbestos inspector, management planner, project designer, and project monitor asbestos licenses, (iv) reduce the look back period for disclosure of criminal convictions and expand the scope of such convictions, (v) make reporting requirements slightly less stringent for individual licensees and laboratories and more stringent for training providers, (vi) revise the threshold value to deem if a financial interest exists from \$1,000 to \$2,000, and (vii) make numerous editorial and formatting changes.

**Background.** This regulation establishes fees; individual licensure requirements for asbestos workers, supervisors, inspectors, management planners, project designers, and project monitors; firm licensure requirements for asbestos contractors and analytical laboratories; requirements for maintaining and renewing licenses; requirements for approval of accredited asbestos training programs; and the standards of practice and conduct for licensees and accredited training programs. Pursuant to a general review of the regulation, the board proposes this comprehensive repeal-and-replace action with numerous changes. The substantive changes between the current and the proposed regulation are discussed below under five categories.

**Estimated Benefits and Costs.** Fee reductions for asbestos contracting firms: Currently, in order to perform asbestos work, a firm must have two licenses: one from the Board of Contractors with an asbestos specialty, and a separate asbestos contracting license from this board. The board proposes to align its requirements with the requirements of the Board for Contractors, so that the qualifications and renewal requirements are the same for each license. As a result, applicants and licensed firms for asbestos contracting who already have a license from the Board for Contractors with an asbestos specialty would be issued an asbestos contractor license from the board that covers the same time period. As a result, applicants and licensed firms will no longer have to pay an application, renewal, or late renewal fee to the board. This change is expected to reduce regulatory compliance costs for firms in terms of initial application, renewal, and late renewal fees, which are \$110, \$70, and \$90, respectively. It is estimated that approximately 35 firms per year would no longer have to pay the initial application fee totaling \$3,850/year (\$110 x 35 applications). Similarly, approximately 226 firms would no longer have to pay the renewal fee totaling \$15,820/year (\$70 x 226 renewals). While this change would benefit asbestos contracting firms, it would also reduce board revenues by \$19,670/year (\$3,850 + \$15,820). Additionally, asbestos contracting applications may be processed two to three business days faster as they no longer contain fees which must be processed through the finance section of the agency. Administrative costs savings to the regulated firms and the

board can also be expected as they would expend less time and effort completing and processing paperwork for initial applications and renewals. The Department of Professional and Occupational Regulation (DPOR) states that the current licensing software allows for staff to check to see if a firm has a license from the Board for Contractors. Procedurally, staff can check the licensing records for the Board for Contractors to determine if a firm has a contractor license with the correct specialty service. Moreover, a new licensing software is in development that is anticipated to facilitate this process by automatically cross-checking license records to ensure the qualification is met.

**Experience requirements:** The board proposes several changes to reduce experience requirements for asbestos inspector, management planner, project designer, and project monitor asbestos licenses as follows: For asbestos inspector, management planner, and project designer, from 24 months to 12 months for an individual with high school diploma or equivalent, from 12 months to six months for an individual with an associate degree, from six months to three months for an individual with a master's or bachelor's degree.

**For asbestos project monitor:** From 160 hours to 80 hours. However, the proposal would also require that 40 of the required 80 hours be from the federal Occupational Safety and Health Administration Class I asbestos activities and the other 40 hours be from Class II asbestos activities, marginally increasing the stringency of the requirement for project monitors. The proposed reductions to experience requirements for asbestos inspector, management planner, project designer, and project monitor represent a 50% reduction which would allow affected individuals to enter the profession sooner and potentially earn higher wages. As a result, the board may see an increase in applicants. However, the board is unable to predict the potential increase in applications.

**Education requirements:** The board proposes to introduce a high school diploma or equivalent requirement as a minimum education qualification for asbestos supervisor and asbestos project monitor applicants. Under the proposal, supervisor or project monitor applicants that do not have a high school diploma or equivalent would have to incur time and other costs associated with meeting this requirement or forgo potentially higher wages that would result from being licensed. For example, DPOR estimates that the cost of a General Educational Development (GED) test is \$144 and that approximately 29 supervisor and monitor applicants per year would be affected by this change. Thus, the aggregate cost of meeting this requirement for all affected regulants would be approximately \$4,176 in (29 individuals x \$144 cost of GED) to meet the proposed requirement by obtaining a GED for licensure. However, this example presumes that all of the applicants readily possess the knowledge to pass a GED test. To the extent some of the applicants require preparation to pass the GED test, the total compliance costs would be higher. The additional cost for such applicants could greatly vary between those who needs minimal preparation (e.g., days) versus

extensive preparation (e.g., months or years). The additional costs for these applicants would be in terms of lower wages during the preparation for the test and the forgone wages during the time devoted to study rather than work. Similarly, another proposed change would require an asbestos supervisor applicant to have at least three months of experience in their field. Thus, applicants for supervisor license lacking the experience requirement would likely experience a delay of up to three months in securing a potentially higher wage. On the other hand, DPOR expects enhanced protection of the public health, safety, and welfare as a result of the new minimum education requirement for asbestos supervisors and asbestos project monitor licenses and the new experience requirement for asbestos supervisor licenses. Essentially, the proposal would establish that an individual has the basic education necessary to competently perform the duties of the occupation, to include being able to know and understand applicable federal and state rules pertaining to asbestos abatement. This is tied to the complexity of the duties the occupation is required to undertake. For instance, inspector, management planner, and project designer occupations require at least a high school education. These positions provide a safeguard role to ensure that abatement activities are undertaken in a manner that is safe and complies with the applicable rules. The supervisor and project monitor roles have a similar safeguarding purpose. The supervisor must oversee response actions, maintenance activities that disturb asbestos-containing material, and responses to a major asbestos fiber release. The project monitor must observe abatement activities to ensure abatement work is completed according to specification and in compliance with relevant statutes and regulations.

**Criminal history disclosures:** The board proposes to reduce the look back period for prior misdemeanor convictions that must be reported on a license application. Applicants would be required to disclose all misdemeanor convictions (other than marijuana convictions) that occurred within three years prior to application. Currently, applicants for licensure must disclose all misdemeanor convictions involving lying, cheating, or stealing in their lifetime. This change reduces the stringency of the current criminal history disclosure requirement and may reduce a potential barrier for some applicants entering the profession. Also, criminal history disclosure provisions would be revised to require applicants to disclose all misdemeanor convictions (other than marijuana convictions). Currently, applicants for licensure must disclose all misdemeanor convictions involving lying, cheating, or stealing in their lifetime. This change would broaden the types of convictions that must be disclosed, marginally increasing the stringency of the current requirement and thereby making it somewhat more difficult to enter this profession for some.

**Reports to the board:** The proposal also contains several changes to the reporting requirements. One of the changes would increase the timeframe within which a regulant must report a disciplinary action taken by another jurisdiction against an asbestos abatement license or asbestos training

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program accreditation from 10 days to 30 days, thereby allowing more time to report such changes. Likewise, the timeframe for an asbestos analytical laboratory to report (i) a change of resident responsible person; (ii) loss of accreditation or proficiency rating; (iii) removal of an employed analyst or project monitor from the Asbestos Analysts Registry; and (iv) change in laboratory location would be increased from 10 days to 30 days, also allowing more time to report such changes. A reporting requirement for asbestos training programs would be revised to require that the training provider report any change in the information provided to the board as part of the application for approval of the training program. Currently, a training provider must only report substantial changes to the training program curriculum, examination, program materials, principal instructors, and certificate of completion. This change would marginally increase the stringency of the current requirement by expanding the scope of reportable changes.

Other: The proposed regulation would revise the threshold value of the financial interest from \$1,000 to \$2,000. The threshold is used to establish financial interest. Asbestos contractors are prohibited from having a financial interest in the asbestos analytical laboratory that it uses to perform asbestos sample analysis; having a financial interest in the firm that employs the project monitor that provides monitoring services for the contractor; entering into a contract to perform an asbestos project if the asbestos inspection or project design was performed by individuals who have a financial interest in the contractor (unless certain disclosures are provided to the owner of the building that is the subject of the asbestos abatement project.) The proposed higher threshold would allow such transactions between \$1,000 to \$2,000 to take place without violating the conflict-of-interest rules for asbestos contractors. Finally, this action is a comprehensive repeal-and-replace action that contains many editorial and formatting changes. These types of changes are expected to improve the structure and organization of the regulatory text and improve clarity.

Businesses and Other Entities Affected. According to DPOR, as of November 1, 2024, there were 167 licensed asbestos contractors, 56 licensed asbestos laboratories, and 16 licensed asbestos laboratory branch offices. Many of the firms that hold contractor or laboratory licenses likely fall within the meaning of small business. Also, there were 1,250, licensed asbestos workers, 1,371 licensed asbestos supervisors, 672 licensed asbestos inspectors, 112 licensed asbestos management planners, 135 licensed asbestos project designers, and 299 licensed asbestos project monitors. These licenses are issued to individuals and not to businesses or entities; however, many individuals likely own or work for a small business. Finally, there are at least 31 providers of approved asbestos training courses. Many of these providers are likely to fall within the meaning of a small business. None of the regulants appears to be disproportionately affected compared to their peers. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>2</sup> 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.<sup>3</sup> The proposal would introduce a high school diploma or equivalent requirement as a minimum education qualification for asbestos supervisor and asbestos project monitor applicants and would require an asbestos supervisor applicant to have at least three months of experience in their field; broaden the criminal history disclosure provisions to require applicants to disclose all misdemeanor convictions (other than marijuana convictions); and expand the scope of reporting requirement for asbestos training programs. Thus, an adverse impact on these affected entities is indicated.

Small Businesses<sup>4</sup> Affected.<sup>5</sup> The expanded scope of reporting requirements for asbestos training programs, some of which may be small businesses, appears to be the only direct adverse impact. Types and Estimated Number of Small Businesses Affected: There are at least 31 providers of approved asbestos training courses. Many of these providers are likely to fall within the meaning of a small business but an exact estimate is not available. Costs and Other Effects: The proposed amendments make reporting requirement for asbestos training programs slightly more stringent by expanding the scope of reportable information. Alternative Method that Minimizes Adverse Impact: There are no clear alternative methods that both reduce adverse impact on small businesses and meet the intended policy goals.

Localities<sup>6</sup> Affected.<sup>7</sup> The proposed amendments do not introduce costs on localities or affect them disproportionately.

Projected Impact on Employment. Two changes (i.e., introducing a high school diploma or equivalent requirement as a minimum education qualification for asbestos supervisor and asbestos project monitor applicants and requiring an asbestos supervisor applicant to have at least three months of experience in their field; and broadening the criminal history disclosure provisions to require applicants to disclose all misdemeanor convictions other than marijuana convictions) may delay or create a barrier in obtaining a license from the board. However, the proposal also contains fee reductions for asbestos contracting firms; a reduction in experience requirements for several individual licensees; and a reduced look back period for criminal history disclosures that could possibly more than offset the negative impact on employment strictly related to asbestos work industry. However, the employment impact on the industry related to asbestos work may not translate to the net impact on total employment.

Effects on the Use and Value of Private Property. By reducing regulatory burden, the proposed fee reductions for asbestos contracting firms should add to their asset values moderately. No impact on real estate development costs is expected.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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."

<sup>5</sup> 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.

<sup>6</sup> "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.

<sup>7</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency's Response to Economic Impact Analysis:** The Virginia Board for Asbestos, Lead, and Home Inspectors concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The proposed action repeals 18VAC15-20 and promulgates 18VAC15-21. The proposed new regulation (i) establishes the entry requirements for licensure as an asbestos worker, supervisor, inspector, management planner, project designer, project monitor, asbestos contractor, and analytical laboratory; (ii) requires a high school diploma or equivalent requirement as a minimum education qualification for asbestos supervisor and asbestos project monitor applicants and at least three months of experience for asbestos supervisor applicants; (iii) reduces fees for asbestos contracting firms; (iv) reduces experience requirements by 50% for asbestos inspector, management planner, project designer, and project monitor asbestos licenses; (v) reduces the look-back period for disclosure of criminal convictions and*

*expands the scope of such convictions; (vi) makes reporting requirements slightly less stringent for individual licensees and laboratories and more stringent for training providers; (vii) increases to \$2,000 the threshold value to determine if a financial interest exists; (viii) establishes requirements for maintaining and renewing licenses; (ix) outlines requirements for approval of accredited asbestos training programs; (x) establishes standards of practice and conduct for licensees and accredited training programs; and (xi) makes numerous editorial and formatting changes.*

Chapter 21

Asbestos Licensing Regulations

Part I

Definitions

**18VAC15-21-10. Definitions.**

A. Section 54.1-500 of the Code of Virginia provides definitions of the following terms and phrases used in this chapter:

"Accredited asbestos training program"

"Asbestos"

"Asbestos analytical laboratory license"

"Asbestos-containing materials" or "ACM"

"Asbestos management plan"

"Asbestos project" or "asbestos abatement project"

"Asbestos supervisor"

"Board"

"Friable"

"Person"

"Principal instructor"

"Training manager"

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

"AAR" means the Asbestos Analysts Registry program offered by the AIHA Registry Programs.

"AAT" means Asbestos Analyst Testing.

"Accredited training program" means a profession-specific asbestos training program or course that is approved by the board and designated as either initial or refresher and is required under the MAP as issued under the Asbestos Hazard Emergency Response Act of 1986, 40 CFR Part 763, Subpart E; or an approved training course that has been approved by EPA or another state that has an EPA-approved MAP program.

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"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board.

"AHERA" means Asbestos Hazard Emergency Response Act, 40 CFR Part 763, Subpart E.

"AIHA" means American Industrial Hygiene Association.

"Applicant" means a person who has submitted an application to the board, but has not been granted a license or accreditation by the board.

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

"Approval letter" means a written notice confirming the firm or individual applicant's licensure or accreditation of a training program by the board.

"Asbestos contractor" means a person who contracts with another person for compensation to carry out an asbestos project or to perform any work on an asbestos project.

"Asbestos inspector" means an individual who conducts an asbestos inspection.

"Asbestos inspection" means an onsite investigation to determine the potential presence or exposure of ACM.

"Asbestos management planner" means any individual preparing or updating an asbestos management plan.

"Asbestos project design" means any work plan describing the construction of an asbestos abatement area, response action, or work practices to be utilized on an asbestos abatement project.

"Asbestos project designer" means an individual who designs or develops a design for an asbestos abatement project.

"Asbestos project monitor" means an individual who monitors or acts as a monitor of an asbestos abatement project.

"Asbestos worker" means an individual who works on an asbestos abatement project.

"ASHARA" means Asbestos School Hazard Abatement Reauthorization Act, 40 CFR Part 763, Subpart E.

"BAPAT" means the Bulk Asbestos Proficiency Analytical Testing Program of the AIHA Proficiency Analytical Testing Programs.

"Board-approved training course" means a training course that has been approved by the board to provide training for individuals who act as a project monitor.

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

"Direct supervision" means exercising oversight, direction of, and control over the work of another.

"Employee" means an individual who has an employment relationship acknowledged by both the individual and the firm and is treated as an employee for the purposes of compliance with federal income tax laws.

"Encapsulation" means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers as the encapsulant creates a membrane over the surface (i.e., bridging encapsulant) or penetrates the material and binds its components together (i.e., penetrating encapsulant).

"Encasement" means any process by which an ACM is sprayed with an insulating sealer that is then mechanically fastened to the asbestos-covered substrate. The insulating sealer is then covered with a sealer to give structural strength and durability.

"Enclosure" means the construction or installation over or around the ACM of any leak-tight solid or flexible coverings that will not deteriorate or decompose for an extended period of time so as to conceal the ACM, contain ACM fibers, and render the ACM inaccessible.

"Environmental remediation activity" means any activity planned or carried out for the purpose of reducing or eliminating any environmental hazard, including activities necessary to train individuals in the proper or lawful conduct of such activities that are regulated by federal or state law or regulation.

"EPA" means U.S. Environmental Protection Agency.

"Financial interest" means financial benefit accruing to an individual or to a member of the individual's immediate family. Such interest exists by reason of (i) ownership in a business if the ownership exceeds 3.0% of the total equity of the business; (ii) annual gross income that exceeds or may be reasonably anticipated to exceed \$2,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property paid or provided by a business that exceeds or may be reasonably expected to exceed \$2,000 annually; or (iv) ownership of real or personal property if the interest exceeds \$2,000 in value and excluding ownership in business, income, salary, other compensation, fringe benefits, or benefits from the use of property.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth.

"Guest instructor" means an instructor who is invited to instruct a specific topic in an accredited asbestos training program and whose instruction is limited to two hours per day.

"Hands-on training" means the physical participation of students in an accredited asbestos training program. Physical

participation includes mock activities specific to the license discipline.

"IHLAP" means the Industrial Hygiene Laboratory Accreditation Program of the AIHA Laboratory Accreditation Programs LLC.

"IHPAT" means the Industrial Hygiene Proficiency Analytical Testing Program of the AIHA Proficiency Analytical Testing Programs LLC.

"Immediate family" means (i) a spouse, (ii) a sibling or stepsibling, (iii) a parent or stepparent, (iv) a child or stepchild, or (v) any other person residing in the same household as the individual.

"Inspection" means an activity undertaken to determine the presence or location or to access the condition of friable or nonfriable ACM or suspected ACM, whether by visual or physical examination or by collecting samples of such material. This term includes reinspections of friable and nonfriable known or assumed ACM that has been previously identified. Inspection does not include the following:

1. Periodic surveillance of the type described in 40 CFR 763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed ACM;
2. Inspections performed by employees or agents of federal, state, or local governments solely for the purpose of determining compliance with applicable statutes or regulations; or
3. Visual inspections solely for the purpose of determining completion of response actions.

"Instructor" means a person who instructs one or more accredited asbestos training programs, including the principal instructor, but excluding guest instructors.

"MAP" means the EPA Asbestos Model Accreditation Plan (Appendix C of 40 CFR Part 763, Subpart E).

"Monitor" means observing and reviewing the activities of an asbestos contractor on an asbestos abatement project, as required by this chapter, to determine whether proper work practices are used and compliance with all asbestos laws and regulations is maintained.

"NIOSH" means National Institute of Occupational Safety and Health.

"NVLAP" means the Asbestos Fiber Analysis Program of the National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program.

"Occupied" means any area of any building designed or intended for human occupancy for any purpose.

"OSHA" means the U.S. Department of Labor Occupational Safety and Health Administration.

"PCM" means phase-contrast microscopy.

"PLM" means polarized light microscopy.

"Regulant" means an asbestos worker, asbestos supervisor, asbestos inspector, asbestos management planner, asbestos project designer, asbestos project monitor, asbestos contractor, or asbestos analytical laboratory that holds a license issued by the board, or an asbestos training program that has been accredited by the board.

"Removal" means the physical removal of ACM in accordance with all applicable regulations.

"Renovation" means altering in any way one or more facility components.

"Repair" means returning damaged ACM to an undamaged condition or to an intact state so as to prevent fiber release.

"Residential buildings" means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes or other multi-unit dwellings consisting of four units or fewer that are currently in use or intended for use only for residential purposes.

"Response action" means any method, including removal, encapsulation, enclosure, encasement, or operation and maintenance, that protects human health and the environment from ACM.

"Responsible individual" means the employee, officer, manager, owner, or principal of the firm who is designated by each firm to ensure compliance with Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia and all regulations of the board and to receive communications and notices from the board that may affect the firm.

"Substantial change" means a change in overall asbestos training program, materials, principal instructors, training managers, directors, ownership, facilities, equipment, examinations, or certificates of completion. The addition of updated regulations, exam questions, or news articles will not be considered a substantial change.

"TEM" means transmission electron microscopy.

"Visual inspection" means a process of looking for conditions that, if not corrected during an asbestos abatement project, could result in residual asbestos-containing dust or debris. Visual inspection includes examination of an asbestos abatement project area prior to clearance air monitoring for evidence that the project has been successfully completed as indicated by the absence of residue, dust, and debris.

## Part II

### Entry

#### **18VAC15-21-20. Application procedures.**

A. All applicants seeking licensure must submit an application with the appropriate fee specified in 18VAC15-21-180. Application must be made on forms provided by the board or the board's agent.

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1. By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

2. The receipt of an application and the deposit of fees by the department does not indicate approval of the application by the board.

B. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications must be completed in accordance with the instructions contained in this chapter and on the application. Applications will not be considered complete until all required documents are received by the board.

C. The applicant will be notified if the application is incomplete. A person who fails to complete the application process within 12 months after the date the department receives the application must submit a new application and fee.

D. The applicant must immediately report all changes in information supplied with the application, if applicable, prior to issuance of the license or expiration of the application.

## **18VAC15-21-30. General requirements for licensure: individuals.**

A. In addition to the specific qualifications for each license type, each applicant for individual licensure must meet the requirements provided in this section.

B. The applicant must disclose the applicant's full legal name.

C. The applicant must be at least 18 years of age.

D. The applicant must disclose the applicant's mailing address. A post office box is only acceptable as a mailing address when a physical address is also provided.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant must disclose the following information:

1. All felony convictions.
2. All misdemeanor convictions related to environmental remediation activity.
3. All misdemeanor convictions, excluding marijuana convictions, that occurred within three years of the date of application.

The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. The applicant must report any action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the applicant, to include any suspension, revocation, or surrender of a license, certification, or registration; imposition of a monetary penalty; or requirement to take remedial

education or other corrective action. The board, at its discretion, may deny licensure to any applicant for any prior action taken by any board or administrative body in any jurisdiction.

G. Applicants must be in compliance with the standards of practice and conduct set forth in Part VI (18VAC15-21-380 et seq.) and Part VII (18VAC15-21-460 et seq.) of this chapter at the time of application to the board, while the application is under review by the board, and at all times when the license is in effect.

## **18VAC15-21-40. Application denial.**

A. The board may refuse initial licensure or accreditation due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant.

B. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

## **18VAC15-21-50. Qualifications for asbestos worker license.**

Each individual applying for an asbestos worker license must provide proof of successful completion of (i) an EPA-approved or board-approved initial accredited asbestos worker training program and all subsequent EPA-approved or board-approved accredited asbestos worker refresher training programs or (ii) an EPA-approved or board-approved initial accredited supervisor training program and all subsequent EPA-approved or board-approved accredited asbestos supervisor refresher training programs. The training certificate must indicate that the training was taken within 12 months preceding the date the department receives the application.

## **18VAC15-21-60. Qualifications for asbestos supervisor license.**

A. Each individual applying for an asbestos supervisor license must:

1. Have a high school diploma or equivalent;
2. Provide proof of successful completion of an EPA-approved or board-approved initial accredited supervisor training program and all subsequent EPA-approved or board-approved accredited asbestos supervisor refresher training programs. The training certificate must indicate that the training was taken within 12 months preceding the date the department receives the application; and
3. Furnish acceptable documentation of three months of experience in asbestos abatement work.

B. The experience submitted pursuant to subsection A of this section must meet the requirements of 18VAC15-21-120.

**18VAC15-21-70. Qualifications for asbestos inspector license.**

A. Each individual applying for an asbestos inspector license must provide:

1. Proof of successful completion of an EPA-approved or board-approved initial accredited inspector training program and all subsequent EPA-approved or board-approved accredited asbestos inspector refresher training programs; and

2. Evidence of experience in performing asbestos inspections in buildings or industrial facilities, including collecting bulk samples, categorizing ACM, assessing ACM, and preparing inspection reports. The applicant must furnish acceptable documentation that one of the following qualifications has been met:

Education	Experience
Acceptable master's or bachelor's degree program	Three months or performed a minimum of seven inspections
Acceptable associate's degree program	Six months or performed a minimum of 10 inspections
High school diploma or equivalent	12 months or performed a minimum of 15 inspections

B. The education submitted pursuant to subsection A of this section must meet the requirements of 18VAC15-21-110. The experience submitted pursuant to subsection A of this section must comply with 18VAC15-21-120.

**18VAC15-21-80. Qualifications for asbestos management planner license.**

A. Each individual applying for an asbestos management planner license must provide:

1. Proof of successful completion of (i) an EPA-approved or board-approved initial accredited management planner training program and all subsequent EPA-approved or board-approved accredited asbestos management planner refresher training programs and (ii) an EPA-approved or board-approved initial accredited inspector training program and all subsequent EPA-approved or board-approved accredited asbestos inspector refresher training programs; and

2. Evidence of experience evaluating inspection reports, selecting response actions, analyzing the cost of response actions, ranking response actions, preparing operations and maintenance plans, and preparing management plans. The applicant must furnish acceptable documentation that one of the following qualifications has been met:

Education	Experience
Acceptable master's or bachelor's degree program	Three months or prepared a minimum of three management plans
Acceptable associate's degree program	Six months or prepared a minimum of five management plans
High school diploma or equivalent	12 months or prepared a minimum of seven management plans

B. The education submitted pursuant to subsection A of this section must meet the requirements of 18VAC15-21-110. The experience submitted pursuant to subsection A of this section must comply with 18VAC15-21-120.

**18VAC15-21-90. Qualifications for asbestos project designer license.**

A. Each individual applying for an asbestos project designer license must provide:

1. Proof of successful completion of an EPA-approved or board-approved initial accredited project designer training program and all subsequent EPA-approved or board-approved accredited asbestos project designer refresher training programs; and

2. Evidence of experience in the preparation of project designs or project specifications. The applicant must furnish acceptable documentation that one of the following qualifications has been met:

Education	Experience
Acceptable master's or bachelor's degree program	Three months or completed a minimum of five project designs
Acceptable associate's degree program	Six months or completed a minimum of seven project designs
High school diploma or equivalent	12 months or completed a minimum of 10 project designs

B. The education submitted pursuant to subsection A of this section must meet the requirements of 18VAC15-21-110. The experience submitted pursuant to subsection A of this section must comply with 18VAC15-21-120.

**18VAC15-21-100. Qualifications for asbestos project monitor license.**

A. Each individual applying for an asbestos project monitor license must have a high school diploma or equivalent and provide:

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1. Proof of (i) a current certification by EPA as an asbestos project designer or asbestos supervisor and successful completion of a board-approved asbestos project monitor training program of 16 hours, including the examination, or (ii) successful completion of a board-approved asbestos project monitor training program of 40 hours, including examination. Only project monitor training programs that are board approved will be accepted for meeting the training requirement; and

2. Evidence of 80 hours of experience in performing asbestos project monitoring through field work on project sites, of which at least 40 hours must be from OSHA Class I asbestos activities and at least 40 hours must be from OSHA Class II asbestos activities. This includes evaluating and monitoring asbestos work practices, collecting environmental asbestos air samples during abatement, performing visual inspections, and taking final air samples to grant clearance for asbestos abatement projects.

B. The experience submitted pursuant to subdivision A 2 of this section must comply with 18VAC15-21-120.

## **18VAC15-21-110. Acceptable degree programs.**

A. Applicants seeking to qualify for licensure based on completion of an associate's, bachelor's, or master's degree must submit an official transcript from the school where the applicable degree was obtained. Only degrees from an accredited college or university that is approved or accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education will be considered.

B. The following degrees will be considered to qualify in accordance with 18VAC15-21-70 A 2, 18VAC15-21-80 A 2, or 18VAC15-21-90 A 2:

1. Bachelor's or master's degree in engineering, architecture, industrial hygiene, environmental science or studies, or physical science;

2. Bachelor's degree in a related field that includes a minimum of 40 semester credit hours in any combination of science, technology, engineering and math;

3. Master's degree in a related field and a bachelor's degree in any major such that the combined degrees include a minimum of 40 semester credit hours in any combination of science, technology, engineering, and math; or

4. Associate's degree in engineering, architecture, industrial hygiene, environmental science or studies, or physical science, or a related field that includes a minimum of 20 credit hours in any combination of science, technology, engineering, and math.

## **18VAC15-21-120. Experience used to qualify for licensure.**

A. Experience used to qualify for licensure in accordance with 18VAC15-21-60 A 3, 18VAC15-21-70 A 2, 18VAC15-21-80 A 2, 18VAC15-21-90 A 2, or 18VAC15-21-100 A 2 may be obtained by:

1. Working in the applicable profession in another state, provided such work complied with all federal, state, and local statutes.

2. Working in the applicable profession under the direct supervision of a properly licensed individual or EPA-certified individual where no license is required. All reports prepared by the unlicensed individual must be signed by the licensed or EPA-certified individual. The licensed or EPA-certified individual assumes responsibility for all work conducted and reports prepared, as applicable, by the unlicensed individual.

B. Experience used to qualify for licensure must be verified by a supervisor on a board-approved experience verification form signed by a supervisor verifying the applicant's experience. An applicant who is self-employed or otherwise unable to obtain a verifying signature for experience must submit five copies of the completed inspections, management plans, project designs, or project monitor reports, as applicable to the license sought.

## **18VAC15-21-130. Individuals certified or licensed in another jurisdiction.**

A. The board may issue a license to an applicant who holds an equivalent and valid license or certificate in another state, the District of Columbia, or any other territory or possession of the United States, provided the requirements and standards under which the license or certificate was issued are substantially equivalent to those established in this chapter and related statutes. The applicant will only need to provide the most recent, current asbestos training program for the applicable license type.

B. In order to qualify in accordance with this section, the applicant must provide proof of a valid license or certificate in the other state acceptable to the board and must be in good standing by the issuing license or certification authority.

## **18VAC15-21-140. Qualifications for asbestos contractor license.**

A firm that holds a valid contractor license issued by the Board for Contractors with an asbestos contracting specialty service designation in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the Board for Contractors is deemed qualified for an asbestos contractor license pursuant to Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia and this chapter. Upon verification of the firm's licensure with the Board for Contractors, the board will issue an asbestos contractor license to such firm for a license term that coincides with the license issued by the Board for Contractors.

## **18VAC15-21-150. General qualifications for an asbestos analytical laboratory license.**

A. Each firm applying for an asbestos analytical laboratory license must meet the requirements of this section.

B. The applicant must disclose the name under which the firm conducts business and holds itself out to the public. In accordance with Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia, the firm must register any trade or fictitious names, when applicable, with the State Corporation Commission before submitting an application to the board.

C. The applicant must disclose the firm's mailing address and the firm's physical address.

D. In accordance with § 54.1-204 of the Code of Virginia, the applicant must disclose the following information about the firm and its owners, officers, managers, members, and directors, as applicable:

1. All felony convictions;
2. All misdemeanor convictions, except marijuana convictions, within the last three years; and
3. Any conviction involving environmental remediation activity that resulted in the significant harm or the imminent and substantial threat of significant harm to human health or the environment.

E. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia. The applicant has the right to request further review of any such action by the board under the Administrative Process Act (§ 2.2- 4000 et seq. of the Code of Virginia).

F. The applicant must report any disciplinary action taken by any board or administrative body in any jurisdiction against a professional or occupational license, certification, or registration issued to the firm, its owners, officers, managers, members, or directors and, as applicable, any reprimand, suspension, revocation, or surrender of a license, certification, or registration, imposition of a monetary penalty, or requirement to take remedial education or other corrective action. The board, at its discretion, may deny licensure to any applicant based on disciplinary action taken by any board or administrative body in any jurisdiction.

G. The board may deny the application of an applicant who is shown to have a substantial identity of interest with a person whose license or certificate has been revoked or not renewed by the board. A substantial identity of interest includes (i) a controlling financial interest by the individual or corporate principals of the person whose license or certificate has been revoked or has not been renewed or (ii) substantially identical owners, officers, managers, members, or directors, as applicable.

## **18VAC15-21-160. Qualifications for asbestos analytical laboratory analysis type.**

A. In addition to the requirements of 18VAC15-21-150, each applicant for an asbestos analytical laboratory license must submit evidence of meeting the standards to perform PLM, PCM, or TEM analysis.

1. For PLM analysis, one of the following:

- a. Current NVLAP accreditation demonstrated by submittal of a copy of the most recent Certificate of Accreditation and Scope of Accreditation;
- b. The asbestos analytical laboratory is currently rated "proficient" in the BAPAT Program; or
- c. The asbestos analytical laboratory is currently accredited under the IHLAP.

2. For PCM analysis, each analyst must have completed the NIOSH 582 or NIOSH 582 Equivalency course. In addition, at least one of the following must be satisfied:

a. At fixed laboratory sites, one of the following qualifications must be met:

- (1) The asbestos analytical laboratory is currently accredited under the IHLAP;
- (2) The asbestos analytical laboratory is currently rated "proficient" in the IHPAT Program; or
- (3) Each analyst is listed in the AAR and has a performance rating of "acceptable" for the most recent AAT round.

b. For onsite analysis, one of the following qualifications must be met:

- (1) The asbestos analytical laboratory is currently rated "proficient" in the IHPAT Program;
- (2) The asbestos analytical laboratory is currently accredited under the IHLAP; or
- (3) Each analyst is listed in the AAR and has a performance rating of "acceptable" for the most recent AAT round.

3. For TEM analysis, a current accreditation by NVLAP to analyze asbestos airborne fibers using TEM as demonstrated by submitting a copy of the NVLAP Certificate of Accreditation and Scope of Accreditation.

B. The applicant must name a responsible individual for the asbestos analytical laboratory.

C. Any branch office of an asbestos analytical laboratory must complete a branch office application from the board. Each branch office will name a resident responsible individual at each branch office.

D. The branch office application must provide the information contained in subsection A of this section for the applicable branch office.

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E. Any training and quality control documentation required to be maintained pursuant to this section must be provided to the board upon request.

## Part III

### Fees

#### 18VAC15-21-170. General fee requirements.

All fees are nonrefundable and will not be prorated. The date on which the fee is received by the department or the department's agent will determine whether the fee is on time. Checks or money orders must be made payable to the Treasurer of Virginia.

#### 18VAC15-21-180. Application fees.

Application fees are set out in this section.

Fee Type	Fee Amount	When Due
<u>Application for worker, supervisor, inspector, management planner, project designer, or project monitor license</u>	<u>\$80</u>	<u>With application</u>
<u>Application for asbestos analytical laboratory license</u>	<u>\$120</u>	<u>With application</u>
<u>Application for asbestos analytical laboratory branch office</u>	<u>\$100</u>	<u>With application</u>
<u>Application for accredited asbestos training program approval</u>	<u>\$500 per day of training</u>	<u>With application</u>

#### 18VAC15-21-190. Renewal and late renewal fees.

A. Renewal and late renewal fees are set out in this section.

Fee Type	Fee Amount	When Due
<u>Renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license</u>	<u>\$45</u>	<u>With renewal application</u>
<u>Renewal for asbestos analytical laboratory license</u>	<u>\$75</u>	<u>With renewal application</u>
<u>Renewal for asbestos analytical laboratory branch office</u>	<u>\$55</u>	<u>With renewal application</u>
<u>Renewal for accredited asbestos training program approval</u>	<u>\$125</u>	<u>With renewal application</u>

<u>Late renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license (includes a \$35 late renewal fee in addition to the regular \$45 renewal fee)</u>	<u>\$80</u>	<u>With renewal application</u>
<u>Late renewal for asbestos analytical laboratory license (includes a \$35 late renewal fee in addition to the regular \$75 renewal fee)</u>	<u>\$110</u>	<u>With renewal application</u>
<u>Late renewal for asbestos analytical laboratory branch office (includes \$35 late renewal fee in addition to the regular \$55 renewal fee)</u>	<u>\$90</u>	<u>With renewal application</u>
<u>Late renewal for accredited asbestos training program approval (includes a \$35 late renewal fee in addition to the regular \$125 renewal fee)</u>	<u>\$160</u>	<u>With renewal application</u>

B. For licenses expiring after February 1, 2023, and before February 1, 2025, the renewal fees will be as follows:

<u>Renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license</u>	<u>\$25</u>
<u>Renewal for asbestos analytical laboratory license</u>	<u>\$40</u>
<u>Renewal for asbestos analytical laboratory branch office</u>	<u>\$40</u>
<u>Renewal for accredited asbestos training program approval</u>	<u>\$40</u>

For late renewals received after March 1, 2023, and on or before February 28, 2025, the late renewal fees will be as follows:

<u>Late renewal for worker, supervisor, inspector, management planner, project designer, or project monitor license</u>	<u>\$60</u>
<u>Late renewal for asbestos analytical laboratory license</u>	<u>\$75</u>
<u>Late renewal for asbestos analytical laboratory branch office</u>	<u>\$75</u>
<u>Late renewal for accredited asbestos training program approval</u>	<u>\$75</u>



## Part IV Renewal

### **18VAC15-21-200. Renewal required.**

A. Each individual asbestos license issued under this chapter will expire 12 months from the last day of the month in which it was issued.

B. Each asbestos analytical laboratory license issued under this chapter will expire 12 months from the last day of the month in which it was issued.

C. Each accredited asbestos training program will expire 24 months from the last day of the month in which it was approved.

D. Each asbestos contractor license will expire on the expiration date of the corresponding contractor license issued by the Board for Contractors.

### **18VAC15-21-210. Procedures for renewal.**

A. The department will send a renewal notice to each regulant at the address of record. Failure to receive the notice does not relieve the licensee or the accredited asbestos training program of the obligation to renew.

B. Prior to the license expiration, each licensed asbestos analytical laboratory desiring to renew the license must submit the appropriate fee specified in 18VAC15-21-190 to the department. A licensed asbestos analytical laboratory must also submit documentation that the laboratory continues to meet the requirements specified in 18VAC15-21-160 for the type of analysis the laboratory is licensed to perform.

C. Prior to the license expiration date, each licensed individual desiring to renew a license must provide evidence of meeting the annual refresher training requirement for license renewal and the appropriate fee specified in 18VAC15-21-190. The board will accept any asbestos training programs that are approved by EPA or the board. A copy of the training certificate documenting the successful completion of the refresher training for the license type being renewed and meeting the requirements outlined in this chapter must accompany the fee.

1. For renewal of an asbestos worker license, the board will accept evidence of completion of asbestos supervisor refresher training to satisfy the refresher training requirement.

2. For renewal of an asbestos management planner license, a management planner must complete both a management planner refresher training program and an inspector refresher training program.

3. For renewal of an asbestos project monitor license, the board will accept evidence of the following to satisfy the refresher training requirement:

a. For project monitors who also hold a valid Virginia asbestos supervisor or project designer license, completion of a supervisor refresher or project designer refresher, as is applicable to the EPA certification submitted for initial licensure as specified in 18VAC15-21-90; or

b. For project monitors who hold only a project monitor license, completion of a board-approved asbestos project monitor refresher training program to meet renewal requirements.

D. Prior to the approval letter expiration date, each accredited asbestos training program desiring to renew the approval must submit the appropriate fee specified in 18VAC-15-21-190.

E. Annual refresher training certificates will only be used once to renew an individual license.

F. Each license and each accredited asbestos training program approval that is not renewed within 30 days of the expiration date on the license or approval letter will be subject to late renewal fees as established in 18VAC15-21-190.

G. A firm with an asbestos contractor license must provide documentation that the corresponding contractor license issued by the Board for Contractors is current and valid. Upon verification of the firm's licensure with the Board for Contractors, the board will renew the asbestos contractor license for a license term that coincides with the license issued by the Board for Contractors.

H. Each license and each approved accredited asbestos training program that is not renewed within 12 months after the expiration date will not be renewed. The individual or firm must apply for a new license or approval and meet entry requirements current at the time the new application is submitted.

## Part V

### Approval of Training Programs and Courses

### **18VAC15-21-220. Application procedures for accredited asbestos training program approval.**

A. Training programs desiring board approval must meet the minimum requirements established in this chapter. Persons requesting approval as an accredited asbestos training program to prepare training program participants for licensure requirements must submit the appropriate application form along with the following:

1. Training provider's business name, physical address, mailing address, and telephone number.

2. Copies of documentation of approval of the asbestos training program issued by EPA or other states, if applicable.

3. Applicable fee specified in 18VAC15-21-180.

4. The training program curriculum.

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5. A narrative explaining how the training program meets the requirements for approval in the following areas:

- a. Length of training in hours.
- b. Amount and type of hands-on training.
- c. Examinations (length, format, and passing score).
- d. Topics covered in the training program.
- e. Assurances of test security and how exams are administered.

6. A copy of all training program materials, including student manuals, instructor notebooks, handouts, and training aids.

7. A copy of the examination used and applicable answer sheets.

8. The name and documentation of the qualifications of the training manager. The training manager employed by the applicant must meet the requirements of 18VAC15-21-230.

9. The names and documentation of the qualifications of each principal instructor and subject areas that each principal instructor will teach. Principal instructors must meet the requirements of 18VAC15-21-240.

10. An example of the completion certificate that will be issued to students who successfully complete the accredited asbestos training program.

11. A proposed training program date for auditing purposes. The proposed date will be confirmed or an alternate date will be proposed within 10 business days after receipt of a complete asbestos training program application.

B. An application must contain all information required by this section.

C. An application must be received by the department no less than 45 days prior to the requested audit date.

D. Upon receipt of an application, a preliminary review will be conducted to ensure compliance with this chapter. The applicant will be notified if the application is incomplete or is deficient. All deficiencies must be corrected prior to the onsite audit.

E. Upon completion of the preliminary review, the board will conduct an onsite audit. The applicant will be notified of any deficiencies identified during the audit. All deficiencies must be corrected prior to approval of the application.

F. Onsite audits are not required for final approval of asbestos courses with a primary location that is out of state, to be conducted solely out of state, so long as the course is currently approved by a MAP state. Proof of MAP state approval must be submitted with the application.

G. All training programs must have a monitored, final written examination.

## **18VAC15-21-230. Training manager qualifications.**

An accredited asbestos training program must employ a training manager who:

1. Has a minimum of two years of experience in teaching adults; or
2. Has a minimum of three years of experience in the asbestos abatement industry.

## **18VAC15-21-240. Principal instructor qualifications.**

A. An accredited asbestos training program must use principal instructors who:

1. Have a minimum of 24 hours of asbestos-specific training; and
2. Have a minimum of two years of experience in the asbestos abatement industry or a minimum of two years of experience in teaching adults.

B. Guest instructors are exempt from instructor qualifications and are limited to no more than two hours of training per day.

## **18VAC15-21-250. Accredited asbestos training program requirements.**

In all of the accredited asbestos training program requirements, one day is equal to eight hours, inclusive of lunch and breaks.

## **18VAC15-21-260. Initial worker training.**

A. An initial worker training program must last a minimum of four days. The worker training program must include lectures, demonstrations, at least 14 hours of hands-on training, a training program review, and an examination.

B. The worker training program must address the following topics:

1. Physical characteristics of asbestos.
  - a. Identification of asbestos.
  - b. Aerodynamic characteristics.
  - c. Typical uses and physical appearance.
  - d. A summary of abatement control options.
2. Potential health effects related to asbestos exposure.
  - a. The nature of asbestos-related diseases.
  - b. Routes of exposure, dose-response relationships, and the lack of a safe exposure level.
  - c. Synergism between cigarette smoking and asbestos exposure.
  - d. Latency period for disease.
3. Employee personal protective equipment.
  - a. Classes and characteristics of respirator types.

- b. Limitations of respirators and proper selection, inspection, donning, use, maintenance, and storage procedures.
  - c. Methods for field testing of the facepiece-to-face seal (e.g., positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair).
  - g. The components of a proper respiratory protection program.
  - h. Selection and use of personal protective clothing and use, storage, and handling of nondisposable clothing.
  - i. Regulations covering personal protective equipment.
4. State-of-the-art work practices.
- a. Asbestos abatement activities, including descriptions of construction and maintenance of barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation equipment, and use of high efficiency particulate air (HEPA) vacuums.
  - e. Clean-up and disposal procedures.
  - f. Work practices for removal, encapsulation, enclosure, and repair.
  - g. Emergency procedures for sudden releases.
  - h. Potential exposure situations and transport and disposal procedures.
  - i. Recommended and prohibited work practices.
5. Personal hygiene.
- a. Entry and exit procedures for the work area, use of showers, avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
  - b. Potential exposures, including family exposure.
6. Additional safety hazards.
- a. Hazards encountered during abatement activities, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards, and how to deal with them.
  - b. Scaffold and ladder hazards.
  - c. Slips, trips, and falls.
  - d. Confined spaces.
7. Medical monitoring.
- a. OSHA requirements for a pulmonary function test.
  - b. Chest X-rays and a medical history for each employee.
8. Air monitoring.
- a. Procedures to determine airborne concentrations of asbestos fibers.
  - b. Focusing on how personal air sampling is performed and the reasons for it.
9. Relevant federal, state, and local regulatory requirements, procedures, and standards, with particular attention directed at relevant EPA, OSHA, and state regulations concerning asbestos abatement workers and Department of Transportation regulations (49 CFR 172 Subpart H), with emphasis on packaging requirements and marking of containers of ACM waste.
10. Establishment of respiratory protection programs.
11. Training program review. A review of key aspects of the accredited asbestos training program.
- C. Upon completion of the worker training program, the training program must administer a closed-book examination. Each examination must cover the topics required by this section.
- 1. Each examination must have 50 multiple choice questions.
  - 2. The passing score on the examination must be 70%.
- 18VAC15-21-270. Worker refresher training program.**
- A. A worker refresher training program must be at least one day. The worker refresher training program must review federal and state regulations and discuss changes to the regulations, if applicable, and developments in state-of-the-art procedures. A review of the following topics from the initial worker training program must be included in the worker refresher training program:
- 1. Potential health effects related to asbestos exposure;
  - 2. Employee personal protective equipment;
  - 3. Personal hygiene; and
  - 4. Additional safety hazards.
- B. A written closed-book examination must be included in the refresher training program. The examination will consist of no fewer than 50 questions. The passing score will be 70% correct. Persons who pass the examination and fulfill the training program requirements will receive a certificate of completion as specified in this chapter.
- 18VAC15-21-280. Initial supervisor training.**
- A. An initial supervisor training program must last a minimum of five days. The supervisor training program must include lectures; demonstrations; at least 14 hours of hands-on training, which must permit supervisors to have actual experience performing tasks associated with asbestos abatement; a training program review; and an examination.

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B. The supervisor training program must address the following topics:

1. The role of the supervisor in the asbestos abatement process.
2. The physical characteristics of asbestos and asbestos-containing materials.
  - a. Identification of asbestos.
  - b. Aerodynamic characteristics.
  - c. Typical uses and physical appearance.
  - d. A review of hazard assessment considerations.
  - e. A summary of abatement control options.
3. Potential health effects related to asbestos exposure.
  - a. The nature of asbestos-related diseases.
  - b. Routes of exposure, dose-response relationships, and the lack of a safe exposure level.
  - c. Synergism between cigarette smoking and asbestos exposure.
  - d. Latency period for disease.
4. Employee personal protective equipment.
  - a. Classes and characteristics of respirator types.
  - b. Limitations of respirators and proper selection, inspection, donning, use, maintenance, and storage procedures.
  - c. Methods for field testing of the facepiece-to-face seal (e.g., positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair).
  - g. The components of a proper respiratory protection program.
  - h. Selection and use of personal protective clothing and use, storage, and handling of nondisposable clothing.
  - i. Regulations covering personal protective equipment.
5. State-of-the-art work practices.
  - a. Work practices for asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation equipment, and use of high efficiency particulate air (HEPA) vacuums.
  - e. Clean-up and disposal procedures.

- f. Work practices for removal, encapsulation, encasement, enclosure, and repair.
  - g. Emergency procedures for sudden releases.
  - h. Potential exposure situations.
  - i. Transport and disposal procedures.
  - j. Recommended and prohibited work practices.
  - k. Discussion of new abatement-related techniques and methodologies.
6. Personal hygiene.
    - a. Entry and exit procedures for the work area; use of showers; and avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
    - b. Potential exposures, such as family exposure, must also be included.
  7. Additional safety hazards.
    - a. Hazards encountered during abatement activities, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards, and how to deal with them.
    - b. Scaffold and ladder hazards.
    - c. Slips, trips, and falls.
    - d. Confined spaces.
  8. Medical monitoring. OSHA requirements for a pulmonary function test, chest X-rays, and a medical history for each employee.
  9. Air monitoring.
    - a. Procedures to determine airborne concentration of asbestos fibers, including a description of aggressive sampling, sampling equipment, and methods.
    - b. Reasons for air monitoring.
    - c. Types of samples and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses.
  10. Relevant federal, state, and local regulatory requirements, procedures, and standards, including:
    - a. Requirements of Title II (§ 2641 et seq.) of the Toxic Substance Control Act (15 USC § 2601 et seq.);
    - b. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standards for Asbestos);
    - c. OSHA Standards for Respiratory Protection (29 CFR 1910.134);
    - d. OSHA Asbestos Construction Standard (29 CFR 1926.1101);
    - e. EPA Worker Protection Rule, 40 CFR Part 763, Subpart G;

f. Requirements for Asbestos-Containing Waste Materials, 9VAC20-81-620; and

g. Department of Transportation regulations (49 CFR Part 172, Subpart H) covering packaging, proper marking of shipping containers, and shipping papers.

11. A review of NESHAP guidance documents.

a. Common Questions on the asbestos NESHAP.

b. Asbestos NESHAP: Regulated Asbestos Containing Materials Guidance (EPA 340/1-90-018).

c. Asbestos NESHAP: Adequately Wet Guidance (EPA 340/1-90-019).

d. Reporting and Record Keeping Requirements for Waste Disposal: A Field Guide (EPA 340/1-90-016).

12. Respiratory protection programs and medical surveillance programs.

13. Insurance and liability issues.

a. Contractor issues, workers' compensation coverage, and exclusions.

b. Third-party liabilities and defenses.

c. Insurance coverage and exclusions.

14. Recordkeeping for asbestos abatement projects:

a. Records required by federal, state, and local regulations.

b. Records recommended for legal and insurance purposes.

15. Supervisory techniques for asbestos abatement activities. Supervisory practices to enforce and reinforce the required work practices and to discourage unsafe work practices.

16. Contract specifications. Discussions of key elements that are included in contract specifications.

17. Training program review. A review of key aspects of the accredited asbestos training program.

C. Upon completion of the supervisor training program, the training program must administer a closed-book examination. Each examination must cover the topics required by this section.

1. Each examination must have 100 multiple choice questions.

2. The passing score on the examination must be 70%.

**18VAC15-21-290. Supervisor refresher training program.**

A. A supervisor refresher training program must be one day. The supervisor refresher training program must review federal and state regulations, discuss changes to the regulations, if applicable, and developments in state-of-the-art procedures. A review of the following topics from the initial accredited asbestos training program must be included in the asbestos supervisor refresher training program:

1. Potential health effects related to asbestos exposure;

2. Employee personal protective equipment, including medical monitoring and respiratory protection program;

3. Additional safety hazards and medical monitoring;

4. Review of the asbestos NESHAP, OSHA, and Department of Transportation requirements; and

5. Review of Virginia regulations concerning asbestos licensing, removal, and disposal.

B. A written closed-book examination must be included in the refresher training program. The examination will consist of no fewer than 50 questions. The passing score will be 70% correct. Persons who pass the refresher training program examination will receive a certificate of completion as specified in this chapter.

**18VAC15-21-300. Initial inspector training.**

A. An initial inspector training program must last a minimum of three days. The inspector training program must include lectures, demonstrations, at least four hours of hands-on training, a training program review, and an examination.

B. The inspector training program must address the following topics:

1. Training program overview.

a. The role of the inspector in the asbestos abatement industry.

b. A discussion of inspection requirements and criteria for AHERA, NESHAP, and state agencies.

2. Background information on asbestos.

a. Identification of asbestos and examples and discussion of the uses and locations of asbestos in buildings.

b. Physical appearance of asbestos.

3. Potential health effects related to asbestos exposure.

a. The nature of asbestos-related diseases.

b. Routes of exposure, dose-response relationships, and the lack of a safe exposure level.

c. The synergism between cigarette smoking and asbestos exposure.

d. Latency period for asbestos-related diseases and a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

4. Functions of and qualifications for inspectors.

a. Discussions of prior experience and qualifications for inspectors and management planners.

b. Discussions of the functions of an accredited inspector as compared to those of an accredited management planner.

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- c. Discussion of the inspection process, including inventory of ACM and physical assessment.
- 5. Legal liabilities and defenses.
  - a. Responsibilities of the inspector, a discussion of comprehensive general liability policies, claims made and occurrence policies, environment and pollution liability policy clauses; state liability insurance requirements.
  - b. Bonding and relationship of insurance availability to bond availability.
- 6. Understanding building systems.
  - a. The relationship between building systems, including an overview of common building physical plan layout; heat, ventilation, and air conditioning (HVAC) system types; physical organization; and where asbestos is found on HVAC components.
  - b. Building mechanical systems, including types and organization and where to look for asbestos on such systems.
  - c. Inspecting electrical systems, including appropriate safety precautions.
  - d. Reading building plans and as-built drawings.
- 7. Public, employee, and building occupant relations.
  - a. Notification of employee organizations about the inspection.
  - b. Signs to warn building occupants.
  - c. Tactics in dealing with occupants and the press.
  - d. Scheduling inspections to minimize disruptions.
  - e. Education of building occupants about actions being taken.
- 8. Pre-inspection planning and review of previous inspection records.
  - a. Scheduling the inspection and obtaining access.
  - b. Building record review and identification of probable homogeneous areas from building plans or as-built drawings.
  - c. Consultation with maintenance or building personnel.
  - d. Review of previous inspection, sampling, and abatement records of a building.
  - e. The role of the inspector in exclusions for previously performed inspections.
- 9. Inspection for friable and nonfriable ACM and assessment of the condition of friable ACM.
  - a. Procedures to follow in conducting visual inspections for friable and nonfriable ACM.
  - b. Types of building materials that may contain asbestos.
  - c. Touching materials to determine friability.
  - d. Open return air plenums and their importance in HVAC systems.
- e. Assessing damage, significant damage, potential damage, and potential significant damage.
- f. Amount of suspected ACM, both in total quantity and as a percentage of the total area.
- g. Type of damage.
- h. Accessibility.
- i. Material's potential for disturbance.
- j. Known or suspected causes of damage or significant damage, and deterioration as assessment factors.
- 10. Bulk sampling and documentation of asbestos in schools.
  - a. Detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials" (EPA 560/5-85-030a October 1985).
  - b. Techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials.
  - c. Techniques for bulk sampling.
  - d. Sampling equipment the inspector should use.
  - e. Patching or repair of damage done in sampling; an inspector's repair kit.
  - f. Discussion of polarized light microscopy.
  - g. Choosing an accredited laboratory to analyze bulk samples.
  - h. Quality control and quality assurance procedures.
- 11. Inspector respiratory protection and equipment.
  - a. Classes and characteristics of respirator types.
  - b. Limitations of respirators.
  - c. Selection, inspection, donning, use, maintenance, and storage procedures for respirators.
  - d. Methods for field testing of the facepiece-to-face seal (e.g., positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair).
  - g. The components of a proper respiratory protection program.
  - h. Selection and use of personal protective clothing.
  - i. Use, storage, and handling of nondisposable clothing.
- 12. Recordkeeping and writing the inspection report.
  - a. Labeling of samples and keying sample identification to sampling location.
  - b. Recommendations on sample labeling.
  - c. Detailing of ACM inventory.
  - d. Photographs of selected sampling areas and examples of ACM condition.

e. Information required for inclusion in the management plan by § 203(i)(1) of the Toxic Substance Control Act (15 USC § 2601 et seq.).

13. Regulatory review.

- a. EPA Worker Protection Rule found at 40 CFR Part 763, Subpart G.
- b. Title II (§ 2641 et seq.) of the Toxic Substances Control Act.
- c. OSHA Asbestos Construction Standard (29 CFR 1926.1101).
- d. OSHA respirator requirements (29 CFR 1910.134).
- e. The friable ACM in Schools Rule found at 40 CFR Part 763, Subpart F.
- f. Applicable state and local regulations.
- g. Differences in federal and state requirements, where they apply, and the effects, if any, on public and nonpublic schools and commercial and public buildings.

14. Field trip.

- a. Field exercise with a walk-through inspection.
- b. Onsite discussion of information gathering and determination of sampling locations.
- c. Onsite practice in physical assessment.
- d. Classroom discussion of field exercise.

15. Training program review. A review of key aspects of the accredited asbestos training program.

C. Upon completion of the inspector training program, the training program must administer a closed-book examination. Each examination must cover the topics required by this section.

- 1. Each examination must have 100 multiple choice questions.
- 2. The passing score on the examination must be 70%.

**18VAC15-21-310. Inspector refresher training program.**

A. An inspector refresher training program must be one-half day. The inspector refresher training program must review federal and state regulations, discuss changes to the regulations, if applicable, and review developments in state-of-the-art procedures. A review of the following topics from the initial accredited asbestos training program must be included in the accredited asbestos inspector refresher training program:

- 1. Inspection for friable and nonfriable ACM and assessment of the condition of friable ACM;
- 2. Bulk sampling and documentation of asbestos in schools; and
- 3. Reinspection and reassessment techniques.

B. A written closed-book examination will be administered covering the topics included in the asbestos inspector refresher training program. The examination will consist of no fewer than 50 questions. The passing score will be 70% correct. Persons who pass the asbestos inspector refresher training program examination will receive a certificate of completion as specified in this chapter.

**18VAC15-21-320. Initial management planner training.**

A. An initial management planner training program must last a minimum of two days. The management planner training program must include lectures, demonstrations, a training program review, and an examination.

B. The management planner training program must address the following topics:

1. Training program overview.

- a. The role of the management planner.
- b. Operations and maintenance programs.
- c. Setting work priorities; protection of building occupants.

2. Evaluation and interpretation of survey results.

- a. Review of Title II (§ 2641 et seq.) of the Toxic Substances Control Act (15 USC § 2601 et seq.) requirements for inspection and management plans as given in § 203(i)(1) of the Toxic Substances Control Act.
- b. Summarized field data and laboratory results; comparison between field inspector's data sheet with laboratory results and site survey.

3. Hazard assessment.

- a. Amplification of the difference between physical assessment and hazard assessment.
- b. The role of the management planner in hazard assessment.
- c. Explanation of significant damage, damage, potential damage, and potential significant damage and use of a description or decision tree code for assessment of ACM; assessment of friable ACM.
- d. Relationship of accessibility, vibration sources, use of adjoining space, air plenums, and other factors to hazard assessment.

4. Legal implications.

- a. Liability; insurance issues specific to management planners.
- b. Liabilities associated with interim control measures, in-house maintenance, repair, and removal.
- c. Use of results from previous inspections.

5. Evaluation and selection of control options.

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a. Overview of encapsulation, enclosure, interim operations and maintenance, and removal; advantages and disadvantages of each method.

b. Response actions described via a decision tree or other appropriate method; work practices for each response action.

c. Staging and prioritizing of work in both vacant and occupied buildings.

d. The need for containment barriers and decontamination in response actions.

## 6. Role of other professionals.

a. Use of industrial hygienists, engineers, and architects in developing technical specifications for response actions.

b. Any requirements that may exist for an architect to sign off on plans.

c. Team approach to the design of high-quality job specifications.

## 7. Developing an operations and maintenance (O&M) plan.

a. Purpose of the plan.

b. Discussion of applicable EPA guidance documents.

c. What actions should be taken by custodial staff; proper cleaning procedures; steam cleaning and high efficiency particulate air (HEPA) vacuuming.

d. Reducing disturbance of ACM.

e. Scheduling O&M for off-hours; rescheduling or canceling renovation in areas with ACM.

f. Boiler room maintenance.

g. Disposal of ACM.

h. In-house procedures for ACM, including bridging and penetrating encapsulants, pipe fittings, metal sleeves, polyvinyl chloride (PVC), canvas, and wet wraps; muslin with straps; fiber mesh cloth; mineral wool; and insulating cement.

i. Discussion of employee protection programs and staff training.

j. Case study in developing an O&M plan (development, implementation process, and problems that have been experienced).

## 8. Recordkeeping for the management planner.

a. Use of field inspector's data sheet along with laboratory results.

b. Ongoing recordkeeping as a means to track asbestos disturbance.

c. Procedures for recordkeeping.

## 9. Assembling and submitting the management plan.

a. Plan requirements in § 203(i)(1) of the of the Toxic Substances Control Act.

b. The management plan as a planning tool.

## 10. Financing abatement actions.

a. Economic analysis and cost estimates.

b. Development of cost estimates.

c. Present costs of abatement versus future operations and maintenance costs.

d. Asbestos School Hazard Abatement Act grants and loans.

## 11. A review of key aspects of the accredited asbestos training program.

C. Upon completion of the management planner training program, the training program must administer a closed-book examination. Each examination must cover the topics required by this section.

1. Each examination must have 100 multiple choice questions.

2. The passing score on the examination must be 70%.

## **18VAC15-21-330. Management planner refresher training program.**

A. A management planner refresher training program must be one-half day and review federal and state regulations, discuss changes, if applicable, and review developments in state-of-the-art procedures. A review of the following topics from the initial accredited asbestos management planner training program must be included in the asbestos management planner refresher training program:

1. Evaluation and interpretation of survey results;

2. Hazard assessment;

3. Evaluation and selection of control options; and

4. Developing an operations and maintenance plan.

B. A written closed-book examination will be administered covering the topics included in the asbestos management planner refresher training program. The examination will consist of no fewer than 50 questions. The passing score will be 70% correct. Persons who pass the asbestos management planner refresher training program examination will receive a certificate of completion as specified in this chapter.

## **18VAC15-21-340. Initial project designer training.**

A. An initial project designer training program must last a minimum of three days. The project designer training program must include lectures, demonstrations, a field trip, a training program review, and an examination.

B. The project designer training program must address the following topics:

1. Training program overview.

a. The role of the project designer in the asbestos abatement industry.



- b. Discussion of what a project design is.
- 2. Background information on asbestos.
  - a. Identification of asbestos and examples and discussion of the uses and locations of asbestos in buildings.
  - b. Physical appearance of asbestos.
- 3. Potential health effects related to asbestos exposure.
  - a. Nature of asbestos-related diseases.
  - b. Routes of exposure, dose-response relationships, and the lack of a safe exposure level.
  - c. The synergistic effect between cigarette smoking and asbestos exposure.
  - d. The latency period of asbestos-related diseases; discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.
- 4. Overview of abatement construction projects.
  - a. Abatement as a portion of a renovation project.
  - b. OSHA requirements for notification of other contractors on a multi-employer site (29 CFR 1926.1101).
- 5. Safety system design specifications.
  - a. Construction and maintenance of containment barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Proper working techniques for minimizing fiber release.
  - e. Entry and exit procedures for the work area, use of wet methods, use of negative pressure exhaust ventilation equipment, use of high efficiency particulate air (HEPA) vacuums, proper clean-up and disposal of asbestos, work practices as they apply to encapsulation, enclosure, and repair, use of glove bags, and a demonstration of glove bag use.
- 6. Field trip.
  - a. Visit a proposed abatement site or other suitable building site, including onsite discussions of abatement design.
  - b. Building walk-through inspection, and discussion following the walk-through.
- 7. Employee personal protective equipment.
  - a. Classes and characteristics of respirator types.
  - b. Limitations of respirators, proper selection, inspection, donning, use, maintenance, and storage procedures.
  - c. Methods for field testing of the facepiece-to-face seal (e.g., positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors and factors that alter respirator fit (e.g., facial hair).
- f. Components of a proper respiratory protection program.
- g. Selection and use of personal protective clothing and use, storage, and handling of nondisposable clothing.
- h. Regulations covering personal protective equipment.
- 8. Additional safety hazards.
  - a. Hazards encountered during abatement activities and how to deal with them.
  - b. Electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards.
- 9. Fiber aerodynamics and control.
  - a. Aerodynamic characteristics of asbestos fibers.
  - b. Importance of proper containment barriers.
  - c. Settling time for asbestos fibers.
  - d. Wet methods in abatement.
  - e. Aggressive air monitoring following abatement.
  - f. Aggressive air movement and negative pressure exhaust ventilation as a clean-up method.
- 10. Designing abatement solutions.
  - a. Discussions of removal, enclosure, and encapsulation methods.
  - b. Asbestos waste disposal.
- 11. Budgeting and cost estimation.
  - a. Development of cost estimates.
  - b. Present costs of abatement versus future operations and maintenance costs.
  - c. Setting priorities for abatement jobs to reduce cost.
- 12. Writing abatement specifications.
  - a. Means and methods specifications versus performance specifications.
  - b. Design of abatement in occupied buildings.
  - c. Modification of guide specifications to a particular building.
  - d. Worker and building occupant health and medical considerations.
  - e. Replacement of ACM with non-asbestos substitutes.
  - f. Clearance of work area after abatement.
  - g. Air monitoring for clearance.
- 13. Preparing abatement drawings.
  - a. Use of as-built drawings.
  - b. Use of inspection photographs and onsite reports.
  - c. Particular problems in abatement drawings.
- 14. Contract preparation and administration.
- 15. Legal, liabilities, and defenses.

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a. Insurance considerations, bonding, hold harmless clauses, and use of abatement contractor's liability insurance.

b. Claims-made versus occurrence policies.

16. Replacement of asbestos with asbestos-free substitutes.

17. Role of other consultants.

a. Development of technical specification sections by industrial hygienists or engineers.

b. The multi-disciplinary team approach to abatement design.

c. The use and responsibilities of a project monitor on the abatement site.

18. Occupied buildings.

a. Special design procedures required in occupied buildings.

b. Education of occupants.

c. Extra monitoring recommendations.

d. Staging of work to minimize occupant exposure.

e. Scheduling of renovation to minimize exposure.

19. Relevant federal, state, and local regulatory requirements. Procedures and standards including:

a. Requirements of Title II (§ 2641 et seq.) of the Toxic Substances Control Act (15 USC § 2601 et seq.);

b. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standard for Asbestos);

c. OSHA standards for respiratory protection (29 CFR 1910.134);

d. EPA Worker Protection Rule, found at 40 CFR Part 763, Subpart G;

e. OSHA Asbestos Construction Standard found at 29 CFR 1926.1101; and

f. OSHA Hazard Communication Standard found in 29 CFR 1926.59.

20. A review of key aspects of the accredited asbestos training program.

C. Upon completion of the project designer training program, the training program must administer a closed-book examination. Each examination must cover the topics required by this section.

1. Each examination must have 100 multiple choice questions.

2. The passing score on the examination must be 70%.

## **18VAC15-21-350. Project designer refresher training program.**

A. A project designer refresher training program must be one day. The project designer refresher training program must review federal and state regulations, discuss changes to the regulations, if applicable, and review developments in state-of-the-art procedures. A review of the following topics from the initial project designer training program must be included in the accredited asbestos project designer refresher training program:

1. Safety system design specifications;

2. Writing abatement specifications; and

3. Employee personal protective equipment.

B. A written closed-book examination will be administered covering the topics included in the asbestos project designer refresher training program. The examination will consist of no fewer than 50 questions. The passing score will be 70% correct. Persons who pass the asbestos project designer refresher training program will receive a certificate of completion as specified in this chapter.

## **18VAC15-21-360. Initial project monitor training.**

A. An initial comprehensive project monitor training program must last a minimum of five days. The project monitor training program must include lectures; demonstrations; at least six hours of hands-on training, which must permit project monitors the experience of performing actual tasks associated with asbestos project monitoring; a field trip; a training program review; and an examination.

B. A comprehensive initial project monitor training program must address the following topics:

1. The physical characteristics of asbestos and asbestos-containing materials.

a. Identification of asbestos.

b. Typical uses and locations in buildings and physical appearance.

c. A review of hazard assessment control options.

d. A summary of abatement control options.

2. Potential health effects related to asbestos exposure.

a. The nature of asbestos-related diseases.

b. Routes of exposure, dose-response relationships, and the lack of a safe exposure level.

c. Synergism between cigarette smoking and asbestos exposure.

d. Latency period for disease; discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of the other organs.

3. Employee personal protective equipment.

- a. Classes and characteristics of respirator types.
  - b. Limitations of respirators and proper selection, inspection, donning, use, maintenance, and storage procedures.
  - c. Methods for field testing of the facepiece-to-face seal (e.g., positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair).
  - g. The components of a proper respiratory protection program.
  - h. Selection and uses of personal protective clothing; use, storage, and handling of nondisposable clothing.
  - i. Regulations covering personal protection equipment.
4. State of the art work practices.
- a. Work practices for asbestos abatement activities, including description of proper construction and maintenance barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation equipment, and use of high efficiency particulate air (HEPA) vacuums. Entry and exit procedures for work area.
  - e. Clean-up and disposal procedures.
  - f. Work practices for removal, encapsulation, enclosure, and repair. Use of glove bags and a demonstration of glove bag use.
  - g. Emergency procedures for sudden release.
  - h. Potential exposure situations.
  - i. Transport and disposal procedures.
  - j. Recommended and prohibited work practices.
  - k. Discussion of new abatement related techniques and methodologies.
5. Personal hygiene.
- a. Entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
  - b. Potential exposures, such as family exposure, must also be included.
6. Additional safety hazards as covered in 29 CFR Parts 1910 and 1926 to include:
- a. Hazards encountered during the abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards;
  - b. Scaffold and ladder hazards;
  - c. Slips, trips, and falls; and
  - d. Confined spaces.
7. Medical monitoring. OSHA requirements for a pulmonary function test, chest X-rays, and a medical history for each employee.
8. Respiratory protection programs and medical surveillance programs.
9. Insurance and liability issues:
- a. Contractor issues, workers' compensation coverage, and exclusions.
  - b. Third-party liabilities and defenses.
  - c. Insurance coverage and exclusions.
10. Relevant federal, state, and local regulatory requirements, procedures, and standards, including:
- a. Requirements of Title II (§ 2641 et seq.) of the Toxic Substances Control Act (15 USC § 2601 et seq.);
  - b. 40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standards for Asbestos);
  - c. OSHA Standards for respiratory protection (29 CFR 1910.134);
  - d. OSHA Asbestos Construction Standard (29 CFR 1926.1101);
  - e. OSHA Hazard Communication Standard (29 CFR 1926.59);
  - f. EPA Worker Protection Rule, 40 CFR Part 763;
  - g. Requirements of Asbestos-Containing Waste Materials, 9VAC20-81-620;
  - h. Department of Transportation 49 CFR Parts 171 and 172 Subpart H; and
  - i. Virginia asbestos licensing regulations.
11. Air monitoring.
- a. NIOSH asbestos monitoring procedure. Procedures to determine airborne concentration of asbestos fibers, including a description of aggressive sampling, sampling equipment, and methods.
    - (1) Explanation of analytical methods, measures of precision, control of errors, collecting samples, fiber counts, sampling and calibration equipment, statistics, and quality control techniques in sampling.
    - (2) Review of 29 CFR Part 1926, Subpart F, §§ 1926.150 through 1926.155.
  - b. Sampling strategy.
    - (1) Why samples are taken.

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(2) Sampling inside and outside of containment area.

(3) Placement of pumps.

c. Reasons for air monitoring.

d. Types of samples and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses.

e. Final clearance.

12. Overview of supervisory techniques for asbestos abatement activities, to include the information covered in the accredited asbestos supervisor training program. A review of the required work practices and safety considerations.

13. Field trip.

a. Visit a proposed abatement site or other suitable building site, including onsite discussions of abatement design.

b. Building walk-through inspection and discussion following the walk-through.

14. Fiber aerodynamics and control.

a. Aerodynamic characteristics of asbestos fibers.

b. Importance of proper containment barriers.

c. Settling time for asbestos fibers.

d. Wet methods in abatement.

e. Aggressive air monitoring following abatement.

f. Aggressive air movement and negative pressure exhaust ventilation as a clean-up method.

15. Project specifications. Discussion of key elements that are included in contract specifications.

a. Means and methods specifications versus performance specifications.

b. Considerations for design of abatement in occupied buildings.

c. Worker and building occupant health and medical considerations.

d. Replacement of ACM with non-asbestos substitutes.

e. Clearance of work area after abatement.

f. Use of as-built drawings.

g. Use of inspection photographs and onsite reports.

h. Particular problems in abatement drawings.

16. Conducting inspections.

a. Inspection prior to containment to ensure condition of items and proper precleaning.

b. Inspection of containment prior to commencement of abatement to ensure that containment is complete and proper.

c. Daily work and containment inspections.

d. Final visual inspection and a discussion of the ASTM E1368 method.

17. Recordkeeping and documentation.

a. Project logs.

b. Inspection reports.

c. Waste shipment record requirements (WSR).

d. Recordkeeping required by federal, state, or local regulations.

e. Recordkeeping required for insurance purposes.

18. Role of project monitor in relation to:

a. Building owner;

b. Building occupants;

c. Abatement contractor; and

d. Other consultants.

19. Occupied buildings.

a. Special procedures recommended in occupied buildings.

b. Extra monitoring recommendations.

20. A review of NESHAP guidance documents.

21. A review of key aspects of the accredited asbestos training program.

22. Examination.

C. Applicants who are currently accredited by EPA as an asbestos supervisor or asbestos project designer may complete a 16-hour initial project monitor training program. A 16-hour initial project monitor program must include lectures; demonstrations; a least six hours of hands-on training, which must permit project monitors the experience of performing actual tasks associated with asbestos project monitoring; a training program review; and an examination. The 16-hour project monitor training program must cover the topics required by subdivisions B 11 through B 22 of this section.

D. Upon completion of the project monitor training program, the training program must administer a closed-book examination. The examination for the comprehensive initial project monitor training program must cover the topics required by subsection B of this section. The examination for the 16-hour initial project monitor training program must cover the topics required by subdivisions B 11 through B 22 of this section.

1. Each examination must have 100 multiple choice questions.

2. The passing score on the examination must be 70%.

**18VAC15-21-370. Project monitor refresher training program.**

A. A project monitor refresher training program must be one

day. The training program must review federal and state regulations, discuss changes to the regulations, if applicable, and review developments in state-of-the-art procedures. A review of the following topics from the initial accredited asbestos project monitor training program must be included in the asbestos project monitor refresher training program:

1. Occupied buildings;
2. Personal protective equipment;
3. Fiber aerodynamics and control; and
4. Recordkeeping and documentation.

B. A written closed-book examination will be administered covering the topics included in the asbestos project monitor refresher training program. The examination will consist of no fewer than 50 questions. The passing score will be 70% correct. Persons who pass the asbestos project monitor refresher training program examination will receive a certificate of completion as specified in this chapter.

#### Part VI

#### General Standards of Practice and Conduct

#### **18VAC15-21-380. Grounds for disciplinary action.**

A. The board has the power to reprimand, fine, suspend, or revoke the license or training program approval of any regulant in accordance with § 54.1-516 of the Code of Virginia or this chapter when the regulant has been found to have violated or cooperated with others in violating any provision of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia or this chapter.

B. Any regulant whose license or training program approval is revoked under this section will not be eligible to reapply for a period of 12 months from the effective date of the order of revocation.

C. Any unlawful act or violation of any provision of Chapter 5 of Title 54.1 of the Code of Virginia or of the regulations of the board by any asbestos supervisor or asbestos worker may be cause for disciplinary action against the asbestos contractor for whom the asbestos supervisor or worker works if it appears to the satisfaction of the board that the asbestos contractor knew or should have known of the unlawful act or violation.

#### **18VAC15-21-390. Prohibited acts.**

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, including inducing another to violate, cooperating with another to violate, or combining or conspiring with or acting as agent, partner, or associate for another to violate any of the provisions of Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia or any of the regulations of the board.

2. Obtaining or attempting to obtain a license or training program approval by false or fraudulent representation; maintaining, renewing, or reinstating a license or training program approval by false or fraudulent representation; or furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or training program approval.

3. Failing to notify the board in writing within 30 days after any change in address or name.

4. Having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC15-21-30 or 18VAC15-21-150. Review of convictions will be subject to the requirements of § 54.1-204 of the Code of Virginia.

5. Failing to notify the board in writing within 30 days of being convicted or found guilty of any felony or of any misdemeanor enumerated in 18VAC15-21-30 E or 18VAC15-21-150 D. Review of convictions will be subject to the requirements of § 54.1-204 of the Code of Virginia.

6. Failing to notify the board in writing no later than 30 days after final disciplinary action against an asbestos abatement license or asbestos training program accreditation has been taken by another jurisdiction.

7. Violating any provision of AHERA or ASHARA or any federal or state regulation pertinent to asbestos abatement activity.

8. Actions constituting negligence, misconduct, or incompetence in the practice of the profession, including:

- a. Having undertaken to perform or performed a professional assignment that the licensee is not qualified to perform by education, experience, training, or appropriate licensure.
- b. Not demonstrating reasonable care, judgment, or application of the required knowledge, skill, and ability in the performance of the licensee's duties.
- c. Failing to act in providing professional services in a manner that safeguards the interests of the public.

9. Actions constituting engaging in improper, fraudulent, or dishonest conduct, including:

- a. Making any misrepresentation or engaging in acts of fraud or deceit in advertising, soliciting, or in providing professional services.
- b. Knowingly signing plans, reports, specifications, or other documents related to an asbestos project not prepared or reviewed and approved by the regulant.
- c. Knowingly misrepresenting factual information in expressing a professional opinion.
- d. Allowing a license issued by the board to be used by another.

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10. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

11. Failing or neglecting to submit information or documentation requested by the board or the board's representatives.

12. Refusing to allow state or federal representatives access to any area of an abatement site, analytical laboratory, or training facility for the purpose of compliance inspections or audits, whether announced or unannounced.

## **18VAC15-21-400. Conflict of interest.**

A. It is a conflict of interest and a violation of this chapter for an asbestos contractor to have an employee-employer relationship with or financial interest in an asbestos analytical laboratory utilized by the contractor for asbestos sample analysis. The requirements of this subsection do not apply when the laboratory performing analysis is owned by the owner of the building where samples are taken.

B. It is a conflict of interest and a violation of this chapter for an asbestos contractor to have an employee-employer relationship with an asbestos project monitor working on an asbestos project performed by that asbestos contractor. An asbestos contractor must not have any financial interests in the firm of which a project monitor is an employee and provides project monitoring services for that contractor. This section does not relieve a contractor of OSHA requirements set forth in 29 CFR 1926.1101.

C. It is a conflict of interest and a violation of this chapter for an asbestos contractor to enter into a contract to perform an asbestos project if the asbestos inspection or project design was performed by individuals with an employer-employee relationship with or financial interest in the asbestos contractor, unless the asbestos contractor provides the building owner with the Virginia Asbestos Licensing Consumer Information Sheet and the Virginia Asbestos Licensing Inspector/Project Designer/Contractor Disclosure Form prescribed by the department. The completed disclosure form must be submitted as part of the bid.

D. The requirements of this section do not apply to a contractor-subcontractor relationship between an asbestos contractor and an asbestos project monitor.

## **18VAC15-21-410. Change of status for analytical laboratories.**

A. The regulant must notify the department within 30 days of any changes to the responsible individual for each laboratory location.

B. The regulant must notify the board within 30 business days upon the loss of accreditation or proficiency rating, as required by 18VAC15-21-160, by any laboratory location.

C. The regulant must notify the board within 30 days if an employed analyst or asbestos project monitor performing asbestos laboratory analysis is removed from the AAR.

D. The regulant must notify the board in writing of any changes to the types of analysis for which the laboratory is licensed. When requesting to add an analysis type to the license, evidence of meeting the qualifications required by 18VAC15-21-160 must be submitted. The regulant must receive board approval of the analysis type prior to performing the analysis.

E. The licensee must notify the department within 30 days of any changes in the laboratory location.

## **18VAC15-21-420. Transfer of license, firms.**

Asbestos contractor licenses and analytical laboratory licenses are issued to firms as defined in this chapter and are not transferable. Should the legal firm holding the license be dissolved or altered to form a new firm, the original license becomes void and must be returned to the board within 30 days of the change. The new firm must apply for a new license within 30 days of the change in the firm. Such changes include:

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership, or the managing partner in a limited partnership;
3. Termination or cancellation of a corporation or limited liability company; and
4. Conversion, formation, or dissolution of a corporation, a limited liability company, or an association or any other firm recognized under the laws of the Commonwealth.

## **18VAC15-21-430. (Reserved).**

## **18VAC15-21-440. Good standing in other jurisdictions.**

A. Regulants in other jurisdictions must be in good standing in every jurisdiction where licensed, certified, or approved and must not have had a license, certification, or approval suspended, revoked, or surrendered in connection with a disciplinary action.

B. Regulants may be subject to disciplinary action or removal of an asbestos training program accreditation for disciplinary actions taken by another jurisdiction.

## **18VAC15-21-450. Response to inquiry and provision of records.**

A. A regulant must respond within 10 days to a request by the board or any board agent regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board must produce to the board or any board agent within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the regulant was involved or for which the regulant is required to

maintain records. The board may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A licensee must not provide a false, misleading, or incomplete response to the board or any board agent seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsection A or B of this section, a licensee must respond to an inquiry by the board or a board agent within 21 days.

## Part VII

### Standards of Practice and Conduct for Individuals

#### **18VAC15-21-460. Asbestos project designs.**

An asbestos project design must include, at minimum:

1. Scope of work.
2. Sequence of work.
3. Work methods and practices to be used.
4. Air sampling procedures.

#### **18VAC15-21-470. Asbestos project monitoring.**

A. A project monitor is required on asbestos projects performed in buildings that are occupied or intended to be occupied upon completion of the asbestos project exceeding 260 linear feet, 160 square feet, or 35 cubic feet of asbestos-containing material.

B. A project monitor is required on asbestos projects for which the property owner deems it necessary, regardless of whether the scope of the project is less than described in subsection A of this section.

C. Asbestos project monitors must be present when response actions are being conducted or more frequently if in accordance with the owner-approved contractual agreement with the project monitor.

D. Asbestos project monitors must maintain a daily log of all work performed. The daily log will include inspection reports, air sampling data, type of work performed by the asbestos contractor, problems encountered, and corrective action taken.

E. Asbestos project monitors will take final air samples on all abatement projects, except for abatement projects in residential buildings.

F. Prior to reoccupancy of a building following asbestos abatement, the asbestos project monitor will provide the air sample report on the asbestos analytical laboratory's letterhead in the final clearance report.

#### **18VAC15-21-480. Onsite analysis by project monitors.**

Project monitors who analyze PCM air samples on site must (i) be employed by or affiliated with a licensed asbestos

analytical laboratory, (ii) have completed the NIOSH 582 or NIOSH 582 Equivalency Course, and (iii) satisfy one of the following:

1. The project monitor is listed in the AAR and rated "acceptable" for the most recent AAT round;
2. The licensed asbestos analytical laboratory employing the project monitor is rated as "proficient" in the IHPAT Program and maintains training and quality control documentation necessary to demonstrate competency in performing onsite analysis; or
3. The licensed asbestos analytical laboratory employing the project monitor is accredited under the IHLAP, remains in compliance with accreditation requirements, and maintains training and quality control documentation necessary to demonstrate competency in performing onsite analysis.

## Part VIII

### Standards of Practice and Conduct for Firms

#### **18VAC15-21-490. Asbestos contractor.**

A. Asbestos contractors must comply with all requirements, procedures, standards, and regulations covering any part of an asbestos project established by EPA, OSHA, the Department of Labor and Industry, and the Divisions of Air Pollution and Waste Management of the Department of Environmental Quality (§ 54.1-517 of the Code of Virginia).

B. Asbestos contractors must comply with the requirements found in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia governing the regulation of general contractors.

C. Asbestos contractors must employ licensed asbestos supervisors and workers to perform work on any asbestos project.

D. Asbestos contractors must ensure that a licensed asbestos supervisor is present at each job site while an asbestos project is in progress.

E. Prior to the start of any asbestos project, the asbestos contractor must:

1. Notify the building or property owner or agent of the owner when a licensed project monitor is required in accordance with the provisions of 18VAC15-21-470 to determine that proper work practices are used and in compliance with all asbestos laws and regulations provided in this chapter.
2. Obtain a written acknowledgment from the owner or agent of the owner that the owner has been notified of the requirement to secure the services of a licensed asbestos project monitor. Such acknowledgment must include the address of the building where the asbestos project is to take place; the date the work is to be performed; the name, address, and license number of the licensed asbestos

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contractor performing the work; and evidence that the building or property owner or agent of the owner has received the notification. The initial notification and acknowledgment will be sufficient for the asbestos project.

## **18VAC15-21-500. Maintenance of licensing and training records at the asbestos project job site.**

A. The asbestos contractor will be responsible for maintaining at each project site a list of each asbestos worker and asbestos supervisor, or copy of the licenses of each asbestos worker and asbestos supervisor. This list must include the current license numbers and the license expiration dates of such workers and supervisors. This section does not relieve the contractor of any specific AHERA and ASHARA requirements concerning training certificates.

B. An asbestos contractor must maintain a copy of its Virginia asbestos contractor license on each project site.

C. Any conflict of interest disclosure forms as required by 18VAC15-21-400 must be maintained at each job site.

D. Records maintained at the job site will be made available for review by the department, the Department of Labor and Industry, and all other agencies having authorization to inspect an asbestos project site.

## **18VAC15-21-510. Asbestos analytical laboratories.**

A. Each asbestos analytical laboratory using PLM to analyze bulk suspect material for the presence of asbestos must analyze the material in accordance with either of the following methods:

1. Test Method: Method for the Determination of Asbestos in Bulk Building Materials, EPA 600/R-93/116, EPA Office of Research and Development, effective July 1993.

2. NIOSH Method 9002, NIOSH Manual of Analytical Methods (NMAM) Fourth Edition, NIOSH, effective August 15, 1994.

The documents specified in this subsection are incorporated by reference.

B. Each asbestos analytical laboratory using PCM to analyze air samples for the presence of airborne fibers must use either of the following methods:

1. Appendix A of 29 CFR § 1926.1101.

2. NIOSH Method 7400, NIOSH Manual of Analytical Methods (NMAM), Fourth Edition, NIOSH, effective August 15, 1994. This document is incorporated by reference.

C. Each asbestos analytical laboratory using TEM to analyze air samples for the presence of airborne asbestos fibers must use either of the following methods:

1. Appendix A to Subpart E of 40 CFR Part 763.

2. NIOSH Method 7402, NIOSH Manual of Analytical Methods (NMAM), Fourth Edition, NIOSH, effective August 15, 1994. This document is incorporated by reference.

D. A copy of the current asbestos analytical laboratory license must be on site at all times where analysis is performed, including project sites. The license must be available for review by the department.

## Part IX

### Standards of Practice and Conduct for Accredited Training Programs and Board-approved Training Courses

## **18VAC15-21-520. General requirements for training programs and courses.**

A. All Virginia-approved accredited asbestos training programs and board-approved training courses must remain in compliance with all training and recordkeeping requirements established by MAP.

B. Each initial and refresher accredited training program and board-approved training course must be discipline specific.

C. All accredited training programs must be taught in English. Accredited asbestos worker training programs are exempt from this requirement.

## **18VAC15-21-525. Electronic delivery of asbestos refresher training courses.**

A. Electronic delivery of accredited asbestos refresher training courses is permitted, provided the following requirements are met:

1. Courses delivered electronically must be approved by the board in accordance with Part V (18VAC15-21-220 et seq.) of this chapter. A pre-existing approval for an in-person, classroom-based refresher course does not extend to approval of the electronic course.

2. The training provider must have a system in place to authenticate each participant's identity and the participant's eligibility to enroll in the course.

3. A unique identifier must be assigned to each participant to be used to launch and re-launch the course. This identifier may be used throughout the course if deemed necessary by the instructor.

4. Each participant must be logged into the course and participating for the full length of time required for each course discipline. The training provider must track each participant's course logins, launches, progress, and completion. The training provider must maintain a record of the same in accordance with the applicable recordkeeping requirements of MAP and this chapter.

5. The course must include knowledge checks throughout the entirety of the course. The knowledge checks must be



successfully completed before the participant moves on to the next module.

6. Course instructors must be available to answer questions or offer technical discussion by way of online discussion or message boards, or a telephone number during the training period.

7. There must be a test of at least 20 questions at the end of the course, of which 80% must be answered correctly for successful completion of the course. The test must be designed so that the student does not receive feedback on answers until after the test has been submitted.

8. Each participant must be provided with a completion certificate that may be saved and printed. The completion certificate must specifically mention that the course was taken online. The certificate must not be susceptible to editing. The certificate must contain all information required by MAP and this chapter.

9. Course notifications and participant lists provided to the board must indicate whether the course is conducted electronically.

B. Electronic courses must meet all other requirements for refresher courses as established in this chapter.

C. For auditing purposes, the board must have unrestricted access to the electronic course at any time during which the course is conducted.

D. For purposes of this section, electronic delivery includes real-time virtual training and asynchronous delivery of training courses.

### **18VAC15-21-530. Length of training.**

A. No portion of an accredited training program or board-approved training course will exceed eight hours in a 24-hour period. One day equals eight hours, inclusive of lunches and breaks, for all accredited training programs.

B. Portions of accredited training programs or board-approved training courses conducted after 5 p.m. and before 8 a.m. may not exceed four hours, except where training is conducted during the course participants' usual working hours.

C. Portions of accredited training programs or board-approved training courses conducted between Friday after 5 p.m. and Monday before 8 a.m. may not exceed 16 hours.

D. Each initial accredited training program or board-approved training course, including examinations, must be completed within a single two-week timeframe.

### **18VAC15-21-540. Presence of instructor required to provide training.**

An instructor must remain present in the classroom or training area where instruction takes place at all times during the course

of the accredited training program or board-approved training course.

### **18VAC15-21-550. Minimum standards for training program and course materials.**

A. Prior to the start of the accredited asbestos training program or board-approved training course, the training provider must prepare a course outline or syllabus to be distributed to all course participants.

B. At a minimum, the outline or syllabus must include:

1. Training program title and length of training;

2. Start time of each day of training;

3. Division of course sections, to include the instructor and length of time for each section;

4. Start and end times for each scheduled break;

5. Start and end times for each scheduled lunch;

6. Scheduled hands-on training, a description of the training, the name of the instructor, and length of training; and

7. Start and end time of the final examination.

C. All training program participants will be issued a training program manual for the training program.

D. Use of video instruction is permitted in an accredited training program, provided that videos are not the sole and primary source of instruction.

E. In no case will equipment utilized for display or as part of hands-on training have been utilized on an asbestos abatement project site.

F. Following attendance of the accredited training program or board-approved training course and successful completion of an examination by the training program participant, the training provider must issue a certificate of completion to the training program participant. At a minimum, the completion certificate must include:

1. Training provider's business name;

2. Training provider's business address and telephone number;

3. Location of training;

4. Typewritten or printed name of training program participant;

5. Training program title and length of training in hours;

6. Certificate number;

7. Start and end dates of the training program;

8. Examination date;

9. An expiration date one year after the date of completion of the accredited asbestos training program;

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10. For training programs covered under 40 CFR Part 763, Subpart E, Appendix C, a statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under Title II (§ 2641 et seq.) of the Toxic Substances Control Act (15 USC § 2601 et seq.);

11. Statement of attendance and successful completion of an examination by the training program participant; and

12. Signature and typewritten or printed name of the accredited asbestos training program manager or administrator and principal instructor. The signature may be a printed facsimile.

## **18VAC15-21-560. Examinations.**

A. Oral examinations are not permitted in an accredited training program. Accredited asbestos worker training programs are exempt from this requirement.

1. Instructors providing oral examinations must provide an answer sheet to the course participant, to be completed by the participant.

2. The answer sheet must be signed by the course participant.

B. Examinations must be given in the language of the accredited asbestos training program's instruction.

C. A course participant is allowed one opportunity to retake a failed examination. If the course participant fails to achieve a 70% passing score on the second examination attempt, the course participant must reenroll and participate in the entirety of the discipline-specific accredited training program.

## **18VAC15-21-570. Reporting of changes.**

A. Any change in the information provided in Part V (18VAC15-21-220 et seq.) of this chapter must be reported to the board prior to implementing the change. Information submitted will be reviewed to ensure compliance with the provisions of this chapter prior to the continuation of the accredited asbestos training program.

B. Documentation of all instructor qualifications will be reviewed and approved by the board prior to the instructor teaching in an accredited asbestos training program.

C. Changes to the certificate of completion must be submitted to the board for review and approval prior to issuance to training program participants.

## **18VAC15-21-580. Recordkeeping and provision of records to the board.**

A. Unless otherwise authorized by the board, the training provider must submit course notifications and participant lists to the board electronically in a format established by the board.

B. The training provider must notify the board no less than 48 hours prior to the start date of any accredited asbestos training program.

C. The training provider must provide an updated notification when an accredited training program will begin on a date other than the start date specified in the original notification no less than 48 hours prior to the new start date.

D. The training provider must update the board of any change in location of an accredited training program at least 48 hours prior to the start date provided to the board.

E. The training provider must update the board regarding any accredited training program cancellations or any other change to the original notification at least 48 hours prior to the start date provided to the board. This requirement does not apply to situations or circumstances beyond the control of the training provider.

F. Each notification, including updates, must include the following:

1. Notification type (e.g., original, update, cancellation).

2. Training program name, Virginia accreditation number, address, and telephone number.

3. Course discipline, type (initial or refresher), and the language in which the instruction will be given.

4. Dates and times of training.

5. Training locations, telephone number, and address.

6. Principal instructor's name.

G. For all accredited training programs, the training provider must provide to the board a training program participant list of all of the individuals attending the accredited training program course within 10 days of the course end date. The training program participant list must contain the following minimum information:

1. Training program name, Virginia accreditation number, address, and telephone number.

2. Course discipline and type (initial or refresher).

3. Dates of training.

4. Location of training program presentation.

5. Each participant's name, address, social security number, course completion certificate number, and course test score.

6. Principal instructor's name.

H. The principal instructor must complete the training program participant list daily.

I. The training program participant list must be retained by the training provider for three years following the date of completion of the training program.

J. The department has discretion to refuse to recognize completion certificates from accredited training providers that fail to provide course notifications or training program participant lists to the board.

K. Approval letters for accredited training programs must be maintained at the location of training and made accessible to the public.

L. A copy of the training program outline must be retained by the training provider for a period of three years following the completion of the training program.

M. All examinations completed by the accredited training program participants, regardless of the examination score, must be kept for a period of three years after the examination date.

N. Records required to be maintained by the training provider must be maintained at the physical location of the accredited asbestos training provider.

**18VAC15-21-590. Access by the department.**

Accredited training providers must permit department representatives to attend, evaluate, and monitor any accredited training program. Prior notice of attendance by department representatives is not required. The department will be given access to all course materials, principal instructor and training manager rosters, participant rosters, and other records as stipulated by this chapter.

**18VAC15-21-600. Withdrawal of approval of an accredited asbestos training program.**

A. The board has discretion to withdraw approval of any accredited training program for the following reasons:

1. The training provider, instructors, or training programs no longer meet the standards established in this chapter.
2. The board determines that the provider is not conducting the training in a manner that meets the requirements as set forth in this chapter.
3. Suspension or revocation of training approval in another state or by EPA.

B. Decisions regarding withdrawal of approval will be made by the board under the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

**FORMS (18VAC15-21)**

[Virginia Asbestos Licensing Consumer Information Sheet, A506-33ACIS-v2 \(rev. 8/2013\)](#)

[Inspector/Project Designer/Contractor Disclosure Form, A506-33DIS-v2 \(rev. 8/2013\)](#)

**DOCUMENTS INCORPORATED BY REFERENCE (18VAC15-21)**

[NIOSH Method 7400, NIOSH Manual of Analytical Methods \(NMAM\), Fourth Edition, NIOSH, August 15, 1994](#)

[NIOSH Method 7402, NIOSH Manual of Analytical Methods \(NMAM\), Fourth Edition, NIOSH, August 15, 1994](#)

[NIOSH Method 9002, NIOSH Manual of Analytical Methods \(NMAM\) Fourth Edition, NIOSH, August 15, 1994](#)

[Test Method: Method for the Determination of Asbestos in Bulk Building Materials, EPA Office of Research and Development, \(EPA 600-R-93-116, July 1993\)](#)

VA.R. Doc. No. R23-7460; Filed March 4, 2025, 10:55 a.m.

**BOARD OF MEDICINE**

**Fast-Track Regulation**

**Title of Regulation:** **18VAC85-80. Regulations Governing the Practice of Occupational Therapy (amending 18VAC85-80-10, 18VAC85-80-26, 18VAC85-80-35, 18VAC85-80-65, 18VAC85-80-71 through 18VAC85-80-80, 18VAC85-80-100, 18VAC85-80-140; repealing 18VAC85-80-20, 18VAC85-80-90).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2956.1 of the Code of Virginia.

**Public Hearing Information:** No public hearing is currently scheduled.

**Public Comment Deadline:** April 23, 2025.

**Effective Date:** May 8, 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, FAX (804) 915-0382, or email [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@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 authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to administer the regulatory system. Section 54.1-2956.1 of the Code of Virginia requires the board to license occupational therapists.

**Purpose:** The amendments reduce the regulatory burden by eliminating provisions redundant of statutory language, eliminating provisions that are no longer needed, and reducing barriers to licensure, which protects the health, safety, and welfare of citizens by ensuring a sufficient workforce of occupational therapists (OTs) and occupational therapy assistants (OTAs). The amendments are intended to eliminate redundant or outdated provisions.

**Rationale for Using Fast-Track Rulemaking Process:** This rulemaking is considered noncontroversial and appropriate for the fast-track rulemaking process because it reduces requirements for licensees.

**Substance:** The amendments remove provisions that are redundant to statute and useless directions in regulation, including provisions related to (i) public participation; (ii) outdated fee reductions; (iii) requirements to verify professional practice to obtain a license; (iv) the requirement to attest to any hours of Type 2 continuing education; (v) the

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board's requirement to periodically conduct random audits; (vi) redundant scope of practice provisions that are identical to language in the Code of Virginia; and (vii) language regarding maintenance of documents and closing of a practice that are related to physicians, not OTs or OTAs.

Issues: The primary advantage to the public is potentially increased numbers of practitioners obtaining a license, 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.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. As the result of a periodic review,<sup>2</sup> the Board of Medicine (board) proposes to (i) remove text from various portions of Regulations for Licensure of Occupational Therapists (18VAC85-80), (ii) reduce required continuing education hours, and (iii) amend the requirements to reactivate or reinstate licensure.

Background. Repealing text: The board relates that each portion of text proposed for removal falls into one of the following categories: (i) a definition not used in the regulation; (ii) a reference to another regulation; (iii) is either obsolete, no longer applicable, repetitive of other regulatory text or duplicative of statute; (iv) imposes a rarely used \$10 fee that costs more to administer than the amount of the fee; or (v) requires the board to periodically conduct audits that are no longer conducted in practice.

Continuing education: Under the current regulation, in order to renew an active license biennially, practitioners must complete at least 20 contact hours of continuing learning activities within the two-year period of licensure. At least 10 of the hours must consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy and is approved or provided by one of the following organizations or any of its components: Virginia Occupational Therapy Association; American Occupational Therapy Association; National Board for Certification in Occupational Therapy; local, state, or federal government agency; regionally accredited college or university; health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation; or an American Medical Association Category 1 Continuing Medical Education program. Up to 10 of the hours may be Type 2 activities, which may include consultation with

another therapist, independent reading or research, preparation for a presentation, or other such experiences that promote continued learning. Two of the Type 2 continuing education hours may be satisfied through delivery of occupational therapy 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 three hours of providing such volunteer services as documented by the health department or free clinic. The board proposes to reduce the required number of contact hours of continuing learning activities within the two-year period of licensure from 20 to 10. In doing so, the board would eliminate the Type 2 category. All of the current Type 1 activities would count toward the requirement. As mandated by § 54.1-2400 of the Code of Virginia, delivery of occupational therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic would also continue to count toward approved contact hours of continuing learning activities. Consultation with another therapist, independent reading or research, preparation for a presentation would not count toward the reduced 10 hours. The board also proposes to specify that up to two of the continuing education hours may be satisfied through supervision or experiences that promote the education of students. One hour of continuing education may be credited for eight hours of providing such supervision as documented by the educational institution for which supervision is performed. According to the Department of Health Professions (DHP), the board had accepted this as qualifying for Type 2 activity and felt that it would be worthwhile for both practitioners and students.

Reactivation: A licensed occupational therapist or an occupational therapy assistant who holds a current, unrestricted license in Virginia shall be issued an inactive license upon a request on the renewal application and submission of the required fee. The holder of an inactive license is not required to maintain hours of active practice or meet the continued competency requirements, and is not entitled to perform any act requiring a license to practice occupational therapy in Virginia. Under the current regulation, an inactive licensee may reactivate a license upon submission of an application as required by the board; payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure; and documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive. In addition, if the license has been inactive for two to six years documentation must be submitted of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist. Alternatively, if the license has been inactive for six years or more and the individual has not engaged in active practice,

documentation must be submitted of having completed a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist. For licenses that have been inactive for two to six years, the board proposes to no longer impose any additional requirements (i.e., documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist). For licenses that have been inactive for six years or more, instead of requiring supervised practice or evidence of having engaged in active practice, the board proposes to require the occupational therapist or occupational therapy assistant provide evidence of current certification by the National Board for Certification in Occupational Therapy (NBCOT) or retake and pass the NBCOT examination. Additionally, the board proposes to amend the required submission of documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive. Now, the documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed six years, in which the license has been inactive.

**Reinstatement:** To be reinstated, an occupational therapist or occupational therapy assistant who allows a license to lapse for a period of two years or more and then chooses to resume practice must submit to the board a reinstatement application, information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed, and the fee for reinstatement of his licensure. Under the current regulation, an occupational therapist or occupational therapy assistant who has allowed a license to lapse for two years but less than six years, and who has not engaged in active practice, must serve a board-approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed occupational therapist. An occupational therapist or occupational therapy assistant who has allowed a license to lapse for six years or more, and who has not engaged in active practice, must serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist in order to have a license reinstated. Completion of continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive must also be accomplished. Regardless of the number of years that the license has been lapsed, instead of requiring supervised practice or evidence of having engaged in active practice, the board proposes to require the occupational therapist or occupational therapy assistant provide evidence of current certification by NBCOT or retake and pass the NBCOT examination. Analogous to the proposed amendment to the cap on required continued competency hours for reactivation, the board proposes to raise the cap on the number of required hours

of continued competency for reinstatement from the required amount for four years to the required amount for six years.

**Estimated Benefits and Costs:** Repealing text: According to DHP, the \$10 fee for an individual licensed out-of-state to register for voluntary practice itself costs more administratively to collect than \$10. Thus, eliminating the fee would be beneficial in that it would both reduce cost for occupational therapists and occupational therapy assistants licensed out-of-state seeking to volunteer in Virginia, and net costs for the board. Currently, the board periodically conducts a random audit of its active licensees to determine compliance. The practitioners selected for the audit must provide all supporting documentation within 30 days of receiving notification of the audit. According to DHP, the board has only performed one or two of these audits in the last two decades, and only on two sets of its 18 types of licensees. DHP adds that the board does not have staff or the ability to conduct such audits and has not for years. Thus, the proposed repeal conforms the regulation to practice. Removing definitions that are not used in the regulation and text that either refers to another regulation or is obsolete, no longer applicable, is repetitive of other regulatory text, or is duplicative of statute would have no impact on requirements for regulated entities or the public.

**Continuing education:** According to DHP, the board believes that the reporting requirement for Type 2 continuing learning activity hours is unnecessarily burdensome and that most practitioners would complete activities that are included as Type 2 regardless of the requirement. Thus, eliminating the requirement for Type 2 hours would be beneficial in that it would eliminate the burden of reporting such activities. The proposed elimination of the Type 2 activity requirement is not likely to have a substantive impact on activities in practice.

**Reactivation:** For practitioners with licenses that have been inactive for two to six years and have not engaged in the active practice of occupational therapy (perhaps in another state) and who do not plan to work under the supervision of another practitioner, the proposal to no longer require documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist would be beneficial. Eliminating the requirement would allow such practitioners to work in their preferred circumstance right away rather than find someone else to supervise them over a 60-day period. For practitioners with licenses that have been inactive for five or six years, the proposal to amend the required submission of documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive. Now the requirement that documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed six years, in which the license has been inactive increases the amount of continued competency hours that they must complete to reactivate their licenses. Under the

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proposed regulation, five hours of continuing learning activities are required per annum. Thus, the proposed increase in the cap would result in five additional hours of required continuing learning activities for those practitioners with licenses that have been inactive for five years, and 10 additional hours of required continuing learning activities for those practitioners with licenses that have been inactive for six years. Their costs in time and fees would increase commensurately. For practitioners with licenses that have been inactive for six years or more and have not engaged in the active practice of occupational therapy and who do not plan to work under the supervision of another licensed occupational therapist, the proposal to replace the requirement to work under the supervision of another practitioner with evidence of current certification by NBCOT or to retake and pass the national examination may be beneficial. According to DHP, most occupational therapists and occupational therapy assistants maintain NBCOT certification. Thus, this proposed change would benefit practitioners with licenses that have been inactive for six years or more and have not engaged in the active practice of occupational therapy and who do not plan to work under the supervision of another practitioner, but have maintained NBCOT certification, by permitting work in their preferred circumstance right away rather than find someone else to be supervised by over four months. Practitioners with licenses that have been inactive for six years or more, have not engaged in the active practice of occupational therapy, and do not have NBCOT certification but do intend to work under the supervision of another licensed occupational therapist, would be worse off under this proposal since they would meet the existing working under supervision requirement, but would not meet the NBCOT requirement.

**Reinstatement:** For practitioners with a lapsed license who have not engaged in active practice and who do not plan to work under the supervision of another practitioner, the proposal to replace the requirement to work under the supervision of another practitioner with evidence of current certification by NBCOT or to retake and pass the national examination may be beneficial. Practitioners with a lapsed license who have not engaged in active practice and do not have NBCOT certification but do intend to work under the supervision of another licensed occupational therapist would be worse off under this proposal. Analogous with reactivation, for practitioners with licenses that have been inactive for five or six years, the proposed increase of the cap on required amount of continued competency hours increases the amount of continued competency hours that they must complete to reinstate their licenses. Thus, their costs in time and fees would increase commensurately.

**Businesses and Other Entities Affected.** The proposed amendments affect the 5,019 occupational therapists and 1,785 occupational therapy assistants licensed in the Commonwealth,<sup>3</sup> and their patients and employers. According to survey data from the most recently published Virginia Healthcare Workforce Data Center report on occupational

therapists,<sup>4</sup> the primary type of employers of occupational therapists in the Commonwealth are distributed as follows:

Establishment Type	Percentage
General Hospital, Inpatient Department	15%
Skilled Nursing Facility	14%
K-12 School System	13%
Home Health Care	13%
Rehabilitation Facility, Outpatient Clinic	9%
Private Practice, Group	7%
Rehabilitation Facility, Residential/Inpatient	7%
General Hospital, Outpatient Department	5%
Assisted Living or Continuing Care Facility	4%
Academic Institution	3%
Private Practice, Solo	3%
Mental Health, Inpatient	1%
Other	7%

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>5</sup> 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. Costs would increase for practitioners who wish to reactivate or reinstate a license if a license has been inactive or lapsed for five or six years. Thus, an adverse impact is indicated.

**Small Businesses<sup>6</sup> Affected.<sup>7</sup>** The proposed amendments do not appear to substantively adversely affect small businesses.

**Localities<sup>8</sup> Affected.<sup>9</sup>** The proposed amendments do not appear to disproportionately affect any particular localities, nor introduce costs for local governments.

**Projected Impact on Employment.** The proposed amendments are not likely to have a substantive impact on total

employment.

Effects on the Use and Value of Private Property. Depending on the circumstances, practitioners seeking to reactivate or reinstate their license may encounter either increases or decreases in cost under the proposed regulation. In net, it is unlikely that the proposed changes would have a substantial impact on hiring costs for firms. Thus, for non-solo practices, there would not likely be a substantive impact on the use and value of private property. The proposed replacement of NBCOT certification for working under supervision as a requirement for reactivation or reinstatement could allow practitioners who prefer to work solo to start doing so sooner. The proposed amendments do not affect real estate development costs.

<sup>1</sup> 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.

<sup>2</sup> See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2148>.

<sup>3</sup> Source: <https://www.dhp.virginia.gov/about/stats/2023Q3/04CurrentLicensesCountQ3FY2023.pdf>.

<sup>4</sup> See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/medicine/0119OT2020.pdf>.

<sup>5</sup> 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.

<sup>6</sup> 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."

<sup>7</sup> 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.

<sup>8</sup> "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.

<sup>9</sup> 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:

*The amendments remove provisions that are redundant to statute and useless directions in regulation, including provisions related to (i) public participation; (ii) outdated fee reductions; (iii) requirements to verify professional practice to obtain a license; (iv) the requirement to attest to any hours of Type 2 continuing education; (v) the requirement that the Board of Medicine periodically conduct random audits; (vi) scope of practice provisions that are identical to language in the Code of Virginia; and (vii) language related to maintenance of documents and closing of a practice that is related to physicians, not occupational therapists or occupational therapy assistants.*

**18VAC85-80-10. 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"

"Occupational therapy assistant"

"Practice of occupational therapy"

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

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Active practice" means a minimum of 160 hours of professional practice as an occupational therapist or an occupational therapy assistant within the 24-month period immediately preceding renewal or application for licensure; if previously licensed or certified in another jurisdiction. The active practice of occupational therapy may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

~~"Advisory board" means the Advisory Board of Occupational Therapy.~~

"Compact" means the Occupational Therapy Interjurisdictional Licensure Compact.

"Compact privilege" means the same as the definition of the term in § 54.1-2956.7:1 of the Code of Virginia.

"Contact hour" means 60 minutes of time spent in continued learning activity.

"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented.

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"National examination" means the examination prescribed by NBCOT for certification as an occupational therapist or an occupational therapy assistant and approved for licensure in Virginia.

"Occupational therapy personnel" means appropriately trained individuals who provide occupational therapy services under the supervision of a licensed occupational therapist.

"Practitioner" means an occupational therapist or occupational therapy assistant licensed in Virginia or an occupational therapist or occupational therapy assistant practicing in Virginia with a compact privilege.

## **18VAC85-80-20. Public participation. (Repealed.)**

~~A separate regulation, 18VAC85-11, Public Participation Guidelines, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.~~

## **18VAC85-80-26. Fees.**

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be \$130; for the occupational therapy assistant, it shall be \$70.
2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be \$180; for the occupational therapy assistant, it shall be \$90.
3. The fee for active license renewal for an occupational therapist shall be \$135; for an occupational therapy assistant, it shall be \$70. The fees for inactive license renewal shall be \$70 for an occupational therapist and \$35 for an occupational therapy assistant. Renewals shall be due in the birth month of the licensee in each even-numbered year. ~~For 2020, the fee for renewal of an active license as an occupational therapist shall be \$108; for an occupational therapy assistant, it shall be \$54. For renewal of an inactive license in 2020, the fees shall be \$54 for an occupational therapist and \$28 for an occupational therapy assistant.~~
4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50 for an occupational therapist and \$30 for an occupational therapy assistant.
5. The fee for a letter of good standing or verification to another jurisdiction for a license shall be \$10.
6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.
7. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.
8. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.

10. The fee for issuance of a compact privilege or the biennial renewal of such privilege shall be \$75 for an occupational therapist and \$40 for an occupational therapy assistant.

B. Unless otherwise provided, fees established by the board shall not be refundable.

## **18VAC85-80-35. Application requirements.**

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-80-26.
2. Verification of professional education in occupational therapy as required in 18VAC85-80-40.
3. ~~Verification of practice as required in 18VAC85-80-60 and as specified on the application form.~~
4. Documentation of passage of the national examination as required in 18VAC85-80-50.
5. ~~4.~~ If licensed or certified in any other jurisdiction, verification that there has been no disciplinary action taken or pending in that jurisdiction.

## **18VAC85-80-65. Registration for voluntary practice by out-of-state licensees.**

Any occupational therapist or an occupational therapy assistant who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 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; and the dates and location of the voluntary provision of services; and
4. ~~Pay a registration fee of \$10; and~~ 5. Provide a notarized statement from a representative of the nonprofit organization attesting to ~~its~~ the nonprofit organization's compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.



**18VAC85-80-71. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially, a licensee shall complete at least ~~20~~ 10 contact hours of continuing learning activities as follows: ~~1. A minimum of 10 of the 20 hours shall be in Type 1 activities, which shall consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy and approved or provided by one of the following organizations or any of its components:~~

- ~~a. 1.~~ Virginia Occupational Therapy Association;
- ~~b. 2.~~ American Occupational Therapy Association;
- ~~c. 3.~~ National Board for Certification in Occupational Therapy;
- ~~d. 4.~~ Local, state, or federal government agency;
- ~~e. 5.~~ Regionally accredited college or university;
- ~~f. 6.~~ Health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation; or
- ~~g. 7.~~ An American Medical Association Category 1 Continuing Medical Education program.

~~2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation, or other such experiences that promote continued learning.~~ B. Up to two of the Type 2 continuing education hours may be satisfied through delivery of occupational therapy 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 three hours of providing such volunteer services as documented by the health department or free clinic.

~~B. C. Up to two of the continuing education hours may be satisfied through supervision or experiences that promote the education of students. One hour of continuing education may be credited for eight hours of providing such supervision as documented by the educational institution for which supervision is performed.~~

D. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

~~C. E. The licensee shall retain in the licensee'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 representative random audit of its active licensees to determine compliance. The licensees selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.~~

~~E. F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.~~

~~F. G. 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. H. 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.~~

**18VAC85-80-72. Inactive licensure.**

A. A licensed occupational therapist or an occupational therapy assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain hours of active practice or meet the continued competency requirements of 18VAC85-80-71 and shall not be entitled to perform any act requiring a license to practice occupational therapy in Virginia.

B. An inactive licensee may reactivate his license upon submission of the following:

- 1. An application as required by the board;
- 2. A payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure;
- ~~3. If the license has been inactive for two to six years, documentation of having engaged in the active practice of occupational therapy or having completed a board approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist; and~~
- 4. 3. Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed ~~four~~ six years, in which the license has been inactive.

C. An occupational therapist or occupational therapy assistant who has had an inactive license for six years or more and who has not engaged in active practice, as defined in 18VAC85-80-10, ~~shall serve a board approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist~~ provide evidence of current certification by NBCOT or retake and pass the national examination.

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D. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

## **18VAC85-80-73. Restricted volunteer license.**

A. An occupational therapist or an occupational therapy assistant who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, an occupational therapist or occupational therapy assistant shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-80-26.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-80-26.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining ~~10~~ five hours of continuing education during the biennial renewal period ~~with at least five hours of Type 1 and no more than five hours of Type 2 as specified in 18VAC85-80-71.~~

## **18VAC85-80-80. Reinstatement.**

A. An occupational therapist or an occupational therapy assistant who allows ~~his~~ a license to lapse for a period of two years or more and chooses to resume ~~his~~ practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed; and shall pay the fee for reinstatement of ~~his~~ licensure as prescribed in 18VAC85-80-26.

B. An occupational therapist or occupational therapy assistant who has allowed ~~his~~ a license to lapse for two years ~~but less than six years, and who has not engaged in active practice as defined in 18VAC85-80-10, shall serve a board approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed occupational therapist or more shall provide evidence of current certification by NBCOT or retake and pass the national examination.~~

C. ~~An occupational therapist or an occupational therapy assistant who has allowed his license to lapse for six years or more, and who has not engaged in active practice, shall serve a board approved practice of 320 hours to be completed in four~~

~~consecutive months under the supervision of a licensed occupational therapist.~~

~~D. C.~~ An applicant for reinstatement shall meet the continuing competency requirements of 18VAC85-80-71 for the number of years the license has been lapsed, not to exceed ~~four~~ six years.

~~E. D.~~ An occupational therapist or an occupational therapy assistant whose license has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of ~~his~~ the license as prescribed in 18VAC85-80-26 pursuant to § 54.1-2408.2 of the Code of Virginia.

## **18VAC85-80-90. General responsibilities. (Repealed.)**

~~A. An occupational therapist renders services of assessment, program planning, and therapeutic treatment upon request for such service. The practice of occupational therapy includes therapeutic use of occupations for habilitation and rehabilitation to enhance physical health, mental health, and cognitive functioning. The practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.~~

~~B. An occupational therapy assistant renders services under the supervision of an occupational therapist that do not require the clinical decision or specific knowledge, skills and judgment of a licensed occupational therapist and do not include the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient.~~

## **18VAC85-80-100. Individual responsibilities Responsibilities.**

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. ~~His~~ The occupational therapist's responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation, and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying treatment goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community, or educational services, the family, and the patient. The services may include ~~but are not limited to~~ education and training in basic and instrumental activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); the design, selection, and use of adaptive equipment and assistive technologies; therapeutic activities to enhance functional performance; vocational evaluation and training; and consultation concerning the adaptation of physical, sensory, and social environments.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

D. An occupational therapy assistant is responsible for the safe and effective delivery of those services or tasks delegated by and under the direction of the occupational therapist. Individual responsibilities of an occupational therapy assistant may include:

1. Participation in the evaluation or assessment of a patient by gathering data, administering tests, and reporting observations and client capacities to the occupational therapist;
2. Participation in intervention planning, implementation, and review;
3. Implementation of interventions as determined and assigned by the occupational therapist;
4. Documentation of patient responses to interventions and consultation with the occupational therapist about patient functionality;
5. Assistance in the formulation of the discharge summary and follow-up plans; and
6. Implementation of outcome measurements and provision of needed patient discharge resources.

E. The practice of occupational therapy may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

**18VAC85-80-140. 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 ~~his~~ the patient's personal representative in a timely manner and in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible, and complete patient records.

D. Practitioners who are employed by a health care institution, school system, or other entity in which the individual practitioner does not own or maintain ~~his~~ the practitioner's own records shall maintain patient records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner does own and is responsible for patient records shall: ~~1. Maintain~~ maintain a

patient record for a minimum of six years following the last patient encounter with the following exceptions:

~~a. 1.~~ 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;

~~b. 2.~~ 2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or ~~his~~ the patient's personal representative; or

~~e. 3.~~ 3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

~~2. From October 19, 2005, post information or in some manner inform all patients concerning the time frame 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 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.~~

VA.R. Doc. No. R25-7380; Filed February 27, 2025, 8:49 a.m.

**BOARD OF NURSING**

**Fast-Track Regulation**

**Title of Regulation: 18VAC90-27. Regulations for Nursing Education Programs (amending 18VAC90-27-30, 18VAC90-27-190).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 23, 2025.

Effective Date: May 8, 2025.

Agency Contact: Claire Morris, RN, Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4665, or email [claire.morris@dhp.virginia.gov](mailto:claire.morris@dhp.virginia.gov).

Basis: Regulations of the Board of Nursing are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which authorizes health regulatory boards to promulgate regulations that are reasonable and necessary to administer the regulatory system.

Purpose: Chapter 425 of the 2024 Acts of Assembly requires the board to amend its regulations regarding out-of-state clinical experiences. The amendments increase opportunities for clinical training for nursing students, which impacts public health and welfare.

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# Regulations

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Rationale for Using Fast-Track Rulemaking Process: This action is appropriate for the fast-track rulemaking process and is expected to be noncontroversial because it expands on requirements of the 2024 legislation and reduces requirements on nursing education programs.

Substance: The amendments remove limitations on out-of-state clinical education.

Issues: The primary advantages to the public are nursing students receiving clinical education in a timely manner, graduating, and entering the Virginia workforce. 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.<sup>1</sup>

Summary of the Proposed Amendments to Regulation. Partially pursuant to Chapter 425 of the 2024 Acts of Assembly,<sup>2</sup> the Board of Nursing (board) proposes to eliminate all restrictions on out-of-state clinical experiences. Additionally, the board proposes to remove the current requirement that all clinical experiences take place within 50 miles of the school, unless an exception is granted by the board.

Background. The current regulation requires that unless exceptions are granted by the board, at least 80% of all clinical experiences for nursing students must be conducted in Virginia, and that the clinical sites must be located within 50 miles of the nursing school. Chapter 425 requires that the Board of Nursing amend its regulations to permit nursing education programs in the Commonwealth located within 60 miles of a bordering state or the District of Columbia to contract for an unlimited number of required clinical hours at out-of-state clinical sites. Such regulations shall require that all such clinical hours be accepted by the board for licensure. According to the Department of Health Professions (DHP), the board determined that all out-of-state clinical restrictions should be removed due to difficulties implementing the legislative language as written and also to ensure consistency in requirements for nursing education programs. The board also proposes to eliminate the requirement that clinical sites be within 50 miles of the nursing school.

Estimated Benefits and Costs: The proposed removal of restrictions provides schools of nursing with additional options for clinical experiences for their students. To the extent that some nursing schools determine that having more than 20% of clinical experiences for their students take place outside the Commonwealth, or having some clinical experiences take place more than 50 miles from the nursing school, would improve the quality of such experiences, the proposed removal of the restrictions would be beneficial.

Businesses and Other Entities Affected. The proposed amendments potentially affect the 40 practical schools of nursing

and the 67 professional schools of nursing in the Commonwealth. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>3</sup> 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.<sup>4</sup> The proposed amendments neither increase net costs nor reduce net benefit. No adverse impact is indicated.

Small Businesses<sup>5</sup> Affected.<sup>6</sup> The proposed amendments do not appear adversely affect small businesses.

Localities<sup>7</sup> Affected.<sup>8</sup> Nursing schools in localities that either border or are near a border with another state or the District of Columbia may be more likely to take advantage of the elimination of the restriction on out-of-state clinical experiences. The proposed amendments do not appear to affect costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed elimination of restrictions on the locations of clinical experiences may result in some private schools of nursing changing where clinical experiences for their students take place. Potentially, this may result in a modest increase in their value. The proposed amendments do not affect real estate development costs.

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<sup>1</sup> 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.

<sup>2</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?241+ful+CHAP0425>.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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."

<sup>6</sup> 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.

<sup>7</sup> "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.

<sup>8</sup> Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

**Agency Response to Economic Impact Analysis:** The Board of Nursing concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The amendments remove all out-of-state nursing education clinical restrictions for consistency in requirements for nursing education programs, expanding upon the requirements for the board to allow certain clinical nursing education to occur out of state pursuant to Chapter 425 of the 2024 Acts of Assembly.*

**18VAC90-27-30. Application for initial approval.**

An institution wishing to establish a nursing education program shall:

1. Provide documentation of attendance by the program director at a board orientation on establishment of a nursing education program prior to submission of an application and fee.
2. Submit to the board an application to establish a nursing education program along with a nonrefundable application fee as prescribed in 18VAC90-27-20.
  - a. The application shall be effective for 12 months from the date the application was received by the board.
  - b. If the program does not meet the board's requirements for approval within 12 months, the institution shall file a new application and fee.
3. Submit the following information on the organization and operation of a nursing education program:
  - a. A copy of a business license and zoning permit to operate a school in a Virginia location, a certificate of operation from the State Corporation Commission, evidence of approval from the Virginia Department of Education or SCHEV, and documentation of accreditation, if applicable;
  - b. The organizational structure of the institution and ~~its~~ the institution's relationship to the nursing education program ~~therein~~;
  - c. The type of nursing program, as defined in 18VAC90-27-10;
  - d. An enrollment plan specifying the beginning dates and number of students for each class for a two-year period from the date of initial approval, including (i) the planned

number of students in the first class and in all subsequent classes and (ii) the planned frequency of admissions. Any increase in admissions that is not stated in the enrollment plan must be approved by the board. Also, transfer students are not authorized until full approval has been granted to the nursing education program; and

e. A tentative time schedule for planning and initiating the program through graduation of the first class and the program's receipt of results of the NCLEX examination.

4. Submit to the board evidence documenting adequate resources for the projected number of students and the ability to provide a program that can meet the requirements of this part to include the following information:

a. The results of a community assessment or market analysis that demonstrates the need for the nursing education program in the geographic area for the proposed school. The assessment or analysis shall include employment opportunities of nurses in the community, the number of clinical facilities or employers available for the size of the community to support the number of graduates, and the number and types of other nursing education programs in the area;

b. A projection of the availability of qualified faculty sufficient to provide classroom instruction and clinical supervision for the number of students specified by the program;

c. Budgeted faculty positions sufficient in number to provide classroom instruction and clinical supervision;

d. Availability of clinical training facilities for the program as evidenced by copies of contracts or letters of agreement specifying the responsibilities of the respective parties and indicating sufficient availability of clinical experiences for the number of students in the program, the number of students, and clinical hours permitted at each clinical site and on each nursing unit;

~~e. Documentation that at least 80% of all clinical experiences are to be conducted in Virginia, unless an exception is granted by the board. There shall be documentation of written approval for any clinical experience conducted outside of Virginia by the agency that has authority to approve clinical placement of students in that state. The use of any clinical site in Virginia located 50 miles or more from the school shall require board approval;~~

~~f. e.~~ A diagram or blueprint showing the availability of academic facilities for the program, including classrooms, skills laboratory, and learning resource center. This information shall include the number of restrooms for the student and faculty population, classroom and skills laboratory space large enough to accommodate the number of the student body, and sufficient faculty office space; and

# Regulations

g. f. Evidence of financial resources for the planning, implementation, and continuation of the program with line-item budget projections for the first three years of operations beginning with the admission of students.

5. Respond to the board's request for additional information within a timeframe established by the board.

## **18VAC90-27-190. Evaluation of resources; written agreements with cooperating agencies.**

A. Periodic evaluations of resources, facilities, and services shall be conducted by the administration, faculty, students, and graduates of the nursing education program, including an employer evaluation for graduates of the nursing education program. ~~Such evaluation shall include assurance that at least 80% of all clinical experiences are conducted in Virginia unless an exception has been granted by the board.~~

B. Current written agreements with cooperating agencies shall be maintained and reviewed annually and shall be in accordance with 18VAC90-27-80 E.

C. Upon request, a program shall provide a clinical agency summary on a form provided by the board.

~~D. Upon request and if applicable, the program shall provide (i) documentation of board approval for use of clinical sites located 50 or more miles from the school, and (ii) for use of clinical experiences conducted outside of Virginia, documented approval from the agency that has authority to approve clinical placement of students in that state.~~

VA.R. Doc. No. R25-7935; Filed February 27, 2025; 8:15 a.m.



## **TITLE 21. SECURITIES AND RETAIL FRANCHISING**

### **STATE CORPORATION COMMISSION**

#### **Proposed Regulation**

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

Titles of Regulations: **21VAC5-10. General Administration - Securities Act.**

**21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-95, 21VAC5-20-120, 21VAC5-20-190, 21VAC5-20-220).**

**21VAC5-80. Investment Advisors (amending 21VAC5-80-100, 21VAC5-80-250).**

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

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

Public Comment Deadline: April 29, 2025.

Agency Contact: Jude Richnafsky, Manager of Examinations and Securities and Retail Franchising, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, Ninth Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9883, or email [jude.richnafsky@scc.virginia.gov](mailto:jude.richnafsky@scc.virginia.gov).

#### Summary:

*The proposed amendments (i) require a broker-dealer agent, agent of the issuer, and investment advisor representative to file amended or updated forms within 30 days of the amendment or update; (ii) remove the requirement that a broker-dealer or investment advisor file certain forms when employing an agent or representative employed by more than one broker-dealer or investment advisor; (iii) waive individuals applying for registration as an agent of the issuer from the required examination if the issuer's securities are exempt from registration by order of the State Corporation Commission; and (iv) remove obsolete forms.*

AT RICHMOND, FEBRUARY 25, 2025

COMMONWEALTH OF VIRGINIA, ex rel.

CASE NO. SEC-2025-00002

STATE CORPORATION COMMISSION

Ex Parte: In the matter of

Adopting Revisions to the Rules

Governing the Virginia Securities Act

#### ORDER ESTABLISHING PROCEEDING

Section 12.1-13 of the Code of Virginia ("Code") provides, in relevant part, that "in the administration and enforcement of all laws within its jurisdiction, the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations." Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 et seq. of the Code, provides that the Commission shall have authority to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of Chapter 5 of Title 13.1 of the Code. The rules issued by the Commission pursuant to § 13.1-523 of the Act ("Rules") are set forth in Title 21 of the Virginia Administrative Code.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission proposed revisions to Chapters 20 and 80 to: (i) provide clarification that an amendment to the form titled "Uniform Application for Securities Industry Registration or Transfer" ("Form U4") by a broker-dealer agent, agent of the issuer, or investment advisor representative must be filed within 30 days of the event that requires the filing of the amendment; (ii) eliminate the requirement that broker-dealers and investment advisors execute and file with the Division the form titled "Agent Multiple Employment Agreement" ("Form S.A. 16") and the form

titled "Investment Advisor Representative Multiple Employment Agreement" ("Form S.A. 15"), respectively; and (iii) waive the "Uniform Securities Agent State Law Examination, Series 63" ("S63") and the "Uniform Combined State Law Examination, Series 66" ("S66") examination requirement in Rule 21VAC5-20-220 A, Examination/qualification, for an individual applying for registration as an agent of the issuer when the issuer's securities are exempt from registration by order of the Commission pursuant to § 13.1-514.1 B of the Act. Collectively, these are referred to as the "Proposed Revisions."

The Division has recommended to the Commission that the Proposed Revisions should be considered for adoption, with an effective date of August 1, 2025.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that a proceeding should be established to consider revising the Rules. To initiate this proceeding, the Division has prepared the Proposed Revisions, which are appended to this Order Establishing Proceeding ("Order"). The Commission finds that notice of the Proposed Revisions should be given to the public, and that interested persons should be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Revisions for adoption with a proposed effective date of August 1, 2025.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. SEC-2025-00002.
- (2) All comments and other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5VAC5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure.<sup>1</sup> Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5VAC5-20-170, Confidential information, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.
- (3) On or before April 29, 2025, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Revisions by following the instructions on the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments). Those unable, as a practical matter, to submit such documents electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, 23218-2118. All documents shall refer to Case No. SEC-2025-00002. Any request for hearing shall state why a hearing is necessary and why the issues raised in the request for hearing cannot be addressed adequately in written comments.
- (4) The Division shall file its response to any comments filed pursuant to Ordering Paragraph 3 on or before May 27, 2025.

(5) If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

(6) The Division shall provide notice of this Order to any interested persons as the Division may designate.

(7) The Commission's Office of General Counsel shall provide a copy of this Order, together with the Proposed Revisions, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(8) Interested persons may download unofficial copies of the Order and the Proposed Revisions from the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(9) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, at [MBrowder@oag.state.va.us](mailto:MBrowder@oag.state.va.us), Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and the Commission's Office of General Counsel and the Director of Securities and Retail Franchising.

<sup>1</sup> 5VAC5-20-10 et seq. State Corporation Commission Rules of Practice and Procedure ("Rules of Practice").

**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 (21VAC5-10)

### Broker-Dealer and Agent Forms

[Form BD, Uniform Application for Broker-Dealer Registration \(rev. 1/2008\)](#)

[Form BDW, Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer \(rev. 4/2007\)](#)

[Form S.A. 2, Application for Renewal of a Broker-Dealer's Registration \(rev. 10/2017\)](#)

[Form S.A. 11, Broker-Dealer's Surety Bond \(rev. 7/1999\)](#)

[Form S.D.4, Application for Renewal of Registration as an Agent of an Issuer \(2017\)](#)

[Form S.D.4.A, Agents to be Renewed - Exhibit I \(rev. 1974\)](#)

[Form S.D.4.B, Agents to be Canceled \(Records Clear\) - Exhibit II \(rev. 1974\)](#)

[Form S.D.4.C, Agents to be Canceled \(Without Clear Records\) - Exhibit III \(rev. 1974\)](#)

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Rev. Form U4, Uniform Application for Securities Industry Registration or Transfer (rev. 5/2009)

Rev. Form U5, Uniform Termination Notice for Securities Industry Registration (rev. 5/2009)

Investment Advisor and Investment  
Advisor Representative Forms

Form ADV, Uniform Application for Registration of Investment Registration and Report by Exempt Reporting Advisers

Part IA, SEC 1707 (7/2017)

Part IB, paper version (rev. 10/2012)

Part 2, Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements (undated)

Form ADV-W - Notice of Withdrawal from Registration as an Investment Advisor (rev. 11/2010)

Form S.A. 3, Affidavit for Waiver of Examination (undated, filed 10/2017)

Form S.A. 10, Investment Advisor's Surety Bond Form (rev. 10/2017)

~~Form S.A. 15, Investment Advisor Representative Multiple Employment Agreement (eff. 7/2007)~~

~~Form S.A. 16, Agent Multiple Employment Agreement (eff. 7/2007)~~

Rev. Form U4, Uniform Application for Securities Industry Registration or Transfer (rev. 5/2009)

Rev. Form U5, Uniform Termination Notice for Securities Industry Registration (rev. 5/2009)

Securities Registration and Notice Filing Forms

Form U-1, Uniform Application to Register Securities (undated, filed 10/2017)

Form U-2, Uniform Consent to Service of Process (rev. 6/2016)

Form U-2A, Uniform Form of Corporate Resolution (rev. 6/2016)

Form S.A. 4, Registration by Notification - Original Issue (rev. 11/1996)

Form S.A. 5, Registration by Notification - Non-Issuer Distribution (rev. 11/1996)

Form S.A. 6, Registration by Notification - Non-Issuer Distribution "Secondary Trading" (1989)

Form S.A. 8, Registration by Qualification (rev. 7/1991)

Form S.A. 12, Escrow Agreement (1971)

Form S.A. 13, Impounding Agreement (rev. 7/1999)

Form VA-1, Parts 1 and 2, Notice of Limited Offering of Securities (rev. 11/1996)

Form NF, Uniform Investment Company Notice Filing (4/1997)

## **21VAC5-20-95. Employment of an agent by more than one broker-dealer.**

A. In accordance with § 13.1-504 B of the Act, an agent may be employed by more than one broker-dealer if all of the following conditions are satisfied:

1. Each employing broker-dealer is under common ownership and control as defined in subsection B of this section or as provided ~~in subdivision C 2 e~~ under 21VAC5-20-330 C 2 c.

2. Each employing broker-dealer is registered in accordance with 21VAC5-20-10.

~~3. Each employing broker-dealer consents in writing to the employment of the agent by each of the other employing broker-dealers.~~

~~4. 3.~~ Each employing broker-dealer agrees to be responsible for the employment activity of the agent.

~~5. 4.~~ The agent is registered in accordance with 21VAC5-20-90 by and on behalf of each employing broker-dealer.

~~6. Each employing broker-dealer executes an Agent Multiple Employment Agreement (Form S.A.16), and the executed agreement is filed with the commission at its Division of Securities and Retail Franchising prior to the agent transacting business in Virginia on behalf of such broker-dealer.~~

~~7. A new Agent Multiple Employment Agreement is executed and filed with the commission at its Division of Securities and Retail Franchising within 15 days after any information in a current agreement on file with the commission becomes materially deficient, incomplete or inaccurate.~~

B. The term "common ownership and control" as used in this section means the same individual ~~or individuals possess~~ possesses at least a 50% ownership interest in each employing broker-dealer.

## **21VAC5-20-120. Updates and amendments.**

A broker-dealer agent shall amend or update Form U4 as ~~required by the "Amendment Filings" provisions set forth under "How to Use Form U4 information becomes inaccurate."~~ A Form U4 must be filed within 30 days of an amendment or update. All filings shall be made on CRD for agents of FINRA member firms or with the commission at its Division of Securities and Retail Franchising for all other broker-dealer agents.



**21VAC5-20-190. Updates and amendments.**

An agent of the issuer shall amend or update ~~his~~ Form U4 as ~~required by the "Amendment Filings" provisions set forth under "How to Use Form U4 information becomes inaccurate."~~ A Form U4 must be filed within 30 days of an amendment or update. Filings shall be made with the commission at its Division of Securities and Retail Franchising.

**21VAC5-20-220. Examination/qualification; waiver of examination requirement.**

A. Except as described in subsection B of this section, an individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a FINRA exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators ~~which that~~, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.

B. The commission may, in a registered offering not being made to the general public ~~or~~, in a Small Company Offering Registration, or in an offering exempt by commission order pursuant to § 13.1-514.1 B of the Act, waive the examination requirement for an officer or director of an issuer that is a corporation, or a general partner of an issuer of a limited partnership or a manager of an issuer that is a limited liability company who:

1. Will receive no commission or similar remuneration directly or indirectly in connection with the offer or sale of the issuer's securities; and
2. In the case of a small company offering registration, agrees to deliver to each prospective purchaser of a security to be issued by such issuer, at or before the time the offering document is required to be delivered, a copy of "A Consumer's Guide to Small Business Investments" prepared by NASAA (see CCH NASAA Reports ¶3676) and the application to register the agent is accompanied by an executed Affidavit Regarding Offers of Small Company Offering Registration (SCOR) Securities by Issuer Agents.

**21VAC5-80-100. Updates and amendments.**

An investment advisor representative shall amend or update Form U4 as ~~required by the "Amendment Filings" provisions set forth under "How to Use Form U4 information becomes inaccurate."~~ A Form U4 must be filed within 30 days of an amendment or update. All filings shall be made in compliance with all requirements of CRD.

**21VAC5-80-250. Employment of investment advisor representative by more than one investment advisor or federal covered advisor.**

A. In accordance with § 13.1-504 C of the Act, an investment advisor representative (representative) may be employed by more than one investment advisor or federal covered advisor

(employing advisor) if all of the following conditions are satisfied:

1. Each employing advisor is under common ownership and control as defined in subsection B of this section.
2. Each employing advisor is registered or has filed notice, as the case may be, in accordance with 21VAC5-80-10.
- ~~3. Each employing advisor consents in writing to the employment of the representative as an investment advisor representative by each of the other employing advisors.~~
4. ~~3.~~ The representative is registered in accordance with 21VAC5-80-70 by and on behalf of each employing advisor.
- ~~5. Each employing advisor executes an Investment Advisor Representative Multiple Employment Agreement (Form S.A.15), and the executed agreement is filed with the commission at its Division of Securities and Retail Franchising prior to the representative transacting business in Virginia on behalf of such advisor.~~
- ~~6. A new Investment Advisor Representative Multiple Employment Agreement is executed and filed with the commission at its Division of Securities and Retail Franchising within 15 days after any information in a current agreement on file with the commission becomes materially deficient, incomplete or inaccurate.~~

B. The term "common ownership and control" as used ~~herein~~ in this section means possession of at least a 50% ownership interest in each employing advisor by the same individual ~~or individuals~~.

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FORMS (21VAC5-80)

Form ADV, Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers

[Part IA, SEC 1707 \(7/2017\)](#)

[Part IB, paper version \(rev. 10/2012\)](#)

[Part 2, Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements \(undated\)](#)

[Form ADV-W, Notice of Withdrawal from Registration as an Investment Advisor, SEC 777 \(rev. 11/2010\)](#)

[Form S.A. 3, Affidavit for Waiver of Examination \(undated, filed 10/2017\)](#)

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[Form S.A. 10, Investment Advisor's Surety Bond Form \(rev. 10/2017\)](#)

~~Form S.A. 15, Investment Advisor Representative Multiple Employment Agreement (eff. 7/2007)~~

~~Form S.A. 16, Agent Multiple Employment Agreement (eff. 7/2007)~~

[Rev. Form U4, Uniform Application for Securities Industry Registration or Transfer, \(rev. 5/2009\)](#)

[Rev. Form U5, Uniform Termination Notice for Securities Industry Registration \(rev. 5/2009\)](#)

VA.R. Doc. No. R25-8199; Filed March 3, 2025, 12:36 p.m.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

#### Final Regulation

Title of Regulation: **24VAC30-121. Comprehensive Roadside Management Program (amending 24VAC30-121-10 through 24VAC30-121-40).**

Statutory Authority: §§ 33.2-210 and 33.2-265 of the Code of Virginia.

Effective Date: April 23, 2025.

Agency Contact: Jo Anne Maxwell, Director, Governance and Legislative Affairs, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email [joanne.maxwell@vdot.virginia.gov](mailto:joanne.maxwell@vdot.virginia.gov).

#### Summary:

*The Comprehensive Roadside Management Program enables private businesses, civic organizations, communities, individuals, and local governments to improve the appearance and safety of the state-maintained right-of-way by participating in project development, establishment, and maintenance of landscaping activities within the right-of-way. The amendments include (i) removing redundant or outdated language and requirements, (ii) adding an exception for limited access highways from some local government provisions, (iii) requiring permittees to maintain any permitted areas for the life of the permit instead of in perpetuity, and (iv) clarifying and streamlining the regulation.*

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

#### **24VAC30-121-10. Purpose.**

The Comprehensive Roadside Management Program (program) is administered by the Virginia Department of

Transportation (department); and enables private businesses, civic organizations, communities, individuals, and local governments an opportunity to improve the appearance and safety of the ~~state maintained~~ state-maintained right-of-way ~~or real property, herein referred to as right-of-way,~~ by participating in the ~~project~~ development, establishment, and maintenance of landscaping activities within the state-maintained right-of-way. This chapter sets forth policies and procedures governing the program.

#### **24VAC30-121-20. Participation.**

A. Eligible entities. A local government, private business, community, individual, or civic organization may fully fund the development, establishment, ~~or~~ maintenance, or any combination of these, activities of landscaping a segment of the right-of-way upon application to, and approval by, a designated ~~department~~ Virginia Department of Transportation representative. ~~Such entities are~~ Entities eligible to participate as are:

1. A single local government;
2. A local government partnership between one or more contiguous local governments; or
3. A private business, civic organization, community, or individual through sponsorship by a local government or local government partnership. Such entities are eligible to participate as a donor through the local government by providing to the local government cash or noncash contributions.

B. ~~Acknowledgement~~ Acknowledgment signs. Signs acknowledging the name ~~or~~, logo, or both, of participating entities may be authorized for erection at the project site in accordance with 24VAC30-121-40 D 2. ~~However, no acknowledgment signs installed pursuant to this program shall remain in place for more than 10 years.~~

C. In addition to the specifications in 24VAC30-121-40 D 2, in order to be recognized on an ~~acknowledgement~~ acknowledgment sign, an entity must provide a minimum cash or in-kind contribution to the permittee for the landscaping activity as specified ~~below~~ in this subsection. Such contribution shall allow an ~~acknowledgement~~ acknowledgment sign for five years, unless the need arises for removal or relocation of the sign. Cost of the ~~acknowledgement~~ acknowledgment sign shall not count toward the ~~minimum~~ contribution requirement.

1. Noncontrolled access primary and secondary highways: \$7,500 contribution.
2. Controlled access primary and secondary highways: \$8,500 contribution.
3. Interchanges on controlled access primary and secondary highways: \$10,000 contribution.
4. Interstate interchanges: \$20,000 contribution.

#### **24VAC30-121-30. Application requirements.**

A. All program activities must be applied for by the local governments within the jurisdiction in which the activity is

proposed to occur in accordance with the General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-21) and the Land Use Permit Regulations (24VAC30-151). ~~The Land Use Permit Regulations and the general rules may be obtained from the Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, or by accessing the Virginia Administrative Code website at <https://law.lis.virginia.gov/admincode/>.~~

1. Single activity or segment permit. A local government may apply for a permit for each individual proposed activity or for all proposed activities on a specific route.
2. Jurisdiction-wide permit. A local government may apply for a jurisdiction-wide permit to cover all proposed activities occurring within that local government's jurisdictional boundaries on the right-of-way, excepting limited access highways. Such jurisdiction-wide permits must be renewed on an annual basis from the date of permit issuance. The local government shall notify the official local Virginia Department of Transportation (department) office (residency) prior to the installation of any landscaping under this permit.

B. The application shall be in the form prescribed by the Land Use Permit Regulations and shall at a minimum include:

1. The name, telephone number, and complete mailing address of the local government and the authorized local government representative who shall be officially designated by the local government as having full administrative and operational authority over all proposed activities;
2. A maintenance agreement that outlines ~~obligated~~ specific maintenance activities and responsibilities, ~~projected maintenance costs, and related funding commitments necessary~~ to ensure areas are maintained and ~~performing~~ perform as originally permitted; and
3. A formal resolution of endorsement from the local governing body, adopted subsequent to a public hearing during which the proposed landscaping activities are made available for review. The local governing body shall provide written notification to the department of its intention to hold such a hearing no later than 14 days prior to such hearing. Such notification shall be made to the ~~Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219~~ residency that has responsibility for the highways in the locality.

**24VAC30-121-40. Conditions.**

A. In order to participate in the program, each ~~project activity~~ must comply with the Land Use Permit Regulations (24VAC30-151) and the general, site, and design considerations specified in this section.

B. General considerations. The following general considerations apply to any permitted activity:

1. Qualifications. All work shall be performed by qualified local government personnel or qualified individuals acting as ~~an agent~~ agents of the permitted local government.

2. Compliance. Such work shall comply with all ~~departmental~~ Virginia Department of Transportation (department) specifications, standards, policies, and guidance as provided in the terms of the permit and all applicable federal, state, and local government policies, laws, regulations, and ordinances.

3. Improvement. Any permitted activity must ensure a net improvement to existing right-of-way conditions and impose no net operational or financial burden to the department as determined by the department.

4. The permittee shall be responsible for the maintenance of the permitted areas ~~in perpetuity~~ for the life of the permit. In the event the permittee fails to adequately maintain the improvements, the department may, at its discretion, revoke the permit. Prior to such revocation, the department may, at its discretion and at the permittee's expense, return the permitted area to its original condition.

5. The master plan, project concept plan, sketches, drawings, estimates, specifications, and descriptive text of all activities and any required federal, state, or local permits shall be available for review by the department at all times.

C. Site considerations. For ~~sites~~ a site to be approved by the department, the following site conditions must be met. ~~The site must:~~

1. ~~Not~~ The site must not be scheduled for future construction as defined within the department's current six-year improvement plan, which would conflict with the activities proposed on the project;
2. ~~Contain~~ The site must contain sufficient right-of-way to reasonably permit planting and landscaping operations without conflicting with safety, ~~geometric operational, and~~ or maintenance considerations;
3. ~~Not~~ The site must contain no overhead or underground utilities, driveways, pavement, sidewalks, or highway system fixtures, including traffic signage or signalization, that will conflict with the planting or landscaping operations proposed under the project; and
4. ~~Not~~ The proposed activities must not obstruct or interfere with existing drainage conditions along the site.

D. Design considerations. For ~~sites~~ a site to be approved by the department, the following design considerations must be met.

1. The project design shall not include the following design elements:
  - a. Lighting;
  - b. Flagpoles or pennant poles;
  - c. Fountains or water features;

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- d. Landscaping that depicts or represents any logo, name, or constitutes an advertisement in any form;
- e. Statuary, sculpture, or other art objects;
- f. Pruning or cutting within highway rights-of-way of vegetation with trunk base diameter greater than ~~four~~ six inches, unless approved by the District Roadside Manager;
- g. Any improvements intended to provide greater visibility to any existing or future business, advertisement, or advertising structure; or
- h. Any improvements that obscure or interfere with the view of existing lawfully erected advertising structures from the main traveled way.

2. ~~Acknowledgement~~ Acknowledgment signs and structures installed pursuant to this program must meet the following design specifications:

- a. Panels per sign structure: a maximum of two ~~acknowledgement~~ acknowledgment panels per sign structure.
- b. Panel dimensions: ~~6~~ six feet wide by 20 inches tall; ~~3~~ three inches corner radii; ~~1.5~~ 1/2 inch—~~2~~ to two inches thick.
- c. Sign material: high density sign foam or equivalent.
- d. Background color options: dark blue (Pantone Matching System #288 or equivalent as determined by the department), dark burgundy (Pantone Matching System #188 or equivalent as determined by the department), dark green (Pantone Matching System #349 or equivalent as determined by the department), or off-white (Pantone Matching System Cool Gray 1 or equivalent as determined by the department).
- e. Sign border: must be inset ~~1~~ one inch from outside edge to a 3/4-inch wide border formed by sandblasting or routing a depth of ~~1/4 inch~~ 1/4 inch to ~~1/2 inch~~ 1/2 inch; color must be off-white (Pantone Matching System Cool Gray 1 or equivalent as determined by the department) if dark background or dark blue (Pantone Matching System #288 or equivalent as determined by the department), dark burgundy (Pantone Matching System #188 or equivalent as determined by the department), or dark green (Pantone Matching System #349 or equivalent as determined by the department) if off-white background.
- f. ~~Acknowledgement~~ Acknowledgment content: a single sponsoring entity may be represented per panel; the representation may be placed within but no closer than ~~1/2 inch~~ 1/2 inch inside the border and formed by sandblasting or routing a depth of 1/4 inch to 1/2 inch.
- g. The words "Landscaping by" must be included in the upper left hand area of the border and must be a minimum of three inches tall. The border must be broken and the color of the "Landscaping by" must be the same as the border.
- h. Installation: the bottom of the sign at its ~~closest~~ closest point to the ground shall not be greater than 30 inches above the ground. The distance between panels shall not exceed four inches. Post height shall not exceed five inches above the top of the highest panel, with the top one inch trimmed at a 45-

degree angle. Post stain color must be a solid gray (Pantone Matching System #423 or equivalent as determined by the department).

3. In the event an ~~acknowledgement~~ acknowledgment sign structure or panel is damaged, the permittee shall be responsible for repairing or replacing the sign.

4. ~~Acknowledgement~~ Acknowledgment sign structures installed pursuant to this program may be placed within the right-of-way, within the limits of the installed landscaping, at the following locations:

- a. Noncontrolled access primary and secondary highways with speed limits of 45 mph or less: no greater than one ~~acknowledgement~~ acknowledgment sign structure per direction per 1/4 mile of main traveled way.
- b. Noncontrolled access primary and secondary highways with speed limits greater than 45 mph: one ~~acknowledgement~~ acknowledgment sign structure per direction per 1/2 mile of main traveled way.
- c. Controlled access primary and secondary highways with speed limits of 45 mph or less: no greater than one ~~acknowledgement~~ acknowledgment sign structure per direction per 1/4 mile of main traveled way except as specified in subdivision 4 e of this subsection.
- d. Controlled access primary and secondary highways with speed limits greater than 45 mph: no greater than one ~~acknowledgement~~ acknowledgment sign structure per direction per 1/2 mile of main traveled way except as specified in subdivision 4 e of this subsection.
- e. Interchanges on controlled access interstates, primary, and secondary highways: no greater than one ~~acknowledgement~~ acknowledgment sign structure per turning roadway.

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FORMS (24VAC30-121)

~~Land Use Permit Application, LUP-A (rev. 3/2010).~~

[Land Use Permit Application, LUP-A \(rev. 5/2023\)](#)

VA.R. Doc. No. R24-7634; Filed February 27, 2025, 7:35 a.m.

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# GUIDANCE DOCUMENTS

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## 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.

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Adult Services Manual, Chapter 2.](#)

[Virginia State Plan for Aging Services.](#)

Public Comment Deadline: April 23, 2025.

Effective Date: April 24, 2025.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms, Richmond, VA 23229, telephone (804) 662-7093, or email [charlotte.arbogast@dars.virginia.gov](mailto:charlotte.arbogast@dars.virginia.gov).

### VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Title of Document: [SEC503-03, Security Standard for Remote Access to Court Documents Online.](#)

Public Comment Deadline: April 23, 2025.

Effective Date: April 24, 2025.

Agency Contact: Amma Abbey, Legal Compliance and Policy Specialist, Virginia Information Technologies Agency, 7325 Beaufont Springs Drive, Richmond, VA 23225, telephone (804) 510-7233, or email [amma.abbey@vita.virginia.gov](mailto:amma.abbey@vita.virginia.gov).

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Document: [Hospital Provider Manual Chapter 7.](#)

Public Comment Deadline: April 23, 2025.

Effective Date: April 24, 2025.

Agency Contact: Emily McClellan, Policy Division Director, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-4300, or email [emily.mcclellan@dmass.virginia.gov](mailto:emily.mcclellan@dmass.virginia.gov).

### STATE BOARD OF SOCIAL SERVICES

Title of Document: [Division of Child Support Enforcement Program Manual.](#)

Public Comment Deadline: April 23, 2025.

Effective Date: April 24, 2025.

Agency Contact: Sandra Brown, Manager of Guidance and Paternity Establishment, 5600 Cox Road, Glen Allen, VA 23060, telephone (804) 726-7880, or email [sandra.brown@dss.virginia.gov](mailto:sandra.brown@dss.virginia.gov).

### DEPARTMENT OF TAXATION

Title of Document: [Firearm Safety Device Tax Credit Guidelines.](#)

Public Comment Deadline: April 23, 2025.

Effective Date: April 24, 2025.

Agency Contact: Austin Smith, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-5107, or email [austin.smith@tax.virginia.gov](mailto:austin.smith@tax.virginia.gov).

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## GUIDANCE DOCUMENTS

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The following guidance documents have been submitted for deletion and the listed agency has opened up a 30-day public comment period. The listed agency 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.

### DEPARTMENT OF CONSERVATION AND RECREATION

Titles of Documents: [2018 Virginia Outdoors Plan](#).

[Community Flood Preparedness Fund Guidelines](#).

[Land and Water Conservation Fund Application Manual](#).

[Virginia Land Conservation Foundation Grant Manual](#).

Public Comment Deadline: April 23, 2025.

Effective Date: April 24, 2025.

Agency Contact: Lisa McGee, Policy and Planning Director,  
Department of Conservation, 600 East Main Street, 24th Floor,  
Richmond, VA 23219, telephone (804) 786-4378, or email  
[lisa.mcgee@dcr.virginia.gov](mailto:lisa.mcgee@dcr.virginia.gov).

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# GENERAL NOTICES

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Enforcement Action for RMRM Holding LLC dba Tradesman XDR LLC

The Department of Environmental Quality (DEQ) is proposing an enforcement action for RMRM Holding LLC doing business as Tradesman XDR LLC for violations of the State Water Control Law and regulations in Gretna, Virginia. The proposed order is available from the DEQ contact 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 March 24, 2025, through April 23, 2025.

Contact Information: Michael Puckett, Department of Environmental Quality, 901 Russell Drive, Salem, VA 24153, telephone (540) 577-6719, or email [michael.puckett@deq.virginia.gov](mailto:michael.puckett@deq.virginia.gov).

### Proposed Enforcement Action for LDJ Petersburg LLC

The Department of Environmental Quality (DEQ) is proposing an enforcement action for LDJ Petersburg LLC for alleged violation of the State Water Control Law and regulations at the BleachTech LLC facility, 2020 Bessemer Road, Petersburg, Virginia (Latitude 37.1795, Longitude -77.4170). The proposed order is available from the DEQ contact or online at <https://www.deq.virginia.gov/permits/public-notices/enforcement-actions>. The DEQ contact person will accept comments by email or postal mail from March 24, 2025, to April 23, 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](mailto:cara.witte@deq.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](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were

originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

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## General Notices

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