



# Virginia Register of Regulations

VOL. 24 ISS. 10

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JANUARY 21, 2008

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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, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

*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: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

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## January 2008 through December 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
24:10	January 2, 2008	January 21, 2008
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008
<b>INDEX 2 Volume 24</b>		<b>April 2008</b>
24:15	March 12, 2008	March 31, 2008
24:16	March 26, 2008	April 14, 2008
24:17	April 9, 2008	April 28, 2008
24:18	April 23, 2008	May 12, 2008
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
<b>INDEX 3 Volume 24</b>		<b>July 2008</b>
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008
<b>FINAL INDEX Volume 24</b>		<b>October 2008</b>
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 - <b>Tuesday</b>	December 8, 2008

\*Filing deadlines are Wednesdays unless otherwise specified.

# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 21, dated June 25, 2007). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 1. Administration</b>			
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:26 VA.R. 4413-4416	10/3/07
1 VAC 55-30-10 through 1 VAC 55-30-90	Erratum	24:7 VA.R. 940	--
<b>Title 2. Agriculture</b>			
2 VAC 5-110 (Forms)	Amended	23:26 VA.R. 4452	--
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-580-10 through 2 VAC 5-580-310	Repealed	24:2 VA.R. 72	10/16/07
2 VAC 5-585-10 through 2 VAC 5-585-4070	Added	24:2 VA.R. 72-133	10/16/07
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-40	Amended	23:25 VA.R. 4107	*
3 VAC 5-50-50	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-80	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-100	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-130	Amended	23:25 VA.R. 4109	*
3 VAC 5-50-140	Amended	23:25 VA.R. 4110	*
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-36-50	Amended	24:6 VA.R. 638	1/1/08
4 VAC 5-36-60	Amended	24:6 VA.R. 644	1/1/08
4 VAC 5-36-70	Amended	24:6 VA.R. 645	1/1/08
4 VAC 5-36-90	Amended	24:6 VA.R. 647	1/1/08
4 VAC 5-36-100	Amended	24:6 VA.R. 649	1/1/08
4 VAC 5-36-110	Amended	24:6 VA.R. 654	1/1/08
4 VAC 5-36-120	Amended	24:6 VA.R. 655	1/1/08
4 VAC 5-36-130	Amended	24:6 VA.R. 656	1/1/08
4 VAC 5-36-140	Amended	24:6 VA.R. 657	1/1/08
4 VAC 5-36-150	Amended	24:6 VA.R. 659	1/1/08
4 VAC 5-36-200	Amended	24:6 VA.R. 662	1/1/08
4 VAC 5-36-210	Amended	24:6 VA.R. 670	1/1/08
4 VAC 5-36-220	Amended	24:6 VA.R. 675	1/1/08
4 VAC 15-200-10	Amended	24:6 VA.R. 676	10/26/07
4 VAC 15-270-40	Amended	24:6 VA.R. 676	7/1/08
4 VAC 15-270-80	Added	24:6 VA.R. 676	10/26/07
4 VAC 15-270-90	Added	24:6 VA.R. 677	1/1/08
4 VAC 20-20-50	Amended	24:5 VA.R. 555	11/1/07
4 VAC 20-252-90	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-100	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-260-10	Amended	24:4 VA.R. 472	10/1/07

\* Objection to Fast-Track Rulemaking 24:1

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-260-20	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-30	Amended	24:4 VA.R. 473	10/1/07
4 VAC 20-260-35	Added	24:4 VA.R. 474	10/1/07
4 VAC 20-260-40	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-260-60	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-650-20	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-30	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-650-40	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Erratum	24:5 VA.R. 621	--
4 VAC 20-720-40 through 4 VAC 20-720-80	Amended	24:4 VA.R. 478-480	10/1/07
4 VAC 20-720-95	Added	24:4 VA.R. 480	10/1/07
4 VAC 20-720-110	Amended	24:4 VA.R. 480	10/1/07
4 VAC 20-755-10	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-20	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-30	Amended	24:2 VA.R. 136	9/1/07
4 VAC 20-910-45	Amended	24:5 VA.R. 556	11/1/07
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
4 VAC 25-50-10 through 4 VAC 25-50-110	Repealed	23:22 VA.R. 3696	8/8/07
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
<b>Title 5. Corporations</b>			
5 VAC 5-30-10	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-20	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-30	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-40	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-50	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-60	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-70	Amended	23:23 VA.R. 3875	7/1/07
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 20-120-40	Amended	23:25 VA.R. 4177	9/19/07
6 VAC 35-20-37 emer	Amended	23:25 VA.R. 4178	8/1/07-7/31/08
6 VAC 35-180-10 through 6 VAC 35-180-170	Added	24:5 VA.R. 557-561	1/1/08
6 VAC 35-190-10 through 6 VAC 35-190-110	Added	24:2 VA.R. 137-139	10/31/07
6 VAC 40-50-10 through 6 VAC 40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 8. Education</b>			
8 VAC 20-21-10 through 8 VAC 20-21-730	Repealed	23:25 VA.R. 4179	9/21/07
8 VAC 20-22-10 through 8 VAC 20-22-760	Added	23:25 VA.R. 4179-4214	9/21/07
8 VAC 20-160-10	Amended	23:23 VA.R. 3876	8/27/07
8 VAC 20-160-20	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-30	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-40	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-50	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-60	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-190-10	Repealed	24:5 VA.R. 562	1/1/08
8 VAC 20-500-10	Repealed	24:5 VA.R. 563	1/1/08
8 VAC 20-541-10 through 8 VAC 20-541-60	Repealed	23:25 VA.R. 4214	9/21/07
8 VAC 20-542-10 through 8 VAC 20-542-600	Added	23:25 VA.R. 4214-4270	9/21/07
8 VAC 35-60-10	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-20	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-30	Added	24:1 VA.R. 25	8/28/07
8 VAC 40-140-10 through 8 VAC 40-140-90	Added	23:22 VA.R. 3704-3706	7/1/07
<b>Title 9. Environment</b>			
9 VAC 5-20-203	Amended	24:5 VA.R. 564	12/12/07
9 VAC 5-20-204	Amended	24:5 VA.R. 565	12/12/07
9 VAC 5-40-20	Amended	24:5 VA.R. 566	12/12/07
9 VAC 5-50-20	Amended	24:5 VA.R. 570	12/12/07
9 VAC 5-50-400	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-50-410	Amended	24:5 VA.R. 573	12/12/07
9 VAC 5-60-60	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-90	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-92	Added	24:5 VA.R. 579	12/12/07
9 VAC 5-60-95	Amended	24:5 VA.R. 579	12/12/07
9 VAC 5-60-100	Amended	24:5 VA.R. 580	12/12/07
9 VAC 5-91-20	Amended	24:5 VA.R. 587	12/12/07
9 VAC 5-140-1061	Added	24:6 VA.R. 679	12/26/07
9 VAC 5-140-1062	Added	24:6 VA.R. 680	12/26/07
9 VAC 5-140-2061	Added	24:6 VA.R. 681	12/26/07
9 VAC 5-140-2062	Added	24:6 VA.R. 682	12/26/07
9 VAC 5-140-3061	Added	24:6 VA.R. 683	12/26/07
9 VAC 5-140-3062	Added	24:6 VA.R. 683	12/26/07
9 VAC 5-140-3400	Amended	24:5 VA.R. 594	12/12/07
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 20-130-10	Amended	24:4 VA.R. 480	11/28/07
9 VAC 20-130-40	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-60	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-70	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-90	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-110	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-120	Amended	24:4 VA.R. 486	11/28/07
9 VAC 20-130-120	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-125	Added	24:4 VA.R. 488	11/28/07
9 VAC 20-130-125	Erratum	24:6 VA.R. 889	--
9 VAC 20-130-130	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-140	Repealed	24:4 VA.R. 489	11/28/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 20-130-150	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-165	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-175 through 9 VAC 20-130-230	Amended	24:4 VA.R. 490-493	11/28/07
9 VAC 20-130-200	Erratum	24:6 VA.R. 889	--
9 VAC 25-20-10	Amended	24:6 VA.R. 701	1/1/08
9 VAC 25-20-20	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-30	Repealed	24:6 VA.R. 702	1/1/08
9 VAC 25-20-40	Amended	24:6 VA.R. 702	1/1/08
9 VAC 25-20-50	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-60	Amended	24:6 VA.R. 703	1/1/08
9 VAC 25-20-90	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-100	Amended	24:6 VA.R. 704	1/1/08
9 VAC 25-20-110	Amended	24:6 VA.R. 705	1/1/08
9 VAC 25-20-120	Amended	24:6 VA.R. 706	1/1/08
9 VAC 25-20-130	Amended	24:6 VA.R. 708	1/1/08
9 VAC 25-20-146	Added	24:6 VA.R. 708	1/1/08
9 VAC 25-20-147	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-148	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-20-149	Added	24:6 VA.R. 709	1/1/08
9 VAC 25-31-100	Amended	24:3 VA.R. 313	11/14/07
9 VAC 25-31-100	Amended	24:6 VA.R. 711	1/1/08
9 VAC 25-31-120	Amended	24:3 VA.R. 309	11/14/07
9 VAC 25-31-165	Amended	24:3 VA.R. 333	11/14/07
9 VAC 25-31-220	Amended	24:6 VA.R. 731	1/1/08
9 VAC 25-31-290	Amended	24:6 VA.R. 735	1/1/08
9 VAC 25-31-460	Amended	24:6 VA.R. 738	1/1/08
9 VAC 25-31-475	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-485	Added	24:6 VA.R. 738	1/1/08
9 VAC 25-31-505	Added	24:6 VA.R. 739	1/1/08
9 VAC 25-32-40	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-60	Amended	24:6 VA.R. 739	1/1/08
9 VAC 25-32-80	Amended	24:6 VA.R. 740	1/1/08
9 VAC 25-32-100	Amended	24:6 VA.R. 743	1/1/08
9 VAC 25-32-140	Amended	24:6 VA.R. 743	1/1/08
9 VAC 25-32-210	Amended	24:6 VA.R. 744	1/1/08
9 VAC 25-32-220	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-240	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-300	Amended	24:6 VA.R. 745	1/1/08
9 VAC 25-32-310 through 9 VAC 25-32-760	Added	24:6 VA.R. 746-781	1/1/08
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-5	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-30	Amended	24:2 VA.R. 139	9/11/07
9 VAC 25-260-30	Amended	24:2 VA.R. 140	9/11/07
9 VAC 25-260-30	Amended	24:7 VA.R. 908	**
9 VAC 25-260-50	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-187	Added	24:4 VA.R. 536	8/14/07
9 VAC 25-260-310	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-480	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	23:23 VA.R. 3881	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3888	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3895	10/22/07
9 VAC 25-720-50	Amended	24:2 VA.R. 140	11/15/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	24:2 VA.R. 147	11/15/07
9 VAC 25-790-10	Amended	24:6 VA.R. 784	1/1/08
9 VAC 25-790-50	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-60	Amended	24:6 VA.R. 787	1/1/08
9 VAC 25-790-120	Amended	24:6 VA.R. 788	1/1/08
9 VAC 25-790-130	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-150	Amended	24:6 VA.R. 790	1/1/08
9 VAC 25-790-180	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-200	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-240	Amended	24:6 VA.R. 791	1/1/08
9 VAC 25-790-540	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-550	Amended	24:6 VA.R. 792	1/1/08
9 VAC 25-790-570	Amended	24:6 VA.R. 795	1/1/08
9 VAC 25-790-580	Amended	24:6 VA.R. 797	1/1/08
9 VAC 25-790-590	Amended	24:6 VA.R. 797	1/1/08

\*\* Effective upon filing notice of U.S. EPA approval with Registrar.



## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-790-600	Amended	24:6 VA.R. 798	1/1/08
9 VAC 25-790-660	Amended	24:6 VA.R. 799	1/1/08
9 VAC 25-790-880	Amended	24:6 VA.R. 799	1/1/08
<b>Title 11. Gaming</b>			
11 VAC 10-45-10	Amended	24:5 VA.R. 595	12/12/07
11 VAC 10-45-25	Added	24:5 VA.R. 596	12/12/07
<b>Title 12. Health</b>			
12 VAC 5-31-2300 through 12 VAC 5-31-2970	Added	24:6 VA.R. 806-818	1/1/08
12 VAC 5-40-10 through 12 VAC 5-40-190	Repealed	24:6 VA.R. 806	1/1/08
12 VAC 5-90-80 emer	Amended	24:5 VA.R. 597	10/24/07-10/23/08
12 VAC 5-125-10 through 12 VAC 5-125-180	Added	23:23 VA.R. 3904-3919	9/1/07
12 VAC 5-421-10	Amended	24:2 VA.R. 149	10/16/07
12 VAC 5-421-90	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-100	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-120	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-140	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-160	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-170	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-180	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-190	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-200	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-230	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-250	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-270	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-295	Added	24:2 VA.R. 160	10/16/07
12 VAC 5-421-300	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-330	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-340	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-350	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-360	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-430	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-440	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-450	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-460	Added	24:2 VA.R. 162	10/16/07
12 VAC 5-421-500	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-520	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-530	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-550	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-560	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-570	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-580	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-590	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-600	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-620	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-670	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-680	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-700	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-720	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-760	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-765	Added	24:2 VA.R. 166	10/16/07
12 VAC 5-421-780	Amended	24:2 VA.R. 166	10/16/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-790	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-800	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-820	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-830	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-840	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-850	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-860	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-870	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-880	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-890	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-900	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-910	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-920	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-930	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-940	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-950	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-960	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-970	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-990	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1000	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1010	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1020	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1030	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1040	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1070	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1090	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1120	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1200	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1260	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1270	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1300	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1310	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1320	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1330	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1340	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1350	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1360	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1370	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1460	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1510	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1520	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1530	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1540	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1620	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1640	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1660	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1670	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1680	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1690	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1700	Amended	24:2 VA.R. 178	10/16/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-1710	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1720	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1730	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1750	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1760	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1780	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1810	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1820	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1880	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1890	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1900	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1960	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2010	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2080	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2190	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2200	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2210	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2270	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2310	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2320	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2520	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2630	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2680	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2710	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2790	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2810	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2820	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2840	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2850	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2870	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2880	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2930	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2990	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3040	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3120	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3200	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3210	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3230	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3310	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3370	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3380	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3450	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3510	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3560	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3580	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3590	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3620	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3660	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3700	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3750	Amended	24:2 VA.R. 187	10/16/07
12 VAC 5-421-3760	Amended	24:2 VA.R. 188	10/16/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-3800	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3815	Added	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3860	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3900	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3960	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-3970	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4000	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4035	Added	24:2 VA.R. 190	10/16/07
12 VAC 5-421-4050	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-421-4070	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-585-70	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-510	Amended	24:5 VA.R. 602	12/17/07
12 VAC 5-585-600	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-610	Amended	24:5 VA.R. 607	12/17/07
12 VAC 5-585-620	Amended	24:5 VA.R. 612	12/17/07
12 VAC 5-585-630	Amended	24:5 VA.R. 614	12/17/07
12 VAC 5-585-760 through 12 VAC 5-585-830	Added	23:25 VA.R. 4298-4301	10/1/07
12 VAC 30-10-820	Added	24:2 VA.R. 191	10/31/07
12 VAC 30-60-500 emer	Added	23:26 VA.R. 4427	8/8/07-8/7/08
12 VAC 30-80-40 emer	Amended	24:3 VA.R. 377	10/1/07-9/30/08
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--
12 VAC 30-120-370 emer	Amended	23:24 VA.R. 4029	9/1/07-8/31/08
12 VAC 30-120-380 emer	Amended	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-120-1500 through 12 VAC 30-120-1550	Added	24:6 VA.R. 819-829	12/26/07
12 VAC 30-135-100 through 12 VAC 30-135-360	Added	24:2 VA.R. 196-218	12/1/07
12 VAC 35-115-10 through 12 VAC 35-115-250	Amended	23:25 VA.R. 4301-4340	9/19/07
12 VAC 35-115-90	Erratum	24:6 VA.R. 889	--
12 VAC 35-115-145	Added	23:25 VA.R. 4329	9/19/07
12 VAC 35-115-146	Added	23:25 VA.R. 4330	9/19/07
12 VAC 35-115-160	Repealed	23:25 VA.R. 4332	9/19/07
<b>Title 13. Housing</b>			
13 VAC 5-31	Erratum	23:24 VA.R. 4079	--
13 VAC 5-91	Erratum	23:24 VA.R. 4080	--
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-40-20	Amended	24:7 VA.R. 911	11/13/07
13 VAC 10-40-60	Amended	24:7 VA.R. 914	11/13/07
13 VAC 10-40-80	Amended	24:7 VA.R. 915	11/13/07
13 VAC 10-40-100	Amended	24:7 VA.R. 916	11/13/07
13 VAC 10-40-110	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-120	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-130	Amended	24:7 VA.R. 917	11/13/07
13 VAC 10-40-170	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-190	Amended	24:7 VA.R. 920	11/13/07
13 VAC 10-40-210	Amended	24:7 VA.R. 921	11/13/07
13 VAC 10-40-230	Amended	24:7 VA.R. 921	11/13/07
<b>Title 14. Insurance</b>			
14 VAC 5-215-20	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-30	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-50	Amended	23:22 VA.R. 3769	7/1/07
14 VAC 5-215-60	Amended	23:22 VA.R. 3770	7/1/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-215-80	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-420-10 through 14 VAC 5-420-60	Added	24:7 VA.R. 926-931	2/15/08
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-90-1910.6	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.66 Appendix D	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.302 through 16 VAC 25-90-1910.308	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.399 Subpart S Appendix A	Amended	24:1 VA.R. 26	12/15/07
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 41-70-10 through 18 VAC 41-70-280	Added	23:25 VA.R. 4349-4359	9/20/07
18 VAC 50-30-10	Amended	24:3 VA.R. 416	11/15/07
18 VAC 50-30-40	Amended	24:3 VA.R. 418	11/15/07
18 VAC 50-30-90	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-100	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-120	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-130	Amended	24:3 VA.R. 420	11/15/07
18 VAC 50-30-190	Amended	24:3 VA.R. 421	11/15/07
18 VAC 50-30-200	Amended	24:3 VA.R. 422	11/15/07
18 VAC 50-30-220	Amended	24:3 VA.R. 422	11/15/07
18 VAC 60-20-17	Amended	24:3 VA.R. 424	11/29/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 65-10-10 through 18 VAC 65-10-80	Amended	24:2 VA.R. 226-228	11/15/07
18 VAC 65-10-100	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-110	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-120	Amended	24:2 VA.R. 228	11/15/07
18 VAC 85-20-140	Amended	24:1 VA.R. 27	10/17/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4360	9/20/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4361	9/20/07
18 VAC 85-20-290	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 85-20-400 through 18 VAC 85-20-420	Adding	23:25 VA.R. 4362-4363	9/20/07
18 VAC 85-40-61	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-40-61	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-40-65	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-50-58	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-80-72	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-101-152	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-110-155	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-120-130	Amended	24:2 VA.R. 229	10/31/07
18 VAC 90-20-30	Amended	23:25 VA.R. 4363	10/1/07
18 VAC 90-20-225	Added	23:25 VA.R. 4364	10/1/07
18 VAC 90-30-240	Added	24:3 VA.R. 427	11/29/07
18 VAC 90-40-100	Amended	24:6 VA.R. 831	1/11/08
18 VAC 90-60-100	Amended	24:3 VA.R. 429	11/29/07
18 VAC 95-10-10 through 18 VAC 95-10-80	Amended	24:2 VA.R. 231-232	11/15/07
18 VAC 95-10-100	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-110	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-120	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-30-10 through 18 VAC 95-30-210	Added	24:6 VA.R. 832-837	1/2/08
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-20-180	Erratum	24:3 VA.R. 444	--
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-40-10 through 18 VAC 110-40-50	Amended	24:3 VA.R. 430-431	11/14/07
18 VAC 112-20-81 emer	Added	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-90 emer	Amended	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-130 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-131 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-150 emer	Amended	24:4 VA.R. 499	11/1/07-10/31/08
18 VAC 120-40-10	Amended	23:24 VA.R. 4038	9/5/07
18 VAC 120-40-15	Added	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-20	Amended	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-60	Repealed	24:3 VA.R. 433	12/29/07
18 VAC 120-40-80 through 18 VAC 120-40-360	Amended	23:24 VA.R. 4040-4052	9/5/07
18 VAC 120-40-221	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-222	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-295	Added	23:24 VA.R. 4048	9/5/07
18 VAC 120-40-342	Added	23:24 VA.R. 4050	9/5/07
18 VAC 120-40-370	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-380	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-385	Added	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-390	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-400	Repealed	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-410	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411	Added	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411.1 through 18 VAC 120-40-411.21	Added	23:24 VA.R. 4054-4064	9/5/07
18 VAC 120-40-415	Added	23:24 VA.R. 4064	9/5/07
18 VAC 120-40-415.1	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.2	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.3	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-420	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 120-40-430	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 130-20-10	Amended	24:6 VA.R. 838	1/1/08
18 VAC 130-20-30	Amended	24:6 VA.R. 842	1/1/08
18 VAC 130-20-60	Amended	24:6 VA.R. 843	1/1/08
18 VAC 130-20-110	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-170	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-180	Amended	24:6 VA.R. 844	1/1/08
18 VAC 130-20-210	Amended	24:6 VA.R. 846	1/1/08
18 VAC 130-20-220	Amended	24:6 VA.R. 847	1/1/08
18 VAC 130-20-230	Amended	24:6 VA.R. 847	1/1/08
18 VAC 135-30 (Forms)	Amended	24:1 VA.R. 41	--
18 VAC 135-40 (Forms)	Amended	24:1 VA.R. 43	--
18 VAC 135-50-10	Amended	23:22 VA.R. 3794	9/22/07
18 VAC 135-50-20	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-220	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-400	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 150-10-10	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-20	Amended	23:23 VA.R. 3937	10/7/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 150-10-30	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-40	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-50	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-60	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-70	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-80	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-100	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-110	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-120	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-20-30	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-100	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-140	Amended	24:3 VA.R. 437	11/29/07
18 VAC 150-20-220	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-230	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-240	Added	24:3 VA.R. 438	11/29/07
<b>Title 19. Public Safety</b>			
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-170-15	Amended	24:2 VA.R. 233	10/1/07
19 VAC 30-170-50	Amended	24:2 VA.R. 233	10/1/07
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-417-10	Amended	24:4 VA.R. 513	10/9/07
20 VAC 5-417-50	Amended	24:4 VA.R. 513	10/9/07
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
21 VAC 5-20-65	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-95	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-280	Amended	23:23 VA.R. 3943	7/1/07
21 VAC 5-20-330	Amended	23:23 VA.R. 3947	7/1/07
21 VAC 5-80-65	Added	23:23 VA.R. 3949	7/1/07
21 VAC 5-80-160	Amended	23:23 VA.R. 3950	7/1/07
21 VAC 5-80-200	Amended	23:23 VA.R. 3954	7/1/07
21 VAC 5-110	Erratum	23:24 VA.R. 4079	--
21 VAC 5-110-65	Added	23:23 VA.R. 3959	7/1/07
21 VAC 5-110-75	Added	23:23 VA.R. 3960	7/1/07
<b>Title 22. Social Services</b>			
22 VAC 40-35-10	Amended	23:23 VA.R. 3962	9/1/07
22 VAC 40-35-80	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-90	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-100	Amended	23:23 VA.R. 3966	9/1/07
22 VAC 40-41-10 through 22 VAC 40-41-50	Amended	23:22 VA.R. 3796-3799	9/1/07
22 VAC 40-41-55	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-41-60	Amended	23:22 VA.R. 3799	9/1/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-72-55	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-367	Added	24:5 VA.R. 616	12/12/07
22 VAC 40-72-930	Amended	24:1 VA.R. 38	11/1/07
22 VAC 40-72-960	Amended	24:1 VA.R. 39	11/1/07
22 VAC 40-375-10 through 22 VAC 40-375-60	Repealed	24:5 VA.R. 616	12/12/07
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-770-10 through 22 VAC 40-770-160	Repealed	24:2 VA.R. 234	11/1/07
22 VAC 40-771-10 through 22 VAC 40-771-160	Added	24:2 VA.R. 234-242	11/1/07
22 VAC 42-10-10 through 22 VAC 42-10-1000	Repealed	24:6 VA.R. 849	12/28/07
22 VAC 42-11-10 through 22 VAC 42-11-1090	Added	24:6 VA.R. 850-885	12/28/07
<b>Title 23. Taxation</b>			
23 VAC 10-210-485	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-693 emer	Amended	23:25 VA.R. 4364	7/26/07-07/25/08
23 VAC 10-210-6041	Amended	23:24 VA.R. 4068	9/6/07
23 VAC 10-210-6042	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6043	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-240-20 through 23 VAC 10-240-60	Repealed	23:25 VA.R. 4372-4373	10/04/07
23 VAC 10-240-100	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-130	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-140	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-150	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-200	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-210	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-240	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-270	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-280	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-300	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-310	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-330	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-340	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-360	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-380	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-400	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-420	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-430	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-450	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-460	Repealed	23:25 VA.R. 4375	10/04/07
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 20-120-10 through 24 VAC 20-120-180	Repealed	24:4 VA.R. 516	1/1/08
24 VAC 20-121-10 through 24 VAC 20-121-220	Adding	24:4 VA.R. 516-529	1/1/08
24 VAC 22-20-10	Amended	24:3 VA.R. 439	12/1/07
24 VAC 22-20-20	Amended	24:3 VA.R. 440	12/1/07
24 VAC 27-10-10 through 24 VAC 27-10-120	Added	23:24 VA.R. 4071-4075	9/20/07
24 VAC 30-45-10	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-20	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-30	Added	24:2 VA.R. 244	10/1/07
24 VAC 30-200-10	Amended	24:4 VA.R. 529	11/28/07
24 VAC 30-200-20	Amended	24:4 VA.R. 530	11/28/07
24 VAC 30-200-30	Amended	24:4 VA.R. 531	11/28/07



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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
24 VAC 30-200-35	Added	24:4 VA.R. 532	11/28/07
24 VAC 30-200-40	Amended	24:4 VA.R. 533	11/28/07

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Petition Withdrawn

Title of Regulation: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy.

Statutory Authority: §54.1-2400 and Chapters 33 (§54.1-3300 et seq.) and 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Name of Petitioner: Sherry Fortune on behalf of Partners Pharmacy of Virginia.

Nature of Petitioner's Request: To amend regulations pertaining to access to drugs in emergency drug or stat boxes in long-term care facilities to allow the use of a Pyxis stat-emergency unit and not require each facility to obtain a controlled substance registration.

Petition Withdrawn: In a letter to the board dated August 15, 2007, the petitioners withdrew the request.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 662-9911, FAX (804) 662-9313, or email [scotti.russell@dhp.virginia.gov](mailto:scotti.russell@dhp.virginia.gov).

VA.R. Doc. No. R07-869; Filed December 26, 2007, 11:40 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending **3VAC5-50, Retail Operations**. On August 2, 2007, Judge Walter D. Kelley, Jr., of the United States District Court for the Eastern District of Virginia entered a preliminary injunction enjoining the Alcoholic Beverage Control Board and its agents from enforcing that portions of §4.1-225 of the Code of Virginia, which prohibits alcoholic beverage licensees from allowing noisy conduct on licensed premises in Virginia. With enforcement of this code section enjoined, the board has no provision of law or regulation to address noise issues on licensed premises. The judge found that the term "noisy" as used in the statute was unconstitutionally vague. The purpose of this action is to more clearly define the noise levels allowable on premises licensed for the sale of alcoholic beverages.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2008.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone 804-213-4621, FAX 804-213-4411, TTY 804-213-4687, or email jeffrey.painter@abc.virginia.gov.

VA.R. Doc. No. R08-1048; Filed December 27, 2007, 9:19 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending **3VAC5-70, Other Provisions**. The purpose of the proposed action is to detail the application, recordkeeping, and reporting requirements for delivery permittees.

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

Statutory Authority: §§4.1-103, 4.1-111 and 4.1-212.1 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2008.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

VA.R. Doc. No. R08-928; Filed January 2, 2008, 3:08 p.m.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### 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 Education intends to consider amending **8VAC20-70, Regulations Governing Pupil Transportation**. The purpose of the proposed action is to update the regulations based on new technology and other changes in pupil transportation in Virginia.

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

Statutory Authority: §§22.1-176 and 22.1-177 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on February 25, 2008.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone 804-225-2540, FAX 804-225-2524, or email margaret.roberts@doe.virginia.gov.

VA.R. Doc. No. R08-1020; Filed December 26, 2007, 11:30 a.m.

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## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Virginia Waste Management Board intends to consider repealing **9VAC20-80, Solid Waste Management Regulations**, and promulgating **9VAC20-81, Solid Waste Management Regulations**. The purpose of the proposed action is to review each section of the regulation for clarity and complexity in order to transform the regulation into a standard that is easier for the public and regulated community to read and to follow. The goals of this amendment are to focus on results-oriented requirements where feasible and to provide less burdensome requirements

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# Notices of Intended Regulatory Action

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for those types of facilities that divert waste from landfills while still protecting the public health, public safety, the environment, and natural resources.

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

Statutory Authority: §10.1-1402 of the Code of Virginia; 42 USC 6941 et seq.; 40 CFR Part 258.

Public Comments: Public comments may be submitted until 5 p.m. on February 28, 2008.

Agency Contact: Allen Brockman, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4468, FAX 804-698-4237, or email arbrockman@deq.virginia.gov.

VA.R. Doc. No. R08-979; Filed January 2, 2008, 9:47 a.m.

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## TITLE 22. SOCIAL SERVICES

### DEPARTMENT 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 promulgating **22VAC40-411, General Relief Program;** and repealing **22VAC40-410, Entitlement Date in the General Relief Program; 22VAC40-570, General Relief (GR) Program - Locality Options; and 22VAC40-640, General Relief Program - Deeming Income from Alien Sponsors.** General Relief is a program that provides assistance to individuals who are not eligible for other forms of assistance. It is an optional program at the local level. Currently, there are multiple regulations governing the General Relief Program. These regulations define the different types of assistance available, how income and resources are determined, and the process for determining eligibility. The purpose of this action is to repeal these separate regulations and promulgate a new comprehensive regulation. Concurrent with establishment of this regulation, Entitlement Date in the General Relief Program (22VAC40-410), General Relief Program-Locality Options (22VAC40-570), and General Relief Program-Deeming Income from Alien Sponsors (22VAC40-640) will be repealed.

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 63.2-802 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2008.

Agency Contact: L. Richard Martin, Jr., Manager, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone 804-726-7902, FAX 804-726-7906, TTY 800-828-1120, or email richard.martin@dss.virginia.gov.

VA.R. Doc. No. R08-978; Filed January 2, 2008, 10:08 a.m.

#### 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 promulgating **22VAC40-201, Permanency Services - Prevention, Foster Care, Adoption, and Independent Living,** and repealing **22VAC40-200, Foster Care - Guiding Principles; 22VAC40-210, Foster Care - Assessing the Client's Service Needs; 22VAC40-240, Nonagency Placement for Adoption - Consent; 22VAC40-250, Agency Placement Adoptions - AREVA; 22VAC40-260, Agency Placement Adoptions - Subsidy; 22VAC40-280, Nonagency Placements for Adoption - Adoptive Home Study; 22VAC40-800, Family Based Social Services; and 22VAC40-810, Fees for Court Services Provided by Local Departments of Social Services.** The purpose of the proposed action is to repeal eight existing regulations and replace them with one comprehensive Permanency Services Regulation that will encompass the full range of services for providing a child with a safe, secure and stable situation in which to grow up. Currently regulations addressing permanency services for children are contained in eight different regulations that were promulgated at different times. Combining these regulations into one comprehensive regulation will ensure consistency in definitions and language and will limit the number of regulations individuals must use when addressing issues related to permanency services for children.

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 63.2-319 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2008.

Agency Contact: Phyl Parrish, Program Manager, Quality Review, Department of Social Services, Division of Family Services, 7 North 8th Street, Richmond, VA 23219, telephone 804-726-7926, FAX 804-726-7895, TTY 800-828-1120, or email phyl.parrish@dss.virginia.gov.

VA.R. Doc. No. R08-1019; Filed January 2, 2008, 10:07 a.m.

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# Notices of Intended Regulatory Action

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## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending **23VAC10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend 23VAC10-310-610 to provide clarification with respect to the application of the tax to florists, landscape contractors, and nurserymen. The Department of Taxation receives frequent questions concerning these issues and these issues are frequently the subject of appeals in the audit process.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2008.

Agency Contact: Jennifer Lewis, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone 804-371-2341, FAX 804-371-2355, or email [jennifer.lewis@tax.virginia.gov](mailto:jennifer.lewis@tax.virginia.gov).

VA.R. Doc. No. R08-912; Filed December 21, 2007, 11:13 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending **23VAC10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to promulgate a new section, 23VAC10-210-144, to articulate the department's policy interpretation with respect to the exemption provided for the audiovisual production industry by §58.1-609.6(6) of the Code of Virginia.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2008.

Agency Contact: Bland Sutton, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone 804-371-2332, FAX 804-371-2355, or email [bland.sutton@tax.virginia.gov](mailto:bland.sutton@tax.virginia.gov).

VA.R. Doc. No. R08-885; Filed December 21, 2007, 11:14 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending **23VAC10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to amend 23VAC10-210-3010 to set forth legislative changes that provide an exemption to out-of-state advertising businesses on the purchase of printed materials from a Virginia printer that are stored in Virginia for 12 months or less for use out of state, and also provides an exemption for sales of printing to Virginia advertising agencies for distribution out of state. Generally, the sale of advertising is an exempt sale and advertising agencies must pay tax on purchases used in providing the advertising. These legislative changes put in-state and out of state advertisers on equal footing and amendments to this regulation section will provide the necessary guidance.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on February 20, 2008.

Agency Contact: Todd Gathje, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone 804-371-2301, FAX 804-371-2355, or email [todd.gathje@tax.virginia.gov](mailto:todd.gathje@tax.virginia.gov).

VA.R. Doc. No. R08-888; Filed December 21, 2007, 11:14 a.m.

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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 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### Emergency Regulation

Title of Regulation: **3VAC5-70. Other Provisions (adding 3VAC5-70-225).**

Statutory Authority: §§4.1-103, 4.1-111 and 4.1-212.1 of the Code of Virginia.

Effective Dates: January 2, 2008, through January 1, 2009.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

#### Preamble:

*Chapters 99 and 799 of the 2007 Acts of Assembly are identical enactments, creating a new delivery permit that may be issued by the Department of Alcoholic Beverage Control to certain alcoholic beverage manufacturers or retailers. Each act provides that the Alcoholic Beverage Control Board shall enact regulations to implement the provisions of the act within 90 days of July 1, 2007. The new regulation details the application, recordkeeping, and reporting requirements for delivery permittees. The proposed regulatory action is essential to ensure that alcoholic beverages are only delivered to adults of legal drinking age, and that the appropriate taxes are collected on all such beverages sold in the Commonwealth.*

#### **3VAC5-70-225. Delivery permits; application process; records and reports.**

A. Any person or entity qualified for a delivery permit pursuant to §4.1-212.1 of the Code of Virginia must apply for such license by submitting form 805-52, Application for License. The applicant shall attach (i) a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer issued by the appropriate authority for the location from which deliveries will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Delivery permittees shall maintain for two years complete and accurate records of all deliveries made under the privileges of such permits, including for each delivery:

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

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

C. On or before the 15th day of each month, each delivery permittee shall file with the Supervisor, Tax Management Section, a report of activity for the previous calendar month, if any deliveries were made during the month. Such report shall include the following information for each delivery:

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

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

D. All deliveries by holders of delivery permits shall be performed by the owner or any agent, officer, director, shareholder, or employee of the permittee.

E. When attempting to deliver wine or beer shipped by a wine shipper's or beer shipper's licensee, an owner, agent, officer, director, shareholder or employee of the permittee shall require:

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

The owner, agent, officer, director, shareholder or employee of the permittee shall refuse delivery when the proposed

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recipient appears to be under the age of 21 years and refuses to present valid identifications. All permittees delivering wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer delivered in the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the delivery permit number of the delivering permittee.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Order and Permit for Transportation of Alcohol, #703-69 (eff. 11/87).

Order and Permit for Transportation of Alcoholic Beverages, #703-73.

Mixed Beverage Annual Review-Instructions for Completion, #805-44 (rev. 11/06).

Retail License Application, #805-52 (rev. 6/07).

Application for Off Premises Keg Permit, #805-45 (eff. 1/93).

Application for Grain Alcohol Permit, #805-75.

Special Event License Application Addendum-Notice to Special Event Licenses Applicants, Form SE-1 (rev.08/02).

Statement of Income & Expenses for Special Event Licenses (with instructions), Form SE-2 (rev.08/02).

VA.R. Doc. No. R08-928; Filed January 2, 2008, 3:08 p.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

## Final Regulation

**Title of Regulation:** 4VAC15-20. Definitions and Miscellaneous: in General (amending 4VAC15-20-50, 4VAC15-20-130, 4VAC15-20-200, 4VAC15-20-210).

**Statutory Authority:** §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** January 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendments (i) update the department's "List of Native and Naturalized Fauna of Virginia," consistent with current nomenclature and knowledge of the wildlife of the Commonwealth; (ii) add the pistolgrip (Tritogonia verrucosa, a species of freshwater mollusk) and the Big Sandy crayfish (Cambarus veteranus) to the Virginia List of Endangered and Threatened Species, thereby prohibiting the taking, transportation, possession, or sale of these rare native species without a permit; (iii) remove an outdated note regarding the effective date of the listing of the bald eagle as a state threatened species; (iv) update the Virginia List of Endangered and Threatened Species by adopting current taxonomic nomenclature for a species on the list; (v) delete the reference in this regulation to §29.1-743 of the Code of Virginia and the subsequent permit that was authorized by the code language and add the word annual to clarify that these are annual fees; and (vi) add the Chinese mitten crab (Eriocheir sinensis) to the list of Nonindigenous Aquatic Nuisance Species, thereby prohibiting the importation, possession, transportation, sale, etc., of this species within Virginia except as allowed by law, regulation, or permit.*

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

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

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

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2000~~ 2007 "List of Native and Naturalized

Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia which have established wild, self-sustaining populations, as included in the department's 2000 2007 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

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

The following animals are defined as domestic animals:

- Domestic dog (*Canis familiaris*), including wolf hybrids.
- Domestic cat (*Felis catus*), including hybrids with wild felines.
- Domestic horse (*Equus caballus*), including hybrids with *Equus asinus*.
- Domestic ass, burro, and donkey (*Equus asinus*).
- Domestic cattle (*Bos taurus* and *Bos indicus*).
- Domestic sheep (*Ovis aries*) including hybrids with wild sheep.
- Domestic goat (*Capra hircus*).
- Domestic swine (*Sus scrofa domestica*), including pot-bellied pig.
- Llama (*Lama glama*).
- Alpaca (*Lama pacos*).
- Camels (*Camelus bactrianus* and *Camelus dromedarius*).
- Domesticated races of hamsters (*Mesocricetus* spp.).
- Domesticated races of mink (*Mustela vison*) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.
- Domesticated races of red fox (*Vulpes*) where their coat color can be distinguished from wild red fox.
- Domesticated races of guinea pigs (*Cavia porcellus*).
- Domesticated races of gerbils (*Meriones unguiculatus*).
- Domesticated races of chinchillas (*Chinchilla laniger*).
- Domesticated races of rats (*Rattus norvegicus* and *Rattus rattus*).
- Domesticated races of mice (*Mus musculus*).
- Domesticated races of European rabbit (*Oryctolagus cuniculus*).
- Domesticated races of chickens (*Gallus*).

Domesticated races of turkeys (*Meleagris gallopavo*).

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

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

Domesticated races of guinea fowl (*Numida meleagris*).

Domesticated races of peafowl (*Pavo cristatus*).

**4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.**

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§1531-1543), as amended, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to §29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	<i>Phoxinus tennesseensis</i>
Darter, sharphead	<i>Etheostoma acuticeps</i>
Darter, variegated	<i>Etheostoma variatum</i>
Sunfish, blackbanded	<i>Enneacanthus chaetodon</i>

Threatened:

Darter, Carolina	<i>Etheostoma collis</i>
Darter, <del>Tippicanoe</del> <u>golden</u>	<i>Etheostoma <del>tippicanoe</del> denoncourti</i>
Darter, greenfin	<i>Etheostoma chlorbranchium</i>
Darter, longhead	<i>Percina macrocephala</i>
Darter, western sand	<i>Ammocrypta clara</i>
Madtom, orangefin	<i>Noturus gilberti</i>
Paddlefish	<i>Polyodon spathula</i>
Shiner, emerald	<i>Notropis atherinoides</i>



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Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

## 2. Amphibians:

### Endangered:

Salamander, eastern tiger	Ambystoma tigrinum tigrinum
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### Threatened:

Salamander, Mabee's	Ambystoma mabeei
Treefrog, barking	Hyla gratiosa

## 3. Reptiles:

### Endangered:

Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia reticularia

### Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

## 4. Birds:

### Endangered:

Plover, Wilson's	Charadrius wilsonia
Wren, Bewick's	Thryomanes bewickii bewickii

### Threatened:

Eagle, bald	Haliaeetus leucocephalus [ (see note A below for effective date) ]
Falcon, peregrine	Falco peregrinus
Sandpiper, upland	Bartramia longicauda
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica

## 5. Mammals:

### Endangered:

Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus

### Threatened:

Shrew, Dismal Swamp southeastern	Sorex longirostris fisheri
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## 6. Molluscs:

### Endangered:

Ghostsnail, thankless	Holsingeria unthinksensis
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio cordatum	Pleurobema
Pigtoe, pyramid	Pleurobema rubrum
Snuffbox	Epioblasma triquetra
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fonitgens morrisoni
Spectaclecase	Cumberlandia monodonta
Supercoil, spirit	Paravitrea hera

### Threatened:

Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pearlymussel, slabside	Lexingtonia dolabelloides
Pigtoe, Atlantic	Fusconaiamasoni

Pimpleback	Quadrula pustulosa pustulosa
<u>Pistolgrip</u>	<u>Tritogonia verrucosa</u>
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Sheepnose	Plethobasus cyphus
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

8. Crustaceans:

Endangered:

<u>Crayfish, Big Sandy</u>	<u>Cambarus veteranus</u>
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[ ~~^ Notwithstanding the prospective removal of the bald eagle from the federal list of endangered or threatened species, the bald eagle continues to be threatened in the Commonwealth of Virginia, and is hereby declared to be a threatened species in Virginia effective as of, and simultaneously with, the date of its removal from the federal list. ]~~

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

**4VAC15-20-200. Fees for ~~Miscellaneous~~ Permits miscellaneous permits.**

A. Pursuant to §§29.1-417, 29.1-418, 29.1-422, ~~29.1-743~~ and other applicable provisions of the Code of Virginia, except as provided by this chapter the following annual fees shall be paid by applicants for the specified permits before any such permit may be issued.

Boat Ramp Special Use	
Nonprofit Public Use	\$10
Private/Commercial Use	\$50
Boat Regattas/Tournaments	\$50/day
Collect and Sell	\$50
Commercial Nuisance Animals	\$25

Exhibitors

Commercial Use	\$50
Educational/Scientific Use	\$20
Exotic Importation and Holding	\$10
Field Trial	\$25
Foxhound Training Preserves	\$50
Hold for Commercial Use	\$10
Propagation	\$12.50
Rehabilitation	\$10
Scientific Collection	\$20
Special Hunting Permit	\$10
Striped Bass Tournament	\$10
Threatened & Endangered Species	\$20
Trout Catch-Out Pond	\$50

B. Veterinarians shall not be required to pay a permit fee or to obtain a permit to hold wildlife temporarily for medical treatment.

**4VAC15-20-210. Definitions; nonindigenous aquatic nuisance species.**

A. In addition to the species already listed in §29.1-571 of the Code of Virginia, the board hereby designates the following species as nonindigenous aquatic nuisance species pursuant to §29.1-100 of the Code of Virginia.

1. Fish.
  - a. Black carp (*Mylopharyngodon piceus*).
2. Invertebrates.
  - a. New Zealand mudsnail (*Potamopyrgus antipodarum*).
  - b. Rusty crayfish (*Orconectes rusticus*).
  - c. Chinese mitten crab (*Eriocheir sinensis*)

B. It shall be unlawful to take, possess, transport, import, sell, or offer for sale within the Commonwealth any nonindigenous aquatic nuisance species except as authorized by law or regulation.

VA.R. Doc. No. R07-823; Filed December 28, 2007, 11:52 a.m.

**Final Regulation**

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-5, 4VAC15-30-40).**

Statutory Authority: §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

# Regulations

Effective Date: January 1, 2008.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The amendments (i) add language to make reference to the code section that gives the board the authority for special permits, which it has in turn conferred upon the director with the regulation; and (ii) add the Chinese mitten crab (Eriocheir sinensis) to the Virginia list of nonnative (exotic) predatory and undesirable species, thereby prohibiting the importation, possession or sale of this species without a permit.*

**4VAC15-30-5. Powers, authorities, and duties of the director in permitting.**

~~Under~~ Pursuant to §29.1-413 of the Code of Virginia and ~~under~~ authority granted to the board in subdivision 12 of §29.1-103 of the Code of Virginia, the board hereby confers authority upon the director to set the permit schedule, establish permit conditions, delegate signature authority, establish protocols for responding to permit decision appeals, and render final permit decisions. The director shall also have

authority to establish a policy on the issuance of new permits to individuals whose previous permits or applications have been revoked or denied for infractions of wildlife laws, regulations, or conditions.

EDITOR'S NOTE: The proposed amendments to 4VAC15-30-10 that (i) prohibit the take, possession, importation, exportation, sale and release of captive-reared waterfowl in Virginia, except as otherwise permitted; and (ii) prohibit the release of captive-reared mallards, except as specified, were adopted by the board but will become effective at a later date.

**4VAC15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.**

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of §29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:			
Order	Family	Genus/Species	Common Name
Anura	Bufo	Bufo marinus	Giant or marine toad*
	Pipidae	Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	Ambystoma tigrinum mavortium	Barred tiger salamander
		A. t. diaboli	Gray tiger salamander
		A. t. melanostictum	Blotched tiger salamander
BIRDS:			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan
FISH:			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*

	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cyprinidae	Aristichyhs nobilis	Bighead carp*
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodom piceus	Black carp*
		Scardinius erythrophthalmus	Rudd
	Tinca tinca	Tench*	
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby
		Neogobius melanostomus	Round goby
Perciformes	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
Siluriformes	Clariidae	All species	Air-breathing catfish
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
MAMMALS:			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs*, Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except Mustela putorius furo)	Weasels, Badgers,* Skunks and Otters Ferret

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	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas*
	Protelidae	Proteles cristatus	Aardwolf*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Leporidae	Lepus europeaeus	European hare
		Oryctolagus cuniculus	European rabbit
Rodentia		All species native to Africa	All species native to Africa
	Sciuridae	Cynomys spp.	Prairie dogs
MOLLUSKS:			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena polymorpha	Zebra mussel
REPTILES:			
Order	Family	Genus/Species	Common Name
Squamata	Alligatoridae	All species	Alligators, caimans*
	Colubridae	Boiga irregularis	Brown tree snake*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
CRUSTACEANS:			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Orconectes rusticus	Rusty crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	<u>Varunidea</u>	<u>Eriocheir sinensis</u>	<u>Chinese mitten crab</u>

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (\*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common

name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A, except members of the Cervidae family, African rodents, and prairie dogs, that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.

F. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

G. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidea, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

H. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to

threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R07-811; Filed December 28, 2007, 11:54 a.m.

## Final Regulation

**Title of Regulation: 4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-25).**

**Statutory Authority:** §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** January 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendments (i) establish a "No walleye less than 18 inches" regulation in the Middle Fork Holston and South Fork Holston rivers, (ii) correct the "No possession (catch and release only)" demarcation lines for American shad and hickory shad by adding "above Harvell Dam" after "Appomattox River" and adding "and the Mattaponi River" after "Pamunkey River," (iii) modify anadromous (coastal) alewife and blueback herring creel and length limit regulations above and below the fall line in all coastal rivers of the Chesapeake Bay to be set by the Virginia Marine Resources Commission, and (iv) modify the creel and length limits for anadromous (coastal) alewife and blueback herring in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing, and Northwest rivers and their tributaries plus Back Bay to "No Possession."*

### 4VAC15-320-25. Creel and length limits.

The creel limits (including live possession) and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

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Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass, spotted bass		5 per day in the aggregate; No statewide length limits	<b>Lakes</b>	
			Briery Creek Lake	No bass 14 to 24 inches, only 1 per day longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 bass less than 14 inches
			Claytor Lake	No bass less than 12 inches
			Flannagan Reservoir	No bass less than 12 inches
			Lake Gaston	Only 2 of 5 bass less than 14 inches
			Leesville Reservoir	Only 2 of 5 bass less than 14 inches
			Lake Moomaw	No bass less than 12 inches
			Philpott Reservoir	No bass less than 12 inches
			Quantico Marine Base waters	No bass 12 to 15 inches
			Smith Mt. Lake and its tributaries below Niagara Dam	Only 2 of 5 bass less than 14 inches
			<b>Rivers</b>	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell counties	No bass 11 to 14 inches
			Dan River and tributaries down stream from the Brantley Steam Plant, Danville	Only 2 of 5 bass less than 14 inches
			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No bass 14 to 22 inches, only 1 per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA – WV state line and its tributary Little River downstream from Little River Dam in Montgomery County (This does not include Claytor Lake which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No bass 14 to 20 inches, only 1 per day longer than 20 inches

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			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA-TN state line	No bass less than 20 inches, only 1 per day longer than 20 inches
			North Fork Shenandoah River – Rt. 42 bridge, Rockingham Co. downstream to the confluence with S. Fork Shenandoah at Front Royal	No bass 11 to 14 inches
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No bass less than 15 inches from March 1 through June 15
			Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte Co.	Only 2 of 5 bass less than 14 inches
			Shenandoah River – Confluence of South Fork and North Fork rivers, Front Royal, downstream, to the Warren Dam, near Front Royal	No bass 11 to 14 inches
			Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Rt. 17/50 bridge downstream to VA - WV state line	No bass 11 to 14 inches
			South Fork Shenandoah River - Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah	No bass 11 to 14 inches
			Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal	No bass 11 to 14 inches



# Regulations

striped bass	landlocked striped bass and landlocked striped bass x white bass hybrids	4 per day in the aggregate;  No fish less than 20 inches	Buggs Island (Kerr) reservoir including the Staunton River to Leesville Dam and the Dan River to Brantly Steam Plant (Danville)	October 1 - May 31: 2 per day in the aggregate;  No striped bass less than 26 inches;  June 1 - September 30: 4 per day in the aggregate;  No length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate;  October 1 - May 31: No striped bass 26 to 36 inches;  June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		
	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day;  No striped bass less than 18 inches		
white bass		5 per day;  No statewide length limits		
walleye		5 per day;  No statewide length limits	Flannagan, Philpott, and South Holston reservoirs, <u>and the Middle Fork Holston and South Fork Holston rivers</u>	No walleye less than 18 inches
			Claytor Lake and New River upstream of Claytor Lake Dam	No walleye less than 20 inches
sauger		2 per day;  No statewide length limits		

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chain pickerel		5 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs	No daily limit
northern pike		2 per day; No pike less than 20 inches		
muskellunge		2 per day; No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to the VA - WV state line, including Claytor Lake	1 per day No muskellunge less than 42 inches
bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
crappie (black or white)		25 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Flannagan and South Holston reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County.	No daily limit
			Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with Roanoke bass; No rock bass less than 8 inches
Roanoke bass		No statewide daily limit; No statewide length limits	Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with rock bass; No Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			

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catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit
	blue catfish	20 per day, only 1 blue catfish per day longer than 32 inches	All rivers below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
	yellow, brown, and black bullheads	No daily limit; No length limits		
American shad and hickory shad	James River above the fall line (14th Street Bridge), the Meherrin River above Emporia Dam, the Chickahominy River above Walkers Dam, the Appomattox River <del>and above</del> <u>Harvell Dam</u> , the Pamunkey River <u>and the Mattaponi River</u> above the Rt. 360 bridge, and the Rappahannock River above the Rt. 1 bridge	No possession (catch and release only)		
	(below the fall line) in tidal rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		
	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	10 per day in the aggregate No length limits		

anadromous (coastal) alewife and blueback herring	James River above Boshers Dam, the Meherrin River above Emporia Dam, the Chickahominy River above Walkers Dam, the Appomattox River above Harvell Dam, the South Anna River above the U.S. Rt. 1 bridge, and the Rappahannock River above Embrey Dam	No possession (catch and release only)		
	Above and below the fall line in <del>tidal</del> <u>all</u> coastal rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		
	Meherrin River below Emporia Dam, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	No <u>daily</u> limits <u>possession</u> No length limits		
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			
nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.			

VA.R. Doc. No. R07-819; Filed December 28, 2007, 11:54 a.m.

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# Regulations

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## Final Regulation

**Title of Regulation:** 4VAC15-330. **Fish: Trout Fishing (amending 4VAC15-330-30, 4VAC15-330-100, 4VAC15-330-120, 4VAC15-330-160, 4VAC15-330-171, 4VAC15-330-200).**

**Statutory Authority:** §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** January 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### Summary:

*The amendments (i) remove Philpott Reservoir from waters that have a special daily creel limit of two trout; (ii) clarify that once trout are caught and taken into possession by an angler, these trout become part of that angler's daily creel and cannot be released (culled); (iii) clarify that a multiple number of single-hook artificial lures, such as dropper flies, fished in a series, may be used in single-hook artificial lure only waters; (iv) remove the special trout regulation section of Jackson River from the "16-inch minimum size (no trout less than 16 inches), 2 trout/day, only artificial lures with single hooks" special regulation trout streams and move it to 4VAC15-330-171, to clarify the types of lures that can be used on this portion of stream; (v) expand the current 1.9-mile section to a 3.1-mile section of Accotink Creek (Fairfax County) that is a delayed harvest trout stream (catch and release from October 1 - May 31; trout may be creeled from June 1 - September 30; (vi) add the "16-inch minimum size (no fish less than 16 inches), 2 trout/day" special trout regulation section of Jackson River from the swinging bridge located just upstream from the mouth of Muddy Run, upstream three miles to the last ford on FS 481D, to existing special regulation 4VAC15-330-171 for Jackson River as subsection B, in order to clarify that multiple-hook artificial lures can be used; and (vii) clarify that, in Urban Fishing Program waters, once trout are caught and taken into possession by an angler, these trout become part of that angler's daily creel and cannot be released (culled).*

### 4VAC15-330-30. Creel limit; generally.

Except as otherwise specifically provided in the sections appearing in this chapter, the daily creel limit for taking trout shall be six, except the daily creel limit shall be two in Lake Moomaw and Philpott reservoirs. Once a trout is taken into possession by placing in the creel, it becomes a part of the daily creel limit and may not be released (culled).

### 4VAC15-330-100. "Artificial lure" defined.

For the purposes of this chapter "artificial lure" shall include manufactured or handmade flies, spinners, plugs, spoons and

facsimiles of live animals, but shall not be construed to include artificially produced organic baits and fish eggs that are intended to be ingested. Artificial lures with single hook shall mean any single point lure (with no multiple point hooks). Where single-hook artificial lures are required, a multiple number of single-hook lures (such as dropper flies) fished in series are permitted.

### 4VAC15-330-120. Special provisions applicable to certain portions of Buffalo Creek, Dan River, ~~Jackson River~~, Pound River, Roaring Run, Smith River, and South Fork Holston River.

A. It shall be lawful year around to fish using only artificial lures with single hooks in that portion of Buffalo Creek in Rockbridge County from the confluence of Colliers Creek upstream 2.9 miles to the confluence of North and South Buffalo Creeks, in that portion of Smith River in Henry County from signs below the east bank of Towne Creek downstream to the State Route 666 (Trent Hill Road) bridge, in that portion of the Dan River in Patrick County from Talbott Dam approximately six miles downstream to a sign posted just upstream from the confluence of Dan River and Townes Reservoir, in that portion of the Pound River from a sign posted 0.4 miles below the Flannagan Dam, downstream 1.2 miles to a sign posted just upstream of the confluence of the Pound River and the Russell Fork River, in that portion of the South Fork Holston River in Smyth County from a sign posted at the upper Jefferson National Forest boundary downstream approximately four miles to a sign posted 500 feet upstream of the concrete dam at Buller Fish Culture Station, and in that portion of Roaring Run in Botetourt County from a sign posted at the third footbridge above the Roaring Run Furnace Day Use Area upstream approximately one mile to a sign posted at the Botetourt/Alleghany County line, ~~and in that portion of Jackson River in Bath County from the swinging bridge located just upstream from the mouth of Muddy Run upstream three miles to the last ford on FS 481D.~~

B. The daily creel limit in these waters shall be two trout a day year around and the size limit shall be 16 inches or more in length. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 16 inches in length in these areas.

### 4VAC15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, Chestnut Creek, Hardware River, Holliday Creek, Holmes Run, North River, Passage Creek, Peak Creek, Pedlar River, North Fork of Pound and Pound rivers, Roanoke River, and South River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures in Accotink Creek (Fairfax County) from ~~Route 236 (Little River Turnpike)~~ King Arthur Road downstream ~~4.9~~ 3.1 miles to Route 620 (Braddock Road), in Back Creek (Bath County)

from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in Chestnut Creek (Carroll County) from the U.S. Route 58 bridge downstream 11.4 miles to the confluence with New River, in the Hardware River (Fluvanna County) from the Route 646 bridge upstream 2.6 miles to Muleshoe Bend as posted, in Holliday Creek (Appomattox/Buckingham Counties) from the Route 640 crossing downstream 2.8 miles to a sign posted at the headwaters of Holliday Lake, in Holmes Run (Fairfax County) from the Lake Barcroft Dam downstream 1.2 miles to a sign posted at the Alexandria City line, in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Warren County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, in Peak Creek (Pulaski County) from the confluence of Tract Fork downstream 2.7 miles to the Route 99 bridge, in the Pedlar River (Amherst County) from the City of Lynchburg/George Washington National Forest boundary line (below Lynchburg Reservoir) downstream 2.7 miles to the boundary line of the George Washington National Forest, in North Fork of Pound and Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, in the Roanoke River (Roanoke County) from the Route 760 bridge (Diuguids Lane) upstream 1.0 miles to a sign posted at the upper end of Green Hill Park (Roanoke County), in the Roanoke River (City of Salem) from the Route 419 bridge upstream 2.2 miles to the Colorado Street bridge, and in the South River from the Second Street Bridge upstream 2.4 miles to the base of Rife Loth Dam in the City of Waynesboro. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

**4VAC15-330-171. Special provisions applicable to certain portion portions of Jackson River.**

A. The daily creel limit shall be four trout per day and the minimum size limit shall be 12 inches in length on that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County. All trout caught in this section of the Jackson River under 12 inches in length shall be immediately returned to the water. It shall be unlawful for any person to have in his possession any trout under 12 inches in length in this area.

B. The trout daily creel limit shall be two, the minimum size limit shall be 16 inches in length, and only artificial lures may be used in that portion of Jackson River in Bath County from the swinging bridge located just upstream from the mouth of Muddy Run, upstream three miles to the last ford on FS

481D. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 16 inches in length in these areas.

**4VAC15-330-200. Special provisions applicable to Urban Fishing Program waters.**

Waters selected by the director for inclusion into the Urban Fishing Program will be considered designated stocked trout waters only from November 1 through April 30, thus a trout license is not required from May 1 through October 31. In addition, trout may be creeled from these waters year around and the daily trout creel limit shall be four. Once a trout is taken into possession by placing in the creel, it becomes a part of the daily creel limit and may not be released (culled).

VA.R. Doc. No. R07-820; Filed December 28, 2007, 11:55 a.m.

**Final Regulation**

Title of Regulation: **4VAC15-340. Fish: Seines and Nets (amending 4VAC15-340-10, 4VAC15-340-30 [ ,4VAC15-340-40) ].**

Statutory Authority: §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2008.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone 804-367-8341 or email phil.smith@dgif.virginia.gov.

Summary:

*The amendments make it illegal to harvest anadromous (coastal) alewife and blueback herring using a haul seine or gill net in Virginia Beach area waters.*

*The proposed deletion of references to herring in 4VAC15-340-40 were reinstated in the final regulation.*

**4VAC15-340-10. Haul seines to take fish for sale.**

A. Authorization to take fish for sale. A haul seine permit shall authorize the person to whom issued to take fish for sale as specified with a haul seine from the waters designated in this section.

B. Permit holder to be present when seine operated. The holder of a haul seine permit must be present with the seine at all times when it is being operated. The holder, however, may have others to assist him and such persons assisting are not required to have a permit.

C. Length and size of nets. The length of haul seine nets shall not be more than 500 yards. The size of mesh shall be 1-1/2 inch bar mesh.

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# Regulations

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D. Season and fish to be taken in Virginia Beach City. In Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake), North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River), the open season to take all fish, except game fish, alewife, and blueback herring, with a haul seine shall be from November 1 through March 31, both dates inclusive. The harvest limit for anadromous American and hickory shad shall be 10 per day, in the aggregate.

E. Labeling packages containing fish taken with haul seine. It shall be unlawful for any person to ship or otherwise transport any package, box or other receptacle containing fish taken under a haul seine permit unless the same bears a label showing the name and address of the owner of the seine and a statement of the kind of fish contained in it.

F. Reporting. The holder of a permit to take fish for sale by means of haul seines shall keep a record of the pounds of fish taken by species and location (name and county of water body), and the pounds of each species sold.

## **4VAC15-340-30. Gill nets.**

A. Authorization to take fish. A gill net permit shall authorize the holder thereof to take nongame fish during the times and in the waters and for the purposes provided for in this section. Such gill net shall not be more than 300 feet in length. The mesh size shall be not less than 1 inch bar or square mesh (three-inch stretch mesh). Applicants must annually purchase tags for each net the applicant intends to operate and attach a department tag to each net prior to use. A single permit will be issued to the permittee and shall list each tag number the permittee has been issued. All nets must be checked daily and all game fish returned to the wild.

B. Permit holder to be present when gill net is being set and checked for fish. The holder of a gill net permit must be present with the net at all times when it is being set and checked for fish. The holder may have others to assist him, and such persons assisting are not required to have a permit. However, those assisting the permittee must meet the fishing license requirements of the Commonwealth.

C. Times and places permitted in Virginia Beach City; fish which may be taken. Gill nets may be used in Virginia Beach City in Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake) and North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River) for the taking of mullet only for table use and also for sale from July 1 through November 1, both dates inclusive; and for the taking of other nongame fish, except mullet, alewife, and blueback herring, for table use and also for sale from November 1 through March 31, both dates inclusive. The harvest limit for anadromous American and hickory shad shall be 10 per day, in the aggregate. Gill nets set in Back Bay waters shall be at least 300 feet from any other net and at least 300 feet from the shoreline. All such

nets must be marked at both ends and at least every 100 feet along the length of the net with a five-inch by 12-inch minimum dimensions float.

**EDITOR'S NOTE:** The proposed amendments to 4VAC15-340-40, which appeared in 23:25 VA.R. 4138-4139 August 20, 2007, were not adopted by the board.

## **4VAC15-340-40. Dip nets; generally.**

A. Authorization to take fish with dip nets. A county dip net permit shall authorize the holder to take shad, [ herring, ] mullet and suckers (daily creel (possession) limits for shad [ and herring ] are found in 4VAC15-320-25, there is no limit for mullet, and subsection D of this section provides limits for suckers), in the county named on the face of the permit with a dip net in inland waters, except where otherwise prohibited by local legislation or by the sections appearing in this chapter.

B. Persons required to have permit; inspection by game wardens. A dip net permit, or valid fishing license, shall be required for all persons using or assisting in the use of a dip net and permits, or licenses, shall be carried at all times while using such nets and shall be subject to inspection by game wardens.

C. Release of certain fish netted. All fish, except shad, [ herring, ] mullet, suckers and carp, when taken with a dip net shall be returned to the water alive with as little injury as possible.

D. Special provisions applicable only to suckers. The following special provisions shall apply only to the taking of suckers, with a dip net:

1. Not more than 20 may be taken by any person in one day;
2. The open season for taking same with a dip net shall be from February 15 through May 15, both dates inclusive; and
3. Dip nets for taking such fish shall not be more than six feet square.

VA.R. Doc. No. R07-821; Filed December 28, 2007, 3:17 a.m.

## **Final Regulation**

**Title of Regulation:** **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, Etc (amending 4VAC15-350-20, 4VAC15-350-30, 4VAC15-350-60, 4VAC15-350-70).**

**Statutory Authority:** §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** January 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad

Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendments (i) add a reference to clarify the creel and length limits for nongame fish, (ii) add the word "common" to "carp," (iii) add northern snakehead to the list of fish that can be taken with a bow and arrow, (iv) remove "crossbows" from the prohibited type of bows and arrows, and (v) add a section to clarify that an unlimited number of common carp, northern snakehead, and gar can be taken with a bow and arrow, and snakeheads must be reported to the department.*

**4VAC15-350-20. Gigs, grab hooks, etc.; certain counties east of the Blue Ridge Mountains.**

It shall be lawful to take nongame fish (daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25) at any time by snagging, grabbing, snaring, giggering, and with a striking iron in all waters of the following counties, except public impoundments, the Roanoke (Staunton) and Dan rivers, the James River in Goochland County and those waters stocked by the department: Amelia, Appomattox, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Dinwiddie, Goochland, Greensville, Halifax, Louisa, Lunenburg, Mecklenburg, Nottoway, Pittsylvania and Prince Edward.

**4VAC15-350-30. Gigs, grab hooks, etc.; certain counties west of the Blue Ridge Mountains.**

Except as otherwise provided by local legislation, it shall be lawful to take nongame fish (daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25) in the daytime by snagging, grabbing, snaring, giggering, and with a striking iron from April 1 through May 15, both dates inclusive, and October 1 through November 30, both dates inclusive, in the following waters: Buchanan County, all waters except Dismal River; Grayson County, New River; Lee County, Powell River; Russell County, Clinch River; Scott County, Clinch River and its tributaries; Tazewell County, Dry Run Creek; Washington County, Middle and South Forks of the Holston River; Wise County, Clinch River. The bag limit for taking suckers or red horse provided for in this section shall be 20 per day.

**4VAC15-350-60. Trotlines, juglines or set poles.**

A. Generally. Except as otherwise provided by local legislation and by subsection B of this section, and except on waters stocked with trout and within 600 feet of any dam, it shall be lawful to use trotlines, juglines or set poles for the purpose of taking nongame fish (daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25) and turtles (limits for turtles are found in 4VAC15-360-10), provided that no live bait is used. Notwithstanding the provisions of this section, live bait other than game fish may

be used on trotlines to take catfish in the Clinch River in the Counties of Russell, Scott and Wise. Any person setting or in possession of a trotline, jugline or set pole shall have it clearly marked by permanent means with his name, address and telephone number, and is required to check all lines at least once each day and remove all fish and animals caught. This requirement shall not apply to landowners on private ponds, nor to a bona fide tenant or lessee on private ponds within the bounds of land rented or leased by him, nor to anyone transporting any such device from its place of purchase.

B. Quantico Marine Reservation. It shall be unlawful to fish with trotlines in any waters within the confines of Quantico Marine Reservation.

**4VAC15-350-70. Taking common carp, northern snakehead, and gar with bow and arrow.**

A. Season. Except as otherwise provided by local legislation or as posted, it shall be lawful to take common carp, northern snakehead, and gar from the public inland waters of the Commonwealth, except waters stocked with trout, by means of bow and arrow.

B. ~~Crossbows, poison~~ Poison arrows or explosive-head arrows prohibited. It shall be unlawful to use ~~a crossbow,~~ poison arrows or arrows with explosive heads at any time for the purpose of taking common carp, northern snakehead, or gar in the public inland waters of the Commonwealth.

C. Fishing license required. All persons taking fish in the manner mentioned in this section shall be required to have a regular fishing license.

D. Creel limits. Common carp, northern snakehead, and gar – unlimited, provided that any angler taking northern snakehead immediately kill such fish and notify the department, as soon as practicable, of such actions.

VA.R. Doc. No. R07-822; Filed December 28, 2007, 11:59 a.m.

**Final Regulation**

Title of Regulation: **4VAC15-360. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish (amending 4VAC15-360-10).**

Statutory Authority: §§29.1-103, 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2008.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.



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## Summary:

*The amendments (i) allow for the liberation of certain native species of amphibians and reptiles captured and held live under certain conditions, and (ii) allow for the use of turtle traps (hoop nets) for the taking of snapping turtles.*

### **4VAC15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.**

A. Possession limits. Except as otherwise provided for in §29.1-418 of the Code of Virginia, 4VAC15-20-130, subdivision 8 of 4VAC15-320-40 and the sections of this chapter, it shall be lawful to capture and possess live for private use and not for sale no more than five individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of amphibian and reptile and 20 individuals of any single native or naturalized (as defined in 4VAC15-20-50) species of aquatic invertebrate and nongame fish unless specifically listed below:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, bowfin, longnose gar, mullet, yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead, white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, and goldfish.
2. See 4VAC15-320-25 for American shad, hickory shad, channel catfish, white catfish, flathead catfish, and blue catfish limits.
3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), salamanders (each under six inches in total length), crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders and crayfish which cannot be sold pursuant to the provisions of 4VAC15-360-60 and 4VAC15-360-70. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.
4. The daily limit for bullfrogs and snapping turtles shall be 15 and bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.
5. The following species may not be taken in any number for private use: candy darter, eastern hellbender,

diamondback terrapin, and spotted turtle. [ Any individual of these species possessed in captivity in Virginia on June 30, 2006, may be maintained in captivity until the animal's death, but the animal may not be sold or released on or after July 1, 2006. Any transfer of animals must have prior authorization of the director or his designee and may only be made to an educational facility. ]

6. Native amphibians and reptiles, as defined in 4VAC15-20-50, that are captured within the Commonwealth and possessed live for private use and not for sale may be liberated under the following conditions:

- a. Period of captivity does not exceed 30 days;
- b. Animals must be liberated at the site of capture;
- c. Animals must have been housed separately from other wild-caught and domestic animals; and
- d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

B. Methods of taking species in subsection A. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A may only be taken by hand, hook and line, with a seine not exceeding four feet in depth by 10 feet in length, an umbrella type net not exceeding five by five feet square, small minnow traps with throat openings no larger than one inch in diameter, cast nets, and hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of §29.1-416 of the Code of Virginia). Gizzard shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take mussels and the spiny riversnail (*Io fluviialis*) in the Tennessee drainage in Virginia (Clinch, Powell and the North, South and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels in the James River and tributaries west of U.S. Route 29, in the entire North Fork of the Shenandoah River, and in the entire Nottoway River.

D. Areas restricted from taking salamanders. Except as provided for in §§29.1-418 and 29.1-568 of the Code of

Virginia, it shall be unlawful to take salamanders in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth and Washington Counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.

VA.R. Doc. No. R07-825; Filed December 28, 2007, 11:55 a.m.

**MARINE RESOURCES COMMISSION**

**REGISTRAR'S NOTICE:** The following regulations filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with §2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Final Regulation**

**Title of Regulation:** 4VAC20-150. **Pertaining to the Dredging of Conchs (also known as Whelks) (amending 4VAC20-150-30).**

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

**Effective Date:** January 1, 2008.

**Agency Contact:** Brandy L. Battle, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email brandy.battle@mrc.virginia.gov.

**Summary:**

*The amendments correct buoy markers for conch dredge Area Number 2 and Area Number 4.*

**4VAC20-150-30. Areas and seasons.**

A. Area Number 1 shall be that area where dredging for crabs is permitted by law and Marine Resources Commission, 4VAC20-90-10 ~~et seq.~~, and the season for this area shall be the same as that season established by §28.2-707 of the Code of Virginia, as may be adjusted by the Marine Resources Commission.

B. Area Number 2 shall be that area east of the Chesapeake Bay Bridge-Tunnel and will include that area known as the mouth or entrance to the Chesapeake Bay. It is more particularly described as follows: beginning at the one-mile marker on the Chesapeake Bay Bridge-Tunnel; thence northerly along the bridge tunnel to Fisherman's Island; thence along the southeast shoreline of Fisherman's Island to the lower portion of Smith Island at a point that is due east of Cape Charles Lighthouse; thence due east three nautical miles to the Three Nautical Mile Line; thence along said Three Nautical Mile Line; southerly to 36° 55' N Latitude; thence due west along said latitude to buoy C"1"; thence northerly to buoy R"2C"; thence southwesterly to buoy G"1TS", thence

southwesterly to buoy G"1" G"1L", thence northwesterly thence to the point of beginning. This description shall specifically exclude all inlets of Fishermans and Smith Islands, and all waters west of said islands. The season for this area shall be from April 1 through September 30, inclusive, of each year.

C. Area Number 3 shall be that area bounded on the north by 36° 45' N Latitude, bounded on the west by mean low water, bounded on the south by the Virginia-North Carolina border, and bounded on the east by the Three Nautical Mile Line; and the season for this area shall be year round.

D. Area Number 4 shall be that area bounded on the north by a line from buoy RN"36A" at the town of Cape Charles and running NNW to Wolf Trap Light, bounded on the west by a line drawn from Wolf Trap Light and running southerly through buoys RN"2", C"1NP", ~~RN"2"~~ RN"2MB", C"1MB", RN"8" R"8", at the York River Entrance Channel; thence southeasterly bounded by the northern side of said channel to buoy R"2"; thence southerly to buoy RW"HC"; thence southwesterly to buoy G"11" at Thimble Shoal Channel; thence bounded on the south by the south side of said channel until its intersection with the Chesapeake Bay Bridge-Tunnel; thence bounded on the east by the Chesapeake Bay Bridge-Tunnel and a line drawn from the terminus of the Chesapeake Bay Bridge-Tunnel on Fishermans Island back to buoy RN"36A" but remaining offshore of any and all fixed fishing devices. The season for this area shall be May 1 through September 30, inclusive, of each year.

E. Area Number 5 shall consist of two parts:

The south part shall be that area in Virginia's portion of the Territorial Sea between 36° 55' N Latitude and 36° 45' N Latitude excluding the inshore one mile. It is more particularly described as follows: beginning at buoy C"1" on the 36° 55' N Latitude; thence along said latitude east to the Three Nautical Mile Line; thence southerly along said Three Nautical Mile Line to 36° 45' N Latitude; thence along said latitude west to the one-mile limit; thence northerly along said one-mile limit to the 36° 55' N Latitude; thence east along said latitude to buoy C"1" and the point of beginning.

The north part shall be that area between the Virginia-Maryland line and Cape Charles Lighthouse and comprising Virginia's portion of the Territorial Sea off of Accomack and Northampton Counties. It is more particularly described as follows: beginning at a point on the mean low water, which point is due east of the Cape Charles Lighthouse; thence northerly along the low water mark of the eastern side of the Eastern Shore Barrier Islands to the Virginia-Maryland border; thence along said border easterly three nautical miles to the Three Nautical Mile Line; thence southerly along said Three Nautical Mile Line to a line that runs due east from Cape Charles Lighthouse; thence along said line three nautical miles to the point of beginning. Said boundary to run

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from headland to headland across all inlets between said Barrier Islands. This description shall specifically exclude all inlets and all waters west of said islands.

The season for Area Number 5 shall be from January 1 through August 31, inclusive, and from November 1 through December 31, inclusive, of each year.

VA.R. Doc. No. R08-1042; Filed December 26, 2007, 9:12 a.m.

## Final Regulation

**Title of Regulation:** **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-55, 4VAC20-252-120, 4VAC20-252-150, 4VAC20-252-160, 4VAC20-252-230).**

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

**Effective Date:** January 1, 2008.

**Agency Contact:** Brandy L. Battle, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email [brandy.battle@mrc.virginia.gov](mailto:brandy.battle@mrc.virginia.gov).

### Summary:

*The amendments (i) increase the recreational and commercial fisheries harvest quota to 1,642,242 pounds each; (ii) add conditions under which it is unlawful for any person aboard any vessel to possess striped bass tags and provide that unlawful striped bass tags will be confiscated and impounded by the commission; (iii) make it lawful to possess Maryland or Potomac River Fisheries Commission current year striped bass tags in the Great Wicomico River and those Virginia waters north and west of a line beginning at Fleeton Point, extending to the southern most point of Tangier Island, and to a point due north of the Virginia-Maryland state boundary; (iv) require that striped bass tags be placed on fish prior to leaving the place of capture and provide that the fish not be brought to shore unless it is tagged; (v) require the removal of any confiscated striped bass from an individual's harvest quota and the catch inventoried by the marine police officer by securing a minimum of two bids for the purchase of, or provide the striped bass to the commission staff for biological sampling of the catch; (vi) require the return of all unused tags within 30 days of harvesting individual harvest quota or by the second Thursday in January, whichever comes first; and (vii) state that any person in violation of this chapter shall not receive or transfer striped bass commercial harvest quota and shall not receive additional tag distributions.*

### 4VAC20-252-55. Recreational harvest quota.

The total allowable level of all recreational harvest of striped bass for all open seasons and for all legal gear shall be ~~1,554,302~~ 1,642,242 pounds of whole fish. At such time as

the total recreational harvest of striped bass is projected to reach ~~1,554,302~~ 1,642,242 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for recreational purposes.

### 4VAC20-252-120. Concerning commercial fishing: general.

A. It shall be unlawful for any person to engage in the commercial fishery for striped bass without first having the necessary commercial fisherman's registration license and appropriate gear license as required by Title 28.2 of the Code of Virginia, and the special permit to fish for striped bass established in 4VAC20-252-130, except as provided in subsection ~~E~~ G of 4VAC20-252-160.

B. It shall be unlawful for any person fishing commercially to possess any striped bass taken outside any open commercial season or area, or with gear inapplicable to the season and area, as specified in 4VAC20-252-140. Any striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person while actively fishing pursuant to a commercial fishery to possess any striped bass that is less than the minimum size limit applicable for the area and season then open and being fished. Any striped bass caught that does not meet the applicable minimum size limit shall be returned to the water immediately.

D. All striped bass in the possession of any person for the purpose of sale must be identified with a tamper-evident sealed tag that has been approved and issued by the appropriate authority in the jurisdiction of capture. Whole striped bass shall have tags attached directly to the fish. Processed or filleted striped bass must be accompanied by the tags removed from the fish when processed. Any person who possesses any amount of striped bass in excess of the maximum number allowed for a licensed recreational fisherman as described in 4VAC20-252-60 through 4VAC20-252-110, inclusive, shall be considered as possessing all striped bass for the purpose of sale. When any person possesses striped bass in excess of the maximum number allowed a licensed recreational fisherman, all striped bass of said person shall be tagged, and the possession of any untagged striped bass shall be prima facie evidence of a violation of this chapter and subject to the provisions of 4VAC20-252-160 H and I and 4VAC20-252-230.

E. When the striped bass are in the possession of any person, other than the original harvester, for the purpose of resale, the striped bass shall be accompanied by a bill of sale which shall include the name of the seller, the permit or license number of the seller if such permit or license is required in the jurisdiction of harvest, the date of sale, the pounds of striped bass in possession, the location of catch and the gear type used to harvest the striped bass. If the striped bass product for

sale is fillets, the bill of sale shall also specify the number of fillets.

**4VAC20-252-150. Individual commercial harvest quota.**

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be ~~1,554,302~~ 1,642,242 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach ~~1,554,302~~ 1,642,242 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be 184,853 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach 184,853 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning an individual's tags for commercial harvests in the Chesapeake area as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to an estimate in numbers of fish per individual harvest quota based on the average weight of striped bass harvested by the permitted individual during the previous fishing year. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

D. For the purposes of assigning an individual's tags for commercial harvests in the coastal area of Virginia as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish per individual commercial harvest quota, based on the estimate of the average weight of striped bass harvested by the permitted individual during the previous fishing year. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

**4VAC20-252-160. Individual transferable shares; tagging.**

A. For each person permitted under the provisions of 4VAC20-252-130 to harvest striped bass commercially, a

weight quota shall be issued to permitted fishermen in amounts equal to the percentage share of the Chesapeake area and coastal area striped bass harvest quota they hold. Tags issued for Chesapeake area harvest quota shall only be used for striped bass harvests in the Chesapeake area, and tags issued for the coastal area harvest quota shall only be used for striped bass harvests in the coastal area.

B. It shall be unlawful for any person or any person aboard any vessel to possess ~~Chesapeake area tags in the coastal area~~ striped bass tags, as described in this subsection except as described in subsection C of this section. Unlawful striped bass tags shall be confiscated and impounded by the commission and returned to the issuing agency.

1. Chesapeake area tags in the coastal area.
2. Tags issued for previous years for either the Chesapeake area or coastal area.
3. Potomac River Fisheries Commission striped bass tags in Virginia waters, excluding the Virginia tributaries of the Potomac River.
4. Maryland striped bass tags in Virginia waters.
5. Tags from any other jurisdiction in Virginia waters.

C. It shall be lawful for any person or any person onboard a vessel to possess Maryland or Potomac River Fisheries Commission current year striped bass tags in the Great Wicomico River and those Virginia waters north and west of a line beginning at Fleeton Point; thence extending to the southern most point of Tangier Island, and thence to a point due north on the Virginia-Maryland state boundary. Unlawful striped bass tags shall be confiscated and impounded by the commission and returned to the issuing agency.

~~C.~~ D. Shares of the commercial striped bass quota held by any permitted fisherman may be transferred to any other person who is a licensed registered commercial fisherman; such transfer shall allow the transferee to harvest striped bass in a quantity equal to the share transferred. Any transfer of striped bass commercial shares shall be limited by the following conditions.

1. Commercial striped bass shares shall not be transferred in any quantity less than 200 pounds, and transfers shall be prohibited during the period of December 1 through February 1.
2. No licensed registered commercial fisherman shall hold more than 2.0% of the total annual Chesapeake area commercial striped bass harvest quota or more than 11% of the total annual coastal area commercial striped bass harvest quota.
3. No transfer of striped bass commercial harvest quota shall be authorized by the commission unless transferor and transferee provide up-to-date records of all commercial

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landings of striped bass and striped bass tag use to the commission prior to such transfer.

4. No transfer of striped bass commercial harvest quota shall be authorized unless such transfer is documented on a form provided by the Marine Resources Commission, notarized by a lawful Notary Public, and approved by the commissioner.

~~D.~~ E. Transfers of Chesapeake area or coastal area striped bass commercial quota from one person to another may be permanent or temporary. Transferred quota from the Chesapeake area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the Chesapeake area, and transferred quota from the coastal area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the coastal area. Permanent transfers of commercial quota shall grant to the transferee that transferred percentage of the quota for future years, and the transferor loses that same transferred percentage of the quota in future years. Temporary transfers of individual striped bass commercial harvest quota shall allow the transferee to harvest only that transferred percentage of the quota during the year in which the transfer is approved. Transferors are solely responsible for any overage of the transferred percentage of the quota by the transferee. Thereafter, any percentage of the transferred striped bass commercial quota, less any overage incurred by the transferee, reverts back to the transferor.

~~E.~~ F. The commission will issue striped bass tags to permitted striped bass commercial fishermen as follows: those fishermen permitted only for Chesapeake area or coastal area harvests of striped bass will receive their allotment of tags prior to the start of the fishing season. Any permitted fisherman, eligible for both Chesapeake area and coastal area tags, shall receive only one type of area-specific tag allotment, of his choosing, prior to the start of the fishing season, and his other type of area-specific tags will be distributed when it has been determined from the commission's mandatory harvest reporting program that the fisherman has used all of his first allotment of tags and has not exceeded his individual harvest quota. The commissioner may authorize the distribution of the second allotment of area-specific tags to a fisherman eligible for both Chesapeake area and Coastal area tags prior to that fisherman's complete use of his first allotment of tags, provided that fisherman surrenders any remaining tags of his first allotment of tags.

~~F.~~ G. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. The permittee shall be on board the boat or vessel when striped bass are harvested and tags are applied. Nothing in this subsection shall prevent a permitted commercial hook-and-line fisherman from using three crew members who are not registered commercial fishermen to assist in the harvest of his allotment of striped bass.

~~G.~~ H. At the place of capture, ~~and as soon as possible after capture~~ and before leaving that place of capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

~~H.~~ I. It shall be unlawful to bring to shore any commercially caught striped bass that has not been ~~marked~~ tagged at the place of capture by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession. If a permittee violates this section, the entire amount of untagged striped bass, as well as the number of tags equal to the amount of striped bass in his possession, shall be confiscated. Any confiscated striped bass shall be considered as a removal from that permittee's harvest quota. Any confiscated striped bass tags shall be impounded by the commission. Upon confiscation, the marine police officer shall inventory the confiscated striped bass and may redistribute the catch by one or a combination of the following methods:

1. The marine police officer shall secure a minimum of two bids for purchase of the confiscated striped bass from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder, and all funds derived from such sale shall be deposited to the Commonwealth pending court resolution of the charge of violating the possession limits established in this chapter. All of the collected funds and confiscated tags will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilt.

2. The marine police officer shall provide the confiscated striped bass to commission staff for biological sampling of the catch. Upon receipt of confiscated striped bass, commission staff will secure a minimum of two estimates of value per pound for striped bass from approved and licensed seafood buyers. The confiscated tags and the estimated value of confiscated striped bass provided for biological sampling will be reimbursed to the accused upon a finding of innocence or retained by the commission upon a finding of guilt.

~~I.~~ J. Altering or attempting to alter any tag for the purpose of reuse shall constitute a violation of this chapter.

~~J.~~ K. Prior to receiving any commercial season's allotment of striped bass tags, a permitted commercial harvester shall be required to have returned all unused tags from the previous commercial season to the commission within 30 days of harvesting their individual harvest quota, or by the second Thursday in January, whichever comes first. Any unused tags that cannot be turned in to the commission shall be accounted for by the harvester submitting an affidavit to the commission that explains the disposition of the unused tags that are not

able to be turned into the commission. Each individual shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for any unused tags that are not turned in to the commission.

~~K.~~ L. Any individual with remaining unused striped bass commercial quota in the current year requesting additional commercial season striped bass tags shall provide up-to-date records of landings and account for all previously issued tags prior to receiving an additional allotment of tags. The harvester shall submit an affidavit to the commission that explains the disposition of the tags that are not accounted for and shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for such tags to the commission.

~~L.~~ M. For the ~~2007~~ commercial fishing season, one type of tag shall be distributed to Chesapeake area permittees and one type of tag shall be distributed to coastal area permittees. For the Chesapeake area, the tag shall only be used on striped bass 18 inches or greater. For the coastal area, the tag shall only be used on striped bass 28 inches or greater. The possession of any improperly tagged striped bass by any permitted striped bass fisherman shall be a violation of this chapter.

**4VAC20-252-230. Sanctions.**

A. Any person failing to submit any report required by this chapter shall be denied a striped bass permit for the following year.

B. It shall be unlawful for any person with a pending violation of this chapter or found guilty of violating any provision of this chapter to receive or transfer striped bass commercial harvest quota as described in 4VAC20-252-160.

C. It shall be unlawful for any person with a pending violation of this chapter or found guilty of violating any provision of this chapter to receive additional tag distributions as described in 4VAC20-252-160.

~~B.~~ D. Any person found guilty of violating any provision of this chapter may have his permit or license revoked at any time upon review by the commission as provided for in §28.2-232 of the Code of Virginia. If the commission revokes any person's permit for an aquaculture facility, then that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

V.A.R. Doc. No. R08-1101; Filed December 26, 2007, 9:13 a.m.

**Final Regulation**

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-30, 4VAC20-620-40).**

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

Effective Date: December 27, 2007.

Agency Contact: Brandy L. Battle, Agency Regulatory Coordinator, Marine Resources Commission, 2600

Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email brandy.battle@mrc.virginia.gov.

Summary:

*This amendments (i) establish that from the first Monday in January through the day preceding the last Monday in October, landings harvested outside of Virginia are limited to an amount of pounds equal to 70.7% of the total specified; (ii) change the beginning and ending days for commercial vessel possession limitations; (iii) from the last Monday in October through December 31 of each year (a) prohibit any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel, once it is projected and announced that 85% of the quota has been taken, and (b) prohibit any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel in Virginia any amount of Summer Flounder once it has been projected and announced that 100% of the quota has been taken.*

**4VAC20-620-30. Commercial harvest quotas.**

A. During each calendar year, commercial landings of Summer Flounder shall be limited to the total pounds calculated pursuant to the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Summer Flounder Fishery Management Plan, as approved by the National Marine Fisheries Service on August 6, 1992 (50 CFR Part 625); and shall be distributed as described in subsections B through ~~H~~ G of this section.

B. The commercial harvest of Summer Flounder from Virginia tidal waters for each calendar year shall be limited to 300,000 pounds. Out of this amount, 142,114 pounds shall be set aside for a Chesapeake Bay-wide harvest quota.

C. From the first Monday in January through ~~March 31~~ the day preceding the last Monday in October of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to ~~64.3%~~ 70.7% of the total ~~specified~~ described in subsection A of this section after deducting the amount specified in subsection B of this section.

~~D. During the period of April 1 through June 30 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 6.4% of the total specified in subsection A of this section after deducting the amount specified in subsection B, except as modified by 4VAC20-620-40.~~

E. D. From the last Monday in October through December 31 of each calendar year, landings of Summer Flounder harvested outside of Virginia shall be limited to an amount of pounds equal to 29.3% of the total ~~specified~~ described in

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subsection A of this section after deducting the amount specified in subsection B of this section and as may be further modified by subsection ~~F~~ E.

~~F~~ E. During the ~~periods~~ period set forth in ~~subsections C and D~~ of this section, should landings exceed or fall short of the quota specified for that period any such excess shall be deducted from, and any such shortage shall be added to, the quota for the period set forth in subsection ~~E~~ D of this section. ~~During the period specified in subsection B of this section, should~~ Should landings specified in subsection B of this section be projected to fall short of the quota specified for that period, any such shortage shall be added to the quota for the period set forth in subsection ~~E~~ D of this section. ~~A projection of harvest under this subsection will be made on or about November 1.~~

~~G~~ F. For each of the time periods and quotas set forth in subsections ~~C, D, and E~~ of this section, the Marine Resources Commission will give timely notice to the industry of the calculated poundages and any adjustments thereto. It shall be unlawful for any person to harvest or to land Summer Flounder for commercial purposes after the commercial harvest or landing quota as described in this section has been attained and announced as such. If a person lands Summer Flounder after the harvest or landing quota has been attained and announced as such, the entire amount of Summer Flounder in that person's possession shall be confiscated.

~~H~~ G. It shall be unlawful for any buyer of seafood to receive any Summer Flounder after any commercial harvest or landing quota as described in this section has been attained and announced as such.

## **4VAC20-620-40. Commercial vessel possession limitations.**

A. From January 1 through the day preceding the ~~fourth Monday in January~~ first Monday in February, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

B. From the ~~fourth Monday in January~~ first Monday in February through ~~March 31 of each year~~ the day preceding the last Monday in October, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters an amount of Summer Flounder in excess of 12,500 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice within each consecutive 10-day period, with the first 10-day period beginning on the ~~fourth Monday in January~~ the first Monday in February.
3. Land in Virginia more than a total of 12,500 pounds of Summer Flounder during each consecutive 10-day period,

with the first 10-day period beginning on the ~~fourth Monday in January~~ first Monday in February.

C. When it is projected and announced that 85% of the quota for the period from the first Monday in January through ~~March 31~~ the day preceding the last Monday in October has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.

~~D. During the period of April 1 through June 30 of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 5,000 pounds, except that when it is projected and announced that 85% of the quota for this period has been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.~~

~~E. From July 1 through the day preceding the last Monday in October of each calendar year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel.~~

~~F. D.~~ From the last Monday in October through December 31 of each year, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters an amount of Summer Flounder in excess of 10,000 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice within each consecutive 10-day period, with the first 10-day period beginning on the last Monday in October.
3. Land in Virginia more than a total of 10,000 pounds of Summer Flounder during each consecutive 10-day period, with the first 10-day period beginning on the last Monday in October.
4. Possess aboard any vessel in Virginia any amount of Summer Flounder in excess of 10% by weight of all other landed species on board the vessel once it has been projected and announced that 85% of the quota has been taken, except as described in subdivision 5 of this subsection.
5. Possess aboard any vessel in Virginia any amount of Summer Flounder once it has projected and announced that 100% of the quota has been taken.

~~G. E.~~ For each of the time periods set forth in subsections A, B, C, ~~and D, E and F~~ of this section, the Marine Resources Commission will give timely notice of any changes in possession limits.

~~H. F.~~ Each possession limit described in subsections A, B, C, ~~and D, E and F~~ of this section shall be determined by the net weight of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The net weight of any Summer Flounder found in excess of this possession limit described in subsections A, B, C, ~~and D, E and F~~ of this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder, aboard any vessel, in excess of the possession limit shall be in violation of this chapter, unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection ~~K. I.~~ of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection ~~K. I.~~ of this section.

~~I. G.~~ If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine ~~patrol~~ police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

~~J. H.~~ It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel and its captain and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 10 p.m. to 7 a.m.

~~K. I.~~ Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

~~L. J.~~ After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

VA.R. Doc. No. R08-1105; Filed December 26, 2007, 9:14 a.m.

## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### STATE BOARD OF JUVENILE JUSTICE

#### Withdrawal of Proposed Regulation

Title of Regulation: **6VAC35-30. Regulations for State Reimbursement of Local Juvenile Residential Facility Costs (amending 6VAC35-30-10 through 6VAC35-30-40, 6VAC35-30-60 through 6VAC35-30-190, adding 6VAC35-30-35, 6VAC35-30-200, 6VAC35-30-210; repealing 6VAC35-30-50).**

Statutory Authority: §66-10 of the Code of Virginia.

The State Board of Juvenile Justice has WITHDRAWN the proposed regulation entitled, 6VAC35-30, Regulations for State Reimbursement of Local Juvenile Residential Facility Costs, which was published in 20:2 VA.R. 89-99 October 3, 2003. This action is being withdrawn because the agency is conducting a new periodic review of this regulation.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin St., P.O. Box 1110, Richmond, VA 23219, email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov), telephone (804) 786-6407, FAX (804) 371-0773.

VA.R. Doc. No. R03-50; Filed December 27, 2007, 10:06 a.m.



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# Regulations

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

#### Final Regulation

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-80, 18VAC30-20-170, 18VAC30-20-171).**

Statutory Authority: §§54.1-2400 and 54.1-2604 of the Code of Virginia.

Effective Date: February 20, 2008.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone 804-367-4630, FAX 804-527-4413, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

#### Summary:

*The amendments (i) establish requirements for provisional licensure in audiology for applicants who have met the educational and examination qualifications in order to complete their clinical experience, (ii) set out the requirements for supervision of persons practicing with a provisional license, and (iii) specify that an applicant for full licensure in audiology must have completed their education, examination, and clinical experience resulting in certification from the American Board of Audiology (ABA) or the American Speech-Language-Hearing Association (ASHA).*

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

#### 18VAC30-20-80. Fees.

A. The following fees shall be paid as applicable for licensure:

1. Application for audiology or speech-language pathology license	\$135
2. Application for school speech-language pathology license	\$70
3. Verification of licensure requests from other states	\$20
4. Annual renewal of audiology or speech-language pathology license	\$75
5. Late renewal of audiology or speech-language pathology license	\$25

6. Annual renewal of school speech-language pathology license	\$40
7. Late renewal of school speech-language pathology license	\$15
8. Reinstatement of audiology or speech-language pathology license	\$135
9. Reinstatement of school speech-language pathology license	\$70
10. Duplicate wall certificates	\$25
11. Duplicate license	\$5
12. Returned check	\$35
13. Inactive license renewal for audiology or speech-language pathology	\$40
14. Inactive license renewal for school speech-language pathology	\$20
15. Approval of a continuing education sponsor	\$200
<u>16. Application for provisional license in audiology</u>	<u>\$50</u>
<u>17. Renewal of provisional license in audiology</u>	<u>\$25</u>

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refunded once submitted.

#### Part III Requirements for Licensure

#### 18VAC30-20-170. Requirements for licensure.

A. The board may grant a license to an applicant who:

1. Holds a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language-Hearing Association, certification issued by the American Board of Audiology or any other accrediting body recognized by the board. Verification of currency shall be in the form of a certified letter from a recognized accrediting body issued within six months prior to licensure; and
2. Has passed the qualifying examination from an accrediting body recognized by the board within three years preceding the date of applying for licensure, or has been actively engaged in the respective profession for which he seeks licensure for one of the past three consecutive years preceding the date of application; or

B. The board may grant a license to an applicant [ for licensure as a speech-language pathologist ] who:

1. Holds a master's [ degree or its equivalent as determined by the board ] or a doctoral degree from a college or

university whose [~~audiology and~~] speech-language program is [~~regionally~~] accredited by the [Council on Academic Accreditation of the] American Speech-Language-Hearing Association or an equivalent accrediting body; and

2. Has passed a qualifying examination from an accrediting body recognized by the board within three years preceding the date of applying for licensure in Virginia or has been actively engaged [~~in the respective profession for which he seeks licensure as a speech-language pathologist~~] for one of the past three consecutive years preceding the date of application.

C. The board may grant a license to an applicant as a school speech-language pathologist who:

1. Holds a master's degree in speech-language-pathology; and
2. Holds an endorsement in speech-language pathology from the Virginia Department of Education.

**18VAC30-20-171. Provisional licensure in audiology.**

A. The board may grant a provisional license in audiology to an applicant who submits a completed application and fee with documentation that the applicant:

1. Is currently enrolled in a doctoral program in audiology at a college or university whose audiology program is accredited by the [ Council on Academic Accreditation of the ] American Speech-Language-Hearing Association or an equivalent accrediting body;
2. Has successfully completed all the [ didactic ] coursework required for the doctoral degree as documented by the audiology program; and
3. Has passed a qualifying examination from an accrediting body recognized by the board within three years preceding the date of applying for provisional licensure in Virginia.

B. A provisional license shall expire [ ~~12~~ 18 ] months from the date of issuance and may be renewed for an additional [ ~~12~~ six ] months by payment of a renewal fee. Renewal of a provisional license beyond 24 months shall be for good cause shown as determined by a committee of the board.

C. The holder of a provisional license in audiology shall only practice under the supervision of a licensed audiologist in order to obtain clinical experience as required for [ licensure in 18VAC30-20-170 certification by the American Speech-Language-Hearing Association, the American Board of Audiology or any other accrediting body recognized by the board ]. The provisional licensee shall be responsible and accountable for the safe performance of those direct patient care tasks to which he has been assigned.

D. Licensed audiologists providing supervision shall:

1. [ Notify the board of the intent to provide supervision for a provisional licensee;

2. ] Document the frequency and nature of the supervision of provisional licensees;

[ ~~2. 3. ] Be responsible and accountable for the assignment of patients and tasks based on their assessment and evaluation of the provisional licensee's knowledge and skills; and~~

[ ~~3. 4. ] Monitor clinical performance and intervene if necessary for the safety and protection of the patients.~~

E. The identity of a provisional licensee shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 9906 Mayland Drive, Suite 300, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

**FORMS**

Application for a License to Practice by ASHA Certification (rev. 6/04).

Application for a License to Practice by ABA (AAA) Certification (rev. 6/04).

Application for Provisional Licensure to Practice Audiology (eff. 7/06).

Form A, Certification of Audiology Education (eff. 7/06).

Application for a License to Practice by Education (rev. 6/04).

Application for a License as a School Speech-Language Pathologist (rev. 6/04).

Application for Reinstatement of License to Practice (rev. 10/02).

Application for Reinstatement of License to Practice as: School Speech Language Pathologist (rev. 6/04).

Renewal Notice and Application, 2201 (rev. 6/04).

Renewal Notice and Application, 2202 (rev. 6/04).

Renewal Notice and Application, 2203 (rev. 6/04).

Continued Competency Activity and Assessment Form (eff. 3/01).

Application for Approval as a Continuing Competency Sponsor (rev. 6/04).

VA.R. Doc. No. R06-325; Filed January 2, 2008, 9:06 a.m.

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# Regulations

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## BOARD OF DENTISTRY

### Fast-Track Regulation

**Title of Regulation:** 18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18VAC60-20-220).

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

**Public Hearing Information:** No public hearings are scheduled.

**Public comments:** Public comments may be submitted until 5 p.m. on February 20, 2008.

**Effective Date:** March 10, 2008.

**Agency Contact:** Sandra Reen, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system.

**Purpose:** The board has clarified that scaling and/or root planing of teeth can only be delegated by a dentist to a dental hygienist. While the board believes the current regulation is unambiguous, it has taken action to ensure that there is no confusion about the requirement to delegate scaling and/or root planing only to licensed dental hygienists. Currently, dental assistants are unregulated and limited in function to chairside duties assisting the dentist. Delegation of a treatment like scaling to an assistant with no specific training or accountability may be potentially harmful to a patient. To protect the public health and safety, the board has acted to clarify the regulation.

**Rationale for Using Fast-Track Process:** The fast-track process is being used to promulgate the amendments because there is general agreement that a clarification is necessary to resolve any possible misinterpretation of the rule by a licensee or his employees. There is no change in the board's policy or its current interpretation.

**Substance:** There are no substantive amendments.

**Issues:** There are no disadvantages to the public of these amendments. Amendments to regulation are intended to ensure that practitioners and patients alike are protected by stating the prohibition on delegation of scaling and/or root planing to dental assistants.

The only advantage to the Commonwealth may be the avoidance of complaints filed against dentists for the improper use of assistants to perform scaling on patients in violation of the regulations on delegation of dental task.

There are no disadvantages to the agency or the Commonwealth.

### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes to amend its Regulations Governing the Practice of Dentistry and Dental Hygiene to clarify that scaling and root planing procedures, whether performed jointly or separately, may only be performed by a dentist or delegated to a dental hygienist under supervision. The Board is proposing this change in response to a petition for rulemaking.

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

**Estimated Economic Impact.** The Board's Regulations Governing the Practice of Dentistry and Dental Hygiene delimit the duties that dentists may delegate only to dental hygienists (and not other dental office staff). Among these enumerated duties is the "scaling and root planing of natural or restored teeth using hand instruments, rotary instruments and ultrasonic devices." The Board proposes to clarify this portion of the regulations so that it allows dental hygienists to perform "scaling and/or root planing of natural or restored teeth using hand instruments, rotary instruments and ultrasonic devices." Because these procedures already must be performed by a dentist or dental hygienist, dental practice is unlikely to change because of this clarification. Accordingly, affected entities are unlikely to incur any costs on account of this regulatory change. To the extent that current rules seemed opaque to any interested party, these amendments should provide the benefit of clarity.

**Businesses and Entities Affected.** The Department of Health Professions (DHP) reports that the Board currently licenses 5,951 dentists and 4,447 dental hygienists. These licensees are all subject to these regulations.

**Localities Particularly Affected.** No locality will be disproportionately affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action will likely have no impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**Legal Mandate.** 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, relating to clarification of scaling and root planing.

Summary:

*The amendments clarify that the acts of scaling and root planing, whether performed jointly or individually, may only be delegated to a dental hygienist.*

**18VAC60-20-220. Dental hygienists.**

A. The following duties shall only be delegated to dental hygienists under direction with the dentist being present:

1. Scaling ~~and~~ and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia administered by the dentist.
2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

B. The following duties shall only be delegated to dental hygienists and may be delegated by written order in accordance with §54.1-3408 of the Code of Virginia to be performed under general supervision without the dentist being present:

1. Scaling ~~and~~ and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.
2. Polishing of natural and restored teeth using air polishers.
3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist.
4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents.
5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed in subsection A of this section and those listed as nondelegable in 18VAC60-20-190.

C. Nothing in this section shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

VA.R. Doc. No. R07-282; Filed January 2, 2008, 9:26 a.m.

**BOARD OF NURSING**

**Final Regulation**

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-120; adding 18VAC90-30-121).**

Statutory Authority: §§54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: February 20, 2008.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone 804-367-4515, FAX 804-527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

*The amendments respond to Chapter 750 of the 2006 Acts of Assembly, which modified the supervisory relationship of physicians and certified nurse midwives.*

*The amendments separate regulations for the practice of certified nurse midwives from the practice of other*

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*categories of licensed nurse practitioners for the purpose of describing the appropriate relationship with a licensed physician. Chapter 750 defined the relationship for licensed nurse practitioners as practice "under the supervision of a duly licensed physician," whereas a certified nurse midwife renders care "in collaboration and consultation with a duly licensed physician."*

*Amendments to regulations are necessary for consistency with the Code of Virginia.*

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

## **18VAC90-30-10. Definitions.**

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a graduate degree in nursing and which hold a national accreditation acceptable to the boards.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

~~"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.~~

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Controlling institution" means the college or university offering a nurse practitioner education program.

"Licensed nurse practitioner" means a registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathy.

~~"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications which provide for and define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes.~~

~~Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.~~

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U. S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.

"Protocol" means a written statement, jointly developed by the collaborating physician(s) and the licensed nurse practitioner(s), that directs and describes the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients.

## **18VAC90-30-120. Practice of licensed nurse practitioners other than certified nurse midwives.**

A. A ~~licensed~~ nurse practitioner licensed in a category other than certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration with and under the medical direction and supervision of a licensed physician.

B. The practice of licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10.

C. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided it is:

1. In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician;
2. Permitted by §54.1-2957.02 or applicable sections of the Code of Virginia; and
3. Not in conflict with federal law or regulation.

D. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Scope and Standards for Nurse Anesthesia Practice, Revised 2005) and under the medical direction and supervision of a doctor of medicine or a doctor of osteopathy or the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry.

~~E. A certified nurse midwife shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 1993) defined by the American College of Nurse-Midwives.~~

E. For purposes of this section, the following definitions shall apply:

"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.

"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

**18VAC90-30-121. Practice of nurse practitioners licensed as certified nurse midwives.**

A. A nurse practitioner licensed as a certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration and consultation with a licensed physician.

B. The practice of certified nurse midwives shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10.

C. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided it is:

1. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the supervising physician;
2. Permitted by §54.1-2957.02 of the Code of Virginia or applicable sections of the Code of Virginia; and
3. Not in conflict with federal law or regulation.

D. A certified nurse midwife, in collaboration and consultation with a duly licensed physician, shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 2003) defined by the American College of Nurse-Midwives.

E. For purposes of this section, the following definition shall apply:

"Collaboration and consultation" means practice in accordance with the Standards for the Practice of [ Nurse- ] Midwifery (Revised 2003) defined by the American College of Nurse-Midwives to include participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; periodic joint evaluation of services provided; and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

DOCUMENTS INCORPORATED BY REFERENCE

Guidelines Scope and Standards for Nurse Anesthesia Practice, 1998 revised 2005, American Association of Nurse Anesthetists.

Standards for the Practice of [ Nurse- ] Midwifery, 1993 revised 2003, American College of Nurse-Midwives.

VA.R. Doc. No. R06-341; Filed January 2, 2008, 9:19 a.m.

**BOARD OF PHARMACY**

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4006 A 7 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants. The Board of Pharmacy will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18VAC110-30-15).**

**Statutory Authority:** §§54.1-2400, 54.1-3304.1 and 54.1-3307 of the Code of Virginia.

**Effective Date:** February 20, 2008.

**Agency Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 527-4456, FAX (804) 527-4472, or email elizabeth.russell@dhp.virginia.gov.

**Summary:**

*The amendment eliminates the inactive license for a physician who ceases to sell drugs from his practice. During a periodic review of regulations, it was determined that such license is unnecessary and inappropriate.*

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## 18VAC110-30-15. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Fee for initial license for a practitioner of the healing arts to sell controlled substances.

1. The application fee for initial licensure shall be \$240.
2. The application fee for reinstatement of a license that has been revoked or suspended indefinitely shall be \$500.

C. Renewal of license for a practitioner of the healing arts to sell controlled substances.

1. The annual fee for renewal of an active license shall be \$90. For the annual renewal due on before December 31, 2006, the fee shall be \$50.
- ~~2. The annual fee for renewal of an inactive license shall be \$45.~~
- ~~3.~~ 2. The late fee for renewal of a license within one year after the expiration date is \$30 in addition to the annual renewal fee.
4. 3. The fee for reinstatement of a license expired for more than one year shall be \$210.

D. The fee for reinspection of any facility shall be \$150.

E. The fee for a returned check shall be \$35.

V.A.R. Doc. No. R08-1085; Filed December 20, 2007, 2:17 p.m.

## Final Regulation

**Title of Regulation:** 18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehouse (amending 18VAC110-50-10; adding 18VAC110-50-160, 18VAC110-50-170, 18VAC110-50-180, 18VAC110-50-190).

**Statutory Authority:** §§54.1-2400 and 54.1-3307 of the Code of Virginia.

**Effective Date:** February 20, 2008.

**Agency Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone 804-367-4456, FAX 804-527-4472, or email scotti.russell@dhp.virginia.gov.

### Summary:

*Part IV (18VAC110-50-160 et seq.) and applicable definitions in 18VAC110-50-10 are being added to comply with Chapter 777 of the 2005 Acts of Assembly and Chapter 632 of the 2006 Acts of Assembly, which mandate the establishment and implementation of a pedigree program for prescription drugs. The regulations also provide for exceptions to the pedigree requirements for distributions from an authorized*

*distributor of records to one other authorized distributor of records to an office-based healthcare practitioner and for emergency medical reasons as defined in regulation.*

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

## 18VAC110-50-10. Definitions.

In addition to words and terms defined in §§54.1-3300 and 54.1-3401 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Authorized distributor of record" means a wholesale distributor with whom a manufacturer has entered into a written agreement under which such wholesale distributor is either authorized to distribute all of that manufacturer's prescription drug products, or only those products listed in the agreement, for such a period of time or number of shipments as specified in the agreement.

"Control number" means the unique identifying customer number assigned by the Virginia Department of Motor Vehicles to an individual when issuing a driver's license, learner's permit, or official identification card. This number is displayed on the driver's license or ID card in lieu of the social security number.

"DEA" means the United States Drug Enforcement Administration.

"Drop shipment" means the sale and distribution of a prescription drug in which a manufacturer, third party logistics provider, or the manufacturer's exclusive distributor directly ships the prescription drug to a pharmacy, chain drug warehouse, or other person authorized to dispense or administer the prescription drug, and the pharmacy, chain drug warehouse or other authorized person is invoiced by a wholesale distributor that took title to the prescription drug during the shipping, but did not take physical possession of the prescription drug.

"Expiration date" means that date placed on a drug package by the manufacturer or repacker beyond which the product may not be dispensed or used.

"FDA" means the United States Food and Drug Administration.

"Manufacturer's exclusive distributor" means a distributor licensed by the board as a wholesale distributor or registered as a nonresident wholesale distributor who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer for a prescription drug and who takes title to that manufacturer's prescription drug, but who does not have general

responsibility to direct the sale or disposition of the prescription drug.

"Third-party logistics provider" means an entity licensed by the board as a wholesale distributor or registered as a nonresident wholesale distributor who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer for a prescription drug, but does not take title to the prescription drug and who only sells, distributes, or otherwise disposes of the prescription drug at the direction of the manufacturer.

"USP-NF" means the United States Pharmacopeia-National Formulary.

Part IV  
Pedigree Requirements

**18VAC110-50-160. Susceptible drugs.**

A. The list of drugs susceptible to counterfeiting for which a pedigree is required shall be all prescription drugs in Schedules II through VI, except that a pedigree is not required for those prescription drugs that do not leave the normal distribution channel or those that include one or more of the following additional distributions or variations to the normal distribution channel:

1. Distribution by a manufacturer's exclusive distributor;
2. Distribution by a third-party logistics provider;
3. Drop shipments;
4. Distributions to a veterinarian for veterinary use; [ and ]
5. [ Distribution from an authorized distributor of record to one other authorized distributor of record to an office-based healthcare practitioner authorized by law to dispense or administer such drug to a patient; and
6. ] Distributions for emergency medical reasons, defined as those in which (i) a state of emergency has been declared by the Governor in accordance with §54.1-3307.3 of the Code of Virginia, or (ii) there is a documented shortage of a drug, where the failure to acquire and dispense a prescription drug could result in imminent danger to patient health, and the wholesale distributor, in lieu of a pedigree, complies with the following requirements:

- a. Obtains and maintains documentation from the manufacturer attesting to a shortage of the prescription drug and its non-availability through normal distribution channels;
- b. Purchases the prescription drug only through an authorized distributor of record and maintains the name of such distributor;

c. Maintains a list of pharmacies or other authorized entities to which the prescription drug was distributed; and

d. Notifies the board within 24 hours of such a distribution.

B. Not less than annually, the board shall evaluate whether the list of susceptible drugs in subsection A of this section should be amended. The board may modify the list under its authority to adopt exempt regulations, pursuant to §2.2-4006 [ ~~A-14~~ ] of the Administrative Process Act, in accordance with the following process:

1. The board shall conduct a public hearing on any proposed amendments to subsection A of this section. Thirty days prior to conducting such hearing, the board shall give written notice of the date, time, and place of the hearing to all persons requesting to be notified of the hearings and publish proposed amendments to the list in the Virginia Register of Regulations.
2. During the public hearing, interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any amendments. Final amendments of the list shall also be published, pursuant to §2.2-4031 of the Code of Virginia, in the Virginia Register of Regulations.
3. Final amendments to the list of susceptible drugs shall become effective upon filing with the Registrar of Regulations.

**18VAC110-50-170. Requirements of a pedigree.**

A. For distributions of prescription drugs that require a pedigree in accordance with §54.1-3307 of the Code of Virginia and 18VAC110-50-160, the pedigree shall list all distributions starting with the sale by a manufacturer through acquisition and sale by any wholesale distributor until final sale to a pharmacy or other person authorized to administer or dispense the prescription drug.

B. When required by law and regulation to provide a pedigree, a wholesale distributor shall provide an authenticated pedigree for drugs sold or returned to another wholesale distributor before or at the time the drug is shipped to such wholesale distributor.

C. The pedigree shall minimally include the following information on a prescription drug for which a pedigree is required:

1. The trade or generic name of the drug;
2. The dosage form and strength, the container size, number of containers, and lot number;
3. The name of the manufacturer of the finished drug product;



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4. Each transaction in which the drug is shipped or received by a manufacturer or wholesale distributor showing the following:

a. The business name and address of each entity involved in the chain of the drug's physical custody;

b. Telephone number and other contact information needed to authenticate the pedigree;

c. Sales invoice number or other unique shipping document number that identify each transaction; and

d. The dates of the transactions to include shipping dates when a seller ships the product and the receiving dates when a purchaser receives the product.

5. A statement of certification that the information contained in the pedigree is true and accurate and the name and signature of the individual certifying the authenticity of the pedigree at the time of shipment of the drug.

D. The requirement for a pedigree shall be effective [beginning [one year from the effective date of a final regulation] February 20, 2009].

## **18VAC110-50-180. Authentication of a pedigree.**

A. [Each person who is engaged in the wholesale distribution of a drug, who is provided a pedigree as specified in 18VAC110-50-160 and attempts to further distribute that drug, shall affirmatively verify before any distribution of a prescription drug that each transaction listed on the pedigree has occurred.

B.] Upon request of a wholesale distributor who is attempting to authenticate a pedigree for a drug as specified in 18VAC110-50-160, any manufacturer or wholesale distributor listed on the pedigree shall provide requested information in a timely manner, [only for those applicable transactions outside the normal chain of distribution conducted by that manufacturer or wholesale distributor, ] to include the following:

1. Dates of receipt or shipment of the drug as well as the name, address, and other contact information of those entities from whom they received the drug or to whom they shipped the drug;

2. Lot number;

3. Sales invoice number or other unique shipping document numbers that identify each transaction; and

4. Name of the person who is providing the requested information.

[ ~~B. C.~~ ] The wholesale distributor shall record the above information and maintain the information in accordance with 18VAC110-20-190.

[ ~~C. D.~~ ] If a wholesale distributor that is attempting to authenticate the distribution of a drug back to a manufacturer

is unable to authenticate each distribution, the wholesale distributor shall quarantine the drug and report to the board and the FDA within three business days after completing the attempted authentication.

## **18VAC110-50-190. Recordkeeping.**

A. Wholesale distributors shall establish and maintain inventories and records of all transactions relating to the receipt and distribution or other disposition of drugs as specified in 18VAC110-50-160, to include records of authentication of pedigrees, for a period of not less than three years.

B. All records shall be made available to the board or its authorized agent upon request. If records are not kept on premises at the address of record, they shall be made available within 48 hours of such request.

VA.R. Doc. No. R05-253; Filed January 2, 2008, 9:20 a.m.

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## **TITLE 22. SOCIAL SERVICES**

### **CHILD DAY-CARE COUNCIL**

#### **Fast-Track Regulation**

Title of Regulation: **22VAC15-30. Standards for Licensed Child Day Centers (amending 22VAC15-30-310).**

Statutory Authority: §§63.2-1734 and 63.2-1735 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until February 20, 2008.

Effective Date: March 6, 2008.

Agency Contact: Jeffrey S. Williams, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North 8th Street, Second Floor, Richmond, VA 23219, telephone (804) 726-7166, FAX (804) 726-7132, TTY (800) 828-1120, or email jeff.williams@dss.virginia.gov.

Basis: The following sections of the Code of Virginia are the sources of legal authority to promulgate the regulation: §63.2-1734 states that the Child Day Care Council shall adopt regulations for licensed child day centers that are conducive to the welfare of the children in their care, and §63.2-1735 gives the council authority to promulgate regulations for licensed child day centers.

Purpose: The initial eight-hour training for staff to become certified to administer medication is rigorous and comprehensive. The training includes successfully

completing three competencies in order to become certified. In addition, those certified to administer medication are required to be retrained at three-year intervals. The reason for eliminating the annual requirement for a practice demonstration is because it is repetitive, burdensome, not cost effective, not required by the Board of Nursing, and affords little to no additional protection to children in care.

Moreover, even if a provider was able to locate an approved trainer for the practice demonstration, this likely would be cost prohibitive. If VDSS takes on the responsibility for supplying opportunities for licensed child day centers to meet this requirement, the cost would prevent VDSS from providing other trainings that are of greater benefit to children in care.

Rationale for Using Fast-Track Process: The fast-track process is being used because there is an urgency regarding the effective date of the proposed changes. The requirement for the practice demonstrations is scheduled to take effect in February 2008. Without using the fast-track action, it would be impossible to eliminate this requirement prior to February 2008. The fast-track action will prevent unnecessary costs from being incurred by the licensed child day centers as well as the Commonwealth.

The department expects this rulemaking to be noncontroversial.

Substance: The amendment deletes the requirement for annual refresher training practice demonstrations for staff certified to administered medications in licensed child day centers.

Issues: The primary advantage to the removal of the annual practice demonstration is the significant cost savings for licensed child day centers and the Commonwealth. At this time there are no foreseen disadvantages to the public, children in care, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Child Day Care Council (Council) proposes to eliminate the requirement that staff certified to administer prescription and over-the-counter medication in licensed child day centers attend a refresher training practice demonstration annually. (Those certified to administer medication would still be required to be retrained at three-year intervals.)

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

Estimated Economic Impact. Under current regulation, a staff member of a child day care center may only administer prescribed medication if s/he has satisfactorily completed a training program in medication administration approved by the Board of Nursing and taught by a registered nurse, a

licensed practical nurse, a doctor of medicine or osteopathic medicine, or a pharmacist. The staff member is required to have the training, be retrained at three-year intervals, and have interim refresher training and practice demonstrations annually. Under the proposed amendment, staff will not be required to have annual interim refresher training and practice demonstrations, although they will still need to be retrained at three-year intervals.

Under current regulation, a staff member of a child day care center may only administer over-the-counter medication (other than topical skin gel, cream, or ointment) if s/he has satisfactorily completed a training course developed or approved by the Department of Social Services in consultation with the Department of Health and the Board of Nursing and taught by an R.N., L.P.N., physician, or a pharmacist. The staff member is required to have the training, be retrained at three-year intervals, and have interim refresher training and practice demonstrations annually. Under the proposed amendment, staff will not be required to have annual interim refresher training and practice demonstrations, although they will still need to be retrained at three-year intervals.

The benefit of the amendment lies in avoiding the cost associated with the annual training. The Department of Social Services (Department) estimates that the cost of the refresher training for 2008 is around \$200,000, not including miscellaneous costs such as copying, shipping, or other charges for registration of participants and room rentals for trainers. This cost will either be incurred by the state or will be passed onto the day care centers and therefore passed on to the families of the children in the day care centers. In addition, the training would take around one hour of time for each day care center worker. Since according to the Bureau of Labor Statistics, the mean hourly wage in Virginia for child day care services workers is around \$11/hour<sup>1</sup>, this adds an opportunity cost of around \$11 per worker per year. The regulation on training licensed day care center staff on medication administration is new; the first round of training required by the regulation was administered in March 2007. For the 6500 child care providers who were trained from March 2007 to October 2007 and therefore would need to attend a refresher practice demonstration in 2008, this adds a total cost of at least \$71,500.<sup>2</sup> Since the first round of training required by the regulation was administered in March 2007, this means that no annual refresher training has yet been required, and will never be required if these proposed changes become effective by February 2008. However, should the training be required, it will cost approximately \$200,000 + \$71,500 = \$271,500, plus whatever miscellaneous costs are incurred. Therefore, the total benefit of the amendment is around \$271,500 saved between the state and licensed day care centers.

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According to the Department, there will be no cost associated with the amendment beyond promulgating the change. According to the Department, the Child Day Care Council (Council) approved the regulation before the initial training had been developed by the Board of Nursing. The Council included the annual interim refresher training in order to ensure that the staff administering medication is well-trained, therefore ensuring the protection of Virginia's children. According to the Department, however, the Board of Nursing developed a training that was more extensive and intense than the Council had envisioned, rendering the annual refresher training unnecessary. Therefore, the safety of children will not be compromised by this amendment and no cost will be imposed on the citizens of Virginia by removing the annual refresher training requirement.

The benefits of this amendment are likely to outweigh the costs.

**Businesses and Entities Affected.** All 2600+ licensed day care centers in the state of Virginia will be affected by the proposed amendments. From March 2007 to October 2007, 6500 child-care providers were trained; so from March 2008 to October 2008, at least 6500 providers will no longer need to attend an annual refresher practice demonstration under the proposed amendments.

**Localities Particularly Affected.** The proposed amendments do not disproportionately affect any specific localities in the Commonwealth.

**Projected Impact on Employment.** The Department anticipates the state paying for the refresher training cost if the refresher requirement remains. The cost to day care centers, then, lies in the time that each worker has to take to attend the training, which is one hour per year. According to the Bureau of Labor Statistics, day care center workers in Virginia are paid on average \$11/hour. With around 2600 licensed day care centers and around 6500 workers trained in 2007, the training would add an annual cost of approximately \$27.50 per day care center.<sup>3</sup> Although this cost *could* have an effect on the number of workers a day care center can employ, it does not seem likely. Therefore, the proposal to eliminate the refresher requirement is not likely to have a positive or negative impact on employment in Virginia.

**Effects on the Use and Value of Private Property.** The proposed amendments could increase the value of a day care center by reducing the cost that the center has to incur for training, but since the average cost to the day care center is likely to be only \$27.50/year, the effect of this amendment on the value of private property will not be large.

**Small Businesses: Costs and Other Effects.** Almost all of the 2600 licensed day care centers are small businesses. Therefore, these amendments might positively impact small businesses in the same way that it might positively impact all

day care centers. However, again, this impact is not likely to be very large.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments have no adverse impact on small businesses.

**Real Estate Development Costs.** The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

**Legal Mandate.** 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup> Child Day Care centers do not include most instructional programs or accredited preschool programs. For more information on the definition of day care center, see 22 VAC 15-30-10.

<sup>2</sup> \$11\*6500. Of course, the cost for 2008 will increase, depending on the number of child day care service providers who are training November and December of 2007.

<sup>3</sup> (6500/2600)\*\$11

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

**Summary:**

*The proposed amendments eliminate the requirement for staff certified to administer prescription and over-the-counter medication in licensed child day centers to attend a refresher training practice demonstration annually. Those certified to administer medication would still be required to be retrained at three-year intervals.*

**22VAC15-30-310. Staff training and development.**

A. Staff shall receive the following training by the end of their first day of assuming job responsibilities:

1. Job responsibilities and to whom they report;
2. The policies and procedures listed in subsection B of this section and 22VAC15-30-490 A that relate to the staff member's responsibilities;
3. The center's playground safety procedures unless the staff member will have no responsibility for playground activities or equipment;
4. Recognizing child abuse and neglect and the legal requirements for reporting suspected child abuse as required by §63.2-1509 of the Code of Virginia;
5. Confidential treatment of personal information about children in care and their families; and
6. The standards in this chapter that relate to the staff member's responsibilities.

B. By the end of the first day of supervising children, staff shall be provided in writing with the information listed in 22VAC15-30-490 A and the following:

1. Procedures for supervising a child who may arrive after scheduled classes or activities including field trips have begun;
2. Procedures to confirm absence of a child when the child is scheduled to arrive from another program or from an agency responsible for transporting the child to the center;
3. Procedures for identifying where attending children are at all times, including procedures to ensure that all children are accounted for before leaving a field trip site and upon return to the center;
4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies and general emergencies;
5. Policy for any administration of medication; and
6. Procedures for response to natural and man-made disasters.

C. Program directors and staff who work directly with children shall annually attend 10 hours of staff development activities that shall be related to child safety and development and the function of the center. Such training hours shall increase according to the following:

1. June 1, 2006 – 12 hours
2. June 1, 2007 – 14 hours
3. June 1, 2008 – 16 hours

4. Staff development activities to meet this subsection may include up to two hours of training in first aid or cardiopulmonary resuscitation. Staff development activities to meet this subsection may not include rescue breathing and first responder as required by 22VAC15-30-590 and training in medication administration and daily health observation of children as required by subsection D of this section.

5. Exception (a): Staff who drive a vehicle transporting children and do not work with a group of children at the center do not need to meet the annual training requirement.

Exception (b): Parents who participate in cooperative preschool centers shall complete four hours of orientation training per year.

Exception (c): Staff who are employed at a short-term program shall obtain 10 hours of staff training per year.

D. 1. To safely perform medication administration practices listed in 22VAC15-30-580, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

b. Staff required to have the training shall be retrained at three-year intervals, ~~with interim refresher training and practice demonstrations annually.~~

2. The decision to administer medicines at a facility may be limited by center policy to:

- a. Prescribed medications;
- b. Over-the-counter or nonprescription medications; or
- c. No medications except those required for emergencies or by law.

3. To safely perform medication administration practices listed in 22VAC15-30-580, whenever the center has agreed to administer over-the-counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Social Services in consultation with the Department of Health and the Board of Nursing and taught by an R.N., L.P.N., physician, or pharmacist; or performed by a staff member

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or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as, but not limited to, reading and following manufacturer's instructions; observing relevant laws, policies and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.

b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

c. Staff required to have the training shall be retrained at three-year intervals, ~~with interim refresher training practice demonstrations annually.~~

4. Any child for whom emergency medications (such as but not limited to albuterol, glucagon, and epipen) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

5. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

6. Daily health observation training shall include:

a. Components of daily health check for children;

b. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;

c. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;

d. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

e. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's (OSHA) Bloodborne Pathogens regulation.

E. Before assuming job responsibilities, staff who work with children in therapeutic child day programs and special needs child day programs shall receive training in:

1. Universal precautions procedures;
2. Activity adaptations;
3. Medication administration;

4. Disabilities precautions and health issues; and

5. Appropriate intervention strategies.

F. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually attend 24 hours of staff development activities. At least eight hours of this training shall be on topics related to the care of children with special needs.

VA.R. Doc. No. R08-1052; Filed January 2, 2008, 11:42 a.m.

## STATE BOARD OF SOCIAL SERVICES

### Proposed Regulation

Title of Regulation: **22VAC40-690. Virginia Child Care Provider Scholarship Program (amending 22VAC40-690-20, 22VAC40-690-30, 22VAC40-690-40, 22VAC40-690-55, 22VAC40-690-65).**

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

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until March 21, 2008.

Agency Contact: Zelda Boyd, Program Development Consultant, Department of Social Services, Division of Child Care and Development, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7616, FAX (804) 726-7655, TTY (800) 828-1120, or email [zelda.boyd@dss.virginia.gov](mailto:zelda.boyd@dss.virginia.gov).

Basis: This regulation informs the public and childcare providers of the process used by the Virginia Department of Social Services to administer the Virginia Child Care Provider Scholarship Program. Section 63.2-217 of the Code of Virginia authorizes the State Board of Social Services to promulgate this regulation.

Purpose: The goals of the revision are to support professional development of child care providers, promote quality care in child care settings and employ more efficient business practices. This revision addresses the issues of the limited available scholarships being awarded to individuals not working in child care settings, the acknowledgement of the use of a third-party administrator and the requirement for agreements with higher education institutions for routine billing and reimbursement procedures.

The revision will promote the health, safety and welfare of children by giving priority to applicants who currently work in child care settings; research has shown that the level of the provider's education has a direct impact on the quality of care provided to children. The revision allows for a more streamlined business process so applicants and institutions participating in the scholarship program have clear guidelines and information about program use and processes.

Substance: The substantive regulatory changes (i) recognize the Department of Social Services' relationship with a contractor to accept and process applications, (ii) revise the applicant eligibility and selection process, (iii) clarify the business process and procedures for working with colleges and universities, (iv) clarify recipient responsibilities, and (v) revise application forms.

Issues: The primary advantages in amending this regulation are (i) child care providers and the public will be better informed of the scholarship selection process; (ii) scholarship funds will be available to more individuals currently working in child care; (iii) the Commonwealth will enjoy a more qualified child care workforce; and (iv) a more qualified child care workforce will enhance the child care experience of Virginia children and families.

There are no known disadvantages to the public, agency or Commonwealth because of the changes made to the regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to amend its child care scholarship program regulation. Specifically, the Board proposes to:

- 1) allow scholarship applicants to obtain applications from the private vendor that administers this program for the Department of Social Services (DSS),
- 2) give priority to applications for scholarship from individuals who already work in child care,
- 3) tighten restrictions on future scholarship monies for individuals who fail to complete or pass scholarship funded classes and
- 4) distribute written policies and procedures to all colleges and universities that participate in this scholarship program. These policies and procedures will replace written agreements that are currently required between DSS and colleges and university that have five or more scholarship recipients enrolled.

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

Estimated Economic Impact. The Virginia Childcare Scholarship Program is a state funded program that offers educational grants to workers (and potential workers) in the field of early childhood education. Current regulation for this program requires potential grant recipients to obtain scholarship applications from DSS. Currently applications are processed on a first-come, first-served basis until all available funds have been dispersed.

The Board proposes to allow interested individuals to receive applications from either DSS or DSS's designated third-party vendor. This change will give interested parties somewhat greater flexibility. Since DSS's third party vendor actually processes completed applications and disperses awarded funds, this change may also streamline the application process.

The Board also proposes to give precedence to applications submitted by current childcare workers. The Board believes that funds spent to educate those currently employed in the targeted field will lead to more skilled childcare workers, and therefore better quality childcare, more quickly than funds spent on individuals who might choose to work in this field at some point in the future. To the extent that more early childhood education is correlated with better childcare outcomes, this change may help the Board to use available funds more efficiently.

Under current regulation, colleges and universities that have five or more scholarship recipients enrolled must have a written agreement with DSS. This agreement outlines procedures these colleges and universities must follow for billing, verifying recipient's Virginia residency and providing final class grades to DSS. The Board proposes to eliminate the requirement for individualized agreements and instead distribute rules and procedures to all participating educational institutions. This change will ensure that all participating institutions know DSS's expectations and will also likely reduce costs for the institutions that currently are required to spend time and resources forming written agreements with DSS. DSS will likely incur some costs to distribute rules and procedures; these costs will likely be partially or completely offset, however, by the elimination of staff time spent to form individualized written agreements with educational institutions.

Current regulation allows scholarship recipients to fail to complete (or fail to pass) grant funded classes three times before they become ineligible for future scholarship funds. The Board proposes to reduce the number of times that recipients can fail to successfully complete classes, before funding is cut off, from three to one. At the same time, the Board proposes to add a provision to regulation that will allow recipients to repay the funds spent on classes that were not successfully completed in order to restore future grant eligibility. DSS reports that scholarship applications inform recipients that they may also withdraw from approved classes without penalty so long as they withdraw in time for the scholarship program to receive a full refund. These changes will likely reduce the amount of program funding wasted due to non-completed classes and, so, will likely increase program efficiency. The Board may wish to include all rules pertaining to continued grant eligibility in this regulation as this will make it easier for grant recipients to find and understand what they must do to ensure future funding.

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**Businesses and Entities Affected.** This proposed regulation will affect all recipients of Child Care Scholarship Program funds. Last year, this program funded approximately 4,000 early childhood education classes. There were, however, fewer than 4,000 grant recipients as recipients may take up to two grant funded classes per semester and may also receive grant funding during multiple semesters.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulation.

**Projected Impact on Employment.** This proposed regulation will likely have no effect on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** The proposed regulation will likely have no effect on the use or value of private property.

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this proposed regulation.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this proposed regulation.

**Real Estate Development Costs.** Affected entities will likely not incur any real estate development costs on account of the proposed regulation.

**Legal Mandate.** 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed amendments (i) allow scholarship applicants to obtain applications from the private vendor that administers this program for the Department of Social Services (DSS); (ii) give priority to applications for scholarship from individuals who already work in child care; (iii) tighten restrictions on future scholarship moneys for individuals who fail to complete or pass scholarship funded classes; and (iv) distribute written policies and procedures, which will replace written agreements that are currently required between DSS and colleges and universities that have five or more scholarship recipients enrolled, to all colleges and universities that participate in this scholarship program.*

**22VAC40-690-20. Application process.**

A. All persons interested in obtaining a scholarship must submit a scholarship application form to the Virginia Department of Social Services or its designee as indicated on the application.

Note: Applications are available through the Virginia Department of Social Services or the designated third-party administrator.

B. A separate application must be submitted for each semester.

C. Only complete applications, both initial and resubmitted, received by the deadline indicated on the application shall be considered.

D. Applicants shall verify that the selected courses are being offered by the selected college or university for the applicable semester prior to applying for scholarships.

E. The selection of courses or colleges and universities may not be changed once the scholarship has been awarded unless the selected class is full or has been cancelled.

**22VAC40-690-30. Selection and eligibility.**

~~A. Applications will be processed and scholarships awarded in order of date received until all available funds designated for the semester have been obligated or the application deadline has occurred, whichever comes first. Priority will be given to applicants currently employed in the field of child care. If funds remain available, the applications will be processed and scholarships awarded in order of date received.~~

B. In order for an applicant to be eligible for a scholarship, he must meet all of the following criteria. The applicant must:

1. Be one of the following:

- a. An employee of a child care program located in Virginia; or
  - b. Domiciled in Virginia as defined in §23-7.4 of the Code of Virginia and (i) employed in a child care program outside of Virginia or (ii) have declared an intent to become employed in child care.
2. Select a department-approved course for which he has not previously received scholarship funds; and
3. Have no more than ~~three occurrences~~ one occurrence of the following for courses for which the applicant received a Virginia Child Care Provider Scholarship:
- a. Did not register for the course after receiving an award;
  - b. Did not complete the course and received a grade of "W" for withdrawal; or
  - c. Did not receive a passing grade.

In the event of such an occurrence, the department will not award future scholarships to an individual until the applicant reimburses the state for the course(s) tuition and fees that were paid to the college or university on behalf of the applicant.

C. An applicant does not have to be enrolled in or have already taken a course in early childhood education or a related major to be eligible for a scholarship.

D. Scholarships will only be awarded if the department has adequate information to process scholarship requests. The department must have received final course grades and payment information on courses that have been previously approved for scholarships. In addition, scholarships will be awarded on a conditional basis for those persons who are in jeopardy of becoming ineligible to receive a scholarship as specified in subdivision B 3 of this section. In these instances, the department will review enrollment and grade information when provided by the institution for the current enrollment period and if the applicant is in compliance with subdivision B 3 of this section, the scholarship will be fully awarded.

E. The scholarship will only pay tuition and the technology fee for each course.

F. Applicants shall not receive scholarships for more than two courses per semester.

G. Scholarships shall not be transferred between semesters or individuals.

H. Scholarships are awarded only for courses approved by the department. The department will determine whether a course meets the definition of a "course" as defined in 22VAC40-690-10.

I. Recipients may receive a total lifetime award of no more than the average tuition for eight community college courses or their monetary equivalent.

J. A recipient may use scholarship funds to attend any combination of Virginia public or private accredited two-year or four-year institutions over a period of time.

K. All applicants will be notified in writing regarding the acceptance or denial of their application.

**22VAC40-690-40. College and university agreements.**

A. Colleges and universities will be notified in writing when scholarships are awarded to applicants planning to attend their institutions.

B. The department shall ~~enter into a written agreement with~~ provide written procedures to all colleges and universities that ~~ordinarily have five or more students per semester~~ any student using scholarship funds regarding the operation of the scholarship program. The ~~agreement~~ procedures shall address the areas of, but not be limited to, verification of Virginia residency, billing procedures, and provision of final course grades. Specifically, these institutions shall:

1. Determine whether applicants that are not employed in child care programs located in Virginia are domiciled in Virginia as defined in §23-7.4 of the Code of Virginia and provide the department with verification of such;

2. Provide the department each semester, but no later than at the time of billing, with the tuition rate category of each person for which the institution plans to bill or is billing the scholarship program.

3. Submit one bill to the department per institution per semester after the college's or university's published add/drop period has occurred. Colleges and universities shall submit a request for payment prior to the end of the semester for which the scholarship was awarded. Such request must be in a department-approved format; and

4. Provide the department with final course grades for classes paid for by the scholarship program within one month following the end of each semester.

C. All other eligible Virginia public and private colleges and universities may ~~enter into an agreement~~ follow the procedures as outlined in subsection B of this section or place the responsibility on the student to seek reimbursement from the department.

**22VAC40-690-55. Disbursement of funds.**

For those institutions ~~that have an agreement with the department~~ participating in the tuition reimbursement process, funds will be disbursed to the colleges and universities upon receipt of an ~~Interagency Transfer (IAT)~~ or invoice in accordance with the Commonwealth Accounting Policies and Procedures. In the event that ~~the department does not have a~~



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~~written agreement with~~ a college or university does not choose to participate in the tuition reimbursement process, the funds will be disbursed to the recipient upon proof of tuition payment and course enrollment through the end of the college's or university's published add/drop period.

## 22VAC40-690-65. Recipient responsibilities.

A. A recipient must submit final course grades for classes paid by the Virginia Child Care Provider Scholarship Program to the department within one month of completion of the course unless the college or university does so.

Note: All colleges and universities are requested to provide final course grades to the department for the classes paid by the scholarship program as outlined in 22VAC40-690-40 B 4. Grades will be used to determine eligibility as outlined in 22VAC40-690-30 B 3.

B. By accepting the award, the recipient agrees to participate in any surveys conducted by the department regarding the scholarship program and comply with any requests for additional information as stated in 22VAC40-690-60.

C. The recipient is responsible for all expenses related to taking the courses with the exception of the amount of the award, which only pays for tuition and the technology fee. The total lifetime award will pay the ~~entire~~ tuition and technology fee for a maximum of eight courses at the community colleges at the in-state tuition rate or the dollar equivalent of the total lifetime award, whichever comes first. Recipients ~~who attend other types of institutions or are not eligible for in state tuition rates~~ shall be required to pay any additional tuition and technology fees that exceed the total lifetime award. Additional expenses for all recipients include, but are not limited to, other college or university fees, books, transportation, and child care.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Virginia Child Care Provider Scholarship Program Application ~~Form to Attend Virginia's Public and Private Colleges and Universities, Form # 032-05-032/7 (rev. 6/02), Form # 032-05-0032-03 (rev.7/07).~~

VA.R. Doc. No. R07-214; Filed January 2, 2008, 11:40 a.m.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### BOARD OF TOWING AND RECOVERY OPERATORS

#### Proposed Regulation

Title of Regulation: 24VAC27-30. **General Regulations for Towing and Recovery Operators (adding 24VAC27-30-10 through 24VAC27-30-180).**

Statutory Authority: §§46.2-2805 and 46.2-2809 of the Code of Virginia.

#### Public Hearing Information:

February 11, 2008 - 9 a.m. - Department of Motor Vehicles, 2300 West Broad Street, Classroom 131, Richmond, VA

Public comments: Public comments may be submitted until March 21, 2008.

Agency Contact: Benjamin Foster, Executive Director, Board of Towing and Recovery Operators, c/o Virginia Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23269-0001, telephone (804) 367-0226, FAX (804) 367-1578, or email benjamin.foster@dmv.virginia.gov.

Basis: Section 46.2-2805 of the Code of Virginia grants to the Board of Towing and Recovery Operators the authority to establish qualifications for licensure, regulate, collect licensure fees, and discipline persons and enterprises engaging in the towing of vehicles. Section 46.2-2809 provides: "The Board may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of provisions of this chapter, and any other regulations, not inconsistent with the provisions of this chapter, as it shall consider necessary for the effective administration and enforcement of this chapter."

Furthermore, §46.2-2812 provides "[o]n and after July 1, 2008, it shall be unlawful for any person to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license as a Class A or Class B operator as provided in this chapter. Violation of any provision of this section shall constitute a Class 1 misdemeanor."

Purpose: The purpose of this regulatory action is to establish new regulations for the Board of Towing and Recovery Operators. These regulations are required for the safety and welfare of the citizens of the Commonwealth as a way to address the apparently inconsistent or outdated state statutes and a patchwork of local ordinances that have been ineffective in ensuring fairness to either those in the towing and recovery business or those owners of vehicles whose vehicles are towed. These regulations are also necessary for the general safety of travelers on the highways of the

Commonwealth. The goals of these regulations are to create statewide standards for licensure and to collect licensing fees to be paid into the state treasury for credit to the Board of Towing and Recovery Operators Fund.

Substance: These regulations establish new requirements for the Board of Towing and Recovery Operators that was created by actions of the 2006 General Assembly. These actions became Chapters 874 and 891 once enacted by the Governor. Section 46.2-2805 of the Code of Virginia creates the authority of the Board of Towing and Recovery Operators to: (i) establish requirements and oversight of towing and recovery operators and the towing and recovery industry, (ii) ensure their possessing and maintaining minimal levels of competency for the public safety and welfare, (iii) establish the necessary qualifications for licensure and regulation of towing and recovery operators, (iv) ensure the competency and integrity of the regulated industry, (v) examine applicants, (vi) establish renewal schedules, (vii) administer fees to cover the administrative expenses of the regulatory program, (viii) take disciplinary action for violation of laws and regulations, and (ix) provide oversight for and enforcement of authorized documentation of drivers of towing and recovery vehicles.

The issues of concern to the citizens of the Commonwealth and this industry that these regulations are intended to address are as follows:

1. Rogue towing operators engaging in false advertising, predatory towing, impersonating other towing operators, charging for services not rendered, operating without locally required business licenses, charging fees that vary depending on how expensive the towed vehicle appeared to be or what it appeared the customer could afford to pay;
2. Towing operators who refused to accept nationally known credit cards as payment for towing services and demanded cash payments instead or refusing to give customers change up to \$100;
3. Towing operators who failed to inform local law-enforcement entities that vehicles had been towed from private property thereby causing the vehicles' owners to have to search, sometimes over several days, for their vehicles while incurring additive storage fees;
4. Towing operators who failed to carry business insurance and who conducted towing activities with equipment not intended to be used for towing activities. Towed vehicles have been damaged, consequently, and the vehicle owners have no insurance recourse by which to secure repairs for their damaged vehicles; and
5. Towing operators who have failed to conduct towing activities in a safe and effective manner.

Due to the nature of this public service, this industry is also concerned about individuals who are required to register anywhere (all other states as in other nations) as sex offenders being able to replicate their previous crimes on new victims. Also, the board's basic enabling statute requires that sex offenders be excluded from receiving operator licenses or driver authorizations in these regulations.

Various sections regarding weight limit standards (for example 24VAC27-30-110 E and F) are commonly accepted industry standards and, as such, have been reflected in these regulations.

Issues: The primary disadvantage to this industry is that individuals and businesses offering towing and recovery services have never before been licensed and regulated. Some individuals and businesses can be expected to object to these regulations with the argument that "we have never before had to get a license" and "it has always been done this way." However, the 2006 General Assembly made the decision to license and regulate this industry and these regulations merely propose to implement that legislative decision.

The amount of licensing fees can also be seen as an issue for this industry that is comprised of some very small (one-truck) operations as well as slightly larger operations. However, if the fee amount is considered over the course of the entire year of the license, the cost is only \$1.36 per day (or \$9.61 per week). A disadvantage to the towing businesses that are now to be regulated is that they will also have criminal background check fees and fingerprinting fees to pay whereas in the past there have been none. Towing businesses will also be required to maintain certain paperwork for specified periods of time that will create recordkeeping issues in addition to being required to post their fees for customers and provide Board of Towing Recovery Operators contact phone numbers for dissatisfied customers wishing to file complaints.

One possible disadvantage to the public might be that a one-truck operation may elect to cease operating in a locality rather than seek licensure. At this point, it is not known, in spite of the board's efforts to identify the affected entities, how many businesses may elect this option.

A considerable advantage to the citizens of the Commonwealth of these regulations is that they will bring greater consistency of service to the public by standardizing towing operators' operations and conduct. Public safety will be enhanced because persons who have been convicted of certain barrier crimes will no longer be permitted to provide this service, thereby reducing opportunities for public contact. Citizens' private property will be protected better by standardizing the equipment approved for use by this industry. The Commonwealth's highways will be protected better when towing and recovery activities can be conducted in a licensed, safe manner.

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## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapters 874 and 891 of the 2006 Acts of Assembly established the Board of Towing and Recovery Operators (Board), whose operation became effective on July 1, 2006. This legislation also specifies in Code of Virginia § 46.2-2805 that the Board shall establish the qualifications of applicants for licensure, levy and collect fees for licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Board, revoke, suspend, or fail to renew a license for violation of this chapter or enumerated in regulations promulgated by the Board etc. Further, the legislation specifies in § 46.2-2812 that “On and after July 1, 2008, it shall be unlawful for any person to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license.” Consequently, the Board proposes to promulgate its initial Regulations Governing the Practice of Towing and Recovery Operators. The proposed regulations include: 1) requirements for towing operator’s licensure, 2) requirements for license renewal (including continuing education), 3) standards of practice, 4) what constitutes unprofessional conduct, 5) exemptions from regulation, 6) requirements for drivers, and 7) fees, etc.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. According to the Board, rogue towing operators have provided significant harm to citizens of the Commonwealth and to honest operators through activities such as: 1) engaging in false advertising, 2) predatory towing, 3) impersonating other towing operators, 4) charging for services not rendered, 5) operating without locally required business licenses, 6) charging fees that vary depending on how expensive the towed vehicle appeared to be or what it appeared the customer could afford to pay, 7) failing to carry business insurance and damaging vehicles due to conducting towing activities with inappropriate equipment, giving vehicle owners no insurance recourse by which to secure repairs for their damaged vehicles 8) failing to inform local law enforcement entities that vehicles had been towed from private property thereby causing the vehicles’ owners to have to search, sometimes over several days, for their vehicles while incurring additive storage fees, and 9) overcharging through refusal to give change, etc. These proposed regulations are designed to protect the public and honest operators from such dishonest and incompetent operators.

Requirements for towing operator’s licensure. The proposed regulations include numerous general requirements for towing and recovery operator licensure, most of which produce marginal or no cost to the operators. For example,

operators must: 1) provide the name of the individual or business entity under which the applicant intends to be licensed, plus any and all trade or fictitious names under which the operator conducts or offers towing and recovery services, 2) advise the board of the physical addresses of the principal office and all additional satellite facilities, 3) designate a Responsible Individual who shall be responsible for assuring that the operator conforms to all applicable state, federal or local laws and regulations related to those towing and recovery services offered, 4) list the principal owners’ names and all other individuals involved in the management and operation of the business, and 5) provide the board with information indicating all tow trucks owned, leased or used by the operator.

Additionally, the Board may refuse to issue a license or tow truck driver’s authorization document if, based upon all the information available, including the record of prior convictions of the applicant or any individual who is an owner, manager or other person involved in the management or operation of the applicant’s business, it finds that the applicant is unfit to engage in providing towing and recovery services. To the extent that the Board in practice does deny licensure to individuals who could legally have operated prior to these regulations, this will be very costly to those denied licensure. The denial, of course, is intended to protect the public from operators who are considered a significant risk to the public through potential illegal activities or incompetence.

The proposed regulations include the following three sections: Operator’s licensure without examination, Operator’s licensure by examination, and Operator’s licensure by endorsement. Pursuant to § 46.2-2822, operators who were active prior to January 1, 2006 are not required to “successfully complete an examination as a prerequisite for obtaining a license as an operator.” They must simply submit an application, certify in writing that the Responsible Individual has read and understands the laws and regulations governing towing and recovery services and pay a \$500 application fee, pay a \$10 decal fee for each tow truck, and pay \$50 for each driver beyond the first driver whose fee is covered by the application fee.

Operators who were not active prior to January 1, 2006 have additional requirements. In order to obtain a Class A Operator license,<sup>1</sup> operators who were not active prior to January 1, 2006 must submit evidence of passage by the principal owner or Responsible Individual of all sections of Level I and of Level II of the Towing and Recovery Association of America’s (TRAA) certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. TRAA charges a total of \$260 for its Level I and II tests and study guides.<sup>2</sup> In order to obtain a Class B Operator license,<sup>3</sup> operators who were not active prior to January 1, 2006 must submit evidence of passage by the principal owner or Responsible Individual of all sections of Level I of TRAA’s certification examination or the

appropriate sections of any other examination deemed by the board to be equivalent. TRAA charges \$100 for its Level I test and study guide.<sup>4</sup> Operators who were not active prior to January 1, 2006 are also required to pass an open book jurisprudence examination provided by the board on the laws and regulations governing towing and recovery operators. In addition to the \$500 application fee, \$10 decal fee for each tow truck, \$50 for each driver beyond the first driver, and fees for the tests and study guides, these operators will incur time costs associated with studying for and taking the TRAA and jurisprudence examinations.

The proposed regulations also include requirements for operator's licensure by endorsement. Operator's licensure by endorsement includes all the same requirements as Operator's licensure by examination, plus "evidence that he has been actively engaged in towing and recovery services in another state for the past five consecutive years" and "a statement from a government entity in the state in which he has been conducting business or businesses in the past five consecutive years that the applicant's business has not violated or been disciplined for violation of the other state's laws and regulations governing towing and recovery services." Thus, there does not appear to be any incentive to pursue licensure by endorsement since the operator can obtain licensure by complying with the Operator's licensure by examination requirements without the additional hassle of obtaining statements from other governmental entities.

Requirements for license renewal (including continuing education). The Board proposes to require that licenses be renewed annually by completing a renewal application and paying the annual \$500 license renewal fee, \$10 decal fee for each tow truck, and \$50 for each driver beyond the first driver whose fee is covered by the license renewal fee. The proposed regulations also include a requirement for continuing education to become effective July 1, 2011. "Each application for operator's license renewal shall be conditioned upon ... eight hours of continuing education taken by the principal owner or Responsible individual" during the previous year, "and an additional four hours of continuing education taken by each of the tow truck drivers employed by the applicant during the previous licensing period and employed by the operator at the time the operator submits his license renewal application." According to the Board, WreckMaster has offered a weekend (approximately 16 hours) continuing education course for \$395. Also AAA has offered some free training to members.

The Board has indicated that it intends to evaluate the feedback it receives during the public comment period and at the public hearing and, by deferring the effective date of this section of the regulations, will have time to make additional changes to these requirements if necessary. According to the Board, changes in laws, motor vehicles, and towing equipment make periodic continuing education necessary in

order to maintain competent business practices and provision of towing and recovery services. Insufficient information exists to accurately assess the benefits of continuing towing education and to compare those benefits to the costs.

Standards of practice. The proposed regulations include a standards of practice section which begins with the following statement: "Violations of any standard of practice set out in this section may be subject to board disciplinary actions or sanctions, including suspension or revocation of an operator's license and imposition of civil penalties." Complying with all applicable federal, state and local laws, such as U.S. Department of Transportation and Virginia Department of Motor Vehicles regulations, state and local building and zoning codes, local business licenses, Worker's Compensation insurance, etc., are listed under standards of practice. These are not new requirements, but the prospect of losing the legal right to sell towing services for failure to follow these other laws may increase the probability that some operators closely comply with those laws. Thus, requiring compliance with other state and local laws as a prerequisite for maintaining an operator's license may be beneficial to the Commonwealth in that other laws may consequently be more likely followed.

The proposed standards of practice also include insurance requirements for operators which mirror tow truck registration requirements by the Department of Motor Vehicles (DMV) under Code of Virginia Title 46.2. As mentioned earlier, failure to carry business insurance and damaging vehicles due to conducting towing activities with inappropriate equipment, giving vehicle owners no insurance recourse by which to secure repairs for their damaged vehicles, has been in ongoing problem. Though insurance is already required under DMV rules, firms may have a reduced practical ability to sell towing services without insurance if they cannot obtain initial licensure or license renewal without sufficient insurance. Thus this requirement may help alleviate one of the ongoing problems enumerated above.

Additionally, the standards of practice also include a number of other requirements that if enforced by plausible threat of revocation of an operator's license and imposition of civil penalties will likely help reduce the incidence of dishonest or incompetent towing service. Such additional standards of practice include: employing only tow truck drivers who comply with the board's requirements for drivers, having the licensee's trade name clearly indicated on all of the operator's tow trucks, retaining for a minimum of one year records of services and fees charged or collected, only using equipment designed and rated for the type of vehicle being transported, allowing an authorized agent of the board to review and inspect records and equipment, and for all operators engaged in towing passenger vehicles without the consent of their owners prominently displaying a comprehensive list of all

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their fees for towing and recovery or the basis of such charges.

Requirements for drivers. The Board proposes to require that tow truck drivers (or their operator) pay a \$50 driver authorization documentation fee, plus the prevailing fee required by state and federal police authorities for reviewing the fingerprints submitted by the applicant and processing the criminal history background checks required by the statutes and these regulations. According to the Board, national (FBI) and Virginia (State Police) criminal background checks and fingerprinting cost from \$37.50 to \$50 per person. Applicants for tow truck documentation authorization must also sign a statement verifying that they are not required to register as a sex offender under any state, federal or local law, or the law of any country. The board shall refuse to issue a tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services as a tow truck driver. Drivers must also have a valid driver's license applicable to the type of truck to be driven. The above requirements are all clearly designed to help protect public safety.

## Fees

The Board proposes the following fees.

<u>License Item</u>	<u>Fee</u>
<u>Initial Fee Structure/Application Fee</u> <u>(Includes the fee for one driver authorization)</u>	<u>\$500</u>
<u>Annual License Renewal, Class A Operator</u> <u>(Includes the fee for one driver authorization)</u>	<u>\$500</u>
<u>Annual License Renewal, Class B Operator</u> <u>(Includes the fee for one driver authorization)</u>	<u>\$500</u>
<u>Annual tow truck decal, per vehicle</u>	<u>\$10</u>
<u>Annual driver authorization documentation, per driver</u>	<u>\$50</u>
<u>Late renewal (operator, truck decal and driver)</u>	<u>150 percent of renewal fee</u>

<u>Reinstatement following revocation or suspension of license</u>	<u>\$1000</u>
<u>Verification of licensure to another jurisdiction or government entity</u>	<u>\$25</u>
<u>Returned check</u>	<u>\$35</u>
<u>Duplicate copy of license, tow truck decal or driver authorization</u>	<u>\$10</u>
<u>Out-of-state temporary trip permit (each permit)</u>	<u>\$50</u>

Businesses and Entities Affected. Approximately 2,200 towing operators and 9,000 to 10,000 drivers are estimated to be affected. All of the businesses in this industry fit the Code of Virginia definition of a small business.<sup>5</sup>

Localities Particularly Affected. There are no localities that should expect a disproportionate impact from these regulations.

Projected Impact on Employment. The proposed regulations may have a negative impact on employment for operators who are only marginally profitable.

Effects on the Use and Value of Private Property. The fees under the proposed regulations will have a small negative impact on the value of operators. On the other hand, honest well-run operators may end up with more business and consequently greater profits if unscrupulous and poorly-run operators leave the industry due to the enforcement of the Code and regulations.

Small Businesses: Costs and Other Effects. Licensure fees, tow truck decal fees, driver authorization fees, examination fees, continuing education fees, and time spent on exam preparation and continuation education will all increase costs for small businesses. As mentioned above though, honest well-run operators may end up with more business and consequently greater profits if unscrupulous and poorly-run operators leave the industry due to the enforcement of the Code and regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both meet statutory requirements and reduce adverse impact.

Real Estate Development Costs. The proposed regulations will not likely have a significant effect on real estate development costs.

Legal Mandate. 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 Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic

impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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<sup>1</sup> Class A Operators may tow vehicles of an unlimited gross vehicle weight.

<sup>2</sup> Source: Towing and Recovery Association of America's website (<http://www.towserver.net/certification.htm>) accessed on November 23, 2007.

<sup>3</sup> Class B Operators may tow vehicles of a gross vehicle weight of 26,000 pounds or less.

<sup>4</sup> Source: Towing and Recovery Association of America's website (<http://www.towserver.net/certification.htm>) accessed on November 23, 2007.

<sup>5</sup> Source: Board of Towing and Recovery Operators.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Towing and Recovery Operators has reviewed and concurs with the economic impact analysis by the Department of Planning and Budget of the proposed regulations entitled General Regulations for Towing and Recovery Operators.

### Summary:

*The proposed regulations establish (i) requirements for licensure of towing operators, including requirements for license renewal and continuing education; (ii) standards of practice; (iii) what constitutes unprofessional conduct; (iv) exemptions from the regulation; and (v) licensure and related fees.*

## CHAPTER 30

### GENERAL REGULATIONS FOR TOWING AND RECOVERY OPERATORS

#### 24VAC27-30-10. Definitions.

The following words and terms when used in these regulations by the Virginia Board of Towing and Recovery Operators or the board's related documents, unless expressly stated otherwise, shall have the following meanings:

"Board" means the Virginia Board of Towing and Recovery Operators.

"Class A operator" means a towing and recovery business towing vehicles of an unlimited gross vehicle weight.

"Class B operator" means a towing and recovery business towing vehicles of a gross vehicle weight of 26,000 pounds or less.

"Driver" means a person who drives or is in actual physical control of a tow truck. A driver shall have obtained an authorization document issued by the board in order to drive a tow truck while providing towing or recovery services.

"Equipment" means any tow truck, vehicle or related machinery or tools used to provide towing or recovery services.

"Gross vehicle weight" means the aggregate weight of a vehicle and the load thereon.

"Gross vehicle weight rating" means as defined in §46.2-341.4 of the Code of the Virginia.

"Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make arrests for violations of the Code of Virginia or local ordinances authorized by law relating to drivers or driving of motor vehicles.

"Operator" means the same as "towing and recovery operator," notwithstanding the provisions of §46.2-100 of the Code of Virginia, which defines operator differently.

"Private property/trespass tow" means requests for towing and recovery services made by the owner, operator or lessee of private property, or the authorized agent thereof, pursuant to the provisions of Article 3 (§46.2-1216 et seq.) of Chapter 12 of Title 46.2 of the Code of Virginia, or local ordinances adopted under that article, or under contract between such person and a towing and recovery operator that specifies what tows are to be made from the property when a motor vehicle or vehicle or self-propelled apparatus is on the property in violation of law or rules promulgated by the owner, operator, or lessee of the private property.

"Responsible individual" means an individual identified through the operator's licensure process who is designated by the operator to represent and be accountable for all aspects of licensure for the operator and who is either the principal owner or chief executive officer of the business entity or manager or both of business operations for the operator.

"Tow" means when the towing vehicle has engaged the towed vehicle by a physical, mechanical means that causes the towed vehicle to be lifted off of the ground or moved for any distance whatsoever.

"Towing and recovery operator" means any person, including a business, corporation, or sole proprietor, offering services involving the use of a tow truck and services

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incidental to the use of a tow truck. Such services shall include but not be limited to those engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Towing and recovery services" means services offered by a towing and recovery operator. Any person who in any way advertises himself as a towing and recovery operator or in any way conveys the impression that he is engaged in services of providing towing and recovery of vehicles shall be deemed to be engaged in towing and recovery services.

"Tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." "Tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as defined in §46.2-100 of the Code of Virginia.

"Tow truck decal," "decal" or similar words mean a board-issued decal to be affixed to the driver side door of a tow truck owned, leased or operated by a licensed towing and recovery operator.

## **24VAC27-30-20. Fees.**

A. The following fees shall be applicable:

<u>License Item</u>	<u>Fee</u>
<u>Initial fee structure/application fee</u> (includes the fee for one driver authorization)	<u>\$500</u>
<u>Annual license renewal, Class A operator</u> (includes the fee for one driver authorization)	<u>\$500</u>
<u>Annual license renewal, Class B operator</u> (includes the fee for one driver authorization)	<u>\$500</u>
<u>Annual tow truck decal, per vehicle</u>	<u>\$10</u>
<u>Annual driver authorization documentation, per driver</u>	<u>\$50</u>
<u>Late renewal (operator, truck decal and driver)</u>	<u>150% of renewal fee</u>

<u>Reinstatement following revocation or suspension of license</u>	<u>\$1,000</u>
<u>Verification of licensure to another jurisdiction or government entity</u>	<u>\$25</u>
<u>Returned check</u>	<u>\$35</u>
<u>Duplicate copy of license, tow truck decal or driver authorization</u>	<u>\$10</u>
<u>Out-of-state temporary trip permit (each permit)</u>	<u>\$50</u>

B. All fees shall be nonrefundable.

C. Examination fees shall be determined by the board.

## **24VAC27-30-30. General requirements for operator's licensure.**

As a condition for licensure, an operator shall:

1. Be an individual or other entity legally authorized to conduct business in the Commonwealth of Virginia.

2. Provide the name of the individual or business entity under which the applicant intends to be licensed. However, the applicant/licensee, at time of application and each renewal of license, shall provide the board with any and all trade or fictitious names under which the operator conducts or offers towing and recovery services.

3. Designate and advise the board of the main or principal office and all additional satellite facilities and the physical addresses. Should such change, the board shall be notified within 30 days such change occurs.

4. Designate a responsible individual who shall be knowledgeable of all applicable state, federal or local laws and regulations related to those towing and recovery services offered or rendered by the operator and who shall be responsible for assuring that the operator conforms to them.

5. List the principal owner's name or owners' names and the name of the responsible individual and of the principal manager and of all other individuals involved in the management and operation of the business on the application for license and advise the board of any change of same.

6. Certify on the application whether any owner, manager, or other individual involved in the management or operation of the business entity, including the responsible individual, has been convicted of any criminal offense, whether felony or misdemeanor.

a. An applicant may not be refused a license or a tow truck driver's authorization document by the board solely because of a prior criminal conviction against such applicant or against any individual who is an owner,

manager or other person involved in the management or operation of the applicant's business, including the responsible individual, unless the criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of such services offered by a licensee or holder of a tow truck driver's authorization document. However, the board may refuse to issue a license or tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant or any individual who is an owner, manager or other person involved in the management or operation of the applicant's business, including the responsible individual, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services.

b. The board shall consider the following criteria in determining whether a criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of towing and recovery services:

- (1) The nature and seriousness of the crime;
- (2) The relationship of the crime to the purpose for requiring a license or tow truck driver's authorization document to provide towing and recovery services, which includes protecting the safety of users of such services;
- (3) The extent to which providing towing and recovery services might offer an opportunity to engage in further criminal activity of the same type as that in which the convicted person had been involved;
- (4) The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of providing towing and recovery services;
- (5) The extent and nature of the person's past criminal activity;
- (6) The age of the person at the time of the commission of the crime;
- (7) The amount of time that has elapsed since the person's last involvement in the commission of a crime;
- (8) The conduct and work activity of the person prior to and following the criminal activity; and
- (9) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release or at any time following the conviction.

c. The board may consider the criminal information as contained in the state or national criminal history record of the applicant or of each individual who is an owner, manager, or other person involved in the management or operation of the applicant's business, including the

responsible individual, if such record is available, in lieu of the applicant providing certified copies of court records as to such convictions in determining whether a criminal conviction directly relates to the provision of towing and recovery services, and in determining whether an applicant is unfit or unsuited to engage in towing and recovery services. The board may request additional information from the applicant or relevant individuals in making such determination.

d. The following criminal convictions may not be considered a bar to licensing by the board, meaning that the inclusion of these items on the record of any individual who is an owner, manager or other person involved in the management or operation of the business entity, including the responsible individual, shall not be sufficient as the sole grounds for denial of an operator's license.

(1) Felony convictions more than 10 years old with no subsequent reportable convictions, unless the conviction resulted in incarceration where the release date is less than three years from the date of the application. This does not include convictions involving murder, manslaughter, sexual assault, rape, robbery, or indecent liberties.

(2) Misdemeanor convictions more than three years old from the date of application.

(3) Felony convictions for possession of controlled substances more than two years old from the date of application, where the applicant has completed a deterrence program.

(4) Felony convictions of Title 46.2 of the Code of Virginia (Traffic Code) more than three years old from the date of application.

(5) Convictions of grand larceny, breaking and entering, or burglary, more than five years old with no subsequent convictions, provided they did not result in incarceration where the release date is less than three years from the application date.

7. Provide the board with information indicating all tow trucks owned, leased or used by the operator, and obtain the appropriate tow truck decal for each such tow truck. Such information shall include a basic description of the type of tow truck, make, model and vehicle identification number, and its license plate number and state issuing such license plate. Information shall be provided no less frequently than on an annual basis, at time of initial licensure or renewal of license, and when obtaining a decal for any tow truck newly acquired.

8. Provide the board with a list of all drivers employed by the operator to drive tow trucks, including their driver's license numbers and driver authorization document



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numbers, at the time of initial licensure and at each renewal of the license.

## **24VAC27-30-40. Operator's licensure without examination.**

Applicants for licensure to take effect July 1, 2008, shall be required to:

1. Submit an application for license on a form provided by the board, indicating on the application whether it is for a Class A or Class B operator's license, and remit payment of fees applicable for application and first year license, including fees for tow truck decals. Applications shall include the operator's federal tax identification number.

2. Certify in writing that the responsible individual has read and understands the laws and regulations governing towing and recovery services.

3. In order to qualify for "grandfather status" so that no examination is required for initial licensure, the applicant shall submit evidence to the board that the operator was actively engaged in the business of towing and recovery services on January 1, 2006. Such evidence shall include a date prior to January 1, 2006, and the business name of the operator and may include but shall not be limited to a copy of a state or federal tax return, local business license, receipt for payment of other taxes or government fees, paid purchase order forms or similar documents related to repair, lease, or purchase of a tow truck. The grandfather exemption shall expire if the application for license has not been received by close of business July 1, 2008.

## **24VAC27-30-50. Operator's licensure by examination.**

A. Applicants for licensure who were not engaged in the towing and recovery business before January 1, 2006, or who do not qualify for grandfather status or both shall be required to:

1. Submit an application for license on a form provided by the board, indicating on the application whether it is for a Class A or Class B operator's license, and remit payment of fees applicable for application and first year license, including fees for tow truck decals. Applications shall include the operator's federal tax identification number.

2. For license as a Class A operator, submit evidence of passage by the principal owner or responsible individual of all sections of Level I and of Level II of the Towing and Recovery Association of America's certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. Examinations that the board has deemed equivalent shall be posted on the board's website (<http://www.btro.vi.virginia.gov>).

3. For license as a Class B operator, submit evidence of passage by the principal owner or responsible individual of

all sections of Level I of the Towing and Recovery Association of America's certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. Examinations that the board has deemed equivalent shall be posted on the board's website (<http://www.btro.vi.virginia.gov>).

B. The principal owner or responsible individual of applicants for Class A and Class B operator's license shall additionally successfully pass an open book jurisprudence examination provided by the board on the laws and regulations governing towing and recovery operators.

## **24VAC27-30-60. Operator's licensure by endorsement.**

An applicant may receive licensure by endorsement providing he (i) provides evidence of passage of the applicable examination requirements set out herein for a Class A or Class B license, (ii) submits evidence that he has been actively engaged in towing and recovery services in another state for the past five consecutive years, (iii) provides a statement from a government entity in the state in which he has been conducting business or businesses in the past five consecutive years that the applicant's business has not violated or been disciplined for violation of the other state's laws and regulations governing towing and recovery services, (iv) has passed the board required jurisprudence examination, and (v) has submitted the required applications and fees to the board.

## **24VAC27-30-70. Exemptions.**

The following shall be exempt from these regulations:

1. "Rollbacks" used exclusively to transport cargo other than vehicles.

2. "Automobile or watercraft transporters," "stinger-steered automobiles or watercraft transporters" or "tractor trucks" as defined in §46.2-100 of the Code of Virginia. Such transporters are only exempt if capable of transporting five or more vehicles and have appropriate and required interstate operating authority.

3. "Household goods carriers" as defined in §46.2-100 of the Code of Virginia providing they have been issued a valid "certificate of public convenience and necessity" means by the Virginia Department of Motor Vehicles.

4. Tow trucks solely owned and operated directly by a government entity used for public safety towing or noncommercial purposes, providing such do not impose a fee for services rendered.

5. Tow trucks that are properly registered and domiciled in another state and have proper interstate operating authority may be operated within the Commonwealth of Virginia while passing through the Commonwealth to another jurisdiction or while delivering a vehicle within the Commonwealth, but only if the pick up of the vehicle and

origin of the trip is outside of the Commonwealth. However, tow trucks registered and domiciled in another state are not exempt from licensure or provisions of applicable state laws or regulations of the board if pick up or hook up of a vehicle is in Virginia. Such tow trucks must obtain a temporary trip permit from the board prior to operating in Virginia unless licensed by the board.

6. Tow trucks owned by a person and used exclusively to transport vehicles owned by such person providing there is no charge or acceptance of fees or payment for services. In such situations, ownership of vehicles being transported must be supported by possession of title, bill of sale, registration or other legal document while the vehicle is being transported and signage must be permanently posted on the door of both sides of said tow truck indicating "NOT FOR HIRE." Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

7. Tow trucks owned by tow truck dealers or tow truck manufacturers operating with a legally recognized dealer license plate. Such tow trucks may only be operated by an employee of the dealer or manufacturer for the sole purpose of transporting it to and from the location of sale or demonstration. Such tow trucks shall be required to have temporary or permanent lettering with the dealer's or manufacturer's name, city and state and the words "NOT FOR HIRE" displayed on both of the side doors of the tow truck. Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

#### **24VAC27-30-80. Transfer of operator's license.**

A. Except as provided in subsection B of this section, an operator's license is not transferable.

B. Transfer of an operator's license under emergency circumstances, as agreed to by the board executive director, may be granted for up to 90 days.

#### **24VAC27-30-90. Temporary trip permits, regulations, fees.**

The board may, on application on forms provided by the board, issue a temporary trip permit to any owner of a tow truck who would otherwise be subject to licensure by the board but is not currently registered. The permit shall be valid for three days and shall show the vehicle identification number, tag number, authorized driver's name and the beginning point and the point of destination, and other information as may be required by the board, including certification that the driver is not required to register as a sex offender in any jurisdiction.

#### **24VAC27-30-100. Unprofessional conduct.**

It shall be deemed unprofessional conduct, which may be subject to disciplinary action or sanctions imposed by the board, for any licensed operator in the Commonwealth to violate any statute or regulation governing towing and recovery services, or fail to:

1. Employ only tow truck drivers who comply with the board's requirements for drivers and hold a valid driver's authorization document from the board.

2. Advise the board in writing of any change in ownership listed on the application or management, including a change in the responsible individual, or in the licensee's principal or business mailing address within 30 days of such change occurring.

3. Have the licensee's trade name, clearly indicated on all of the operator's tow trucks. Provided, however, that if the licensee's towing business is exclusively limited to towing only vehicles that are being repossessed, then the name of the licensee and any other markings that might identify the vehicle as associated with the business of repossessing vehicles shall not be required except for their board-issued decal.

4. Retain for a minimum of one year from last date of service, records of services and fees charged or collected. If said records are not maintained at the operator's principal place of business, the location of such records shall be made known to the board at the board's request.

5. Allow an authorized agent of the board to review or inspect, during regular business hours, the operator's records of services rendered and fees charged or collected, facilities and equipment. Such inspections shall be limited to that which is related to compliance with laws or regulations governing towing and recovery operators and towing and recovery services.

6. Accept at least one of two nationally recognized credit cards. However, any individual credit card offered in payment, even if of a type normally accepted, may be considered unacceptable by the operator if the credit card processing company denies charges being applied to said card or if the actual card is not presented to the operator for inspection. Operators may insist payment by credit card be made at their principal place of business or any location at which payment for fees for services is normally accepted. Operators may also insist on accepting a credit card only from the owner of the vehicle towed or impounded.

7. For operators engaged in towing passenger vehicles without the consent of their owners pursuant to §46.2-1231 of the Code of Virginia, also known herein as private property/trespass towing, prominently display at their main place of business and at any other location where towed vehicles may be reclaimed, a comprehensive list of all their

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fees for towing and recovery or the basis of such charges. This requirement to display a list of fees may also be satisfied by providing, when the towed passenger vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall not be collectible from any motor vehicle owner whose vehicle is towed or recovered without his consent. If the owner or representative or agent of the owner of the trespassing passenger vehicle is present and removes the trespassing vehicle from the premises before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed the fee set out in §46.2-1231 of the Code of Virginia, or such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of towing.

8. Provide, at the customer's request, a price list indicating the maximum fees normally charged for basic services for towing, recovery and processing fees for vehicles weighing 26,000 pounds or less. If storage fees are not included in the list of charges, the list shall include a statement indicating storage fees may be additional and vary according to the size and condition of the vehicle, length of time the vehicle is stored and other costs that may be incurred by the operator when storing the vehicle.

9. Have affixed on the driver's side of all of the operator's tow trucks a tow truck decal issued by the board to all licensed operators.

10. Display his operator's license in a conspicuous place in the principal office in which he operates and display a copy of his operator's license at all other locations at which payment for fees is accepted.

## **24VAC27-30-110. Standards of practice.**

Violations of any standard of practice set out in this section may be subject to board disciplinary actions or sanctions, including suspension or revocation of an operator's license and imposition of civil penalties.

1. All of an operator's places of business, including their offices and storage facilities, shall comply with any required state or local building or zoning laws or codes.

2. If required by the locality in which the operator designates as his principal place of business, an operator must maintain a valid business license from that locality.

3. Any operator permanently ceasing to provide towing and recovery services shall notify the board in writing and return the board-issued operator's license for voluntary cancellation and termination within 15 days.

4. A licensed operator must maintain the following proof of insurance: (i) \$750,000 for automobile liability; (ii) \$750,000 for commercial general liability; (iii) \$50,000 for

garagekeepers liability; (iv) \$50,000 for on hook coverage; and (v) worker's compensation as required by state and federal entities.

5. Operators shall assure that only equipment designed and rated for the type of vehicle being transported is used. Operators shall additionally assure that at no time shall one of their tow trucks exceed the manufacturer's gross vehicle weight rating: for a Class B operator, a minimum of 14,500 pounds on a rollback and a minimum of 10,000 pounds on a wrecker; for a Class A operator, a minimum of 29,000 pounds gross vehicle weight rating for a wrecker or the manufacturer's rated capacity for towing apparatus.

6. All tow trucks shall meet all federal Department of Transportation and applicable Virginia regulations. Towing or rollback units shall be a factory manufactured unit and only used as designed and rated to haul the vehicle being transported. Tow trucks shall be able to retain 50% of its front axle weight during towing operations. Safety chains or straps shall be used in all towing operations with such chains or straps rated to secure the towed vehicle to the tow truck.

7. Any and all advertisements, promotions, and offers for services shall include the operator's trade name and board license number. Invoices shall include the operator's trade name, address, telephone number, and board license number.

8. Operators shall be responsible for the supervision and all actions of their employees and drivers, including their compliance with laws and regulations governing towing and recovery services.

9. Operators shall not provide public safety towing and recovery services unless they have met the criteria established by the board pursuant to §46.2-2826 of the Code of Virginia and have been placed on the list authorized by that section.

10. Whenever a trespassing vehicle is removed or towed without the owner's consent pursuant to §46.2-1231 of the Code of Virginia, then in accordance with that section, notice of the removal or towing shall forthwith be given by the driver of the tow truck to the Virginia State Police or the local law-enforcement agency of the jurisdiction from which the vehicle was towed. Should the driver fail to report such action, it shall limit the amount that may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping. If the vehicle is removed and stored, the vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and storage.

11. An operator shall comply with all local ordinances and with all contracts, if any, that he has entered into, including any agreements related to private property/trespass towing

pursuant to §46.2-1231 of the Code of Virginia. At the request of both the locality and a towing and recovery operator, the board may assist in conflict resolution between an operator and a locality regarding compliance with local ordinances or contracts.

12. For vehicles towed or removed from private property without the consent of the owner, unless different limits are established by ordinance of the local governing body, an operator shall not charge a hookup and initial towing fee in excess of the amount set out in §46.2-1233.1 of the Code of Virginia. For towing such a vehicle between 7 p.m. and 8 a.m. or on any Saturday, Sunday, or holiday, an additional fee of no more than the amount set out in §46.2-1233.1 of the Code of Virginia may be charged per instance; however, in no event shall more than two such fees be charged for towing any such vehicle. No charge shall be made for storage and safekeeping for such vehicle if it is stored for a period of 24 hours or less. Except for such stated fees, no other fees or charges shall be imposed during the first 24-hour period.

13. As provided in §46.2-2828 of the Code of Virginia, no operator shall impersonate a licensed operator of a like or different name.

14. As provided in §46.2-2828 of the Code of Virginia, no operator shall publish or cause to be published in any manner an advertisement that is false, deceptive, misleading or that violates regulations of the board governing advertising by towing and recovery operators.

15. No operator shall provide any towing and recovery services for vehicles of a gross vehicle weight over 26,000 pounds unless licensed as a Class A operator.

16. In addition to the foregoing, the standards of practice for operators require that no operator shall:

- (a) Engage in fraud or deceit in the offering or delivering of towing and recovery services.
- (b) Conduct his business or offering services in such a manner as to endanger the health and welfare of the public.
- (c) Use or allow the use of alcohol or drugs to the extent such use renders the operator or his drivers unsafe to provide towing and recovery services.
- (d) Neglect to maintain on record at the licensed operator's principal office a list of all drivers in the employ of the operator.
- (e) Obtain any fee by fraud or misrepresentation.
- (f) Advertise in a way that directly or indirectly deceives, misleads, or defrauds the public.

(g) Advertise or offer services under a name other than one's own name or trade name (as specified on the truck) as set forth on the operator's license.

(h) Fail to accept for payment cash, insurance company check, certified check, money order, at least one of two commonly used, nationally recognized credit cards, or additional methods of payment approved by the board.

(i) Fail to display at the licensed operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees for vehicles of 26,000 pounds gross vehicle weight or less.

(j) Fail to have readily available at the customer's request the maximum fees normally charged by the licensed operator for basic services for towing and initial hookup of vehicles of 26,000 pounds gross vehicle weight or less.

(k) Fail to provide at the consumer's request the phone number for which consumer complaints may be filed with the board.

(l) Knowingly charge excessive fees for towing, storage, or administrative services or charge fees for services not rendered.

(m) Fail to maintain all towing records, which shall include itemized fees, for a period of one year from the date of service.

(n) Willfully invoice for payment any services not stipulated or otherwise incorporated in a contract for services rendered between the licensed operator and any locality or political subdivision of the Commonwealth that has established a local Towing Advisory Board pursuant to §46.2-1233.2 of the Code of Virginia.

(o) Employ any driver required to register as a sex offender as provided in §9.1-901 of the Code of Virginia.

(p) Remove or tow a trespassing vehicle, as provided in §46.2-1231 of the Code of Virginia, or a vehicle towed or removed at any request of a law-enforcement officer to any location outside the Commonwealth.

(q) Refuse at any operator's place of business where payment is accepted, to make change up to \$100 for the owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for towing and storage of the vehicle.

(r) Violate, assist, induce, or cooperate with others in violating any provisions of law related to the offering or delivery of towing and recovery services, including the provisions of Chapter 28 (§46.2-2800 et seq.) of Title 46.2 of the Code of Virginia and the provisions of these regulations.

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(s) Fail to provide the owner of a stolen vehicle written notice of his right under the law to be reimbursed for towing and storage of his vehicle out of the state treasury from the appropriation for criminal charges as required in §46.2-1209 of the Code of Virginia.

(t) Fail to satisfy the procedural steps, including the timely mailing of all notices, required by §§43-32 and 43-34 of the Code of Virginia, in order to perfect and enforce the liens provided therein for towing and recovery and vehicle storage.

## **24VAC27-30-120. Operating without a license; penalties.**

A. Should the board, after investigation, determine an operator is engaged in or offering towing and recovery services without a license, then, as authorized by §46.2-2808 of the Code of Virginia, the board may bring an action in the name of the Commonwealth to enjoin any such violation of law, as well as any violations of these regulations, or Chapter 28 (§46.2-2800 et seq.) of Title 46.2 of the Code of Virginia.

B. Those persons found to be engaged in or offering towing and recovery services without a license may be subject to a board-imposed civil penalty of up to \$1,000 for each violation pursuant to §§46.2-2811 and 46.2-2824 of the Code of Virginia.

C. The board may seek criminal prosecution for such a violation pursuant to §46.2-2812 of the Code of Virginia.

## **24VAC27-30-130. Expedited process to consider consumer complaints.**

A. The board's executive director or designated staff shall have the authority to initiate an expedited process to mediate and resolve complaints filed against those licensed or otherwise regulated by the board according to guidelines developed by the board.

B. Anonymous complaints received by the board shall be handled in accordance with board's policy and guidance documents.

## **24VAC27-30-140. Prerequisites for application for tow truck driver's authorization document.**

A. The board shall accept applications for tow truck driver's authorization documents at its office in Richmond or via its website. To be included with the application shall be the board application fee plus the prevailing fee required by state and federal police authorities for reviewing the fingerprints submitted by the applicant and processing the criminal history background checks required by the statutes and these regulations.

B. After the application and fees are received, the applicant shall be issued the board originating number to provide to the entity taking the fingerprints at the time the fingerprints and criminal history background check data are taken before being forwarded to Virginia State Police to be processed. The

board may accept electronically processed fingerprints such as those available from LiveScan or other electronic systems that take the fingerprints and forward them electronically for almost immediate processing by state and federal officials, sometimes within 24 hours, in addition to ink fingerprint cards submitted to the Virginia State Police, noting that ink cards have processing times from 30 to 60 days and higher rates of rejection requiring retesting than electronic systems.

C. When the results of the criminal history background check are received by the board, they shall be evaluated and the application may either continue to be processed, or, if the results are such that the applicant appears to be ineligible to obtain a driver authorization document under the statutes or these regulations, the applicant shall receive a denial notice from the board.

D. A denied applicant may appeal such denial by requesting review by the board in accordance with informal proceeding provisions of the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) within 30 days of the denial notice.

E. Results of the criminal history background check shall be sent directly to the board office and maintained confidentially unless its contents are used to reject or place conditions upon a driver's authorization document. An applicant shall not be refused a tow truck driver's authorization document by the board solely because of a prior criminal conviction against such applicant unless the criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of such services offered by a licensee or holder of a tow truck driver's authorization document. However, the board shall refuse to issue a tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services as a tow truck driver.

1. The board shall consider the following criteria in determining whether a criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of towing and recovery services by a tow truck driver:

- a. The nature and seriousness of the crime;
- b. The relationship of the crime to the purpose for requiring a license or tow truck driver's authorization document to provide towing and recovery services, which includes protecting the safety of users of such services;
- c. The extent to which providing towing and recovery services might offer an opportunity to engage in further criminal activity of the same type as that in which the convicted person had been involved;

d. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of providing towing and recovery services;

e. The extent and nature of the person's past criminal activity;

f. The age of the person at the time of the commission of the crime;

g. The amount of time that has elapsed since the person's last involvement in the commission of the crime;

h. The conduct and work activity of the person prior to and following the criminal activity; and

i. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release or at any time following the conviction.

2. The following criminal convictions shall not be considered a bar to authorization by the board, meaning that the inclusion of these items on a criminal history record shall not be sufficient as the sole grounds for denial of a tow truck driver's authorization document:

a. Felony convictions more than 10 years old with no subsequent reportable convictions, unless the conviction resulted in incarceration where the release date is less than three years from the date of the application. This does not include convictions involving murder, manslaughter, sexual assault, rape, robbery, or indecent liberties.

b. Misdemeanor convictions more than three years old from the date of application.

c. Convictions of grand larceny, breaking and entering, or burglary or all of these convictions, more than five years old with no subsequent convictions, provided such convictions did not result in incarceration where the release date is less than three years from the application date.

d. Driving-under-the-influence (DUI) convictions where the applicant has completed Virginia Alcohol Safety Action Program (VASAP) or another similar program accepted by the court after the latest conviction. However, no tow truck driver's authorization document shall be issued, and none shall continue to be valid, during any time period for which (i) the person's driver's license is suspended or revoked or (ii) the person has been authorized only a restricted license during a period of suspension or revocation resulting from a conviction or convictions for DUI or any DUI-related offense, except that if the driver demonstrates that he is not required to possess a commercial driver's license in order to drive a tow truck, then an authorization document can be issued for the period during which he has a restricted

license if it authorizes the driver to drive only tow trucks for which a commercial drivers license is not required.

3. The applicant must possess a valid driver's license at the time of the application. The driver shall be required to possess a commercial driver's license if applicable to the class of operator the driver is to be employed by or the type of tow truck to be driven.

4. Applicants shall be required to sign a statement verifying they are not currently on any state or federal list as a sex offender and are not required to register as a sex offender under any state, federal or local law, or the law of any foreign country.

5. A tow truck driver's authorization documents shall be valid for one year and shall be subject to annual renewal by June 30 of each year. Driver authorization documents issued on or after April 1 of any year, with the payment of a full year's fee, shall be valid until June 30 of the following year.

## **24VAC27-30-150. Exemptions from tow truck driver authorizations.**

A tow truck driver's authorization document shall be required for operation of a tow truck in Virginia only if such operation is for hire and involves a pick up of the towed vehicle in Virginia. Driving a tow truck into or through Virginia while towing a vehicle picked up outside of Virginia shall not require a driver's authorization document.

## **24VAC27-30-160. Requirements for drivers.**

A tow truck driver shall:

1. Possess a valid and appropriate driver's license and tow truck driver's authorization document while operating a tow truck for hire in Virginia when the pick up of the towed vehicle takes place in Virginia.

2. Provide evidence at time of application for a tow truck driver's authorization document that he is employed or about to be employed by a licensed operator and the name and address of that operator.

3. Maintain in his possession and have readily available for inspection when providing towing and recovery services his board-issued tow truck driver's authorization document. The driver's authorization document shall include the name of the driver and the driver's appropriate driver's license number of the state in which he holds a valid driver's license and the name and board-issued license number of the driver's employer.

4. Notify the board within five business days upon the driver being convicted of any criminal offense, including any offense for which the driver is required to register as a sex offender under any state, federal or local law, or the law of any foreign country.

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# Regulations

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5. Provide towing and recovery services in a safe manner.

6. Review and read all regulations and laws related to standards of practice, unprofessional conduct and safety prior to operating a tow truck or providing towing and recovery services. The driver shall sign a statement to be retained by the operator who employs the driver verifying the driver's compliance with this subsection.

7. Notify the board within 15 days of any change in licensed operator who employs the driver. The driver's authorized documentation shall, within 30 days of any change in employer, reflect the current operator or operators who employ the driver.

8. Surrender his tow truck driver's authorization document should the board rescind, cancel, suspend, revoke or deny such tow truck driver's authorization document upon a determination by the board that the driver has violated laws or regulations governing towing and recovery services or otherwise has become unqualified to hold a tow truck authorization document.

## **24VAC27-30-170. Renewal of licensure; reinstatement; renewal of fees.**

A. All those licensed by the board as a towing and recovery operator shall, on or before June 30 of every year, submit a completed renewal application and pay the prescribed annual licensure fee.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current mailing address. All changes of mailing addresses or change of name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed validly tendered when mailed to the address given by the licensee to the board, and the licensee shall not be relieved of the obligation to comply with any notice so mailed if there has been a failure to notify the board of changes.

C. The license of every operator who does not submit the completed form and fee or forms and fees, as applicable, by June 30 of each year may be allowed to apply for renewal for up to one year after that date by paying the prescribed renewal fee and late fee. However, if the renewal has not been submitted to the board within 62 days after the June 30 due date, then on and after August 31 of that year the operator's license is lapsed. Engaging in towing and recovery services with a lapsed license constitutes operating without a license and may subject the licensee to disciplinary action and civil penalties imposed by the board.

D. An operator whose license has been lapsed for more than one year and who wishes to resume providing services as a towing and recovery operator shall apply for a new operator's license.

## **24VAC27-30-180. Requirements for continuing education shall become effective July 1, 2011.**

A. Exclusive of additional hours that may be required of those recognized by the board to provide public safety towing and recovery services, each application for operator's license renewal shall be conditioned upon submission of evidence to the board of eight hours of continuing education taken by the principal owner or responsible individual or other person responsible for the day-to-day operations of the applicant for renewal during the previous license period, and an additional four hours of continuing education taken by each of the tow truck drivers employed by the applicant during the previous licensing period and employed by the operator at the time the operator submits his license renewal application.

1. The required hours of continuing education shall be directly related to the safe and proper rendering and business practices of towing and recovery services, proper inspection and maintenance of equipment, and laws and regulations governing towing and recovery operators.

2. Courses that are offered directly by or of which a majority of their content promote the sale of specific equipment or products or on augmenting income are excluded and may not receive credit by the board.

B. Each licensee shall attest to fulfillment of continuing education requirements on the required annual renewal application form completed by the applicant for renewal and submitted to the board. All continuing education shall be completed prior to application for renewal being submitted each year unless an extension or waiver has been granted by the board's continuing education committee.

C. Requests to the board for consideration of waiver, reduction in the number of hours or an extension for time to complete continuing education shall be in writing and must be received by the board no later than April 1 of the year for which such request is made. Such requests are only to be considered when based on documented illness or undue hardship.

D. All continuing education courses shall be offered by an approved sponsor, a list of whom shall be posted on the board's website. Courses that are not offered by an approved sponsor shall not be accepted for continuing education credit, but the sponsor of such a course may apply for approval by submitting an application to the board's executive director.

E. At least one-half of the required number of continuing education credit hours completed annually must be through face-to-face instruction, which requires the presenter and audience to see and to hear each other during the presentation.

F. Courses presented via the Internet or by correspondence must (i) be sponsored by a board approved sponsor and (ii) require a post-test with credit only to be granted for the

licensee receiving a passing grade as indicated on the certificate of completion of the course.

G. Licensees shall maintain documentation for a period of at least three years of the continuing education completed as required for renewal of their license.

H. At the discretion of the board, a random audit of licensees may be conducted by the board, which shall require that the licensee, within 21 days of the request, provide evidence substantiating completion of the required continuing education courses.

I. Documentation of hours shall clearly indicate: (i) the name of the sponsor of the continuing education; (ii) the name or title of the presentation or instruction; (iii) the name of the instructor or instructors; (iv) the location where the instruction was presented; (v) the time period of the instruction; (vi) the number of applicable continuing education hours received; (vii) the name of the person taking the course and that person's relationship to the licensee, as well as the name of the licensee; and (viii) either a signature, a type of stamp, or some other means to verify attendance. Documents failing to have the required information shall not be acceptable to the board. Correspondence or internet courses shall be credited according to the date on which the post-test was graded as indicated on the applicable continuing education certificate.

J. One hour of continuing education credit shall require the licensee's presence and participation for at least 50 minutes.

K. A licensee shall be exempt from the continuing education competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

#### FORMS

Operators License Application, 27LIC (eff. 1/08).

Tow Truck Driver Authorization Application (eff. 1/08).

Change of Responsible Individual Application (eff. 1/08).

VA.R. Doc. No. R07-270; Filed December 28, 2007, 2:30 p.m.



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# FORMS

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

**NOTICE:** The following form has been filed by the State Water Control Board. The form is available for public inspection at the State Water Control Board, 629 East Main Street, Richmond, Virginia 23218, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation.**

#### FORMS

Virginia Pollution Abatement Permit Application, General Instructions, revised 10/95.

Virginia Pollution Abatement Permit Application, Form A, All Applicants, revised 10/95.

Virginia Pollution Abatement Permit Application, Form B, Animal Waste, revised 10/95.

Virginia Pollution Abatement Permit Application, Form C, Industrial Waste, revised 10/95.

Virginia Pollution Abatement Permit Application, Form D, Municipal Waste, revised 10/95.

Application for a Biosolids Use Permit, 2007.

Application for Land Application Supervisor Certification, (eff. 1/08).

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Periodic Review of Regulations

Pursuant to Executive Order 36 (2006), the Department of Agriculture and Consumer Services has completed a periodic review for 2VAC5-590, Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Ground Beef. No public comment was received during the periodic review period. In view of its continued need and effectiveness, the department recommends that the regulation remain in effect without change.

Agency Contact: Scott P. Johnson, M.P.A., Department of Agriculture and Consumer Services, Commissioner's Office, Office of Policy, Planning & Research, 102 Governor Street, Richmond, VA 23219, telephone (804) 371-8067, FAX (804) 371-2945, or email [scott.johnson@vdacs.virginia.gov](mailto:scott.johnson@vdacs.virginia.gov).

## AIR POLLUTION CONTROL BOARD

### Seeking Individuals to Serve on a Fine Particulate Matter (PM<sub>2.5</sub>) Implementation Workgroup

The State Air Pollution Control Board and the Department of Environmental Quality (DEQ) are seeking individuals who are willing to serve as members of a Fine Particulate Matter (PM<sub>2.5</sub>) Implementation Workgroup. The workgroup will be responsible for developing a draft policy to evaluate both new and existing sources that have the potential to emit PM<sub>2.5</sub> in quantities that could have a potential for significant adverse health and/or environmental impacts.

DEQ is seeking membership from environmental and health organizations, academia, the legal profession, and industry or trade associations that have a background in air quality modeling, policies or programs to serve on this workgroup. If you are interested, please submit your name and a brief resume of your qualifications to the contact below by close of business on February 4, 2007.

Agency Contact: Michael F. Kiss, Coordinator, Air Quality Assessments Group, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4406, FAX (804) 698-4510, or email [mfkiss@deq.virginia.gov](mailto:mfkiss@deq.virginia.gov).

## STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 21, 2007

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2007-00161

Ex Parte: In re: credit union

service organizations

### ORDER SCHEDULING HEARING

By Order to Take Notice entered herein October 5, 2007, all interested persons were ordered to take notice that subsequent to December 14, 2007, the State Corporation Commission ("Commission") would consider the entry of an Order adopting Rules proposed by the Bureau of Financial Institutions ("Bureau") implementing provisions of the Virginia Credit Union Act relative to credit union service organizations, to be set forth in Chapter 40 of Title 10 of the Virginia Administrative Code. Interested persons were required to file comments and/or a request for hearing on the proposed Rules with the Clerk of the Commission ("Clerk") on or before December 14, 2007.

On December 10, 2007, DuPont Community Credit Union filed comments to the proposed Rules with the Clerk, and on December 14, 2007, University of Virginia Community Credit Union, Inc. and the National Association of Credit Union Service Organizations filed comments to the proposed Rules with the Clerk. Riverside Health System Employees' Credit Union, Incorporated also filed comments on the proposed Rules. These entities did not request a hearing.

The Regulatory Response Committee of the Virginia Credit Union League, Richmond Postal Credit Union Incorporated, and the Virginia Credit Union League filed comments to the proposed Rules and requests for a hearing with the Clerk on December 12, 2007. The Virginia Credit Union League also filed a corrected version of its comments and request for hearing with the Clerk on December 14, 2007. In addition, BayPort Credit Union and Virginia Credit Union, Inc. filed comments and a request for hearing with the Clerk on December 14, 2007.

The Commission is of the opinion that a hearing should be held to consider the proposed Rules and the filed comments. The Commission also concludes that it would be beneficial for the Bureau to meet with those who have filed comments on the proposed Rules in an effort to narrow the issues for the Commission's consideration at the hearing. In addition, the Commission concludes that it would be beneficial to receive a written response from the Bureau to the comments that have been filed in this proceeding.

IT IS THEREFORE ORDERED THAT:

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## General Notices/Errata

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(1) The Commission shall conduct a hearing in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia at 10:00 a.m. on February 26, 2008, to consider the adoption of the proposed Rules that were attached to the Order to Take Notice.

(2) On or before January 25, 2008, the Bureau shall meet with representatives from those entities who have submitted comments in this proceeding in an attempt to narrow the issues for the Commission's consideration at the hearing on February 26, 2008. Such meeting or meetings may be conducted by teleconference, if necessary.

(3) On or before February 15, 2008, the Bureau shall make a filing in this case in which it (i) identifies any issues that have been resolved as a result of the meeting or meetings conducted in accordance with the preceding paragraph, and (ii) responds to the comments filed in this case that pertain to issues that remain unresolved after the Bureau's meeting or meetings.

(4) The Commission's Division of Information Resources shall cause a copy of this Order to be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(5) This Order shall be posted on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

(6) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Gerald Hershey, President/CEO, DuPont Community Credit Union, P.O. Box 1365, 140 Lucy Lane, Waynesboro, Virginia 22980; Richard Williams, Chairman, Virginia Credit Union League Regulatory Response Committee, 1207 Fenwick Drive, Lynchburg, Virginia 24502; S. Timothy Hesson, Vice President Operations, Richmond Postal Credit Union Incorporated, 1601 Ownby Lane, Richmond, Virginia 23220; Richard D. Pillow, CLE, President, Virginia Credit Union League, 1207 Fenwick Drive, Lynchburg, Virginia 24502; Katherine E. Weber, Messick & Weber P.C., The Madison Building, 108 Chesley Drive, Media, Pennsylvania 19063-1712; George R. Dudley, Jr., President/CEO, BayPort Credit Union, 3711 Huntington Avenue, Newport News, Virginia 23607; Ray C. Goodwin, Chairman, Board of Directors, Virginia Credit Union, Inc., P.O. Box 90010, Richmond, Virginia 23225-9010; Jane G. Watkins, President, Virginia Credit Union, Inc., P.O. Box 90010, Richmond, Virginia 23225-9010; Alison DeTuncq, President/CEO, University of Virginia Community Credit Union, Inc., 3300 Berkmar Drive, Charlottesville, Virginia 22901; Janet L. Harris, CEO, Riverside Health System Employees' Credit Union, Incorporated, 500 J. Clyde Morris Boulevard, Newport News, Virginia 23601; and to the Commissioner of Financial Institutions, who shall mail a

copy of this Order to all state-chartered credit unions and such other interested parties as he may designate.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Air Quality Plan

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standard for PM<sub>2.5</sub> in the metropolitan Washington, D.C. area, which includes the northern Virginia jurisdictions of Loudoun County, Prince William County, Fairfax County, Arlington County, the City of Falls Church, the City of Alexandria, the City of Manassas, the City of Fairfax, and the City of Manassas Park. If adopted, the Commonwealth intends to submit the plan or portion thereof as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of §110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan, including (i) the attainment plan, (ii) the analysis of reasonably available control measures, (iii) the attainment demonstration, (iv) the contingency plans for failure to attain the air quality standard, (v) mobile source budgets, and (vi) the base year 2002 air pollutant emissions inventory. The base year 2002 air pollutant emissions inventory has been prepared in response to the emission inventory requirements under §172(c) of the federal Clean Air Act in accordance with 40 CFR 51.915.

Public comment period: December 28, 2007, to January 30, 2008.

Public hearing: George Mason High School, 7124 Leesburg Pike, Falls Church, Virginia (within walking distance of the West Falls Church Metro Station) at 7 p.m. on January 29, 2008.

Description of proposal: The proposed revision, "State Implementation Plan (SIP) for the Annual Fine Particulate (PM<sub>2.5</sub>) Standard and the 2002 Base Year Inventory for the Washington, DC-MD-VA Nonattainment Area," was prepared by the Metropolitan Washington Air Quality Committee (MWAQC), which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies. The plan is intended to show the progress being made to improve air quality in the Washington nonattainment area and the efforts underway to assure that all necessary steps are taken to reach the federal health standard for PM<sub>2.5</sub> by 2009. MWAQC prepared the plan to comply with the Clean Air Act

Amendments of 1990 and with federal implementation guidance.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under §110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. All provisions of the proposal are planned to be submitted as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, facsimile transmission, and postal mail. In order to be considered, written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period (January 30, 2008). Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits, and documents received are part of the public record. Please note this proposed plan is being concurrently reviewed by the U.S. EPA.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website: <http://www.deq.virginia.gov/air/permitting/planotes.html>. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following locations: DEQ Main Street Office, 8th Floor, 629 E. Main Street, Richmond, Virginia, 804-698-4070; and DEQ Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, Virginia, 703-583-3800.

Agency Contact: Doris McLeod, Air Quality Planner/Department of Air Data Analysis and Planning, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email [damcleod@deq.virginia.gov](mailto:damcleod@deq.virginia.gov).

### **Total Maximum Daily Loads (TMDLs) - Hays Creek, Moffatts Creek, Walker Creek, and Ottis Creek**

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Hays Creek, Moffatts Creek, Walker Creek, and Ottis Creek in Augusta and Rockbridge counties. Hays Creek was listed on the 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. This impairment extends for 11.99 miles from Moffatts Creek

to the confluence with the Maury River. Tributaries of Hays Creek, including Moffatts Creek, Walker Creek, and Ottis Creek are also listed on the 2006 303(d) TMDL Priority List and Report for violations of the state's water quality standard for bacteria.

Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report. DEQ has developed bacteria TMDLs to address the impairments in the Hays, Moffatts, Walker, and Ottis creeks and is soliciting public comment on the draft TMDL report. The draft report will be available for review and download from the DEQ website at: [http://gisweb.deq.virginia.gov/tmdlapp/tmdl\\_draft\\_reports.cfm](http://gisweb.deq.virginia.gov/tmdlapp/tmdl_draft_reports.cfm) beginning on or before January 29, 2008.

The final public meeting on the development of these TMDLs will be held on Tuesday, January 29, 2008, 7 p.m. at the Rockbridge Baths Volunteer Fire Department, 5024 Maury River Rd., Rockbridge Baths, VA. In the event of inclement weather on the designated meeting date, the meeting will be moved to January 31, 2008, at 7 p.m. The decision to postpone the meeting will be determined by the Rockbridge County School schedule. If Rockbridge County Schools are closed or close early on January 29, 2008, the meeting will be postponed to the alternate date.

The public comment period for this final public meeting will end on February 29, 2008. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or email [mbrent@deq.virginia.gov](mailto:mbrent@deq.virginia.gov).

### **Total Maximum Daily Loads (TMDLs) - Rivanna River Basin**

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) within the Rivanna River Basin in Albemarle, Greene, and Orange counties. An 11.16 mile segment of the Rivanna River was listed on the 2006 303(d) TMDL Priority List and Report as impaired due to violations of the state's general (benthic) standard for aquatic life. A smaller 5.28 mile segment was also listed as impaired due to violations of the state's water quality standard for bacteria. In addition, tributaries to the Rivanna River including the North Fork Rivanna River, Preddy Creek, Meadow Creek, Mechums River, and Beaver Creek were also listed as impaired due to violations of the state's water quality standard for bacteria.

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## General Notices/Errata

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Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report. DEQ has developed TMDLs to address each of the impairments listed below:

Rivanna River, benthic impairment, 11.16 miles from North and South Fork Rivanna confluence to unnamed tributary below Glenmore Sewage Treatment Plant;

Rivanna River, bacterial impairment, 5.28 miles from North and South Fork Rivanna confluence to Moores Creek;

North Fork Rivanna River, bacterial impairment, 10.38 miles from North Fork Rivanna River public water intake to South Fork Rivanna confluence;

Preddy Creek, bacterial impairment, 25.96 miles from its headwaters to confluence with the North Fork Rivanna River;

Meadow Creek, bacterial impairment, 4.01 miles from its headwaters to confluence with the Rivanna River;

Mechums River, bacterial impairment, 10.44 miles from Lickinghole Creek to confluence with Moormans River;

Beaver Creek, bacterial impairment, 4.80 miles from its headwaters to Beaver Creek Reservoir.

DEQ is soliciting public comment on the draft TMDL reports to address these impairments. The draft reports will be available for review and download from the DEQ website at: [http://gisweb.deq.virginia.gov/tmdlapp/tmdl\\_draft\\_reports.cfm](http://gisweb.deq.virginia.gov/tmdlapp/tmdl_draft_reports.cfm) beginning on or before February 11, 2008.

The final public meeting on the development of these TMDLs will be held on Monday, February 11, 2008, 7 p.m. at the Albemarle County 5th Street Office Building, Room 100, 1600 5th Street, Charlottesville, VA. In the event of inclement weather on the designated meeting date, the meeting will be moved to February 25 at 7 p.m. The decision to postpone the meeting will be determined by the Albemarle County School schedule. If Albemarle County Schools are closed or close early on February 11, the meeting will be postponed to the alternate date.

The public comment period for this final public meeting will end on March 12, 2008. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or email [rbrent@deq.virginia.gov](mailto:rbrent@deq.virginia.gov).

## STATE BOARD OF JUVENILE JUSTICE

### Notice of Periodic Review of Regulations

The State Board of Juvenile Justice has submitted notices of periodic review:

6VAC35-30, Regulations for State Reimbursement of Local Juvenile Residential Facility Cost

6VAC35-60, Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs

6VAC35-150, Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts

Start of comment period: 1/21/2008

End of comment period: 2/20/2008

Pursuant to Executive Order (EO) 36 (2006), the Virginia Department of Juvenile Justice, on behalf of the State Board of Juvenile Justice, will review the Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts (6VAC35-150). The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles set out in EO 36. The purpose of the regulations is to protect public health and welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth.

The department and the board are seeking public comment in the review of any issue relating to these regulations, and in particular, whether they comport appropriately with the policies contained in EO 36. EO 36 encourages consideration of whether (i) the regulations protect public health, safety and welfare with the least possible intrusion in the lives of citizens, (ii) alternatives in lieu of regulation may achieve the goals of the regulation, (iii) the regulations are based on the best reasonably available scientific, economic and other information, (iv) the regulations are designed to achieve their intended objective in the most efficient, cost-effective manner, (v) the regulations are clearly written and easily understandable by the individuals and entities affected, and (vi) the regulations have been developed in accordance with laws relating to the impact of regulations on small businesses.

Comments on the regulations are welcome and will be accepted until the close of the comment period (which must be no sooner than 21 days after publication of the notice). Comments should be sent to Patricia Rollston, Legal Analyst, Legislative and Regulatory Unit, Virginia Department of Juvenile Justice, P.O. Box 1110, Richmond, Virginia 23218-1110, (804) 786-4194, [patricia.rollston@djj.virginia.gov](mailto:patricia.rollston@djj.virginia.gov). (Note: Please include your full name and mailing address in any email.)

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on December 26, 2007 and December 27, 2007. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

[Director's Order Number Sixty-Four \(07\)](#)

Virginia's Thirteenth On-Line Game Lottery; "New Year's Millionaire Raffle" (effective 12/19/07)

[Director's Order Number Sixty-Five \(07\)](#)

Virginia's Instant Game Lottery 1016; "Whole Lotta \$100's" (effective 12/21/07)

[Director's Order Number Sixty-Six \(07\)](#)

Virginia's Instant Game Lottery 1017; "Lucky Green" (effective 12/21/07)

[Director's Order Number Sixty-Seven \(07\)](#)

Virginia's Instant Game Lottery 1018; "Big Money" (effective 12/21/07)

## NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

### Model State Administrative Procedure Act Revision Process -- Invitation to Participate

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is revising its Model State Administrative Procedure Act (MSAPA). NCCUSL invites organizations and individuals interested in state administrative agency processes to participate in this effort.

NCCUSL is a 117 year old national organization of lawyers, judges and law professors who are appointed to represent their states in drafting and seeking enactment of uniform laws to facilitate commerce and certainty in the law among the states. For more information about NCCUSL, visit <http://www.nccusl.org/>.

The goal of the MSAPA drafting committee is to make the administrative process more efficient, accessible and fair. The most recent draft of MSAPA is available at <http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=234>. The drafting process will not be completed until the spring of 2009. The MSAPA drafting committee invites interested parties to attend committee meetings as an observer and make comments and suggestions at the meetings

or by submitting them in writing. To become an observer, please contact Ms. Leang Sou at NCCUSL at (312) 450-6606 or at [leang.sou@nccusl.org](mailto:leang.sou@nccusl.org). Submit written comments about the MSAPA to Commissioner Francis J. Pavetti, 18 The Strand, Goshen Point, Waterford, CT 06385.

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order - Atlantic Waste Disposal, Inc.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a private sanitary landfill in Sussex County, Virginia.

Public comment period: January 21, 2008, to February 22, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Atlantic Waste Disposal, Inc., to address alleged violations of water regulations. The location of the property where the violations occurred is at 3474 Atlantic Ln., Sussex County, VA. The consent order settles the unpermitted discharge to state waters, the exceedances of effluent limits, the failure to notify DEQ of noncompliance and the failure to submit DMRs. The order requires corrective action and payment of a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Jennifer Hoeffner, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5123, FAX (804) 527-5106, or email [jhoeffner@deq.virginia.gov](mailto:jhoeffner@deq.virginia.gov).

### Proposed Consent Special Order - Hahn Transportation, Inc.

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility.

Public comment period: January 21, 2008, to February 21, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Hahn Transportation, Inc. to address alleged violations of the regulations. The location of the UST facility where the alleged violations occurred is in Warren County, Virginia. The consent order describes a settlement to resolve these violations.

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## General Notices/Errata

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How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: David C. Robinett, Department of Environmental Quality, Valley Regional Office, Post Office Box 3000, 4411 Early Road, Harrisonburg, VA 22801-9519, telephone (540) 574-7862, FAX (540) 574-7878, or email [dcrebinett@deq.virginia.gov](mailto:dcrebinett@deq.virginia.gov).

### VIRGINIA CODE COMMISSION

#### Elimination of the Calendar of Events Section

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at [www.virginia.gov](http://www.virginia.gov) and click on the calendar on the right side of the screen. Public hearing information will still be published in the Register and can be found with the corresponding proposed regulation.

#### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

#### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked 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.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file

print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

### ERRATA

#### BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Regulation: 18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations (amending 18VAC10-20-10, 18VAC10-20-280, 18VAC10-20-295, 18VAC10-20-310, 18VAC10-20-340, 18VAC10-20-350, 18VAC10-20-360, 18VAC10-20-380, 18VAC10-20-760; adding 18VAC10-20-382, 18VAC10-20-392, and 18VAC10-20-395).

Publication: 23:22 VA.R. 3771-3783 July 9, 2007.

#### Correction to proposed regulation:

18VAC10-20-760 was inadvertently omitted from publication with the proposed regulation. The only change consists of the addition of the Surveyor Photogrammetrist seal. The section should appear as:

#### **18VAC10-20-760. Use of seal.**

A. The application of a professional seal shall indicate that the professional has exercised direct control and personal supervision over the work to which it is affixed. Therefore, no professional shall affix a name, seal or certification to a plat, design, specification or other work constituting the practice of the professions regulated which has been prepared by an unlicensed or uncertified person unless such work was performed under the direct control and personal supervision of the professional while said unlicensed or uncertified person was an employee of the same firm as the professional or was under written contract to the same firm that employs the professional. If the original professional of record is no longer employed by the regulant or is otherwise unable to seal completed professional work, such work may be sealed by another professional, but only after a thorough review of the work by the professional affixing the professional seal to verify that the work has been accomplished to the same extent that would have been exercised if the work had been done under the direct control and personal supervision of the professional affixing the professional seal.

B. An appropriately licensed or certified professional shall apply a seal to final and complete original cover sheets of plans, drawings, plats, technical reports and specifications and to each original sheet of plans, drawings or plats,

prepared by the professional or someone under his direct control and personal supervision.

1. All seal imprints on the cover or first sheet of final documents shall bear an original signature and date. "Final Documents" are completed documents or copies submitted on a client's behalf for approval by authorities or recordation. In such cases, the cover sheet of the documents or copies shall contain a list of drawings or plats included in the set on which a seal, original signature and date shall be affixed for all regulated disciplines. Every page of the submission, other than the cover, may be reproduced from originals which contain the seal, original signature and date by each discipline responsible for the work.

a. An electronic seal, signature and date are permitted to be used in lieu of an original seal, signature and date when the following criteria, and all other requirements of this section, are met:

- (1) It is a unique identification of the professional;
- (2) It is verifiable; and
- (3) It is under the professional's direct control.

b. A professional should not seal original documents made of mylar, linen, sepia, or other materials, or that are transmitted electronically, which can be changed by the person or entity with whom the documents are filed, unless the professional accompanies such documents with a signed and sealed letter making the recipient of such documents aware that copies of the original documents as designed by the professional have been retained by the professional and that the professional cannot assume responsibility for any subsequent changes to the reproducible original documents that are not made by the professional or those working under his direct control and personal supervision.

2. Incomplete plans, documents and sketches, whether advance or preliminary copies, shall be so identified on the plan, document or sketch and need not be sealed, signed or dated.

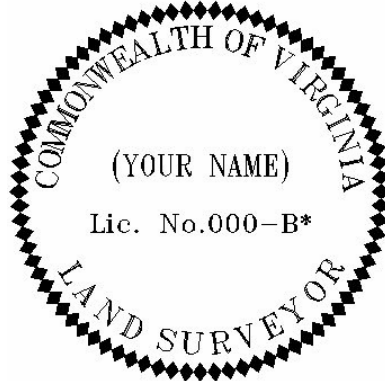
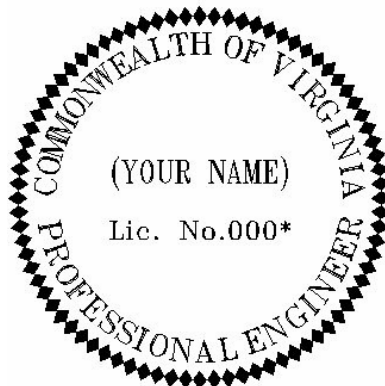
3. All plans, drawings or plats prepared by the professional shall bear the professional's name or firm name, address and project name.

4. The seal of each professional responsible for each profession shall be used and shall be on each document that was prepared under the professional's direction and for which that professional is responsible. If one of the exemptions found in §54.1-402 of the Code of Virginia is applicable, a professional licensed or certified by this board shall nevertheless apply his seal to the exempt work.

5. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.

6. The seal shall conform in detail and size to the design illustrated below and shall be two inches in diameter. The designs below may not be shown to scale:





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\* The number referred to is the last six-digit number as shown on the license or certificate. The number is permanent. Leading zeros contained in the six-digit number may be omitted from the seal.

VA.R. Doc. No. R08-1050